

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7575**

4 DATE COMPLAINT FILED: Mar. 4, 2019

5 DATE OF LAST NOTIFICATION: Mar. 7, 2019

6 DATE OF LAST RESPONSE: Mar. 22, 2019

7 DATE ACTIVATED: Aug. 14, 2019

8
9 ELECTION CYCLE: 2018

10 EXPIRATION OF SOL: Jan. 3, 2022 – May 24, 2023

11 **COMPLAINANT:**

National and Legal Policy Center

12 **RESPONDENTS¹:**

13 Brand New Congress and Hosseh Enad in his

14 Official capacity as treasurer

15 Justice Democrats PAC and Natalie Trent in her

16 official capacity as treasurer

17 Brand New Congress, LLC (f/k/a Brand New

18 Campaign, LLC)

19 Alexandria Ocasio-Cortez

20 Saikat Chakrabarti

21 Alexandria Ocasio-Cortez for Congress and Frank

Llewellyn in his official capacity as treasurer

22 **MUR 7580**

23 DATE COMPLAINT FILED: Mar. 18, 2019

24 DATE OF LAST NOTIFICATION: Mar. 21, 2019

25 DATE OF LAST RESPONSE: Apr. 11, 2019

26 DATE ACTIVATED: Aug. 14, 2019

27
28 ELECTION CYCLE: 2018

29 EXPIRATION OF SOL: Jan. 3, 2022 – May 24, 2023

30 **COMPLAINANT:**

Sheila Oxsher

31 **RESPONDENTS:**

32 Justice Democrats PAC and Natalie Trent in her

33 official capacity as treasurer

34 Alexandria Ocasio-Cortez

35 Saikat Chakrabarti

36 Alexandria Ocasio-Cortez for Congress and Frank

Llewellyn in his official capacity as treasurer

¹ This Report refers to the Respondents by their current committee names and current treasurers (or most recent names and treasurers in the case of terminated committees). Where relevant, citations to Statements of Organization, disclosure reports, and other Commission filings reflect the name and treasurer listed on the report or filing cited.

MUR 7592

DATE COMPLAINT FILED: Apr. 4, 2019

DATE OF LAST NOTIFICATION: Nov. 18, 2021

DATE OF LAST RESPONSE: Aug. 9, 2019

DATE ACTIVATED: Aug. 14, 2019

ELECTION CYCLE: 2018

EXPIRATION OF SOL: Jan. 3, 2022 – May 24, 2023

COMPLAINANT:

Coolidge-Reagan Foundation

RESPONDENTS:Brand New Congress and Hosseh Enad in his
official capacity as treasurerJustice Democrats PAC and Natalie Trent in her
official capacity as treasurerBrand New Congress, LLC (f/k/a Brand New
Campaign, LLC)

Alexandria Ocasio-Cortez

Saikat Chakrabarti

Alexandria Ocasio-Cortez for Congress and Frank
Llewellyn in his official capacity as treasurerAdrienne Bell 2018 and Andret Rayford in her
official capacity as treasurerAnthony Clark 2018 (terminated) and Anthony
Clark in his official capacity as treasurerChardo Richardson for Congress (terminated) and
Chardo Richardson in his official capacity as treasurerCommittee to Elect Ryan Stone (terminated) and
Ryan Stone in his official capacity as treasurerCori Bush for Congress and Amy Vilela in her
official capacity as treasurer

Hector Morales for Congress (terminated) and

Hector Morales in his official capacity as treasurer

Hepburn for Congress (terminated) and Michael
Hepburn in his official capacity as treasurerLetitia Plummer 2018 and Letitia Plummer in her
official capacity as treasurerPaula Swearengin 2018 and Paula Swearengin in
her official capacity as treasurerPerry for Pennsylvania (terminated) and Paul-David
Perry, II, in his official capacity as treasurerRobert Ryerse 2018 and Robert Ryerse in his
official capacity as treasurerSarah Smith 2018 and Andy Lo in his official
capacity as treasurer

Arden Buck

Kamilka Malwatte

Natalie Elsberg

MUR 7626

DATE COMPLAINT FILED: July 29, 2019

DATE OF LAST NOTIFICATION: Aug. 2, 2019

DATE OF LAST RESPONSE: Aug. 19, 2019

DATE ACTIVATED: Oct. 4, 2019

ELECTION CYCLE: 2018

EXPIRATION OF SOL: Apr. 26, 2022 – Feb. 14, 2023

COMPLAINANT:

Michelle Clay

RESPONDENTS:

Brand New Congress and Hosseh Enad in his
official capacity as treasurer
Justice Democrats PAC and Natalie Trent in her
official capacity as treasurer
Cori Bush for Congress and Amy Vilela in her
official capacity as treasurer

RELEVANT STATUTES**AND REGULATIONS:**

52 U.S.C. § 30101(8)

52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104(a), (b)

52 U.S.C. § 30116(a), (f)

11 C.F.R. § 100.52(d)(1)

11 C.F.R. § 104.3(a), (b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

STATE AGENCIES CHECKED:**I. INTRODUCTION**

This Report addresses four complaints that primarily concern the activities of two political committees, Brand New Congress (“BNC”) and Justice Democrats PAC (“JD”), that recruited and promoted first-time progressive Democratic congressional candidates in the 2018 election cycle, and a related limited liability corporation, Brand New Congress, LLC (the “LLC”), owned by BNC and JD co-founder Saikat Chakrabarti, that provided campaign-related services to the 13 candidates recruited by BNC and JD and their campaign committees (the “Respondent candidate committees”). The four complaints make sometimes overlapping

1 allegations that BNC, JD, the LLC, Chakrabarti, the 13 Respondent candidate committees, and
2 other individuals violated various provisions of the Federal Election Campaign Act of 1971, as
3 amended (the "Act"), and Commission regulations.

4 For the reasons discussed below, we recommend that the Commission: (1) find reason to
5 believe that BNC, JD, the LLC, and Chakrabarti made excessive in-kind contributions to the
6 Respondent candidate committees; (2) take no action at this time regarding the allegations that
7 the Respondent candidate committees knowingly accepted excessive in-kind contributions;
8 (3) take no action at this time regarding the allegations that the LLC was an unregistered political
9 committee; (4) take no action at this time regarding the allegations that JD was an unregistered
10 authorized committee or leadership PAC of U.S. Representative Alexandria Ocasio-Cortez;
11 (5) find reason to believe that BNC, JD, Cori Bush for Congress, and Paula Swearengin 2018
12 failed to include sufficient descriptions showing the purposes for, and misreported the payee of,
13 disbursements to the LLC; (6) exercise its prosecutorial discretion and dismiss the allegations
14 that the remaining Respondent candidate committees failed to include sufficient descriptions
15 showing the purposes for, and misreported the payee of, disbursements to the LLC, and remind
16 those Respondent candidate committees to work with the Commission's Reports Analysis
17 Division ("RAD") to amend their reports, if necessary, to reflect proper purposes and payees;
18 (7) exercise its prosecutorial discretion and dismiss the allegations that Arden Buck, Kamilka
19 Malwatte, and Natalie Elsberg made, and JD and Alexandria Ocasio-Cortez for Congress
20 ("Ocasio-Cortez for Congress") knowingly accepted, excessive contributions; and (8) approve
21 the use of compulsory process.

MURs 7575, 7580, 7592, & 7626 (Brand New Congress, *et al.*)

First General Counsel's Report

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1 II. FACTUAL BACKGROUND

2 BNC and JD represent, in a Joint Response with several other Respondents, that they
 3 “sought to implement a national program to recruit non-traditional, first-time candidates for
 4 United States House of Representatives and Senate, and to support them with an infrastructure to
 5 effectively run their campaigns as an integrated, national effort.”² BNC and JD state that they
 6 sought to recruit a candidate in every congressional district in the country, but it appears that the
 7 13 Respondent candidate committees were the only 2018 congressional candidates that BNC and
 8 JD ultimately worked with in 2018.³ BNC and JD share many of the same founding members,
 9 including Chakrabarti.⁴

10 In an online statement posted by JD on May 8, 2018, Chakrabarti wrote that the founders
 11 of BNC and JD started those groups to:

12 recruit candidates who were not thinking about running already
 13 and to actually fully run all of their campaigns as if it was one big

² Alexandria Ocasio-Cortez; Alexandria Ocasio-Cortez for Congress; Saikat Chakrabarti; Brand New Congress; Justice Democrats PAC; and Brand New Congress, LLC Resp. at 3 (Mar. 22, 2019), MUR 7575 [hereinafter MUR 7575 Joint Resp.]; Alexandria Ocasio-Cortez; Alexandria Ocasio-Cortez for Congress; Saikat Chakrabarti; Brand New Congress PAC; Justice Democrats PAC; and Brand New Congress, LLC Resp. at 3 (Apr. 11, 2019), MUR 7580 [hereinafter MUR 7580 Joint Resp.]; *accord* Alexandria Ocasio-Cortez; Alexandria Ocasio-Cortez for Congress; Justice Democrats PAC; Brand New Congress; Brand New Congress, LLC; Saikat Chakrabarti; Adrienne Bell 2018; Chardo Richardson for Congress; Cori Bush for Congress; Paula Swearengin 2018; Robert Ryerse 2018; and Sarah Smith 2018 Resp. at 7 (June 28, 2019), MUR 7592 [hereinafter MUR 7592 Joint Resp.]; *see also* Perry for Pennsylvania Resp. (June 28, 2019), MUR 7592 (joining MUR 7592 Joint Resp.); Hector Morales for Congress Resp. (July 5, 2019), MUR 7592 (same); Hepburn for Congress Resp. (Aug. 9, 2019) (agreeing with MUR 7592 Joint Resp.); Letitia Plummer 2018 Resp. (Sept. 11, 2019), MUR 7592 (joining MUR 7592 Joint Resp.). BNC and the LLC joined the MUR 7580 Joint Response although they were not notified as Respondents in that matter. MUR 7580 Joint Resp. at 1. Committee to Elect Ryan Stone did not submit a Response to the MUR 7592 Complaint.

³ *See* MUR 7592 Joint Resp. at 7-8 & n.10.

⁴ *See When I Look at the FEC Report for Justice Democrats in 2017, Why Are There so Many Expenditures to “Brand New Congress”?*, JUSTICE DEMOCRATS (May 8, 2018, 2:24PM) [hereinafter JD Online Post], <https://justicedems.freshdesk.com/support/solutions/articles/33000223353-when-i-look-at-the-fec-report-for-justice-democrats-in-2017-why-are-there-so-many-expenditures-to-b> (“[M]any of the founding members of [JD] also helped start [BNC].”). The MUR 7575 Complaint, MUR 7592 Complaint, and the MUR 7592 Joint Response all include the JD Online Post as an attachment. Compl., Ex. 4 (Mar. 4, 2019), MUR 7575 [hereinafter MUR 7575 Compl.]; Compl. at 15 (Apr. 4, 2019), MUR 7592 [hereinafter MUR 7592 Compl.] (linking to JD Online Post and confirming, on October 29, 2021, that missing Exhibit 2 is text at that link); MUR 7592 Joint Resp., Ex. A.

1 presidential race. . . . Normally, running a campaign requires all
2 kinds of ops and legal headaches, but we thought we could
3 possibly short circuit that by having this big national campaign that
4 all the candidates could plug into and one central team was doing
5 the annoying work of keeping the actual campaign logistics
6 running.⁵

7 Chakrabarti and his co-founders started BNC to perform the campaign work associated with
8 advancing the congressional candidates, but their legal counsel advised against that structure.⁶
9 Accordingly, they created the LLC to “essentially run the full campaigns for the vast majority of
10 our candidates.”⁷ BNC “put all [of its] staff in th[e] LLC and had it act as the vendor for both
11 the PAC and all the candidates.”⁸ The LLC was designed to have prices that were “as low as
12 possible while still satisfying the FEC’s requirement [to] charg[e] something reasonable.”⁹

13 BNC filed its Statement of Organization with the Commission on April 5, 2016.¹⁰ BNC
14 reported \$252,562.56 in total receipts and \$220,500.08 in total disbursements in 2016.¹¹ BNC
15 reported \$607,364.52 in total receipts and \$629,706.44 in total disbursements in the 2018
16 cycle.¹² JD filed its Statement of Organization with the Commission on January 9, 2017.¹³ JD
17 reported \$2,726,957.42 in total receipts and \$2,539,933.41 in total disbursements in the 2018

⁵ JD Online Post; *see* MUR 7575 Compl. at 2; MUR 7592 Compl. at 15.

⁶ JD Online Post.

⁷ *Id.*

⁸ *Id.*; MUR 7575 Compl. at 3 (quoting JD Online Post).

⁹ JD Online Post.

¹⁰ Brand New Congress, Statement of Organization (Apr. 5, 2016); MUR 7575 Compl. at 2.

¹¹ *See* Brand New Congress, 2016 Year-End Report at 2-4 (Jan. 18, 2017); *see also* *Brand New Congress: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00613810/?tab=summary&cycle=2016> (last visited Nov. 23, 2021).

¹² *See* Brand New Congress, 2017 Year-End Report at 2-4 (Jan. 31, 2018); Brand New Congress, Amended 2018 Year-End Report at 2-4 (July 19, 2019); *see also* *Brand New Congress: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00613810/?tab=summary&cycle=2018> (last visited Nov. 23, 2021).

¹³ Justice Democrats, Statement of Organization (Jan. 9, 2017); MUR 7575 Compl. at 2; MUR 7592 Compl. at 4.

1 cycle.¹⁴ The Respondent candidate committees were all authorized committees for first-time
2 Democratic congressional candidates in 2018.¹⁵

3 Brand New Congress, LLC, was a single-member limited liability company with
4 Chakrabarti as its single member.¹⁶ The LLC represents that it operated as a “campaign in a
5 box” vendor that provided campaign services to candidates, including “communications, field,
6 online organizing, fundraising,” and similar services.¹⁷ According to the MUR 7592 Joint
7 Response, the LLC began operations in January 2017.¹⁸ However, the LLC originally formed as
8 “Brand New Campaign, LLC,” on May 11, 2016, before it was renamed as Brand New
9 Congress, LLC.¹⁹ The first reported disbursement to Brand New Campaign, LLC, was from

¹⁴ See Justice Democrats PAC, 2018 Year-End Report at 2-4 (Jan. 24, 2019); Justice Democrats, Amended 2017 Year-End Report at 2-4 (Nov. 5, 2018); *see also Justice Democrats: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00630665/?cycle=2018> (last visited Nov. 23, 2021).

¹⁵ Adrienne Bell 2018, Statement of Organization (May 10, 2017); Alexandria Ocasio-Cortez, Statement of Organization (May 5, 2017); Anthony Clark 2018, Statement of Organization (May 10, 2017); Chardo Richardson, Statement of Organization (May 18, 2018); Committee to Elect Ryan Stone, Statement of Organization (Apr. 8, 2017); Cori Bush 2018, Statement of Organization (Apr. 25, 2017); Hector Morales for Congress, Statement of Organization (Apr. 6, 2017); Hepburn for Congress, Statement of Organization (Apr. 1, 2017); Letitia Plummer 2018, Statement of Organization (May 10, 2017); Paula Swearengin 2018, Statement of Organization (May 3, 2017); Perry for Pennsylvania, Statement of Organization (May 20, 2017); Robert Ryerse 2018, Statement of Organization (May 10, 2017); Sarah Smith 2018, Statement of Organization (May 11, 2017).

¹⁶ MUR 7575 Joint Resp. at 4 & n.4; MUR 7580 Joint Resp. at 4 & n.4; MUR 7592 Joint Resp. at 14, 27.

¹⁷ MUR 7575 Joint Resp. at 3; MUR 7580 Joint Resp. at 3; MUR 7592 Joint Resp. at 8; *see also* JD Online Post (describing the LLC’s organization and referencing “many kinds of campaign work,” including “direct message consulting, writing press statements, any field work or voter outreach work, etc.”); MUR 7592 Joint Resp. at 9, 27 (referencing the LLC’s “campaign in a box” services); MUR 7575 Compl. at 3 (alleging Chakrabarti stated in a television interview on May 19, 2016, that Brand New Congress, LLC, “ran all of the fundraising and volunteering operations for the campaigns”).

¹⁸ See MUR 7592 Joint Resp. at 14, 17, 40.

¹⁹ See *Entity Search*, STATE OF DEL. DIV. OF CORPS., <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> (search Entity Name field for “Brand New Campaign LLC” or File Number field for “6039258”) (last visited Nov. 23, 2021) (showing formation on May 11, 2016); *e.g.*, MUR 7575 Compl. at 2; MUR 7592 Compl. at 4; MUR 7575 Joint Resp. at 1, 3; MUR 7580 Joint Resp. at 1, 3; MUR 7592 Joint Resp. at 1, 8; *see also* MUR 7575 Joint Resp., Ex. A (Statement of Work and Services Agreement executed between “Brand New Campaign, LLC” and JD). The Delaware Division of Corporations Entity Search database does not return results for “Brand New Congress.” *Entity Search*, STATE OF DEL. DIV. OF CORPS., <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> (search Entity Name field for “Brand New Congress”) (last visited Nov. 23, 2021) (showing no results).

1 BNC on May 17, 2016.²⁰ Respondents assert that the LLC ceased operations in August 2017
 2 when it determined that its business model was “not sustainable.”²¹ According to Respondents,
 3 Chakrabarti received no salary or any other kind of profit from the LLC as its sole member.²²
 4 In 2016, BNC made \$205,154.71 in total disbursements to the LLC’s predecessor-in-
 5 name, Brand New Campaign, LLC.²³ In the 2017-2018 cycle, JD made \$605,849.12 in
 6 disbursements to the LLC and BNC made \$261,165.18 in disbursements to the LLC.²⁴ In
 7 contrast to the aggregate \$867,014.30 provided to the LLC by BNC and JD in the 2017-2018
 8 cycle, the 13 Respondent candidate committees made \$175,801.92 in aggregate disbursements to
 9 the LLC.²⁵ A chart depicting the breakdown of each Respondent’s aggregate disbursements to
 10 the LLC in the 2018 cycle is included below:

²⁰ Brand New Congress, 2016 July Quarterly Report at 11 (July 13, 2016); *see also* MUR 7575 Compl. at 3 (alleging Chakrabarti stated in a television interview on May 19, 2016, that Brand New Congress, LLC, “created the campaign infrastructure and ran all of the fundraising and volunteering operations for the campaigns”).

²¹ *See* MUR 7575 Joint Resp. at 4; MUR 7592 Joint Resp. at 9-10, 18; *see also* MUR 7592 Compl. at 22; JD Online Post (describing decision in September 2017 to wrap up LLC and “move all” staff into JD).

²² MUR 7575 Joint Resp. at 4, 8; MUR 7580 Joint Resp. at 4; MUR 7592 Joint Resp. at 9, 40, 47; JD Online Post.

²³ *See FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00613810&recipient_name=Brand+New+Campaign (last visited Nov. 23, 2021) (reflecting 15 disbursements by BNC to Brand New Campaign, LLC).

²⁴ *See FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00630665&recipient_name=brand+new+congress&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 11 disbursements by JD to the LLC); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00613810&recipient_name=brand+new+congress&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 13 disbursements by BNC to the LLC).

²⁵ The MUR 7592 Complaint alleges the 13 committees made \$173,101.92 in aggregate disbursements to the LLC, but Commission records reflect the committees made \$175,801.92. *See* MUR 7592 Compl. at 16-20; *see also* MUR 7575 Compl. at 3 (alleging Ocasio-Cortez for Congress disbursed \$18,720.86 to the LLC). It appears the MUR 7592 Complaint omits a \$2,700 disbursement made by Ocasio-Cortez for Congress to the LLC on September 1, 2017, that is described as “strategic consulting, FEC compliance including software expense, relay texting.” *See* Alexandria Ocasio-Cortez for Congress, Amended 2017 October Quarterly Report at 21 (Apr. 19, 2019) [hereinafter Ocasio-Cortez for Congress October 2017 Quarterly Report].

MURs 7575, 7580, 7592, & 7626 (Brand New Congress, *et al.*)

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Respondent Disbursements to Brand New Congress, LLC, in 2018 Cycle			
Respondent Category	Respondent	Aggregate Disbursements	Number of Transactions
PACs	Justice Democrats PAC	\$605,849.12	11
	Brand New Congress	\$261,165.18	13
	Sub-Total	\$867,014.30	24
Candidate Committees	Adrienne Bell 2018	\$10,536.26	3
	Alexandria Ocasio-Cortez for Congress	\$21,580.14	4
	Anthony Clark 2018	\$18,577.22	4
	Chardo Richardson for Congress	\$4,034.77	2
	Committee to Elect Ryan Stone	\$8,550.14	4
	Cori Bush for Congress	\$40,607.91	4
	Hector Morales for Congress	\$4,602.65	2
	Hepburn for Congress	\$9,048.70	2
	Letitia Plummer 2018	\$4,565.72	2
	Paula Swearengin 2018	\$33,826.87	5
	Perry for Pennsylvania	\$6,800.54	1
	Robert Ryerse 2018	\$4,590.35	2
	Sarah Smith 2018	\$8,480.65	2
	Sub-Total	\$175,801.92	37
TOTAL		\$1,042,816.22	61

- 1 Chakrabarti, in addition to forming the LLC, was a founding member of both BNC and
- 2 JD and served as the Executive Director of JD from the time of its inception until June 2018.²⁶
- 3 He served as the initial custodian of records for three Respondent candidate committees: Chardo
- 4 Richardson for Congress, Ocasio-Cortez for Congress, and Sarah Smith 2018.²⁷ He also

²⁶ See MUR 7592 Compl. at 5-6; MUR 7592 Joint Resp. at 18; *see also* JD Online Post (describing Chakrabarti's involvement in BNC, JD, and the LLC); MUR 7575 Compl. at 3 (same); MUR 7575 Joint Resp. at 4, 8 (same); MUR 7580 Joint Resp. at 3-4 (same); Compl. (Mar. 18, 2019), MUR 7580 [hereinafter MUR 7580 Compl.] (alleging violations by Saikat Chakrabarti, JD "founder," and two political committees he "opened" and "controlled").

²⁷ See Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (May 15, 2017) (listing Chakrabarti as custodian of records); Chardo Richardson, Statement of Organization at 3 (May 18, 2017) (same); Sarah Smith 2018, Statement of Organization at 3 (May 11, 2017) (same); MUR 7592 Compl. at 5; MUR 7592 Joint Resp. at 18.

1 subsequently served as Ocasio-Cortez for Congress's treasurer and campaign manager.²⁸
2 Chakrabarti and Ocasio-Cortez joined JD's Board of Directors in November 2017.²⁹ Ocasio-
3 Cortez resigned from JD's Board of Directors on June 30, 2018, and Chakrabarti left the Board
4 on January 11, 2019.³⁰

5 The Complaints in MURs 7580, 7592, and 7626 all broadly allege that BNC, JD, the
6 LLC, or some combination thereof, made excessive in-kind contributions to some or all of the 13
7 Respondent candidate committees, and that the respective candidate committees knowingly
8 accepted those excessive in-kind contributions. The MUR 7592 Complaint asserts that the LLC
9 provided "likely in excess of \$1 million" worth of campaign-related services to Respondent
10 candidate committees but only received \$173,101.92 in disbursements from them, and contends
11 that the much larger BNC and JD payments subsidized the cost of the LLC's services for the
12 candidate committees.³¹ Most of the Respondents filed a Joint Response in MUR 7592 which
13 denies certain factual assertions made in that Complaint, such as that the LLC performed
14 discounted work for the Respondent candidate committees that was paid for by BNC and JD.³²

²⁸ Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (Feb. 6, 2018) (listing Chakrabarti as treasurer); MUR 7592 Compl. at 5 (describing Chakrabarti as Ocasio-Cortez for Congress's treasurer and campaign manager).

²⁹ MUR 7592 Joint Resp. at 18; *see also* MUR 7592 Compl. at 5 (alleging Ocasio-Cortez and Chakrabarti joined JD's Board in December 2017); MUR 7575 Compl. at 4 (referencing Ocasio-Cortez's membership on JD's Board). At the time Chakrabarti and Ocasio-Cortez joined JD's Board, it apparently consisted of two other people: Cenk Uygur and Kyle Kulinski. *See* MUR 7592 Compl. at 5; *see also* JD Online Post (describing Uygur and Kulinski's involvement in JD). The MUR 7592 Complaint states that Uygur was expelled from the Board on December 22, 2017, leaving control to Ocasio-Cortez, Chakrabarti, and Kulinski. MUR 7592 Compl. at 5. The MUR 7592 Complaint further states that on March 28, 2018, Chakrabarti filed a "Two Year Report for Domestic & Foreign Filing Entity" on behalf of JD that stated JD's "governors" were Ocasio-Cortez, Chakrabarti, and Nasim Thompson. *Id.* As of June 24, 2018, JD's website identified only Ocasio-Cortez and Chakrabarti as its Board members. *About Justice Democrats*, JUSTICE DEMOCRATS (June 24, 2018), <https://justicedemocrats.com/about/> [<https://web.archive.org/web/20180624092923/https://justicedemocrats.com/about/>]; MUR 7592 Compl. at 5-6.

³⁰ MUR 7580 Joint Resp. at 4; MUR 7592 Joint Resp. at 18.

³¹ MUR 7592 Compl. at 19.

³² MUR 7592 Joint Resp. at 25-35.

1 In support of this denial, the MUR 7592 Joint Response discusses the timing of expenditures
 2 made to the LLC.³³ The MUR 7592 Joint Response states that the LLC's operations can be best
 3 explained as occurring in three phases:

- 4 (1) **Phase 1** (January-May 2017): The LLC engages in candidate recruitment on behalf
 5 of BNC and JD.³⁴
 6 (2) **Phase 2** (June-August 2017): The LLC begins providing services to the candidate
 7 committees and continues to provide services to BNC and JD to "grow their brands
 8 and influence."³⁵
 9 (3) **Phase 3** (August 2017): The LLC winds down operations and collects balances from
 10 its clients.³⁶

11 The MUR 7592 Joint Response includes the following chart showing the amounts the
 12 LLC received from BNC and JD, compared to the 13 candidate committees, during each phase
 13 of the 2018 cycle explained above:³⁷

Phase	LLC Total Income	Income from BNC and JD	Income from Candidate Committees	Percentage of Income from BNC and JD
Phase 1	\$643,258.87	\$643,258.87	\$0	100%
Phase 2	\$368,516.92	\$198,065.00	\$170,451.92	53.75%
Phase 3	\$28,340.43	\$25,690.43	\$2,650.00	90.65%

14 Approximately 74% of the funds paid by BNC and JD to the LLC in the 2018 cycle were paid
 15 during what the Respondents characterize as the Phase 1 candidate recruitment phase.³⁸ The
 16 MUR 7592 Joint Response characterizes these payments as "retainers" for the LLC staff's work

³³ *See id.* at 9-13.

³⁴ All of the Respondent candidates filed their Statements of Candidacy during this phase; four of the candidates filed those statements in April 2017, while the other nine filed their statements in May 2017. *See supra* note 15.

³⁵ MUR 7592 Joint Resp. at 8.

³⁶ *Id.* at 7-8; *see also id.* at 11-12 (providing a more detailed chart itemizing each receipt by the LLC).

³⁷ It appears the LLC's only sources of income were BNC, JD, and the 13 Respondent candidate committees. *See id.* at 8 n.10 (listing the Respondents as the "LLC's only clients"). The MUR 7592 Joint Response does not include on this chart or otherwise reference any payments made by BNC to Brand New Campaign, LLC, in 2016. *See generally id.*

³⁸ *Id.* at 10.

1 identifying and recruiting candidates to run for office on behalf of BNC and JD.³⁹ The
2 MUR 7592 Joint Response argues that the timing of these payments negates the allegation that
3 those payments subsidized the LLC's services to the candidate committees because they were
4 made before the candidates became "candidates" under the Act.⁴⁰ The Respondents do not
5 elaborate on what proportion of the \$643,258.87 candidate recruitment payments was
6 attributable to the LLC's efforts to recruit the 13 candidates it ultimately recruited and what was
7 attributable to its efforts to recruit individuals who did not become candidates, if any.

8 The MUR 7592 Joint Response states that, after Phase 1, the LLC moved from a
9 "retainer" model of billing its clients to a "hybrid" model of billing.⁴¹ According to the
10 Respondents, this hybrid model included charging clients a flat fee for certain services, charging
11 a percentage of digital fundraising services, and billing some services based on the amount of
12 staff time it took to provide that service.⁴² The MUR 7592 Joint Response states that the LLC
13 engaged in arm's-length contracts with the candidate committees and applied the hybrid billing
14 model to all clients.⁴³ The MUR 7592 Joint Response does not explain how the LLC determined
15 the amount of the Phase 1 retainers paid by BNC and JD, nor does it explain how the LLC
16 determined the amount of the hybrid billing or flat fees paid by the 13 candidate committees.

³⁹ *Id.* at 10, 14, 26. The MUR 7592 Joint Response asserts that the LLC's recruitment efforts involved "many different staff, dozens of meetings," and "travel, staff, office space," to "vet and interview candidates." *Id.* at 10; *see also id.* at 8, 10 ("JD and BNC PAC sought nominations for potential candidates through emails sent to their supporters, as well as social media campaigns, which were then evaluated and vetted by [the] LLC."); MUR 7575 Joint Resp., Ex. A at 1 (describing, in contract between JD and the LLC, the LLC's "scope of work" with JD as including "helping [JD] identify, vet and recruit candidates").

⁴⁰ MUR 7592 Joint Resp. at 9-13, 25.

⁴¹ *Id.* at 26.

⁴² *Id.*

⁴³ *Id.* at 26-27.

1 The Complaints in MURs 7575, 7580, 7592, and 7626 allege variously that one or more
2 of BNC, JD, and the Respondent candidate committees did not accurately report the purpose and
3 payees of disbursements.⁴⁴ Respondents assert that “strategic consulting” was a sufficient
4 description of the services the LLC provided, itemized reporting of sub-vendors of the LLC is
5 not required in these circumstances, and the LLC sought guidance from RAD regarding how its
6 clients should report payments for its services.⁴⁵

7 Finally, the MUR 7592 Complaint identifies excessive payments made from three
8 individuals to JD and Ocasio-Cortez for Congress.⁴⁶ Specifically, the MUR 7592 Complaint
9 asserts that: (1) Arden Buck contributed \$7,500 to JD in 2018, exceeding the applicable \$5,000
10 annual limit; (2) Kamilka Malwatte contributed \$5,500 to JD in 2018, exceeding the applicable
11 \$5,000 annual limit; and (3) Natalie Elsberg contributed a total of \$5,650 to Ocasio-Cortez for
12 Congress during the 2018 cycle, exceeding the \$5,400 total per-election limit to candidate
13 committees.⁴⁷ The MUR 7592 Joint Response states that these excessive contributions have
14 been refunded, which is reflected in the relevant reports.⁴⁸

⁴⁴ MUR 7575 Compl. at 3-4; MUR 7580 Compl.; MUR 7592 Compl. at 43-45; Compl. at 1-2 (July 29, 2019), MUR 7626 [hereinafter MUR 7626 Compl.] (focusing on payments presumably relating to Cori Bush for Congress). Cori Bush for Congress did not submit a Response to the MUR 7626 Complaint.

⁴⁵ MUR 7575 Joint Resp. at 4-11, Ex. B; MUR 7592 Joint Resp. at 36-41; *id.*, Ex. D.

⁴⁶ MUR 7592 Compl. at 45-47.

⁴⁷ *Id.*

⁴⁸ MUR 7592 Joint Resp. at 42; *see also* Kamilka Malwatte Resp. (Aug. 28, 2019), MUR 7592 (joining MUR 7592 Joint Resp.); Natalie Elsberg Resp. (May 2, 2019), MUR 7592; Alexandria Ocasio-Cortez for Congress, Amended 2019 April Quarterly Report at 570 (June 16, 2019) [hereinafter Ocasio-Cortez for Congress April 2019 Quarterly Report]; Justice Democrats PAC, 2019 Mid-Year Report at 1534, 1536 (July 31, 2019) [hereinafter JD Mid-Year 2019 Report]. Arden Buck did not submit a response in MUR 7592.

1 **III. ANALYSIS**

2 **A. The Commission Should Find Reason to Believe That BNC, JD, the LLC,**
3 **and Chakrabarti Made Excessive In-Kind Contributions, But Take No**
4 **Action at This Time Regarding Allegations That the Respondent Candidate**
5 **Committees Knowingly Accepted Excessive In-Kind Contributions**

6 The Act defines “contribution” as “any gift, subscription, loan, advance, or deposit of
7 money or anything of value made by any person for the purpose of influencing any election for
8 Federal office.”⁴⁹ The Act prohibits any person from making contributions to any candidate or
9 candidate’s authorized committee in excess of the limits at 52 U.S.C. § 30116(a) and candidate
10 committees are prohibited from knowingly accepting excessive contributions.⁵⁰ Commission
11 regulations specify that a “contribution by an LLC with a single natural person member that does
12 not elect to be treated as a corporation by the Internal Revenue Service . . . shall be attributed
13 only to that single member.”⁵¹

14 During the 2018 election cycle, the per-election limit for contributions to candidate
15 committees from multicandidate political committees was \$5,000 and the limit from individuals
16 and non-multicandidate committees was \$2,700.⁵² The LLC had a single natural person member
17 in Chakrabarti and elected partnership taxation.⁵³ Therefore, any contributions by the LLC to
18 candidate committees are attributable to Chakrabarti and subject to a \$2,700 per-election limit.⁵⁴
19 Similarly, BNC, as a non-multicandidate committee, could contribute \$2,700 per election to

⁴⁹ 52 U.S.C. § 30101(8)(A)(i).

⁵⁰ *Id.* § 30116(a), (f); *see also* 11 C.F.R. §§ 110.1, 110.2, 110.9.

⁵¹ 11 C.F.R. § 110.1(g)(4).

⁵² 52 U.S.C. § 30116(a)(1), (a)(2); *see* 11 C.F.R. §§ 110.1(b)(1)(i), 110.2(b)(1), 110.17(b), 110.17(e).

⁵³ MUR 7592 Joint Resp. at 14.

⁵⁴ *See* 11 C.F.R. § 110.1(g)(4); *see also* 52 U.S.C. § 30116(a)(1); 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b), 110.17(e).

1 candidate committees in the 2018 election cycle.⁵⁵ JD is a multicandidate political committee
2 and, therefore, contributions by it to candidate committees are subject to a \$5,000 per-election
3 limit.⁵⁶

4 Under the Commission's regulations, the provision of any goods or services without
5 charge or at a charge that is "less than the usual and normal charge" for such goods or services is
6 a contribution.⁵⁷ The "usual and normal charge" for goods is "the price of those goods in the
7 market from which they ordinarily would have been purchased at the time of the contribution."⁵⁸
8 The "usual and normal charge" for non-volunteer services is "the hourly or piecework charge for
9 the services at a commercially reasonable rate prevailing at the time the services were
10 rendered."⁵⁹ The Commission has previously concluded that entities may establish the "usual
11 and normal charge" of goods or services by reference to the "fair market price" of goods or
12 services,⁶⁰ "commercial considerations,"⁶¹ or the fee provided to "similarly situated persons in
13 the general public."⁶²

⁵⁵ See 52 U.S.C. § 30116(a)(1); 11 C.F.R. § 110.1(b)(1)(i).

⁵⁶ See 52 U.S.C. § 30116(a)(2); 11 C.F.R. § 110.2(b)(1).

⁵⁷ 11 C.F.R. § 100.52(d)(1).

⁵⁸ *Id.* § 100.52(d)(2).

⁵⁹ *Id.*

⁶⁰ See First Gen. Counsel's Rpt. ("First GCR") at 5-6, MUR 5682 (Bachmann for Congress) (recommending the Commission find that respondent assigned an appropriate valuation to a mailing list where the respondent had consulted with a "reputable list broker" regarding the "proper fair market value" of the list); Certification (Nov. 3, 2006), MUR 5682 (approving First GCR's recommendations); see also Advisory Opinion 2010-30 at 3 (Citizens United) ("Because the 'fair market price' is the price of the list in the market in which lists are ordinarily rented at the time of the rental, the 'fair market price' is the usual and normal charge for renting the list [of email contacts].").

⁶¹ Advisory Opinion 2012-31 at 4 (AT&T, Inc.) ("AO 2012-31") (opining that AT&T's proposed rate structure for text-message fundraising was not a contribution because, although rates would be lower than those AT&T usually charges to use its text message platform, the proposed rates would cover the company's costs as well as profit and would be offered on the same terms to all political customers).

⁶² Advisory Opinion 2004-06 at 4 (Meetup) (concluding that a fee is usual and normal if the charge is "set in accordance with the fixed set of fee criteria" and "applied equally between the various classes of Federal candidates . . . and other . . . members of the general public who are similarly situated with respect to the respective classes of candidates and political committees"); see also Advisory Opinion 2014-09 at 4 (REED Marketing)

1 The MUR 7592 Complaint alleges that BNC and JD subsidized the costs of services the
 2 LLC provided to the Respondent candidate committees by disbursing \$261,165.18 and
 3 \$605,849.12, respectively, to the LLC.⁶³ The MUR 7592 Complaint asserts that the LLC
 4 provided discounted rates to the candidate committees that did not take into account the LLC's
 5 overhead, resulting in the LLC making excessive, unreported, in-kind contributions to the
 6 campaign committees, which those committees accepted.⁶⁴ The basis for these allegations
 7 appears to be a comparative assessment of the \$867,014.30 BNC and JD collectively paid to the
 8 LLC versus the aggregate \$175,801.92 the 13 Respondent candidate committees paid to the
 9 LLC, coupled with the LLC's operation at a loss, apparent lack of profit motivation, and the
 10 overlap of staff between BNC, JD, and the LLC, from which the MUR 7592 Complaint infers
 11 that the LLC provided services to candidates at costs below market value.⁶⁵

12 The MUR 7592 Joint Response asserts that the Complaint disregards the timing of the
 13 expenditures from BNC and JD to the LLC; it contends that, because 74%, or \$643,258.87, of
 14 those expenditures occurred during the Phase 1 candidate recruitment phase before the
 15 individuals became candidates under the Act, those expenditures could not have subsidized the

(deciding affinity program arrangement reflects the usual and normal charge if the provider offers same services under "similar agreements on similar terms with its non-political clients").

⁶³ MUR 7592 Compl. at 15-23. The MUR 7580 Complaint also alleges that Chakrabarti's two political committees, which we interpret to refer to BNC and JD, made excessive contributions to Ocasio-Cortez for Congress, as a result of the "comingling between financial a [*sic*] well as staff between the PAC and the campaign" MUR 7580 Compl at 1.

⁶⁴ MUR 7592 Compl. at 22. Most of the "causes of action" in the MUR 7592 Complaint are premised on one of four alternative characterizations of JD's relationship with the LLC and Ocasio-Cortez: (1) that JD is Ocasio-Cortez's authorized committee (Counts I-VII); (2) that JD is Ocasio-Cortez's leadership PAC (Counts VIII-X); (3) that JD is a nonconnected political committee that made contributions via payments to the LLC for services to Ocasio-Cortez for Congress (Counts XI-XIV); and (4) that the LLC is a political committee (Counts XV-XVIII). *See id.* at 24-43 (alleging multiple violations relating to each underlying characterization, such as related reporting, disclaimer, or coordination violations). Section III.A of this Report addresses the third of those characterizations, Section III.B, *infra*, addresses the fourth, and Section III.C, *infra*, addresses the first two characterizations.

⁶⁵ *See id.* at 15-23.

1 services the LLC later provided to the Respondent candidate committees.⁶⁶ Moreover, the
2 Respondents contend that candidate recruitment is not regulated by the Act.⁶⁷ The MUR 7592
3 Joint Response further argues the Complaint does not allege any facts demonstrating the LLC did
4 not charge the usual and normal rate for its services and asserts the LLC's pricing model was
5 designed to comply with the Act and was universally applied to all of its clients.⁶⁸

6 An individual becomes a candidate under the Act if he or she receives contributions or
7 makes expenditures in excess of \$5,000, or consents to another doing so on his or her behalf.⁶⁹
8 The Commission's regulations create exemptions to the definitions of contribution and
9 expenditure — and therefore to the \$5,000 candidacy threshold — to allow individuals to
10 conduct certain activities to evaluate a potential candidacy, *i.e.*, to “test the waters.”⁷⁰ An
11 individual who is testing the waters need not register or file disclosure reports with the
12 Commission unless and until the individual subsequently decides to run for federal office.⁷¹
13 Testing-the-waters activities are those “conducted to determine whether an individual should
14 become a candidate,” and include, but are not limited to, payments for polling, telephone calls,
15 and travel, and only funds permissible under the Act may be used for such activities.⁷² When an
16 individual becomes a candidate, any such funds received or payments made in connection with

⁶⁶ MUR 7592 Joint Resp. at 9-13.

⁶⁷ *Id.* at 10.

⁶⁸ *Id.* at 14, 25-30.

⁶⁹ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

⁷⁰ 11 C.F.R. §§ 100.72(a), 100.131(a).

⁷¹ 11 C.F.R. §§ 100.72(b), 100.131(b); *see also* Advisory Opinion 2015-09 (Senate Majority PAC, *et al.*).

⁷² 11 C.F.R. §§ 100.72(a), 100.131(a); Advisory Opinion 1981-32 (Askew) (“AO 1981-32”).

1 testing-the-waters activities must be reported as contributions or expenditures on the first
2 disclosure report filed by the candidate's authorized committee.⁷³

3 The MUR 7592 Joint Response cites to Advisory Opinion 1991-32 (CEC, Inc.)
4 ("AO 1991-32") in support of its position that the candidate recruitment activities here would not
5 result in contributions to the resulting candidate committees.⁷⁴ In AO 1991-32, the Commission
6 concluded that a fundraising consulting firm's efforts to recruit candidate clients would not
7 constitute corporate contributions to those candidates, so long as the "potential client ha[d]
8 decided to become a candidate and [wa]s no longer in the process of determining whether to
9 become a candidate."⁷⁵ The Commission observed, however, that if the consulting firm's
10 recruitment target was still "testing the waters" or "in a pre-exploratory phase" and the
11 consulting firm used its corporate funds in persuading that individual to become a candidate or to
12 determine "whether an individual should become a candidate," the prohibitions on funds used for
13 testing-the-waters activities might be implicated.⁷⁶ Although the Commission flagged activity
14 "that entails persuading the potential candidate to become a candidate" as potentially resulting in
15 an in-kind contribution subject to the limits of the Act, it declined to reach a conclusion on
16 whether the consulting firm would violate the Act through payments for testing-the-waters

⁷³ 11 C.F.R. § 101.3; AO 1981-32 at 3 ("If and when the individual becomes a candidate the regulation has a retroactive effect in that the financing of all activity coming within the exemption must be reported and otherwise treated as contributions and expenditures for purposes of the Act and regulations.").

⁷⁴ MUR 7592 Joint Resp. at 10, 30 & nn.12, 14, 49-50 (citing Advisory Opinion 1991-32 (CEC, Inc.) ("AO 1991-32")).

⁷⁵ AO 1991-32 at 8. The Commission relied upon the requestor's representations that it would not present research or other materials of value to the candidate client during the recruitment process. *Id.*

⁷⁶ *Id.* (citing 11 C.F.R. §§ 100.7(b)(1), 100.8(b)(1)). The Commission expressly did not address "the question of whether an individual testing the waters should be deemed to have accepted any in-kind 'contribution'" from the fundraising firm. *Id.* at 8 n.8.

1 activities “[w]ithout further information as to the written or oral communications taking place in
2 the recruitment process.”⁷⁷

3 The available information indicates that BNC and JD’s retainer payments to the LLC for
4 candidate recruitment may have paid for unreported testing-the-waters activities for the 13
5 Respondent candidate committees. The MUR 7592 Joint Response repeatedly asserts that the
6 majority of expenditures from BNC and JD to the LLC were made to recruit candidates on behalf
7 of BNC and JD.⁷⁸ The MUR 7592 Joint Response provides general descriptions of what the
8 LLC’s recruitment efforts entailed; the LLC “interviewed,” “vetted,” and “evaluated” potential
9 candidates with the goal of recruiting candidates from every congressional district.⁷⁹ The
10 MUR 7575 Joint Response appends a statement of work between JD and the LLC that includes
11 in the LLC’s services “identify[ing], vet[ting] and recruit[ing] candidates,” “recruiting and
12 organizing volunteers” to do work for JD, and “researching all Congressional districts and
13 current incumbents.”⁸⁰

14 The Respondents’ characterization of Phase 1 payments to the LLC for candidate
15 recruitment does not explain specific services the LLC provided to BNC and JD in exchange for
16 \$643,258.87 in retainer payments nor does it resolve whether any of those expenditures were in-
17 kind contributions to the ultimate candidate committees. For example, the MUR 7592 Joint
18 Response represents that the recruitment process included “travel,”⁸¹ which, if incurred on behalf

⁷⁷ *Id.* at 8-9 (concluding that an unpaid advisor, acting on behalf of the corporate consulting firm, engaging in “activity that entails persuading the potential candidate to become a candidate” would personally make an in-kind contribution and that the corporate consulting firm’s payments of that unpaid advisor’s expenses in such efforts would constitute prohibited corporate contributions).

⁷⁸ *See, e.g.*, MUR 7592 Joint Resp. at 4, 10, 13-14, 29.

⁷⁹ *E.g., id.* at 8, 10.

⁸⁰ MUR 7575 Joint Resp., Ex. A at 1.

⁸¹ MUR 7592 Joint Resp. at 10.

1 of potential candidates, is one of the activities specifically enumerated in the Commission's
2 regulations on testing-the-waters activities.⁸² The general descriptions of the LLC's recruitment
3 services as interviewing, vetting, evaluating, and researching potential candidates do not exclude
4 the possibility that funds were expended to assist individuals in "determining whether [they]
5 should become" candidates,⁸³ persuade individuals to become candidates,⁸⁴ or present "research
6 or other materials" of value, including "[i]nformation on the candidate's district or opponent,
7 research on issue identification and tracking," to the prospective candidates during the
8 recruitment process.⁸⁵

9 Furthermore, Respondents' own statements about the arrangement between JD, BNC, the
10 LLC, and the recruitment targets are inconsistent and indicate that some of the \$643,258.87 in
11 expenditures for recruitment services funded unreported testing-the-waters activities that should
12 have been reported as in-kind contributions. The MUR 7592 Joint Response states that the LLC
13 "did not attempt to recruit candidates to run for office who were not already considering doing
14 so."⁸⁶ However, that statement is at odds with Chakrabarti's earlier public statement that BNC's
15 goal was to "recruit candidates who were not thinking about running already."⁸⁷

16 The former assertion — in response to the MUR 7592 Complaint — appears to be an
17 attempt to align these facts with AO 1991-32.⁸⁸ It was drafted well after the events at issue,
18 "only . . . after the [Commission's] inquiry had commenced," which "raise[s] the risk" it is "a

⁸² 11 C.F.R. §§ 100.72(a), 100.131(a).

⁸³ *Id.* § 100.72(a).

⁸⁴ *See* AO 1991-32 at 9.

⁸⁵ *See id.* at 8-9.

⁸⁶ MUR 7592 Joint Resp. at 10 n.12.

⁸⁷ JD Online Post; *see supra* note 4 and accompanying text.

⁸⁸ *See* MUR 7592 Joint Resp. at 10 n.12 (citing AO 1991-32).

1 vehicle for [the] party's *post hoc* rationalizations."⁸⁹ Furthermore, it appears inconsistent with
2 the latter statement, made publicly by Chakrabarti himself — the LLC's sole member, Executive
3 Director of JD, and founding member of BNC — rendered closer to the time of the events in
4 question and before the Complaints were filed. That unguarded statement appears to suggest that
5 some of the LLC's recruitment activities on behalf of BNC and JD may have constituted testing-
6 the-waters activity.⁹⁰ Therefore, it is reasonable to infer that payments made by the LLC, on
7 behalf of BNC and JD, to interview, vet, evaluate, research, and recruit candidates from a pool of
8 individuals "who were not thinking about running already,"⁹¹ may have involved expenditures
9 for activities for individuals to determine whether to become a candidate, and may have included
10 communications "persuading the potential candidate to become a candidate."⁹²

11 Any of the LLC's recruitment efforts funded by BNC and JD that involved (1) providing
12 information or other things of value to the 13 potential candidates regarding whether the
13 individual should become a candidate or (2) otherwise persuading any individual to become a
14 candidate who had not already determined to do so should have been reported as in-kind
15 contributions by the candidates' authorized committees on their first disclosure reports filed with
16 the Commission.⁹³ Only two of the 13 Respondent candidate committees reported contributions
17 (in-kind or monetary) from JD, BNC, the LLC, or Chakrabarti on their first disclosure reports
18 filed with the Commission. Hepburn for Congress reported a \$2,700 donation from Chakrabarti

⁸⁹ *La Botz v. FEC*, 889 F. Supp. 2d 51, 62 (D.D.C. 2012) (citing *Ponte v. Real*, 471 U.S. 491, 509 (1985)).

⁹⁰ See JD Online Post; see also MUR 7592 Joint Resp. at 7 (describing the online post as written by Chakrabarti).

⁹¹ JD Online Post.

⁹² AO 1991-32 at 9.

⁹³ 11 C.F.R. §§ 100.72(a), 100.131(a), 101.3.

1 via ActBlue, which does not appear on its face to reflect testing-the-waters activities.⁹⁴ Perry for
2 Pennsylvania reported a \$1,700 in-kind contribution from Chakrabarti for website and logo
3 design on its first report, though it is unclear whether this cost was incurred for testing-the-waters
4 activities.⁹⁵

5 While the available information, including the MUR 7592 Joint Response, suggests some
6 of the \$643,258.87 BNC and JD paid to the LLC during the Phase 1 candidate recruitment period
7 paid for testing-the-waters activities, the record is insufficient to establish the extent of testing-
8 the-waters activities that BNC and JD's disbursements to the LLC funded.⁹⁶ Though the MUR
9 7592 Joint Response describes Respondents' intent to recruit candidates in "every congressional
10 district in the country,"⁹⁷ it is not clear from the available information how many individuals
11 BNC and JD contacted during the recruitment phase as potential candidates, beyond the 13 that
12 ultimately formed the Respondent candidate committees, whether BNC and JD contacted
13 individuals in each of the 435 congressional districts in the country as originally intended, or
14 whether BNC and JD contacted more than one prospective candidate in the districts in which
15 they actively recruited. An investigation would allow assessment of whether any of BNC and
16 JD's disbursements to the LLC financed testing-the-waters activity of the 13 individuals who
17 formed the Respondent candidate committees and that would have to be reported as such, and if

⁹⁴ Hepburn for Congress, 2017 July Quarterly Report at 5 (July 15, 2017).

⁹⁵ Perry for Pennsylvania, 2017 July Quarterly Report at 5 (July 15, 2017).

⁹⁶ The current record also does not indicate what portion of BNC and JD's disbursements to the LLC funded testing-the-waters activities for individuals who did not become candidates, if any such individuals were also recruited. *See* MUR 7592 Joint Resp. at 7-8, 10, 14, 26 (discussing nationwide recruitment plan); MUR 7575 Joint Resp. at 3; MUR 7580 Joint Resp. at 3.

⁹⁷ MUR 7592 Joint Resp. at 7-8, 10, 14, 26.

1 so, what proportion of the \$643,258.87 that BNC and JD paid to the LLC for their candidate
2 recruitment activities was attributable to each of the 13 Respondent candidate committees.⁹⁸

3 In addition to contributions in the form of BNC and JD's payments for the LLC's
4 recruitment efforts which appear to have funded testing-the-waters activities, it appears that
5 BNC, JD, and the LLC may have provided services to the Respondent candidate committees at
6 less than the usual and normal charge once those candidate committees retained the LLC as a
7 vendor. When determining whether a given rate structure constitutes an in-kind contribution, the
8 Commission has previously looked at whether the rate structure reflected the company's
9 "commercial considerations" and whether the company was considering factors "outside of a
10 business relationship."⁹⁹ Discounts have been deemed permissible when they "were available to
11 others on equal terms or as part of a pre-existing business relationship."¹⁰⁰ The Commission has
12 concluded that a consulting company that has a policy of charging fees materially lower than
13 consultants offering similar services and also either operates at a loss (particularly a long-term
14 loss), waives salaries, or infuses debt/capital to compensate for losses raises a rebuttable
15 presumption that the company is not charging the usual and normal rate, and is therefore making
16 contributions to the committee(s) for which it is providing services.¹⁰¹

17 The MUR 7592 Joint Response argues that the matter is comparable to MUR 6916
18 (DNC, *et al.*), in which the Commission found no reason to believe that a data services vendor

⁹⁸ Presumably, a higher proportion of the retainer payments was attributable to each of the 13 candidates rather than any prospects who did not reach that stage or that removed themselves from consideration earlier in the vetting process.

⁹⁹ AO 2012-31 at 4 (quoting Advisory Opinion 2012-26 (m-Qube II)).

¹⁰⁰ *Id.* (quoting Advisory Opinion 2012-28 (CTIA II)).

¹⁰¹ See AO 1991-32 at 11 (recognizing that without information on normal industry practice as to charges for certain services, the Commission cannot, in the advisory opinion, make a "definitive determination as to whether the [requestor would] be charging the selected candidates the usual and normal charges").

1 provided contributions to committees in the form of discounts to certain political clients.¹⁰²
2 Those allegations stemmed primarily from unattributed statements in a book that the vendor had
3 “little interest in profit,” and “pay[s] attention to revenue but [is] more interested in keeping its
4 prices down to help partisan and ideological allies win elections.”¹⁰³ The Commission observed
5 that the complaint in MUR 6916 provided no information about the extent to which the vendor’s
6 prices differed from prevailing market rates and concluded that those general allegations were
7 rebutted by specific information provided by the respondents that (1) the vendor engaged in
8 arm’s-length commercial transactions with the respondent political committees; (2) the
9 respondent committees paid significant sums for the vendor’s services; (3) the vendor used a
10 fixed-pricing model to determine how much it charged its clients that was applied equally to
11 similarly-situated political and non-political clients; and (4) the vendor had a “long list of non-
12 political clients.”¹⁰⁴

13 While the MUR 7592 Joint Response argues that the MUR 7592 Complaint, like that in
14 MUR 6916, does not state facts indicating that the LLC charged below the usual and normal rate
15 to the Respondent candidate committees,¹⁰⁵ the facts in these matters are distinguishable from
16 the facts of MUR 6916. For example, Chakrabarti waived remuneration¹⁰⁶ so that the LLC could

¹⁰² MUR 7592 Joint Resp. at 26-28; Amended Certification at 2 (Mar. 21, 2016), MUR 6916 (DNC, *et al.*).

¹⁰³ Factual & Legal Analysis (“F&LA”) at 4, MUR 6916 (DNC, *et al.*) (quoting Compl. at 20 (Feb. 18, 2015), MUR 6916 (alterations in original)). The MUR 6916 Complaint also alleged that the vendor used investments from wealthy donors to keep costs low for political clients. *See id.* at 6.

¹⁰⁴ *Id.* at 3-4, 11-12.

¹⁰⁵ MUR 7592 Joint Resp. at 25, 27-29 (citing MUR 6916).

¹⁰⁶ *See* MUR 7575 Joint Resp. at 4, 8; MUR 7580 Joint Resp. at 4; MUR 7592 Joint Resp. at 9, 40, 47; JD Online Post.

1 provide campaign services to the Respondent candidate committees “as cheaply as possible,”¹⁰⁷
2 and the LLC ceased operations after eight months when it determined its business model was
3 “not sustainable.”¹⁰⁸

4 Additionally, while the exemplar consulting agreement attached to the MUR 7592 Joint
5 Response presents evidence of a fixed-pricing fee model, that exemplar suggests that the
6 Respondent candidate committees did not pay fair market value for the LLC’s services.¹⁰⁹ For
7 example, it shows that the LLC charged a Respondent candidate committee \$500 for “Campaign
8 Launch” services, which purportedly included initial opposition research, production of a
9 biographical video for media use, messaging strategy, stump speech drafting, website creation,
10 social media and other marketing design, press release drafting, compliance software setup, and
11 filing Commission reports, among other tasks.¹¹⁰ The number of services offered for \$500
12 undermines the assertion that Perry for Pennsylvania was paying *fair market* rates, even if it was
13 paying *fixed* rates. Although the Complaints here do not include information to establish the
14 market rates of specific services offered by the LLC, reported disbursements by all committees
15 from the 2018 election cycle provide, at this stage of the matter, a credible basis for assessing
16 that the LLC charged fees materially lower than those of consultants offering similar services;¹¹¹

¹⁰⁷ See JD Online Post (stating the “goal of the LLC was not to make a profit”). This statement by Chakrabarti differs from the one in MUR 6916, where the allegation the company lacked profit motivation was based on unattributed statements in a reporter-published book. See F&LA at 4, MUR 6916 (DNC, *et al.*).

¹⁰⁸ See MUR 7592 Joint Resp. at 9; *accord* MUR 7575 Joint Resp. at 4 (“[The 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.”). The Respondents’ argument that the LLC “wound down its operations before any potential losses could be considered long-term” distinguishes these matters from the vendor in MUR 6916, which had provided services for almost a decade, including as a government contractor, before the complaint was filed. See MUR 7592 Joint Resp. at 30, 34-35; F&LA at 3, MUR 6916 (DNC, *et al.*).

¹⁰⁹ MUR 7592 Joint Resp., Ex. B (1st Amendment to Consulting Agreement, Schedules A & B).

¹¹⁰ *Id.*

¹¹¹ *Cf.* AO 1991-32 at 11.

1 disbursement records indicate that the \$500 fixed price for “Campaign Launch” services would
2 be unlikely to cover what other committees reported paying for even two of the more than nine
3 services included in that package.¹¹²

4 Notwithstanding the lack of available information to conclusively determine that the LLC
5 charged less than the usual and normal rate for the services it provided, the information suggests
6 that the LLC provided services to the Respondent candidate committees for free, during those
7 individuals’ assessments of their potential candidacies, and at less than the usual and normal rate
8 once the Respondent candidate committees employed it as a vendor. An investigation will show
9 the extent to which the aggregate \$643,258.87 BNC and JD paid to the LLC for the candidate
10 recruitment phase funded the candidate committees’ unreported testing-the-waters activities and
11 subsidized the LLC’s vendor services, constituting in-kind contributions exceeding the
12 applicable contribution limits.

13 An investigation would also clarify the share of recruitment costs accepted by the
14 respective Respondent candidate committees, and whether such shares constitute excessive
15 contributions, since most of the candidate committees did ultimately report contributions from
16 Chakrabarti, the LLC, or JD. Commission disclosure reports indicate Chakrabarti made the
17 \$2,700 maximum individual contribution to 11 out of the 13 Respondent candidate committees

¹¹² See, e.g., *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&disbursement_description=biographical+video&disbursement_description=launch+video (last visited Nov. 23, 2021) (reflecting six disbursements from 2017-18 for “launch video” and “biographical video” ranging from \$620 to \$5,000); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&disbursement_description=opposition+research (last visited Nov. 23, 2021) (reflecting 36 disbursements from 2017-18 for “opposition research” ranging from \$600 to \$38,930.50); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&disbursement_description=speech+drafting&disbursement_description=speech+writing&disbursement_description=speechwriting (last visited Nov. 23, 2021) (showing 39 disbursements from 2017-18 for “speechwriting,” “speech writing,” and “speech drafting” ranging from \$400 to \$12,747.18).

1 for the primary election (nine of those in the form of in-kind contributions, including one in the
2 form of a contribution from the LLC attributed to Chakrabarti), and a \$1,700 individual in-kind
3 contribution to Perry for Pennsylvania for the primary election.¹¹³ Ocasio-Cortez for Congress is
4 the only Respondent candidate committee that reported receiving a maximum \$5,000 primary
5 election contribution from JD.¹¹⁴ Thus, any unreported testing-the-waters activities paid for by
6 Chakrabarti individually or the LLC, and any unreported testing-the-waters activities paid for by
7 JD on behalf of Ocasio-Cortez, would appear to result in excessive primary election
8 contributions to 12 Respondent candidate committees regardless of their value, though at this
9 time we do not know which of the Respondent candidate committees may have accepted such
10 contributions.

11 Accordingly, we recommend that the Commission find reason to believe that JD, BNC,
12 the LLC, and Chakrabarti violated 52 U.S.C. § 30116(a) by making excessive in-kind
13 contributions to the Respondent candidate committees. While the available information indicates
14 that JD, BNC, the LLC, and Chakrabarti, in some arrangement, made excessive in-kind
15 contributions to the Respondent candidate committees, the proposed investigation would
16 complete the record to allow a determination of whether, for example, BNC and JD contributed
17 to Respondent candidate committees using the LLC as a legitimate vendor of campaign services,
18 whether the LLC acted as a pass-through for BNC and JD's contributions, or whether the LLC

¹¹³ *FEC Individual Contributions: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=Saikat+Chakrabarti&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 53 individual contributions by Saikat Chakrabarti); Ocasio-Cortez for Congress October 2017 Quarterly Report at 6 (attributing LLC contribution to Chakrabarti). Anthony Clark 2018 disclosed receiving a \$2,700 in-kind contribution from the LLC and a separate contribution in the same amount from Chakrabarti but does not appear to have attributed the LLC's contribution to Chakrabarti. Anthony Clark 2018, 2017 October Quarterly Report at 5 (Oct. 14, 2017).

¹¹⁴ *FEC Receipts: Filtered Results*, FEC.GOV, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00639591&contributor_name=C00630665&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting one contribution by JD).

1 and Chakrabarti — as the LLC's sole member and a founder of both BNC and JD — contributed
2 to the Respondent candidate committees. In light of the proposed investigation that will
3 complete the record as to the 13 Respondent candidate committees' receipt of in-kind
4 contributions from JD, BNC, the LLC, or Chakrabarti, and the amount of excessive
5 contributions, if any, we further recommend the Commission take no action at this time
6 regarding the allegations that the 13 Respondent candidate committees knowingly accepted
7 excessive in-kind contributions.

8 **B. The Commission Should Take No Action at This Time Regarding the**
9 **Allegation That the LLC Was Required to Register and Report as a Political**
10 **Committee**

11 Under the Act and Commission regulations, all political committees are required to
12 register and file periodic disclosure reports with the Commission which accurately report all
13 contributions received and disbursements made.¹¹⁵ The Act defines a “political committee” as
14 “any committee, club, association or other group of persons which receives contributions
15 aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating
16 in excess of \$1,000 during a calendar year.”¹¹⁶ In *Buckley v. Valeo*, the Supreme Court held that
17 defining political committee status “only in terms of amount of annual ‘contributions’ and
18 ‘expenditures’” might be overbroad, reaching “groups engaged purely in issue discussion.”¹¹⁷
19 To cure that infirmity, the Court concluded that the term “political committee” “need only
20 encompass organizations that are under the control of a candidate or the major purpose of which

¹¹⁵ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

¹¹⁶ 52 U.S.C. § 30101(4)(A), (C); *see also id.* § 30101(8), (9) (defining “contribution” and “expenditure,” respectively).

¹¹⁷ *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).

1 is the nomination or election of a candidate.”¹¹⁸ Accordingly, under the statute as thus
2 construed, an organization that is not controlled by a candidate must register as a political
3 committee only if it (1) crosses the \$1,000 threshold, and (2) has as its “major purpose” the
4 nomination or election of federal candidates.

5 The MUR 7592 Complaint alternatively alleges that because of the in-kind contributions
6 described above, the LLC was in fact a political committee and accordingly should have
7 registered with and reported to the Commission.¹¹⁹ Notwithstanding that the LLC may have
8 made excessive contributions to some of its client committees, the available information
9 currently suggests that it did so as a vendor of campaign services. The proposed investigation
10 into excessive contributions by the LLC, Chakrabarti, BNC, and JD will yield information
11 relevant to the political committee analysis, such as whether the LLC was acting as a vendor
12 providing goods and services at the usual and normal charge. Therefore, we recommend that the
13 Commission take no action at this time regarding the allegation that the LLC failed to register
14 and report as a political committee.

¹¹⁸ *Id.*

¹¹⁹ MUR 7592 Compl. at 40-43; *see supra* note 64.

1 **C. The Commission Should Take No Action at This Time Regarding the**
 2 **Allegations That JD Made Contributions to Ocasio-Cortez and Ocasio-**
 3 **Cortez for Congress as an Authorized Committee or Leadership PAC**

4 The MUR 7592 Complaint sets forth two additional alternative theories to allege that JD
 5 made, and Ocasio-Cortez and Ocasio-Cortez for Congress accepted, contributions from JD:
 6 (1) JD was an authorized committee of Ocasio-Cortez; and (2) JD was a leadership PAC of
 7 Ocasio-Cortez.¹²⁰ As explained above, we recommend that the Commission find reason to
 8 believe that JD made excessive contributions under an alternative approach alleged in the MUR
 9 7592 Complaint,¹²¹ and because there does not appear to be sufficient information at this time to
 10 support these two alternative theories, we recommend the Commission take no action at this time
 11 regarding the allegations that JD or Ocasio-Cortez violated the Act via JD's failure to register as
 12 either an authorized committee or leadership PAC, pending the proposed investigation that is
 13 likely to yield additional information relevant to this analysis.

14 1. Whether JD Acted as Ocasio-Cortez's Authorized Committee

15 The Act and Commission regulations define "authorized committee" as the principal
 16 campaign committee or any other political committee authorized by the candidate to receive
 17 contributions or make expenditures on their behalf and require such committees to be authorized
 18 in writing.¹²² Ocasio-Cortez did not designate JD as an authorized campaign committee.¹²³ The
 19 MUR 7592 Complaint alleges that Ocasio-Cortez authorized JD to receive contributions or make

¹²⁰ See MUR 7592 Compl. at 4-14; *see also id.* at 14 ("[N]o matter how the relationship among Ocasio-Cortez, AOC for Congress, and [JD] is characterized, they violated federal contribution limits and reporting requirements."); *supra* note 64.

¹²¹ See *supra* Section III.A.

¹²² 52 U.S.C. §§ 30101(6), 30102(e); 11 C.F.R. §§ 100.5(f)(1), 102.13(c)(1).

¹²³ *Alexandria Ocasio-Cortez: About This Candidate*, FEC.GOV <https://www.fec.gov/data/candidate/H8NY15148/?tab=about-candidate&cycle=2018> (last visited Nov. 23, 2021). *Cf.* 52 U.S.C. § 30102(e)(1).

1 expenditures (including payments to the LLC) on her behalf as a candidate either directly, due to
2 her position on JD's Board from December 2017 to June 2018, or through Chakrabarti's role as
3 JD's Executive Director and, as of February 2018, Ocasio-Cortez's campaign manager.¹²⁴ JD's
4 payments to the LLC, however, all predated Ocasio-Cortez's role on JD's Board and
5 Chakrabarti's role as her campaign manager.¹²⁵ Outside of such payments, the MUR 7592
6 Complaint presents only speculation that Ocasio-Cortez authorized JD to receive contributions or
7 make expenditures on her behalf as a candidate.

8 2. Whether JD Was Ocasio-Cortez's Leadership PAC

9 A leadership PAC is a political committee that "is directly or indirectly established,
10 financed, maintained or controlled by a candidate for Federal office or an individual holding
11 Federal office but which is not an authorized committee of the candidate or individual."¹²⁶ Any
12 expenditure made by a leadership PAC for the benefit of the sponsoring candidate's principal
13 campaign committee should be deemed coordinated with that candidate committee, and is
14 therefore an in-kind contribution that is accepted by the candidate committee and must be
15 reported.¹²⁷ The MUR 7592 Complaint alleges, in the alternative, that JD was a leadership PAC
16 of Ocasio-Cortez by virtue of Ocasio-Cortez and Chakrabarti's control of JD's Board and by
17 Chakrabarti's simultaneous roles as Ocasio-Cortez's campaign manager and JD's Executive

¹²⁴ See, e.g., MUR 7592 Compl. at 5, 9, 24, 27-28; *supra* notes 28-30 and accompanying text.

¹²⁵ See MUR 7592 Joint Resp. at 17-18; see also *infra* notes 129-130 and accompanying text.

¹²⁶ 11 C.F.R. § 100.5(e)(6).

¹²⁷ See *id.* § 109.20(a), (b); Leadership PACs, 68 Fed. Reg. 67,013, 67,017 (Dec. 1, 2003) ("To the extent that leadership PACs are used to pay for costs that could and should otherwise be paid for by a candidate's authorized committee, such payments are in-kind contributions, subject to the Act's contribution limits and reporting requirements.").

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- 1 agent of Ocasio-Cortez or Ocasio-Cortez for Congress in exercising control over JD's decisions
- 2 to make expenditures to the LLC that benefited Ocasio-Cortez for Congress.¹³²

¹³² Two of the MUR 7592 Complaint's "causes of action" allege that JD, as either a leadership PAC or a nonconnected committee, made coordinated expenditures that benefitted Ocasio-Cortez for Congress, which therefore accepted or received in-kind contributions, by virtue of Ocasio-Cortez and Chakrabarti's roles in both organizations. *See* MUR 7592 Compl. at 31-33, 36-38 (Counts X and XIII, respectively); *supra* note 64; *see also* 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(b); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425-443 (Jan. 3, 2003). These allegations rely on the same theories of agency analyzed herein regarding the MUR 7592 Complaint's claim that JD was Ocasio-Cortez's leadership PAC and, like in the leadership PAC allegation, present only speculation that Chakrabarti was acting in his capacity as Ocasio-Cortez's agent when making decisions for JD or the LLC. We do not separately address the coordinated expenditure theory here because we already recommend that the Commission find reason to believe JD made, and take no action at this time regarding allegations that Ocasio-Cortez for Congress knowingly accepted, excessive in-kind contributions on an alternative theory alleged by the MUR 7592 Complaint. *See supra* Section III.A.

1 **D. The Commission Should Find Reason to Believe That BNC, JD, Cori Bush**
2 **for Congress, and Paula Swarengin 2018 Failed to Itemize and Correctly**
3 **Report Expenditures Made to the LLC, and Dismiss the Allegations That the**
4 **Remaining Respondent Candidate Committees Failed to Itemize and**
5 **Correctly Report Expenditures to the LLC**

6 The Act and Commission regulations require political committees to report the name and
7 address of each person to whom they make expenditures or other disbursements aggregating
8 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
9 date, amount, and purpose of such payments.¹³³ The relevant reporting requirements under the
10 Act and Commission regulations are intended to ensure public disclosure of “where political
11 campaign money comes from and how it is spent.”¹³⁴ Disclosure requirements also “deter[] and
12 help[] expose violations” of the Act and Commission regulations.¹³⁵

13 The Complaints in MUR 7575 and MUR 7592 identify expenditures from reports filed
14 with the Commission by Ocasio-Cortez for Congress, BNC, and JD to the LLC that include the
15 description “strategic consulting,” and Commission reports reflect JD made \$605,849.12 in
16 disbursements, BNC made \$261,165.18 in disbursements, and Ocasio-Cortez for Congress made

¹³³ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

¹³⁴ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (quoting H.R. Rep. No. 92-564, at 4 (1971)); *see also Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

¹³⁵ *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc); *see also Buckley*, 424 U.S. at 67-68 (explaining that “disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity” and that “recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations” of the Act); *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (concurring with the stated government interests in disclosure requirements described in *Buckley*: “providing the electorate with information, deterring actual corruption and avoiding its appearance, and gathering data necessary to enforce” the Act and Commission regulations).

1 \$18,880.14 in disbursements to the LLC associated with that stated purpose.¹³⁶ In addition, the
 2 MUR 7592 Complaint identifies nine other Respondent candidate committees that reported all,
 3 and one other Respondent candidate committee that reported some, of their respective
 4 disbursements to the LLC with that stated purpose.¹³⁷

5 Relying on reported quotations about how the LLC aspired to essentially run the
 6 candidates' campaigns, the MUR 7575 Complaint alleges that describing all of the expenditures
 7 as "strategic consulting" was a "mischaracterization of a wide range of activities that should have

¹³⁶ MUR 7575 Compl. at 3; MUR 7592 Compl. at 12-20; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00613810&committee_id=C00630665&committee_id=C00639591&recipient_name=brand+new+congress&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 28 disbursements by JD, BNC, or Ocasio-Cortez for Congress to the LLC). Commission reports also show a \$2,700 disbursement from Ocasio-Cortez for Congress to the LLC for "strategic consulting, FEC Compliance including software expense, relay texting." Ocasio-Cortez for Congress October 2017 Quarterly Report at 21. The MUR 7575 Complaint incorrectly states Ocasio-Cortez for Congress made \$18,720.86 in disbursements to the LLC for "strategic consulting." See MUR 7575 Compl. at 3.

¹³⁷ MUR 7592 Compl. at 16-18; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00636936&committee_id=C00637124&committee_id=C00638767&committee_id=C00639849&committee_id=C00639872&committee_id=C00639898&committee_id=C00639971&committee_id=C00640151&committee_id=C00640870&recipient_name=brand+new+congress+llc&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 25 disbursements by Adrienne Bell 2018, Anthony Clark 2018, Chardo Richardson for Congress, Committee to Elect Ryan Stone, Cori Bush for Congress, Hector Morales for Congress, Letitia Plummer 2018, Robert Ryerse 2018, and Sarah Smith 2018 to the LLC). Two of the remaining three Respondent candidate committees, Hepburn for Congress and Perry for Pennsylvania, reported their disbursements to the LLC with the stated purpose of "consulting services" and "campaign consultant services," respectively. *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00636381&committee_id=C00641027&recipient_name=brand+new+congress+llc&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting three disbursements by Hepburn for Congress and Perry for Pennsylvania to the LLC). The final Respondent candidate committee, Paula Swearengin 2018, reported a \$2,450 disbursement with the stated purpose of "strategic planning" in addition to four disbursements for "strategic consulting." *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00640219&recipient_name=brand+new+congress+llc&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting five disbursements by Paula Swearengin 2018 to the LLC). The MUR 7592 Complaint incorrectly states Paula Swearengin 2018 made all of its five disbursements to the LLC with the stated purpose of "strategic consulting." See MUR 7592 Compl. at 17-18.

1 been reported individually.”¹³⁸ The MUR 7575 Complaint provides a detailed list of activities
 2 performed by the LLC and asserts that the payments for those activities cannot be discerned from
 3 the FEC filings.¹³⁹ The MUR 7575 Complaint further asserts that “[t]he actual vendors, staff,
 4 and fundraising expenses were not disclosed. [The LLC] was simply a cutout.”¹⁴⁰ The
 5 MUR 7626 Complaint alleges that disbursements for Cori Bush for Congress “radio
 6 commercials, messaging, preparations, speechwriting and coaching,” among other purposes,
 7 were not fully reported.¹⁴¹ The MUR 7580 Complaint also alleges that Chakrabarti’s two
 8 political committees, which appears to refer to BNC and JD, “fail[ed] to disclose where these
 9 donations originated from and attempts to conceal the donations [*sic*].”¹⁴² Thus, the Complaints
 10 in MURs 7575, 7580, 7592, and 7626 allege that various Respondents misreported the purposes
 11 of disbursements to the LLC and misreported the ultimate recipients.¹⁴³

12 1. Purpose of Disbursements

13 Commission regulations define “purpose” as a “brief statement or description of why the
 14 disbursement was made.”¹⁴⁴ “The ‘purpose of disbursement’ entry, when considered along with

¹³⁸ MUR 7575 Compl. at 3-4. The MUR 7626 Complaint appears to make a similar allegation that “private companies” (presumed to be the LLC) “receiv[ed] reported payments for ‘Political Strategies’” from BNC and JD that “were payments made to further the candidacy of . . . Cori Bush . . . in the form of expenditures for radio commercials, messaging, preparations, speechwriting and coaching, facility and set design,” among other purposes. *See* MUR 7626 Compl. at 2. In response, BNC and JD assert that JD provided limited services to Cori Bush for Congress under a “fee-for-service” model and deny that BNC or JD engaged in independent expenditures. Brand New Congress and Justice Democrats PAC Resp. at 2 (Aug. 19, 2019), MUR 7626.

¹³⁹ MUR 7575 Compl. at 3-4; *see also* MUR 7592 Compl. at 23 (alleging failure to disclose the “nature” and purposes of payments to the LLC).

¹⁴⁰ MUR 7575 Compl. at 3; *see also* MUR 7592 Compl. at 44 (alleging payments to the LLC for JD staff were made “without any public reporting or accountability”).

¹⁴¹ *See* MUR 7626 Compl. at 1-2.

¹⁴² MUR 7580 Compl.

¹⁴³ MUR 7575 Compl. at 3-4; MUR 7592 Compl. at 23, 43-45.

¹⁴⁴ 11 C.F.R. § 104.3(b)(3)(i)(A), (B); *id.* § 104.3(b)(4)(i)(A).

1 the identity of the disbursement recipient, must be sufficiently specific to make the purpose of
2 the disbursement clear.”¹⁴⁵ The Commission has determined that the description of the purpose
3 should be sufficient to allow “a person not associated with the committee [to] easily discern why
4 the disbursement was made when reading the name of the recipient and the purpose.”¹⁴⁶
5 Examples of sufficient statements of purpose include, but are not limited to, dinner expenses,
6 media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense
7 reimbursement, and catering costs.¹⁴⁷

8 In addition to the non-exhaustive list of examples included in the regulation, the
9 Commission has provided guidance that descriptions of purpose such as “Consulting-Media,”
10 “Consulting-Fundraising,” “Consulting-Polling,” “Consulting-Legal,” and “Consulting-Get-Out-
11 the-Vote,” are sufficient for a disbursement to a consultant; the sufficiency of the description is
12 read in context with the name of the payee.¹⁴⁸ Additional guidance set forth on the
13 Commission’s website includes “Political Strategy Consulting” and “Strategy Consulting” as
14 sufficient descriptions of consultant and consulting purposes.¹⁴⁹

15

¹⁴⁵ Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (4)(i)(A)).

¹⁴⁶ *Id.* at 888.

¹⁴⁷ 11 C.F.R. § 104.3(b)(3)(i)(B); *id.* § 104.3(b)(4)(i)(A); *see also* Purpose Statement of Policy, 72 Fed. Reg. at 888. The Commission has concluded that “[t]he description ‘media’ is considered as a satisfactory description for a payment that is, in fact, made for media, such as the purchase of media time or media space.” Advisory Opinion 1983-25 at 2 (Mondale for President) (“AO 1983-25”).

¹⁴⁸ Purpose Statement of Policy, 72 Fed. Reg. at 888; *see also* FEC, CAMPAIGN GUIDE FOR CONGRESSIONAL CANDIDATES AND COMMITTEES 103 (June 2014) (“The description [of purpose] must be sufficiently specific, when considered within the context of the payee’s identity, to make the reason for the disbursement clear.”).

¹⁴⁹ *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement> (last updated Aug. 21, 2018) [hereinafter Purposes of Disbursement FEC Site]; *see also* Purpose Statement of Policy, 72 Fed. Reg. at 888 (indicating that additional guidance will be posted on the Purposes of Disbursement FEC Site).

In MUR 7923

(Friends of David Schweikert, *et al.*), the Commission found reason to believe that the same Commission-approved purpose description the Respondent committees reported here — “strategic consulting” — inadequately described the purpose of disbursements where the disbursements were actually for purposes such as advertising, website design, lodging, and food and beverage.¹⁵¹

The available information indicates that BNC, JD, and the Respondent candidate committees reported inadequate purpose descriptions for payments made to the LLC in reports filed with the Commission. During the 2018 election cycle, JD disclosed \$605,849.12 and BNC disclosed \$261,165.18 in disbursements to the LLC for which the purpose was reported as “strategic consulting.”¹⁵² Eleven of the Respondent candidate committees disclosed disbursements to the LLC for which the purpose was reported as “strategic consulting”: Adrienne Bell 2018 disclosed \$10,536.26; Anthony Clark 2018 disclosed \$15,877.22; Chardo Richardson for Congress disclosed \$4,034.77; Committee to Elect Ryan Stone disclosed \$8,550.14; Cori Bush for Congress disclosed \$40,607.91; Hector Morales for Congress disclosed \$4,602.65; Letitia Plummer 2018 disclosed \$4,565.72; Ocasio-Cortez for Congress disclosed \$18,880.14; Paula Swearengin 2018 disclosed \$31,376.87; Robert Ryerse 2018 disclosed

¹⁵⁰

¹⁵¹ F&LA at 11-14, MUR 7923 (Friends of David Schweikert) (finding reason to believe committee failed to properly report purpose of approximately \$78,000 in disbursements).

¹⁵² *See supra* note 24.

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1 \$4,590.35; and Sarah Smith 2018 disclosed \$8,480.65.¹⁵³ Paula Swearengin 2018 disclosed an
 2 additional \$2,450.00 disbursement to the LLC for “strategic planning,” Hepburn for Congress
 3 disclosed \$9,048.70 in disbursements to the LLC for “consulting services,” and Perry for
 4 Pennsylvania disclosed \$6,800.54 for “campaign consultant services.”¹⁵⁴

5 These matters are similar to MUR 7923. While “strategic
 6 consulting,” for example, is a facially sufficient purpose description under Commission
 7 regulations,¹⁵⁵ Respondents acknowledge that the payments to the LLC described that way were
 8 actually for a wide array of diverse purposes. As explained above, the LLC was specifically
 9 formed to provide “campaign in a box” services including “communications, field, online
 10 organizing, fundraising[,] and the like” to JD, BNC, and the candidate committees.¹⁵⁶ The

¹⁵³ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00636936&committee_id=C00637124&committee_id=C00638767&committee_id=C00639849&committee_id=C00639872&committee_id=C00639898&committee_id=C00639971&committee_id=C00640151&committee_id=C00640219&committee_id=C00640870&recipient_name=brand+new+congress+llc&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 30 disbursements by Adrienne Bell 2018, Anthony Clark 2018, Chardo Richardson for Congress, Committee to Elect Ryan Stone, Cori Bush for Congress, Hector Morales for Congress, Letitia Plummer 2018, Paula Swearengin 2018, Robert Ryerse 2018, and Sarah Smith 2018 to the LLC). In addition to these expenditures, Ocasio-Cortez for Congress reported one disbursement to the LLC of \$2,700 for “strategic consulting, FEC compliance including software expense, relay texting.” *See supra* note 136; Ocasio-Cortez for Congress October 2017 Quarterly Report at 21.

¹⁵⁴ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00636381&committee_id=C00640219&committee_id=C00641027&recipient_name=brand+new+congress+llc&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting eight disbursements by Hepburn for Congress, Paula Swearengin 2018, and Perry for Pennsylvania to the LLC); *see also* Purposes of Disbursement FEC Site (listing “consulting services” as an inadequate purpose).

¹⁵⁵ F&LA at 11-14, MUR 7923 (Friends of David Schweikert) Purposes of Disbursement FEC Site; *see also* MUR 7575 Joint Resp. at 5 (arguing “strategic consulting” is an acceptable expenditure purpose, citing Purposes of Disbursement FEC Site).

¹⁵⁶ *See* MUR 7575 Joint Resp. at 3; MUR 7580 Joint Resp. at 3; MUR 7592 Joint Resp. at 8-9 (describing the “campaign in a box” services the LLC provided, including “communications, field, finance, digital, and the like”); *id.*, Ex. B (demonstrating the LLC would provide services to one candidate committee that included fundraising, financial services, crafting a campaign platform, managing offices and leases, hiring and managing staff, communications, speechwriting, website management, organizing voter registration, recruiting/organizing volunteers, and other services); *id.* at 27 (describing 20 staff members in five different divisions: “Field, Communications, Operations and Technology, Recruitment, and Management”).

1 MUR 7592 Joint Response attaches a spreadsheet of its June 2017 revenues, which itself
2 demonstrates that the Respondent committees' disbursements to the LLC that month paid for
3 communications/press, digital fundraising, field, operations/compliance, and more.¹⁵⁷
4 Additionally, the MUR 7592 Joint Response explains that BNC and JD paid the LLC to
5 effectuate a national recruitment effort that required "travel, staff, office space, costs to vet and
6 interview candidates from all around the country, and the like."¹⁵⁸

7 Respondents' contention that "strategic consulting" was a sufficient description because
8 the LLC assisted "with nearly every facet of a political campaign" and the range of services were
9 "strategic" in nature" is unpersuasive in light of the breadth of services the LLC provided under
10 the umbrella of "strategic consulting" and the magnitude of those expenditures.¹⁵⁹ A person
11 reading these disclosure reports could not have discerned that JD, BNC, or the Respondent
12 candidate committees were disbursing funds for travel, salary, website design, compliance
13 services, or other reportable purposes within the full range of "campaign in a box" services from
14 communications to field to finance, by reading the name of the recipient (*i.e.*, Brand New
15 Congress, LLC) together with the reported purpose (*i.e.*, strategic consulting).¹⁶⁰

16 Thus, the available information indicates that BNC, JD, and the Respondent candidate
17 committees did not properly disclose the purpose of the disbursements to the LLC for what
18 appears to have been a range of services performed. Where respondents disclosed inadequate or

¹⁵⁷ See MUR 7592 Joint Resp., Ex. C. In aggregate, the spreadsheet indicates 18% of the LLC's June 2017 revenues derived from digital fundraising services, 15% from candidate recruiting, 15% from social media, 12% for technology, 11% for operations and compliance, and 5% or under from each of the following: communications and press, field, campaign database, campaign manager, creative services, helpdesk, and field director services. See *id.*

¹⁵⁸ MUR 7592 Joint Resp. at 10.

¹⁵⁹ MUR 7575 Joint Resp. at 7; MUR 7592 Joint Resp. at 39.

¹⁶⁰ See Purpose Statement of Policy, 72 Fed. Reg. at 888;
F&LA at 11-14, MUR 7923 (Friends of David Schweikert)

1 incorrect purposes for disbursements in amounts similar to BNC's and JD's, the Commission has
2 found reason to believe that they violated the Act.¹⁶¹ Accordingly, we recommend that the
3 Commission find reason to believe that BNC and JD violated 52 U.S.C. § 30104(b)(5) and (b)(6)
4 and 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to include sufficient descriptions showing the
5 purposes for disbursements to the LLC.

6 However, in matters involving a limited number of inadequately described disbursements
7 or small amount of money, the Commission has dismissed the matter or referred it to the
8 Commission's Alternative Dispute Resolution Office ("ADRO").¹⁶³ Eight of the Respondent
9 candidate committees reported inadequate purposes for disbursements to the LLC aggregating to
10 less than \$10,000, and three additional Respondent candidate committees reported inadequate

¹⁶¹ See, e.g., Report of the Audit Division at 13-14 (Dallas County Republican Party) (Nov. 19, 2008) (finding committee's description of generic purposes such as professional fees and fundraising consulting for an aggregate \$215,261 over 50 disbursements was inadequate because a person could not easily discern why disbursements were made); F&LA at 2-3, MUR 6204 (Dallas County Republican Party) (finding reason to believe that committee violated, *inter alia*, 52 U.S.C. § 30104(b)(5) (formerly 2 U.S.C. § 434(b)(5))); Report of the Audit Division at 12-13 (Cranley for Congress) (Apr. 23, 2008) (projecting from sample review that \$1.4 million in disclosed disbursements lacked required information including, but not limited to, missing or inadequate purposes, for which a person could not easily discern why the disbursements were made when reading the payee and purpose together); Certification (Nov. 19, 2008), MUR 6134 (Cranley for Congress) (approving the Report of the Audit Division dated April 23, 2008 as the F&LA); Conciliation Agreement at 4, 6, MUR 5635 (Conservative Leadership Political Action Committee); Final Audit Report, Conservative Leadership Political Action Committee (Nov. 29, 2004) (finding committee failed to disclose a correct or adequate purpose for disbursements totaling over \$1.6 million).

¹⁶³ See, e.g., Certification at 3 (June 24, 2015), MUR 6518 (Newt Gingrich, *et al.*) (referring allegations that respondents failed to disclose an adequate purpose for one \$47,005 disbursement to ADRO); F&LA at 3, 5, MUR 6638 (Todd Long for Congress) (dismissing allegation that respondent incorrectly described the purpose of two disbursements totaling \$21,666.66 as "check" where respondent committee corrected the description and terminated); F&LA at 4-5, MUR 7049 (Alaska Democratic Party, *et al.*) (dismissing reporting allegations involving "at least some of" \$20,000 in reported contributions that were actually payments for use of a voter database).

1 purposes for disbursements to the LLC aggregating to less than \$20,000.¹⁶⁴ Although the
2 proposed investigation in these matters is likely to provide additional information as to the
3 specific services performed by the LLC on behalf of or benefitting the Respondent candidate
4 committees relevant to a determination of what an adequate purpose would have been, we do not
5 foresee the investigation revealing additional misreporting of disbursement purposes to increase
6 the aggregate amount in violation for these 11 Respondent candidate committees. Therefore,
7 given the aggregate amount of disbursements and number of affected transactions, we
8 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations
9 that Adrienne Bell 2018, Anthony Clark 2018, Chardo Richardson for Congress, Committee to
10 Elect Ryan Stone, Hector Morales for Congress, Hepburn for Congress, Letitia Plummer 2018,
11 Ocasio-Cortez for Congress, Perry for Pennsylvania, Robert Ryerse 2018, and Sarah Smith 2018
12 violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to
13 include sufficient descriptions showing the purposes for disbursements to the LLC, and remind
14 those 11 Respondent candidate committees to work with RAD to amend their reports, as
15 necessary, to reflect proper purposes.¹⁶⁵

16 The remaining two Respondent candidate committees, Cori Bush for Congress and Paula
17 Swearngin 2018, reported inadequate purposes for disbursements to the LLC in the aggregate
18 amounts of \$40,607.91 and \$33,826.87, respectively.¹⁶⁶ These amounts in violation are closer to
19 the amounts at issue in matters in which the Commission has previously pursued purpose

¹⁶⁴ See *supra* notes 153-154 and accompanying text.

¹⁶⁵ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985); see First GCR at 14-17, MUR 7639 (Ilhan for Congress, *et al.*) (recommending the Commission dismiss allegations a committee failed to properly report the purpose of approximately \$5,677.40 in disbursements and direct the committee to work with RAD to amend its reports as necessary).

¹⁶⁶ See *supra* note 153 and accompanying text.

1 reporting violations.¹⁶⁷ Therefore, we recommend that the Commission find reason to believe
 2 that Cori Bush for Congress and Paula Swearengin 2018 violated 52 U.S.C. § 30104(b)(5) and
 3 (b)(6) and 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to include sufficient descriptions
 4 showing the purposes for disbursements to the LLC.

5 2. Disclosure of Payees of Disbursements

6 Neither the Act nor Commission regulations expressly address reporting of ultimate
 7 payees such as sub-vendors, subcontractors, or vendor employees.¹⁶⁸ The Commission
 8 concluded in Advisory Opinion 1983-25 (Mondale for President) (“AO 1983-25”) that a
 9 committee planning to contract with a media consulting group was not required to separately
 10 report or itemize payments made by the consultant to its sub-vendors.¹⁶⁹ The Commission found
 11 several facts to be significant in reaching its conclusion: (1) the vendor at issue had a legal
 12 existence as a corporation separate and distinct from the operations of the committee; (2) the
 13 vendor’s principals did not hold any staff positions with the committee; (3) the committee
 14 conducted arm’s-length negotiations with the vendor that resulted in formation of a final

¹⁶⁷

F&LA at 11-14, MUR 7923 (Friends of David Schweikert) (finding reason to believe a committee failed to adequately report the purpose of at least approximately \$78,000 in disbursements described as “strategic consulting/travel” where the disbursements paid for, *inter alia*, office supplies, travel, and advertising); *cf.* Certification at 3 (June 24, 2015), MUR 6518 (Newt Gingrich, *et al.*) (referring allegations to ADRO that respondents failed to disclose an adequate purpose for one \$47,005 disbursement). We do not recommend the Commission refer Cori Bush for Congress and Paula Swearengin 2018 to ADRO because we recommend, in these same matters, the Commission take no action at this time regarding other allegations against these two Respondents pending the proposed investigation.

¹⁶⁸ See AO 1983-25 at 2; F&LA at 8-9, MUR 6800 (Ron Paul 2012 Presidential Campaign Committee, Inc.) F&LA at 8, MUR 6724 (Bachmann for President, *et al.*). As discussed below, the Commission has since addressed the requirements of section 30104(b)(5) in certain situations not applicable to these facts. See Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) [hereinafter Ultimate Payee Interpretive Rule] (clarifying committees’ obligation to report “ultimate payees” in three specific scenarios that are not vendor-specific).

¹⁶⁹ AO 1983-25 at 3.

1 contract; (4) the vendor was not required to devote its “full efforts” to the contract and expected
2 to have contracts with other campaigns and entities; and (5) the committee had no interest in the
3 vendor’s other contracts.¹⁷⁰

4 The Commission has applied the analytical framework identified in AO 1983-25 when
5 considering whether a committee’s reported payment to a vendor satisfies the reporting
6 requirements of section 30104(b) in light of an allegation that the committee should have
7 reported a sub-vendor. For example, the Commission has found no reason to believe a
8 committee failed to adequately report disbursements when those payments were for services or
9 goods used in the performance of the vendors’ contracts with the committees and the sub-
10 vendors provide the same type of services provided by the vendors.¹⁷¹

11 The Commission has, however, found reason to believe committees violated the Act’s
12 reporting requirements in matters where the record suggests facts materially distinguishable from
13 those considered in AO 1983-25, such as when a committee reported a vendor that served merely
14 as a stand-in for payments to another particular recipient the committee avoided disclosing. For
15 instance, in MUR 4872 (Jenkins for Senate 1996, *et al.*), a committee directly hired a vendor to
16 perform phone bank services, but routed its payments through a second vendor to conceal its
17 relationship with the first vendor, and reported the second vendor as the payee on disclosure

¹⁷⁰ *Id.* at 1, 3.

¹⁷¹ *See, e.g.*, F&LA at 1-2, MUR 6894 (Steve Russell for Congress) (finding no reason to believe committee failed to adequately report disbursements where media vendor paid television stations for media buys); F&LA at 12-13, MUR 6510 (Kirk for Senate, *et al.*) (finding no reason to believe committee failed to adequately report disbursements where media vendor paid sub-vendor for media and communications consulting); *see also United States v. Benton*, 890 F.3d 697, 708-09 (8th Cir. 2018), *cert. denied*, 2019 WL 1231756 (Benton), 2019 WL 1231758 (Tate), 2019 WL 1231759 (Kesari) (Mar. 18, 2019) (affirming the convictions of three former Ron Paul 2012 campaign officials for, *inter alia*, violating the Act by causing false campaign finance reports to be filed with the Commission and noting that in AO 1983-25 and MUR 6510, “the Commission concluded that the vendors and sub-vendors had provided the services described by the campaign”).

1 reports.¹⁷² The committee's reporting violated the Act because the second vendor "had no
2 involvement whatsoever with the services provided by" the first vendor and its only role was "to
3 serve as a conduit for payment" to the first vendor "so as to conceal the transaction."¹⁷³

4 Similarly, in MUR 3847 (Friends of Steve Stockman, *et al.*), the Commission laid out the
5 facts relevant to its conclusion in AO 1983-25 that the Mondale committee need not further
6 itemize payments to sub-vendors, found the Stockman facts distinguishable, and conciliated after
7 finding probable cause to believe that Stockman's committee violated the reporting requirements
8 of the Act by not itemizing payments to sub-vendors.¹⁷⁴ Stockman's committee had reported
9 payments to a vendor, which was an unincorporated proprietorship run by two committee
10 officials, for approximately \$470,000 in committee expenses for a variety of purposes, including
11 the costs of at least one "sub-vendor" who created communications pursuant to a direct contract
12 between the sub-vendor and the candidate and his committee.¹⁷⁵ The Commission rested its
13 determination on the facts that the reported vendor's principals held positions with the
14 committee; the vendor was not incorporated; there was no formal contract between the vendor
15 and the committee; the vendor was devoted largely to the committee, worked out of the
16 committee's headquarters, and used its facilities; and the principals of the vendor held
17 themselves out to the public as officials of the committee.¹⁷⁶ The Commission concluded that

¹⁷² Conciliation Agreement at 2-4, MUR 4872 (Jenkins for Senate 1996, *et al.*).

¹⁷³ *Id.* at 3-4.

¹⁷⁴ See Conciliation Agreement at 6-7, MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the Conciliation Agreement at PDF page 1581); Gen. Counsel's Rpt. at 1, MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the General Counsel's Report at PDF page 1560).

¹⁷⁵ Gen. Counsel's Br. at 33-37, MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the Gen. Counsel's Br. at PDF page 1448); Amended Certification (Dec. 8, 1997), MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the Amended Certification at PDF page 1539).

¹⁷⁶ Conciliation Agreement at 6-7, MUR 3847 (Stockman).

1 these facts reflected that the reported vendor served as merely an intermediary for payments to
2 the other payees (including the purported “sub-vendor”) and thus, under the Act, the committee
3 was required to report the true purpose and recipients of the payments made through the
4 vendor.¹⁷⁷

5 More recently, in MUR 6800 (Ron Paul 2012 Presidential Campaign Committee, Inc., *et*
6 *al.*) and MUR 6724 (Bachmann for President, *et al.*), the Commission found reason to believe
7 that the respondent committees misreported disbursements when they agreed to pay a state
8 senator for his endorsement and as a surrogate but made payments through intermediaries to
9 conceal him as the “true, intended recipient of the disbursements.”¹⁷⁸

10 The Commission has also addressed the requirements of 52 U.S.C. § 30104(b)(5) in
11 certain situations that do not appear to be applicable to the facts presented here.¹⁷⁹ In the
12 Ultimate Payee Interpretive Rule, the Commission clarified a committee’s obligation to report
13 “ultimate payees” in three specific scenarios not articulated in the Act or Commission
14 regulations: (1) reimbursements to individuals who advance personal funds to pay committee
15 expenses; (2) payments to credit card companies; and (3) payments by candidates who use
16 personal funds to pay committee expenses without reimbursement.¹⁸⁰ Although Respondents

¹⁷⁷ Gen. Counsel’s Br. at 37, MUR 3847 (Stockman); Conciliation Agreement at 7, MUR 3847 (Stockman).

¹⁷⁸ F&LA at 1-6, 10, MUR 6800 (Ron Paul 2012 Presidential Campaign Committee, Inc.)
F&LA at 2-3, MUR 6724 (Bachmann for President, *et al.*); *see* Conciliation Agreement at 2, MUR 6724 (Bachmann
for President); *see also* F&LA at 15, MUR 7923 (Friends of David Schweikert) In MUR 6724, the
committee simply added the state senator’s payments to the monthly fees it was already paying to an intermediary
vendor under an existing contract. F&LA at 2-3, MUR 6724 (Bachmann for President, *et al.*); *see* Conciliation
Agreement at 2, MUR 6724 (Bachmann for President).

¹⁷⁹ *See* Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,625.

¹⁸⁰ *Id.* at 40,626.

1 cite repeatedly to this rule,¹⁸¹ the Ultimate Payee Interpretive Rule explicitly states that it does
2 not apply to the issue of vendors and sub-vendors:

3 [T]he Commission is only addressing the three issues at hand and
4 is not extending the clarification to situations in which a vendor,
5 acting as the committee's agent, purchases goods and services on
6 the committee's behalf from sub-vendors. The relationship
7 between committees and its vendors raises different issues than the
8 relationships that exist in these three circumstances.¹⁸²

9 Respondents also rely on MUR 6698 (United Ballot PAC), in which there was an
10 insufficient number of votes for the Commission to find reason to believe that a candidate
11 committee violated the Act by failing to properly disclose a payment that was passed through
12 two intermediary entities before being used by a state-registered political organization to pay for
13 get-out-the-vote activity on the candidate's behalf.¹⁸³ In the First General Counsel's Report in
14 MUR 6698, this Office reasoned that the candidate committee's use of intermediary entities was
15 in an apparent attempt to conceal the arrangement from the public, which was distinguishable
16 from the material facts of AO 1983-25.¹⁸⁴ In a Statement of Reasons, three Commissioners
17 explained their position that the Ultimate Payee Interpretive Rule does not address such a
18 scenario and distinguished the matter from MUR 4872 (Jenkins for Senate 1996, *et al.*) and

¹⁸¹ MUR 7575 Joint Resp. at 5-6; MUR 7592 Joint Resp. at 37-39. Respondents seem to argue that the Ultimate Payee Interpretive Rule's limitation to the three scenarios specifically means that ultimate payees in other scenarios would not be reportable. *See* MUR 7575 Joint Resp. at 6 ("A committee reading this guidance would have no indication that ultimate payees *besides the ones discussed in the Interpretive Rule* would be reportable." (emphasis in original)); MUR 7592 Joint Resp. at 38 (same).

¹⁸² Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626.

¹⁸³ Certification (Feb. 25, 2016), MUR 6698 (United Ballot PAC); First GCR at 8-16, MUR 6698 (United Ballot PAC); *see* MUR 7575 Joint Resp. at 9-10; MUR 7592 Joint Resp. at 40-41.

¹⁸⁴ First GCR at 14-15, MUR 6698 (United Ballot PAC).

1 MUR 3847 (Friends of Steve Stockman, *et al.*), stating there were factual differences between
2 those matters and MUR 6698.¹⁸⁵

3 Contrary to Respondents' arguments, these matters do not fit cleanly within the facts the
4 Commission considered in AO 1983-25.¹⁸⁶ Unlike the arrangement approved in AO 1983-25,
5 where a media vendor hired media sub-vendors to effectuate its contract with the candidate
6 committee for media services, here JD, BNC, and the Respondent candidate committees
7 seemingly failed to report disbursements made by an LLC vendor hired to provide "strategic
8 consulting" services to a variety of sub-vendors to conduct a range of different services on behalf
9 of those committees. The MUR 7575 and MUR 7592 Joint Responses assert that discrete
10 campaign costs — "from fundraising costs, event costs, as well as all printing and advertising
11 costs" — were paid for directly by the political committees, not by the LLC.¹⁸⁷ However, the
12 Respondents also appear to admit the LLC made payments to sub-vendors and consultants on

¹⁸⁵ Statement of Reasons, Comm'rs. Petersen, Goodman & Hunter, at 3-4, MUR 6698 (United Ballot PAC). The Statement of Reasons did not enumerate the factual differences.

¹⁸⁶ See, e.g., MUR 7575 Joint Resp. at 7-8 (arguing the facts "meets all of the [AO 1983-25 criteria] save for one," that Chakrabarti held a position with the LLC); MUR 7592 Joint Resp. at 39-40 (same). The Joint Responses assert that their counsel sought guidance from the Reports Analysis Division ("RAD") as to how payments to the LLC should be reported and attach an email from RAD describing sub-vendor reporting guidance in, *inter alia*, AO 1983-25. See MUR 7575 Joint Resp. at 3-5, Ex. B (March 2017 email from RAD); MUR 7592 Joint Resp. at 36-37, Ex. D (same). Despite Respondents' assertion that they discussed with RAD "payments by candidates and committees to Brand New Congress LLC," the RAD email does not mention any candidates, committees, or the LLC. MUR 7575 Joint Resp. at 4, Ex. B; MUR 7592 Joint Resp. at 36, Ex. D. Moreover, RAD has no record that Respondents' counsel specified that he was inquiring about (or provided specific facts concerning) the activity of any particular vendor or committee.

¹⁸⁷ MUR 7575 Joint Resp. at 4; MUR 7592 Joint Resp. at 9.

1 behalf of JD, BNC, and the Respondent candidate committees in the process of providing its
2 “strategic consulting” services to those committees.¹⁸⁸

3 Here, though not as stark as the more recent examples in which the Commission has
4 distinguished AO 1983-25, the current record indicates that JD, BNC, and the Respondent
5 candidate committees did not report the appropriate payee with respect to all disbursements to
6 the LLC. Although the record here does not evince an intent to obscure the disbursements to
7 sub-vendors as in some of the MURs described above,¹⁸⁹ the LLC’s interactions with JD, BNC,
8 and the Respondent candidate committees demonstrate, at best, a mixed record on the significant
9 factors the Commission considered in approving the reporting arrangement in AO 1983-25.

10 First, while the LLC was a separate legal entity from the committees it served, there was
11 pervasive overlap of principals and staff between the LLC and its largest clients, BNC and JD.
12 The LLC’s single member was Chakrabarti, who was extensively involved with BNC, JD, and
13 Ocasio-Cortez for Congress.¹⁹⁰ The LLC provided services to the committees via a staff of
14 employees that was transferred from BNC to effectuate the arrangement.¹⁹¹ Next, the
15 MUR 7592 Joint Response contends the LLC’s services would be marketable to corporate and
16 other clients, but the Respondent committees were the LLC’s only clients during its short

¹⁸⁸ MUR 7575 Joint Resp. at 3 (“[T]he perceived burden of providing the itemization of subvendors for payments by [the] LLC’s clients was believed to be prohibitive given the scope of services that the LLC provided.”); MUR 7592 Joint Resp. at 36 (same); *see also* MUR 7575 Joint Resp. at 8 (“[The] LLC hired and paid staff and consultants to service its many different clients.”); *id.* at 9 (“[A] committee paid [the] LLC as a vendor, who hired staff and consultants to service its clients in the ordinary course of business.”); *id.* at 10 (“[The] 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.”).

¹⁸⁹ The record provides some support for the Respondents’ assertion that the LLC was a vendor that performed *bona fide* services for the Respondent committees as a consolidated campaign vendor in furtherance of the aforementioned “national campaign.” *See* JD Online Post.

¹⁹⁰ *See* MUR 7592 Joint Resp. at 17-19; JD Online Post; *supra* note 26.

¹⁹¹ *See* JD Online Post.

1 existence.¹⁹² Thus, the LLC seemingly did devote its “full efforts” to the contracts with BNC
2 and JD, which staffed and paid the LLC to recruit and provide services to only those clients, the
3 Respondent candidate committees, contemplated by the LLC’s performance of its original two
4 contracts with BNC and JD. On a related note, BNC and JD certainly had an interest in the
5 LLC’s other contracts with the Respondent candidate committees because the parties behind
6 BNC and JD created the LLC to advance those candidates’ campaigns by providing services to
7 their committees in an at-cost manner that generated no profit for the LLC.

8 Accordingly, we recommend that the Commission find reason to believe that BNC and
9 JD violated 52 U.S.C. § 30104(b)(5) by misreporting the payees of disbursements to the LLC.
10 Furthermore, for reasons similar to those discussed above with respect to purpose reporting,¹⁹³
11 we recommend that the Commission find reason to believe that Cori Bush for Congress and
12 Paula Swearengin 2018 violated 52 U.S.C. § 30104(b)(5) by misreporting the payees of
13 disbursements to the LLC, exercise its prosecutorial discretion and dismiss the allegations that
14 Adrienne Bell 2018, Anthony Clark 2018, Chardo Richardson for Congress, Committee to Elect
15 Ryan Stone, Hector Morales for Congress, Hepburn for Congress, Letitia Plummer 2018,
16 Ocasio-Cortez for Congress, Perry for Pennsylvania, Robert Ryerse 2018, and Sarah Smith 2018
17 violated 52 U.S.C. § 30104(b)(5) by misreporting the payees of disbursements to the LLC, and
18 remind those 11 Respondent candidate committees to work with RAD to amend their reports, as
19 necessary, to reflect proper payees.¹⁹⁴

¹⁹² See MUR 7592 Joint Resp. at 8 n.10.

¹⁹³ See *supra* Section III.D.1; see also F&LA at 14-16, MUR 7923 (Friends of David Schweikert) (finding reason to believe a committee misreported payees of approximately \$50,000 in aggregate disbursements); F&LA at 2-3, MUR 6204 (Dallas County Republican Party) (finding reason to believe a party committee misreported payees of 44 disbursements totaling \$97,222).

¹⁹⁴ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

1 **E. The Commission Should Dismiss the Allegations Regarding Excessive**
2 **Contributions from Three Individuals to JD and Ocasio-Cortez for Congress**

3 Under the Act, an individual may not make a contribution to a candidate with respect to
4 any election in excess of the legal limit, which was \$2,700 per election during the 2018 election
5 cycle.¹⁹⁵ Nor may an individual make a contribution to a multicandidate committee during any
6 calendar year in excess of \$5,000.¹⁹⁶ Further, the Act prohibits any political committee from
7 knowingly accepting contributions that exceed those limits.¹⁹⁷

8 The MUR 7592 Complaint alleges and Commission reports reflect that three individuals
9 made excessive contributions to JD and Ocasio-Cortez for Congress. Arden Buck contributed
10 \$7,500 to JD in 2018, \$2,500 in excess of the applicable limit.¹⁹⁸ Kamilka Malwatte contributed
11 \$5,500 to JD in 2018, \$500 in excess of the applicable limit.¹⁹⁹ Natalie Elsberg contributed a
12 total of \$5,650 to Ocasio-Cortez for Congress during the 2017-2018 cycle, \$250 in excess of the
13 applicable per-election limits.²⁰⁰ However, the MUR 7592 Joint Response states and

¹⁹⁵ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

¹⁹⁶ 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).

¹⁹⁷ 52 U.S.C. § 30116(f).

¹⁹⁸ Justice Democrats PAC, Amended 2018 April Quarterly Report at 20, 21 (Sept. 27, 2018) [hereinafter JD April 2018 Quarterly Report] (\$1,000 contribution on Jan. 24, 2018, \$4,000 contribution on Mar. 7, 2018, and \$2,500 contribution on Mar. 30, 2018); MUR 7592 Compl. at 45.

¹⁹⁹ JD April 2018 Quarterly Report at 99 (\$5,000 contribution on Feb. 27, 2018); Justice Democrats PAC, Amended 2018 October Quarterly Report at 770 (Jan. 10, 2019) (\$500 contribution on Aug. 30, 2018); MUR 7592 Compl. at 45-46.

²⁰⁰ Alexandria Ocasio-Cortez 2018, Amended 2018 April Quarterly Report at 27 (Aug. 21, 2018) (\$2,700 primary election contribution on Mar. 23, 2018); Alexandria Ocasio-Cortez for Congress, Amended 2018 October Quarterly Report at 296 (June 7, 2019) (\$2,700 general election contribution on July 12, 2018); *id.* at 297 (\$250 general election contribution on Sept. 12, 2018); Natalie Elsberg Resp., MUR 7592; MUR 7592 Compl. at 46-47.

1 Commission reports reflect that respective recipients have refunded the excessive portions of
2 these contributions.²⁰¹

3 In light of the limited nature of these individuals' excessive contributions, and the
4 subsequent reimbursement of those amounts,²⁰² we recommend that the Commission exercise its
5 prosecutorial discretion and dismiss the allegations that Arden Buck, Kamilka Malwatte, and
6 Natalie Elsberg violated 52 U.S.C. § 30116(a) by making excessive contributions, and that
7 Ocasio-Cortez for Congress and JD violated 52 U.S.C. § 30116(f) by knowingly accepting such
8 contributions.²⁰³

9 **IV. INVESTIGATION**

10 Our proposed investigation will determine what services the LLC provided to BNC, JD,
11 and each of the 13 Respondent candidate committees in exchange for the payments each relevant
12 Respondent made to the LLC. In particular, we will seek information on what services the LLC
13 provided as part of its candidate recruitment efforts on behalf of BNC and JD, including a
14 breakdown of expenditures attributable to each of the relevant Respondent candidate committees,
15 to assess whether BNC and JD's retainer payments to the LLC for candidate recruitment funded
16 testing-the-waters activities for any of the candidates. We will request information and
17 documentation regarding the specific services the LLC provided to the other Respondents in the
18 course of its "strategic consulting" to establish whether and how BNC, JD, the LLC, or
19 Chakrabarti bore any Respondent candidate committee's costs. We will also obtain the

²⁰¹ Ocasio-Cortez for Congress April 2019 Quarterly Report at 570; JD Mid-Year 2019 Report at 1534, 1536; *see* MUR 7592 Joint Resp. at 42; Natalie Elsberg Resp., MUR 7592.

²⁰² *Cf.* F&LA at 3-4, MUR 7066 (Hillary for America, *et al.*) (exercising prosecutorial discretion to dismiss \$845 in excessive contributions from one individual not timely refunded); F&LA at 7-8, MUR 6438 (Art Robinson for Congress, *et al.*) (exercising prosecutorial discretion to dismiss one \$2,400 and one \$600 excessive contributions that were refunded).

²⁰³ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

1 information necessary to establish the extent to which BNC, JD, Cori Bush for Congress, and
2 Paula Swearengin 2018 need to amend their disclosure reports with regard to the purposes of
3 these disbursements and ultimate payees. While we would initially pursue informal discovery
4 methods, we recommend the Commission authorize the use of compulsory process, including the
5 issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as
6 necessary.

7 **V. RECOMMENDATIONS**

8 **MURs 7580, 7592, and 7626**

9 1. Find reason to believe that Justice Democrats PAC and Natalie Trent in her
10 official capacity as treasurer violated 52 U.S.C. § 30116(a) by making excessive
11 in-kind contributions to the Respondent candidate committees;

12 **MURs 7580 and 7592**

13 2. Find reason to believe that Saikat Chakrabarti violated 52 U.S.C. § 30116(a) by
14 making excessive in-kind contributions to the Respondent candidate committees;

15 3. Take no action at this time regarding the allegations that Alexandria Ocasio-
16 Cortez and Alexandria Ocasio-Cortez for Congress and Frank Llewellyn in his
17 official capacity as treasurer violated 52 U.S.C. § 30116(f) by knowingly
18 accepting excessive in-kind contributions from Justice Democrats PAC or Saikat
19 Chakrabarti;

20 **MURs 7592 and 7626**

21 4. Find reason to believe that Brand New Congress and Hosseh Enad in his official
22 capacity as treasurer violated 52 U.S.C. § 30116(a) by making excessive in-kind
23 contributions to the Respondent candidate committees;

24 5. Take no action at this time regarding the allegations that Cori Bush for Congress
25 and Amy Vilela in her official capacity as treasurer violated 52 U.S.C. § 30116(f)
26 by knowingly accepting excessive in-kind contributions from Justice Democrats
27 PAC or Brand New Congress;

1 6. Find reason to believe that Cori Bush for Congress and Amy Vilela in her official
2 capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R.
3 § 104.3(b)(3) and (b)(4) by failing to include sufficient descriptions showing the
4 purposes for, and misreporting the payee of, disbursements to Brand New
5 Congress, LLC;

6 **MUR 7592**

7 7. Find reason to believe that Brand New Congress, LLC violated 52 U.S.C.
8 § 30116(a) by making excessive in-kind contributions to the Respondent
9 candidate committees;

10 8. Take no action at this time regarding the allegations that Alexandria Ocasio-
11 Cortez and Alexandria Ocasio-Cortez for Congress and Frank Llewellyn in his
12 official capacity as treasurer violated 52 U.S.C. § 30116(f) by knowingly
13 accepting excessive in-kind contributions from Brand New Congress or Brand
14 New Congress, LLC;

15 9. Take no action at this time regarding the allegations that Cori Bush for Congress
16 and Amy Vilela in her official capacity as treasurer violated 52 U.S.C. § 30116(f)
17 by knowingly accepting excessive in-kind contributions from Saikat Chakrabarti
18 or Brand New Congress, LLC;

19 10. Take no action at this time regarding the allegations that Adrienne Bell 2018 and
20 Andret Rayford in her official capacity as treasurer; Anthony Clark 2018 and
21 Anthony Clark in his official capacity as treasurer; Chardo Richardson for
22 Congress and Chardo Richardson in his official capacity as treasurer; Committee
23 to Elect Ryan Stone and Ryan Stone in his official capacity as treasurer; Hector
24 Morales for Congress and Hector Morales in his official capacity as treasurer;
25 Hepburn for Congress and Michael Hepburn in his official capacity as treasurer;
26 Letitia Plummer 2018 and Letitia Plummer in her official capacity as treasurer;
27 Paula Swearingin 2018 and Paula Swearingin in her official capacity as treasurer;
28 Perry for Pennsylvania and Paul-David Perry, II, in his official capacity as
29 treasurer; Robert Ryerse 2018 and Robert Ryerse in his official capacity as
30 treasurer; and Sarah Smith 2018 and Andy Lo in his official capacity as treasurer
31 violated 52 U.S.C. § 30116(f) by knowingly accepting excessive in-kind
32 contributions from Justice Democrats PAC, Brand New Congress, Brand New
33 Congress, LLC, or Saikat Chakrabarti;

34 11. Take no action at this time regarding the allegations that Brand New Congress,
35 LLC violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to register and
36 report as a political committee;

- 1 12. Take no action at this time regarding the allegations that Alexandria Ocasio-
2 Cortez or Justice Democrats PAC and Natalie Trent in her official capacity as
3 treasurer violated the Act by Justice Democrats PAC's failure to register and
4 report as an authorized committee or leadership PAC;
- 5 13. Dismiss the allegations that Adrienne Bell 2018 and Andret Rayford in her
6 official capacity as treasurer; Anthony Clark 2018 and Anthony Clark in his
7 official capacity as treasurer; Chardo Richardson for Congress and Chardo
8 Richardson in his official capacity as treasurer; Committee to Elect Ryan Stone
9 and Ryan Stone in his official capacity as treasurer; Hector Morales for Congress
10 and Hector Morales in his official capacity as treasurer; Hepburn for Congress
11 and Michael Hepburn in his official capacity as treasurer; Letitia Plummer 2018
12 and Letitia Plummer in her official capacity as treasurer; Perry for Pennsylvania
13 and Paul-David Perry, II, in his official capacity as treasurer; Robert Ryerse 2018
14 and Robert Ryerse in his official capacity as treasurer; and Sarah Smith 2018 and
15 Andy Lo in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and
16 (b)(6) and 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to include sufficient
17 descriptions showing the purposes for, and misreporting the payee of,
18 disbursements to Brand New Congress, LLC and remind these Respondent
19 candidate committees to work with the Reports Analysis Division to amend their
20 reports, as necessary, to reflect proper purposes and payees;
- 21 14. Find reason to believe that Paula Swearengin 2018 and Paula Swearengin in her
22 official capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and (b)(6) and
23 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to include sufficient descriptions
24 showing the purposes for, and misreporting the payee of, disbursements to Brand
25 New Congress, LLC;
- 26 15. Dismiss the allegations that Arden Buck, Kamilka Malwatte, and Natalie Elsberg
27 violated 52 U.S.C. § 30116(a) by making excessive contributions;
- 28 16. Dismiss the allegations that Alexandria Ocasio-Cortez for Congress and Frank
29 Llewellyn in his official capacity as treasurer and Justice Democrats PAC and
30 Natalie Trent in her official capacity as treasurer violated 52 U.S.C. § 30116(f) for
31 knowingly accepting excessive contributions from Arden Buck, Kamilka
32 Malwatte, and Natalie Elsberg;

33 **MURs 7575, 7592, and 7626**

- 34 17. Find reason to believe that Brand New Congress and Hosseh Enad in his official
35 capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R.
36 § 104.3(b)(3) and (b)(4) by failing to include sufficient descriptions showing the
37 purposes for, and misreporting the payee of, disbursements to Brand New
38 Congress, LLC;

1 MURs 7575, 7580, and 7592

- 2 18. Dismiss the allegations that Alexandria Ocasio-Cortez for Congress and Frank
3 Llewellyn in his official capacity as treasurer violated 52 U.S.C. § 30104(b)(5)
4 and (b)(6) and 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to include sufficient
5 descriptions showing the purposes for, and misreporting the payee of,
6 disbursements to Brand New Congress, LLC and remind Alexandria Ocasio-
7 Cortez for Congress to work with the Reports Analysis Division to amend its
8 reports, as necessary, to reflect proper purposes and payees;

9 MURs 7575, 7580, 7592, and 7626

- 10 19. Find reason to believe that Justice Democrats PAC and Natalie Trent in her
11 official capacity as treasurer violated 52 U.S.C. § 30104(b)(5) and (b)(6) and
12 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to include sufficient descriptions
13 showing the purposes for, and misreporting the payee of, disbursements to Brand
14 New Congress, LLC;
- 15 20. Authorize the use of compulsory process;
- 16 21. Approve the attached Factual and Legal Analyses; and

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Arden Buck

MUR 7592

I. INTRODUCTION

The Complaint alleges that Arden Buck made an excessive contribution to Justice Democrats PAC (“JD”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Buck contributed \$7,500 to JD in 2018 — \$2,500 in excess of the applicable \$5,000 annual limit. For the reasons discussed below, the Commission exercises its prosecutorial discretion and dismisses the allegation that Buck made an excessive contribution to JD.¹

II. FACTUAL BACKGROUND AND ANALYSIS

Justice Democrats PAC filed its Statement of Organization with the Commission on January 9, 2017, and was a multicandidate political committee in the 2018 election cycle.² The Complaint asserts that Buck contributed \$7,500 to JD in 2018, exceeding the applicable \$5,000 annual limit.³ Buck did not submit a Response to the Complaint.

Under the Act, an individual may not make a contribution to a multicandidate committee during any calendar year in excess of \$5,000.⁴ The Complaint alleges, and Commission reports reflect, that Buck made an excessive contribution to JD. Buck contributed \$7,500 to JD in 2018,

¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

² Justice Democrats, Statement of Organization (Jan. 9, 2017); *Justice Democrats: About This Committee*, FEC.GOV, <https://www.fec.gov/data/committee/C00630665/?tab=about-committee&cycle=2018> (last visited Nov. 23, 2021) (describing JD as a qualified PAC); *see also* Compl. at 4 (Apr. 4, 2019) (describing JD as a “nonqualified political committee”).

³ Compl. at 45-46.

⁴ 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).

1 \$2,500 in excess of the applicable limit.⁵ However, Commission reports reflect that JD has
2 refunded the excessive portion of Buck's contributions: \$2,500 on May 5, 2019.⁶ In light of the
3 limited nature of Buck's excessive contribution, and the subsequent reimbursement of that
4 amount,⁷ the Commission exercises its prosecutorial discretion and dismisses the allegation that
5 Arden Buck violated 52 U.S.C. § 30116(a) by making an excessive contribution to JD.⁸

⁵ Justice Democrats PAC, Amended 2018 April Quarterly Report at 20, 21 (Sept. 27, 2018) (\$1,000 contribution on Jan. 24, 2018, \$4,000 contribution on Mar. 7, 2018, and \$2,500 contribution on Mar. 30, 2018); Compl. at 45.

⁶ Justice Democrats PAC, 2019 Mid-Year Report at 1534 (July 31, 2019).

⁷ Cf. Factual & Legal Analysis ("F&LA") at 3-4, MUR 7066 (Hillary for America, *et al.*) (exercising prosecutorial discretion to dismiss \$845 in excessive contributions from one individual not timely refunded); F&LA at 7-8, MUR 6438 (Art Robinson for Congress, *et al.*) (exercising prosecutorial discretion to dismiss one \$2,400 and one \$600 excessive contributions that were refunded).

⁸ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Kamilka Malwatte

MUR 7592

4 **I. INTRODUCTION**

5 The Complaint alleges that Kamilka Malwatte made an excessive contribution to Justice
6 Democrats PAC (“JD”) in violation of the Federal Election Campaign Act of 1971, as amended
7 (the “Act”). Malwatte contributed \$5,500 to JD in 2018 — \$500 in excess of the applicable
8 \$5,000 annual limit. For the reasons discussed below, the Commission exercises its
9 prosecutorial discretion and dismisses the allegation that Malwatte made an excessive
10 contribution to JD.¹

11 **II. FACTUAL BACKGROUND AND ANALYSIS**

12 Justice Democrats PAC filed its Statement of Organization with the Commission on
13 January 9, 2017, and was a multicandidate political committee in the 2018 election cycle.² The
14 Complaint asserts that Malwatte contributed \$5,500 to JD in 2018, exceeding the applicable
15 \$5,000 annual limit.³ Malwatte states that JD refunded the excessive contribution, which is
16 reflected in the relevant report.⁴

17 Under the Act, an individual may not make a contribution to a multicandidate committee
18 during any calendar year in excess of \$5,000.⁵ The Complaint alleges, and Commission reports

¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

² Justice Democrats, Statement of Organization (Jan. 9, 2017); *Justice Democrats: About This Committee*, FEC.GOV, <https://www.fec.gov/data/committee/C00630665/?tab=about-committee&cycle=2018> (last visited Nov. 23, 2021) (describing JD as a qualified PAC); *see also* Compl. at 4 (Apr. 4, 2019) (describing JD as a “nonqualified political committee”).

³ Compl. at 45-46.

⁴ Kamilka Malwatte Resp. (Aug. 28, 2019) (joining Joint Resp. in MUR 7592); *see also* Justice Democrats PAC, 2019 Mid-Year Report at 1536 (July 31, 2019) [hereinafter JD 2019 Mid-Year Report].

⁵ 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).

1 reflect, that Malwatte made an excessive contribution to JD. Malwatte contributed \$5,500 to JD
2 in 2018, \$500 in excess of the applicable limit.⁶ However, Commission reports reflect that JD
3 has refunded the excessive portion of Malwatte’s contributions: \$500 on May 5, 2019.⁷ In light
4 of the limited nature of Malwatte’s excessive contribution, and the subsequent reimbursement of
5 that amount,⁸ the Commission exercises its prosecutorial discretion and dismisses the allegation
6 that Kamilka Malwatte violated 52 U.S.C. § 30116(a) by making an excessive contribution to
7 JD.⁹

⁶ Justice Democrats PAC, Amended 2018 April Quarterly Report at 99 (Sept. 27, 2018) (\$5,000 contribution on Feb. 27, 2018); Justice Democrats PAC, Amended 2018 October Quarterly Report at 770 (Jan. 10, 2019) (\$500 contribution on Aug. 30, 2018); Compl. at 45-46.

⁷ JD 2019 Mid-Year Report at 1536.

⁸ Cf. Factual & Legal Analysis (“F&LA”) at 3-4, MUR 7066 (Hillary for America, *et al.*) (exercising prosecutorial discretion to dismiss \$845 in excessive contributions from one individual not timely refunded); F&LA at 7-8, MUR 6438 (Art Robinson for Congress, *et al.*) (exercising prosecutorial discretion to dismiss one \$2,400 and one \$600 excessive contributions that were refunded).

⁹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Natalie Elsberg

MUR 7592

I. INTRODUCTION

The Complaint alleges that Natalie Elsberg made an excessive contribution to Alexandria Ocasio-Cortez for Congress (“Ocasio-Cortez for Congress”) in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Elsberg contributed \$5,650 to Ocasio-Cortez for Congress in 2018 — \$250 in excess of the applicable \$5,400 total per-election limit. For the reasons discussed below, the Commission exercises its prosecutorial discretion and dismisses the allegation that Elsberg made an excessive contribution to Ocasio-Cortez for Congress.¹

II. FACTUAL BACKGROUND AND ANALYSIS

Ocasio-Cortez for Congress is the authorized committee for now-U.S. Representative Alexandria Ocasio-Cortez that filed its Statement of Organization with the Commission on May 5, 2017.² The Complaint asserts that Elsberg contributed \$5,650 to Ocasio-Cortez for Congress in 2018, exceeding the applicable \$5,400 total per-election limit, including both the primary and general elections.³ Elsberg states that the excessive contribution was inadvertent

¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

² Alexandria Ocasio-Cortez, Statement of Organization (May 5, 2017); Compl. at 3 (Apr. 4, 2019).

³ Compl. at 46-47.

1 and Ocasio-Cortez for Congress refunded the excessive contribution, which is reflected in the
2 relevant report.⁴

3 Under the Act, an individual may not make a contribution to a candidate with respect to
4 any election in excess of the legal limit, which was \$2,700 per election during the 2018 cycle.⁵
5 The Complaint alleges, and Commission reports reflect, that Elsberg made an excessive
6 contribution to Ocasio-Cortez for Congress. Elsberg contributed a total of \$5,650 to Ocasio-
7 Cortez for Congress during the 2017-2018 cycle, \$250 in excess of the applicable per-election
8 limits.⁶ However, Elsberg responds and Commission reports reflect that Ocasio-Cortez for
9 Congress has refunded the excessive portion of Elsberg's contribution: \$250 on January 30,
10 2019.⁷ In light of the limited nature of Elsberg's excessive contribution, and the subsequent
11 reimbursement of that amount,⁸ the Commission exercises its prosecutorial discretion and
12 dismisses the allegation that Natalie Elsberg violated 52 U.S.C. § 30116(a) by making an
13 excessive contribution to Ocasio-Cortez for Congress.⁹

⁴ Natalie Elsberg Resp. (May 2, 2019); *see also* Alexandria Ocasio-Cortez for Congress, Amended 2019 April Quarterly Report at 570 (June 16, 2019) [hereinafter Ocasio-Cortez for Congress April 2019 Quarterly Report].

⁵ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

⁶ Alexandria Ocasio-Cortez 2018, Amended 2018 April Quarterly Report at 27 (Aug. 21, 2018) (\$2,700 primary election contribution on Mar. 23, 2018); Alexandria Ocasio-Cortez for Congress, Amended 2018 October Quarterly Report at 296 (June 7, 2019) (\$2,700 general election contribution on July 12, 2018); *id.* at 297 (\$250 general election contribution on Sept. 12, 2018); Natalie Elsberg Resp.; Compl. at 46-47.

⁷ Ocasio-Cortez for Congress April 2019 Quarterly Report at 570.

⁸ *Cf.* Factual & Legal Analysis ("F&LA") at 3-4, MUR 7066 (Hillary for America, *et al.*) (exercising prosecutorial discretion to dismiss \$845 in excessive contributions from one individual not timely refunded); F&LA at 7-8, MUR 6438 (Art Robinson for Congress, *et al.*) (exercising prosecutorial discretion to dismiss one \$2,400 and one \$600 excessive contributions that were refunded).

⁹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**RESPONDENTS¹:

MURs 7575, 7580, 7592, & 7626

Brand New Congress and Hosseh Enad in his official capacity as treasurer
Brand New Congress, LLC (f/k/a Brand New Campaign, LLC)
Justice Democrats PAC and Natalie Trent in her official capacity as treasurer
Saikat Chakrabarti

I. INTRODUCTION

This Factual and Legal Analysis addresses four complaints that primarily concern the activities of two political committees, Brand New Congress (“BNC”) and Justice Democrats PAC (“JD”), that recruited and promoted first-time progressive Democratic congressional candidates in the 2018 election cycle, and a related limited liability corporation, Brand New Congress, LLC (the “LLC”), owned by BNC and JD co-founder Saikat Chakrabarti, that provided campaign-related services to the 13 candidates recruited by BNC and JD and their campaign committees. The four complaints make sometimes overlapping allegations that BNC, JD, the LLC, and Chakrabarti, and other individuals violated various provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations.²

For the reasons discussed below, the Commission: (1) finds reason to believe that BNC, JD, the LLC, and Chakrabarti made excessive in-kind contributions to the 13 recruited candidate committees; (2) finds reason to believe that BNC and JD failed to include sufficient descriptions showing the purposes for, and misreported the payee of, disbursements to the LLC; and

¹ This Factual and Legal Analysis refers to the Respondents by their current committee names and current treasurers. Where relevant, citations to Statements of Organization, disclosure reports, and other Commission filings reflect the name and treasurer listed on the report or filing cited.

² The Commission takes no action at this time as to the allegations that LLC was an unregistered political committee and that JD was an unregistered authorized committee or leadership PAC of U.S. Representative Alexandria Ocasio-Cortez.

1 (3) exercises its prosecutorial discretion and dismisses the allegations that JD knowingly
2 accepted excessive contributions from Arden Buck and Kamilka Malwatte.

3 **II. FACTUAL BACKGROUND**

4 BNC and JD represent, in a Joint Response with the other Respondents, that they “sought
5 to implement a national program to recruit non-traditional, first-time candidates for United States
6 House of Representatives and Senate, and to support them with an infrastructure to effectively
7 run their campaigns as an integrated, national effort.”³ BNC and JD state that they sought to
8 recruit a candidate in every congressional district in the country, but it appears that the 13
9 recruited candidates were the only 2018 congressional candidates that BNC and JD ultimately
10 worked with in 2018.⁴ BNC and JD share many of the same founding members, including
11 Chakrabarti.⁵

12 In an online statement posted by JD on May 8, 2018, Chakrabarti wrote that the founders
13 of BNC and JD started those groups to:

14 recruit candidates who were not thinking about running already
15 and to actually fully run all of their campaigns as if it was one big

³ Alexandria Ocasio-Cortez; Alexandria Ocasio-Cortez for Congress; Saikat Chakrabarti; Brand New Congress; Justice Democrats PAC; and Brand New Congress, LLC Resp. at 3 (Mar. 22, 2019), MUR 7575 [hereinafter MUR 7575 Joint Resp.]; Alexandria Ocasio-Cortez; Alexandria Ocasio-Cortez for Congress; Saikat Chakrabarti; Brand New Congress PAC; Justice Democrats PAC; and Brand New Congress, LLC Resp. at 3 (Apr. 11, 2019), MUR 7580 [hereinafter MUR 7580 Joint Resp.]; *accord* Alexandria Ocasio-Cortez; Alexandria Ocasio-Cortez for Congress; Justice Democrats PAC; Brand New Congress; Brand New Congress, LLC; Saikat Chakrabarti; Adrienne Bell 2018; Chardo Richardson for Congress; Cori Bush for Congress; Paula Swearengin 2018; Robert Ryerse 2018; and Sarah Smith 2018 Resp. at 7 (June 28, 2019), MUR 7592 [hereinafter MUR 7592 Joint Resp.]. BNC and the LLC joined the MUR 7580 Joint Response although they were not notified as Respondents in that matter. MUR 7580 Joint Resp. at 1.

⁴ See MUR 7592 Joint Resp. at 7-8 & n.10.

⁵ See *When I Look at the FEC Report for Justice Democrats in 2017, Why Are There so Many Expenditures to “Brand New Congress”?*, JUSTICE DEMOCRATS (May 8, 2018, 2:24PM) [hereinafter JD Online Post], <https://justicedems.freshdesk.com/support/solutions/articles/33000223353-when-i-look-at-the-fec-report-for-justice-democrats-in-2017-why-are-there-so-many-expenditures-to-b> (“[M]any of the founding members of [JD] also helped start [BNC].”). The MUR 7575 Complaint, MUR 7592 Complaint, and the MUR 7592 Joint Response all include the JD Online Post as an attachment. Compl., Ex. 4 (Mar. 4, 2019), MUR 7575 [hereinafter MUR 7575 Compl.]; Compl. at 15 (Apr. 4, 2019), MUR 7592 [hereinafter MUR 7592 Compl.] (linking to JD Online Post); MUR 7592 Joint Resp., Ex. A.

1 presidential race. . . . Normally, running a campaign requires all
2 kinds of ops and legal headaches, but we thought we could
3 possibly short circuit that by having this big national campaign that
4 all the candidates could plug into and one central team was doing
5 the annoying work of keeping the actual campaign logistics
6 running.⁶

7 Chakrabarti and his co-founders started BNC to perform the campaign work associated with
8 advancing the congressional candidates, but their legal counsel advised against that structure.⁷
9 Accordingly, they created the LLC to “essentially run the full campaigns for the vast majority of
10 our candidates.”⁸ BNC “put all [of its] staff in th[e] LLC and had it act as the vendor for both
11 the PAC and all the candidates.”⁹ The LLC was designed to have prices that were “as low as
12 possible while still satisfying the FEC’s requirement [to] charg[e] something reasonable.”¹⁰

13 BNC filed its Statement of Organization with the Commission on April 5, 2016.¹¹ BNC
14 reported \$252,562.56 in total receipts and \$220,500.08 in total disbursements in 2016.¹² BNC
15 reported \$607,364.52 in total receipts and \$629,706.44 in total disbursements in the 2018
16 cycle.¹³ JD filed its Statement of Organization with the Commission on January 9, 2017.¹⁴ JD
17 reported \$2,726,957.42 in total receipts and \$2,539,933.41 in total disbursements in the 2018

⁶ JD Online Post; *see* MUR 7575 Compl. at 2; MUR 7592 Compl. at 15.

⁷ JD Online Post.

⁸ *Id.*

⁹ *Id.*; MUR 7575 Compl. at 3 (quoting JD Online Post).

¹⁰ JD Online Post.

¹¹ Brand New Congress, Statement of Organization (Apr. 5, 2016); MUR 7575 Compl. at 2.

¹² *See* Brand New Congress, 2016 Year-End Report at 2-4 (Jan. 18, 2017); *see also* Brand New Congress: *Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00613810/?tab=summary&cycle=2016> (last visited Nov. 23, 2021).

¹³ *See* Brand New Congress, 2017 Year-End Report at 2-4 (Jan. 31, 2018); Brand New Congress, Amended 2018 Year-End Report at 2-4 (July 19, 2019); *see also* Brand New Congress: *Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00613810/?tab=summary&cycle=2018> (last visited Nov. 23, 2021).

¹⁴ Justice Democrats, Statement of Organization (Jan. 9, 2017); MUR 7575 Compl. at 2; MUR 7592 Compl. at 4.

1 cycle.¹⁵ The 13 recruited candidate committees were all authorized committees for first-time
2 Democratic congressional candidates in 2018.¹⁶

3 Brand New Congress, LLC, was a single-member limited liability company with
4 Chakrabarti as its single member.¹⁷ The LLC represents that it operated as a “campaign in a
5 box” vendor that provided campaign services to candidates, including “communications, field,
6 online organizing, fundraising,” and similar services.¹⁸ According to the MUR 7592 Joint
7 Response, the LLC began operations in January 2017.¹⁹ However, the LLC originally formed as
8 “Brand New Campaign, LLC” on May 11, 2016, before it was renamed as Brand New Congress,
9 LLC.²⁰ The first reported disbursement to Brand New Campaign, LLC, was from BNC on

¹⁵ See Justice Democrats PAC, 2018 Year-End Report at 2-4 (Jan. 24, 2019); Justice Democrats, Amended 2017 Year-End Report at 2-4 (Nov. 5, 2018); see also *Justice Democrats: Financial Summary*, FEC.GOV, <https://www.fec.gov/data/committee/C00630665/?cycle=2018> (last visited Nov. 23, 2021).

¹⁶ Adrienne Bell 2018, Statement of Organization (May 10, 2017); Alexandria Ocasio-Cortez, Statement of Organization (May 5, 2017); Anthony Clark 2018, Statement of Organization (May 10, 2017); Chardo Richardson, Statement of Organization (May 18, 2018); Committee to Elect Ryan Stone, Statement of Organization (Apr. 8, 2017); Cori Bush 2018, Statement of Organization (Apr. 25, 2017); Hector Morales for Congress, Statement of Organization (Apr. 6, 2017); Hepburn for Congress, Statement of Organization (Apr. 1, 2017); Letitia Plummer 2018, Statement of Organization (May 10, 2017); Paula Swearengin 2018, Statement of Organization (May 3, 2017); Perry for Pennsylvania, Statement of Organization (May 20, 2017); Robert Ryerse 2018, Statement of Organization (May 10, 2017); Sarah Smith 2018, Statement of Organization (May 11, 2017).

¹⁷ MUR 7575 Joint Resp. at 4 & n.4; MUR 7580 Joint Resp. at 4 & n.4; MUR 7592 Joint Resp. at 14, 27.

¹⁸ MUR 7575 Joint Resp. at 3; MUR 7580 Joint Resp. at 3; MUR 7592 Joint Resp. at 8; see also JD Online Post (describing the LLC’s organization and referencing “many kinds of campaign work,” including “direct message consulting, writing press statements, any field work or voter outreach work, etc.”); MUR 7592 Joint Resp. at 9, 27 (referencing the LLC’s “campaign in a box” services); MUR 7575 Compl. at 3 (alleging Chakrabarti stated in a television interview on May 19, 2016, that Brand New Congress, LLC, “ran all of the fundraising and volunteering operations for the campaigns”).

¹⁹ See MUR 7592 Joint Resp. at 14, 17, 40.

²⁰ See *Entity Search*, STATE OF DEL. DIV. OF CORPS., <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> (search Entity Name field for “Brand New Campaign LLC” or File Number field for “6039258”) (last visited Nov. 23, 2021) (showing formation on May 11, 2016); e.g., MUR 7575 Compl. at 2; MUR 7592 Compl. at 4; MUR 7575 Joint Resp. at 1, 3; MUR 7580 Joint Resp. at 1, 3; MUR 7592 Joint Resp. at 1, 8; see also MUR 7575 Joint Resp., Ex. A (Statement of Work and Services Agreement executed between “Brand New Campaign, LLC” and JD). The Delaware Division of Corporations Entity Search database does not return results for “Brand New Congress.” *Entity Search*, STATE OF DEL. DIV. OF CORPS., <https://icis.corp.delaware.gov/ecorp/entitysearch/namesearch.aspx> (search Entity Name field for “Brand New Congress”) (last visited Nov. 23, 2021) (showing no results).

1 May 17, 2016.²¹ Respondents assert that the LLC ceased operations in August 2017 when it
 2 determined that its business model was “not sustainable.”²² According to Respondents,
 3 Chakrabarti received no salary or any other kind of profit from the LLC as its sole member.²³
 4 In 2016, BNC made \$205,154.71 in total disbursements to the LLC’s predecessor-in-
 5 name, Brand New Campaign, LLC.²⁴ In the 2017-2018 cycle, JD made \$605,849.12 in
 6 disbursements to the LLC and BNC made \$261,165.18 in disbursements to the LLC.²⁵ In
 7 contrast to the aggregate \$867,014.30 provided to the LLC by BNC and JD in the 2017-2018
 8 cycle, the 13 recruited candidate committees made \$175,801.92 in aggregate disbursements to
 9 the LLC.²⁶ A chart depicting the breakdown of each committee’s aggregate disbursements to the
 10 LLC in the 2018 cycle is included below:

²¹ Brand New Congress, 2016 July Quarterly Report at 11 (July 13, 2016); *see also* MUR 7575 Compl. at 3 (alleging Chakrabarti stated in a television interview on May 19, 2016, that Brand New Congress, LLC, “created the campaign infrastructure and ran all of the fundraising and volunteering operations for the campaigns”).

²² *See* MUR 7575 Joint Resp. at 4; MUR 7592 Joint Resp. at 9-10, 18; *see also* MUR 7592 Compl. at 22; JD Online Post (describing decision in September 2017 to wrap up LLC and “move all” staff into JD).

²³ MUR 7575 Joint Resp. at 4, 8; MUR 7580 Joint Resp. at 4; MUR 7592 Joint Resp. at 9, 40, 47; JD Online Post.

²⁴ *See FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00613810&recipient_name=Brand+New+Campaign (last visited Nov. 23, 2021) (reflecting 15 disbursements by BNC to Brand New Campaign, LLC).

²⁵ *See FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00630665&recipient_name=brand+new+congress&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 11 disbursements by JD to the LLC); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00613810&recipient_name=brand+new+congress&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 13 disbursements by BNC to the LLC).

²⁶ The MUR 7592 Complaint alleges the 13 committees made \$173,101.92 in aggregate disbursements to the LLC, but Commission records reflect the committees made \$175,801.92. *See* MUR 7592 Compl. at 16-20; *see also* MUR 7575 Compl. at 3 (alleging Ocasio-Cortez for Congress disbursed \$18,720.86 to the LLC). It appears the MUR 7592 Complaint omits a \$2,700 disbursement made by Ocasio-Cortez for Congress to the LLC on September 1, 2017, that is described as “strategic consulting, FEC compliance including software expense, relay texting.” *See* Alexandria Ocasio-Cortez for Congress, Amended 2017 October Quarterly at 21 (Apr. 19, 2019) [hereinafter Ocasio-Cortez for Congress October 2017 Quarterly Report].

Committee Disbursements to Brand New Congress, LLC, in 2018 Cycle			
Committee Category	Committee	Aggregate Disbursements	Number of Transactions
PACs	Justice Democrats PAC	\$605,849.12	11
	Brand New Congress	\$261,165.18	13
	Sub-Total	\$867,014.30	24
Candidate Committees	Adrienne Bell 2018	\$10,536.26	3
	Alexandria Ocasio-Cortez for Congress	\$21,580.14	4
	Anthony Clark 2018	\$18,577.22	4
	Chardo Richardson for Congress	\$4,034.77	2
	Committee to Elect Ryan Stone	\$8,550.14	4
	Cori Bush for Congress	\$40,607.91	4
	Hector Morales for Congress	\$4,602.65	2
	Hepburn for Congress	\$9,048.70	2
	Letitia Plummer 2018	\$4,565.72	2
	Paula Swearengin 2018	\$33,826.87	5
	Perry for Pennsylvania	\$6,800.54	1
	Robert Ryerse 2018	\$4,590.35	2
	Sarah Smith 2018	\$8,480.65	2
	Sub-Total	\$175,801.92	37
TOTAL		\$1,042,816.22	61

1 Chakrabarti, in addition to forming the LLC, was a founding member of both BNC and
 2 JD and served as the Executive Director of JD from the time of its inception until June 2018.²⁷
 3 He served as the initial custodian of records for three of the recruited candidate committees:
 4 Chardo Richardson for Congress, Alexandria Ocasio-Cortez for Congress (“Ocasio-Cortez for
 5 Congress”), and Sarah Smith 2018.²⁸ He also subsequently served as Ocasio-Cortez for

²⁷ See MUR 7592 Compl. at 5-6; MUR 7592 Joint Resp. at 18; *see also* JD Online Post (describing Chakrabarti’s involvement in BNC, JD, and the LLC); MUR 7575 Compl. at 3 (same); MUR 7575 Joint Resp. at 4, 8 (same); MUR 7580 Joint Resp. at 3-4 (same); Compl. (Mar. 18, 2019), MUR 7580 [hereinafter MUR 7580 Compl.] (alleging violations by Saikat Chakrabarti, JD “founder,” and two political committees he “opened” and “controlled”).

²⁸ See Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (May 15, 2017) (listing Chakrabarti as custodian of records); Chardo Richardson, Statement of Organization at 3 (May 18, 2017) (same); Sarah Smith 2018, Statement of Organization at 3 (May 11, 2017) (same); MUR 7592 Compl. at 5; MUR 7592 Joint Resp. at 18.

1 Congress’s treasurer and campaign manager.²⁹ Chakrabarti and Ocasio-Cortez joined JD’s
2 Board of Directors in November 2017.³⁰ Ocasio-Cortez resigned from JD’s Board of Directors
3 on June 30, 2018, and Chakrabarti left the Board on January 11, 2019.³¹

4 The Complaints in MURs 7580, 7592, and 7626 all broadly allege that BNC, JD, the
5 LLC, or some combination thereof, made excessive in-kind contributions to some or all of the 13
6 recruited candidate committees. The MUR 7592 Complaint asserts that the LLC provided
7 “likely in excess of \$1 million” worth of campaign-related services to the 13 recruited candidate
8 committees but only received \$173,101.92 in disbursements from them, and contends that the
9 much larger BNC and JD payments subsidized the cost of the LLC’s services for the candidate
10 committees.³² The Respondents filed a Joint Response in MUR 7592 which denies certain
11 factual assertions made in that Complaint, such as that the LLC performed discounted work for
12 the recruited candidate committees that was paid for by BNC and JD.³³ In support of this denial,
13 the MUR 7592 Joint Response discusses the timing of expenditures made to the LLC.³⁴ The

²⁹ Alexandria Ocasio-Cortez, Amended Statement of Organization at 3 (Feb. 6, 2018) (listing Chakrabarti as treasurer); MUR 7592 Compl. at 5 (describing Chakrabarti as Ocasio-Cortez for Congress’s treasurer and campaign manager).

³⁰ MUR 7592 Joint Resp. at 18; *see also* MUR 7592 Compl. at 5 (alleging Ocasio-Cortez and Chakrabarti joined JD’s Board in December 2017); MUR 7575 Compl. at 4 (referencing Ocasio-Cortez’s membership on JD’s Board). At the time Chakrabarti and Ocasio-Cortez joined JD’s Board, it apparently consisted of two other people: Cenk Uygur and Kyle Kulinski. *See* MUR 7592 Compl. at 5; *see also* JD Online Post (describing Uygur and Kulinski’s involvement in JD). The MUR 7592 Complaint states that Uygur was expelled from the Board on December 22, 2017, leaving control to Ocasio-Cortez, Chakrabarti, and Kulinski. MUR 7592 Compl. at 5. The MUR 7592 Complaint further states that on March 28, 2018, Chakrabarti filed a “Two Year Report for Domestic & Foreign Filing Entity” on behalf of JD that stated JD’s “governors” were Ocasio-Cortez, Chakrabarti, and Nasim Thompson. *Id.* As of June 24, 2018, JD’s website identified only Ocasio-Cortez and Chakrabarti as its Board members. *About Justice Democrats*, JUSTICE DEMOCRATS (June 24, 2018), <https://justicedemocrats.com/about/> [<https://web.archive.org/web/20180624092923/https://justicedemocrats.com/about/>]; MUR 7592 Compl. at 5-6.

³¹ MUR 7580 Joint Resp. at 4; MUR 7592 Joint Resp. at 18.

³² MUR 7592 Compl. at 19.

³³ MUR 7592 Joint Resp. at 25-35.

³⁴ *See id.* at 9-13.

1 MUR 7592 Joint Response states that the LLC's operations can be best explained as occurring in
 2 three phases:

- 3 (1) **Phase 1** (January-May 2017): The LLC engages in candidate recruitment on behalf
 4 of BNC and JD.³⁵
 5 (2) **Phase 2** (June-August 2017): The LLC begins providing services to the candidate
 6 committees and continues to provide services to BNC and JD to “grow their brands
 7 and influence.”³⁶
 8 (3) **Phase 3** (August 2017): The LLC winds down operations and collects balances from
 9 its clients.³⁷

10 The MUR 7592 Joint Response includes the following chart showing the amounts the
 11 LLC received from BNC and JD, compared to the 13 recruited candidate committees, during
 12 each phase of the 2018 cycle explained above:³⁸

Phase	LLC Total Income	Income from BNC and JD	Income from Candidate Committees	Percentage of Income from BNC and JD
Phase 1	\$643,258.87	\$643,258.87	\$0	100%
Phase 2	\$368,516.92	\$198,065.00	\$170,451.92	53.75%
Phase 3	\$28,340.43	\$25,690.43	\$2,650.00	90.65%

13 Approximately 74% of the funds paid by BNC and JD to the LLC in the 2018 cycle were paid
 14 during what the Respondents characterize as the Phase 1 candidate recruitment phase.³⁹ The
 15 MUR 7592 Joint Response characterizes these payments as “retainers” for the LLC staff's work
 16 identifying and recruiting candidates to run for office on behalf of BNC and JD.⁴⁰ The

³⁵ All of the 13 recruited candidates filed their Statements of Candidacy during this phase; four of the candidates filed those statements in April 2017, while the other nine filed their statements in May 2017. *See supra* note 16.

³⁶ MUR 7592 Joint Resp. at 8.

³⁷ *Id.* at 7-8; *see also id.* at 11-12 (providing a more detailed chart itemizing each receipt by the LLC).

³⁸ It appears the LLC's only sources of income were BNC, JD, and the 13 recruited candidate committees. *See id.* at 8 n.10 (listing those committees as the “LLC's only clients”). The MUR 7592 Joint Response does not include on this chart or otherwise reference any payments made by BNC to Brand New Campaign, LLC, in 2016. *See generally id.*

³⁹ *Id.* at 10.

⁴⁰ *Id.* at 10, 14, 26. The MUR 7592 Joint Response asserts that the LLC's recruitment efforts involved “many different staff, dozens of meetings,” and “travel, staff, office space,” to “vet and interview candidates.” *Id.* at 10; *see*

1 MUR 7592 Joint Response argues that the timing of these payments negates the allegation that
2 those payments subsidized the LLC’s services to the candidate committees because they were
3 made before the candidates became “candidates” under the Act.⁴¹ The Respondents do not
4 elaborate on what proportion of the \$643,258.87 candidate recruitment payments was
5 attributable to the LLC’s efforts to recruit the 13 candidates it ultimately recruited and what was
6 attributable to its efforts to recruit individuals who did not become candidates, if any.

7 The MUR 7592 Joint Response states that, after Phase 1, the LLC moved from a
8 “retainer” model of billing its clients to a “hybrid” model of billing.⁴² According to the
9 Respondents, this hybrid model included charging clients a flat fee for certain services, charging
10 a percentage of digital fundraising services, and billing some services based on the amount of
11 staff time it took to provide that service.⁴³ The MUR 7592 Joint Response states that the LLC
12 engaged in arm’s-length contracts with the candidate committees and applied the hybrid billing
13 model to all clients.⁴⁴ The MUR 7592 Joint Response does not explain how the LLC determined
14 the amount of the Phase 1 retainers paid by BNC and JD, nor does it explain how the LLC
15 determined the amount of the hybrid billing or flat fees paid by the 13 recruited candidate
16 committees.

also id. at 8, 10 (“JD and BNC PAC sought nominations for potential candidates through emails sent to their supporters, as well as social media campaigns, which were then evaluated and vetted by [the] LLC.”); MUR 7575 Joint Resp., Ex. A at 1 (describing, in contract between JD and the LLC, the LLC’s “scope of work” with JD as including “helping [JD] identify, vet and recruit candidates”).

⁴¹ MUR 7592 Joint Resp. at 9-13, 25.

⁴² *Id.* at 26.

⁴³ *Id.*

⁴⁴ *Id.* at 26-27.

1 The Complaints in MURs 7575, 7580, 7592, and 7626 allege variously that BNC and JD
2 did not accurately report the purpose and payees of disbursements.⁴⁵ Respondents assert that
3 “strategic consulting” was a sufficient description of the services the LLC provided, itemized
4 reporting of sub-vendors of the LLC is not required in these circumstances, and the LLC sought
5 guidance from RAD regarding how its clients should report payments for its services.⁴⁶

6 Finally, the MUR 7592 Complaint identifies excessive payments made from two
7 individuals to JD.⁴⁷ Specifically, the MUR 7592 Complaint asserts that: (1) Arden Buck
8 contributed \$7,500 to JD in 2018, exceeding the applicable \$5,000 annual limit; and (2) Kamilka
9 Malwatte contributed \$5,500 to JD in 2018, exceeding the applicable \$5,000 annual limit.⁴⁸ The
10 MUR 7592 Joint Response states that these excessive contributions have been refunded, which is
11 reflected in the relevant reports.⁴⁹

12 **III. ANALYSIS**

13 **A. The Commission Finds Reason to Believe That BNC, JD, the LLC, and** 14 **Chakrabarti Made Excessive In-Kind Contributions**

15 The Act defines “contribution” as “any gift, subscription, loan, advance, or deposit of
16 money or anything of value made by any person for the purpose of influencing any election for
17 Federal office.”⁵⁰ The Act prohibits any person from making contributions to any candidate or
18 candidate’s authorized committee in excess of the limits at 52 U.S.C. § 30116(a) and candidate

⁴⁵ MUR 7575 Compl. at 3-4; MUR 7580 Compl.; MUR 7592 Compl. at 43-45; Compl. at 1-2 (July 29, 2019), MUR 7626 [hereinafter MUR 7626 Compl.] (focusing on payments presumably relating to Cori Bush for Congress).

⁴⁶ MUR 7575 Joint Resp. at 4-11, Ex. B; MUR 7592 Joint Resp. at 36-41; *id.*, Ex. D.

⁴⁷ MUR 7592 Compl. at 45-47.

⁴⁸ *Id.*

⁴⁹ MUR 7592 Joint Resp. at 42; *see also*; Justice Democrats PAC, 2019 Mid-Year Report at 1534, 1536 (July 31, 2019) [hereinafter JD Mid-Year 2019 Report].

⁵⁰ 52 U.S.C. § 30101(8)(A)(i).

1 committees are prohibited from knowingly accepting excessive contributions.⁵¹ Commission
2 regulations specify that a “contribution by an LLC with a single natural person member that does
3 not elect to be treated as a corporation by the Internal Revenue Service . . . shall be attributed
4 only to that single member.”⁵²

5 During the 2018 election cycle, the per-election limit for contributions to candidate
6 committees from multicandidate political committees was \$5,000 and the limit from individuals
7 and non-multicandidate committees was \$2,700.⁵³ The LLC had a single natural person member
8 in Chakrabarti and elected partnership taxation.⁵⁴ Therefore, any contributions by the LLC to
9 candidate committees are attributable to Chakrabarti and subject to a \$2,700 per-election limit.⁵⁵
10 Similarly, BNC, as a non-multicandidate committee, could contribute \$2,700 per election to
11 candidate committees in the 2018 election cycle.⁵⁶ JD is a multicandidate political committee
12 and, therefore, contributions by it to candidate committees are subject to a \$5,000 per-election
13 limit.⁵⁷ Commission regulations provide that all funds raised or spent for testing-the-waters
14 activities are subject to the Act’s limitations and prohibitions.⁵⁸

⁵¹ *Id.* § 30116(a), (f); *see also* 11 C.F.R. §§ 110.1, 110.2, 110.9.

⁵² 11 C.F.R. § 110.1(g)(4).

⁵³ 52 U.S.C. § 30116(a)(1), (a)(2); *see* 11 C.F.R. §§ 110.1(b)(1)(i), 110.2(b)(1), 110.17(b), 110.17(e).

⁵⁴ MUR 7592 Joint Resp. at 14.

⁵⁵ *See* 11 C.F.R. § 110.1(g)(4); *see also* 52 U.S.C. § 30116(a)(1); 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b), 110.17(e).

⁵⁶ *See* 52 U.S.C. § 30116(a)(1); 11 C.F.R. § 110.1(b)(1)(i).

⁵⁷ *See* 52 U.S.C. § 30116(a)(2); 11 C.F.R. § 110.2(b)(1).

⁵⁸ *See* 11 C.F.R. §§ 100.72(a), 100.131(a). Additionally, when an individual becomes a candidate, any funds received or payments made in connection with testing-the-waters activities must be reported as contributions or expenditures on the first disclosure report filed by the candidate’s authorized committee. 11 C.F.R. § 101.3; Advisory Opinion 1981-32 (Askew) at 3.

1 The provision of any goods or services without charge or at a charge that is “less than the
2 usual and normal charge” for such goods or services is a contribution.⁵⁹ The “usual and normal
3 charge” for goods is “the price of those goods in the market from which they ordinarily would
4 have been purchased at the time of the contribution.”⁶⁰ The “usual and normal charge” for non-
5 volunteer services is “the hourly or piecework charge for the services at a commercially
6 reasonable rate prevailing at the time the services were rendered.”⁶¹ The Commission has
7 previously concluded that entities may establish the “usual and normal charge” of goods or
8 services by reference to the “fair market price” of goods or services,⁶² “commercial
9 considerations,”⁶³ or the fee provided to “similarly situated persons in the general public.”⁶⁴

10 The MUR 7592 Complaint alleges that BNC and JD subsidized the costs of services the
11 LLC provided to the 13 recruited candidate committees by disbursing \$261,165.18 and
12 \$605,849.12, respectively, to the LLC.⁶⁵ The MUR 7592 Complaint asserts that the LLC

⁵⁹ 11 C.F.R. § 100.52(d)(1).

⁶⁰ *Id.* § 100.52(d)(2).

⁶¹ *Id.*

⁶² *See* First Gen. Counsel’s Rpt. (“First GCR”) at 5-6, MUR 5682 (Bachmann for Congress) (recommending the Commission find that respondent assigned an appropriate valuation to a mailing list where the respondent had consulted with a “reputable list broker” regarding the “proper fair market value” of the list); Certification (Nov. 3, 2006), MUR 5682 (approving First GCR’s recommendations); *see also* Advisory Opinion 2010-30 at 3 (Citizens United) (“Because the ‘fair market price’ is the price of the list in the market in which lists are ordinarily rented at the time of the rental, the ‘fair market price’ is the usual and normal charge for renting the list [of email contacts].”).

⁶³ Advisory Opinion 2012-31 at 4 (AT&T, Inc.) (“AO 2012-31”) (opining that AT&T’s proposed rate structure for text-message fundraising was not a contribution because, although rates would be lower than those AT&T usually charges to use its text message platform, the proposed rates would cover the company’s costs as well as profit and would be offered on the same terms to all political customers).

⁶⁴ Advisory Opinion 2004-06 at 4 (Meetup) (concluding that a fee is usual and normal if the charge is “set in accordance with the fixed set of fee criteria” and “applied equally between the various classes of Federal candidates . . . and other . . . members of the general public who are similarly situated with respect to the respective classes of candidates and political committees”); *see also* Advisory Opinion 2014-09 at 4 (REED Marketing) (deciding affinity program arrangement reflects the usual and normal charge if the provider offers same services under “similar agreements on similar terms with its non-political clients”).

⁶⁵ MUR 7592 Compl. at 15-23. The MUR 7580 Complaint also alleges that Chakrabarti’s two political committees, which appear to refer to BNC and JD, made excessive contributions to Ocasio-Cortez for Congress, as a

1 provided discounted rates to the candidate committees that did not take into account the LLC’s
2 overhead, resulting in the LLC making excessive, unreported, in-kind contributions to the
3 campaign committees, which those committees accepted.⁶⁶ The basis for these allegations
4 appears to be a comparative assessment of the \$867,014.30 BNC and JD collectively paid to the
5 LLC versus the aggregate \$175,801.92 the 13 recruited candidate committees paid to the LLC,
6 coupled with the LLC’s operation at a loss, apparent lack of profit motivation, and the overlap of
7 staff between BNC, JD, and the LLC, from which the MUR 7592 Complaint infers that the LLC
8 provided services to candidates at costs below market value.⁶⁷

9 The MUR 7592 Joint Response asserts that the Complaint disregards the timing of the
10 expenditures from BNC and JD to the LLC; it contends that, because 74%, or \$643,258.87, of
11 those expenditures occurred during the Phase 1 candidate recruitment phase before the
12 individuals became candidates under the Act, those expenditures could not have subsidized the
13 services the LLC later provided to the 13 recruited candidate committees.⁶⁸ Moreover, the
14 Respondents contend that candidate recruitment is not regulated by the Act.⁶⁹ The MUR 7592
15 Joint Response further argues the Complaint does not allege any facts demonstrating the LLC did

result of the “comingling between financial a [*sic*] well as staff between the PAC and the campaign”
MUR 7580 Compl at 1.

⁶⁶ MUR 7592 Compl. at 22. Most of the “causes of action” in the MUR 7592 Complaint are premised on one of four alternative characterizations of JD’s relationship with the LLC and Ocasio-Cortez: (1) that JD is Ocasio-Cortez’s authorized committee (Counts I-VII); (2) that JD is Ocasio-Cortez’s leadership PAC (Counts VIII-X); (3) that JD is a nonconnected political committee that made contributions via payments to the LLC for services to Ocasio-Cortez for Congress (Counts XI-XIV); and (4) that the LLC is a political committee (Counts XV-XVIII). *See id.* at 24-43 (alleging multiple violations relating to each underlying characterization, such as related reporting, disclaimer, or coordination violations). Section III.A of this Factual and Legal Analysis addresses the third of those characterizations; the Commission takes no action at this time as to allegations deriving from the other characterizations.

⁶⁷ *See id.* at 15-23.

⁶⁸ MUR 7592 Joint Resp. at 9-13.

⁶⁹ *Id.* at 10.

1 not charge the usual and normal rate for its services and asserts the LLC’s pricing model was
2 designed to comply with the Act and was universally applied to all of its clients.⁷⁰

3 When determining whether a given rate structure constitutes an in-kind contribution, the
4 Commission has previously looked at whether the rate structure reflected the company’s
5 “commercial considerations” and whether the company was considering factors “outside of a
6 business relationship.”⁷¹ The Commission has concluded that a consulting company that has a
7 policy of charging fees materially lower than those of consultants offering similar services and
8 also either operates at a loss (particularly a long-term loss), waives salaries, or infuses
9 debt/capital to compensate for losses raises a rebuttable presumption that the company is not
10 charging the usual and normal rate, and is therefore making contributions to the committee(s) for
11 which it is providing services.⁷²

12 It appears that BNC, JD, and the LLC may have provided services to the 13 recruited
13 candidate committees at less than the usual and normal charge. While the exemplar consulting
14 agreement attached to the MUR 7592 Joint Response presents evidence of a fixed-pricing fee
15 model, there is no indication the fixed-prices represented fair market rates. Indeed, the exemplar
16 suggests that the 13 recruited candidate committees may not have paid fair market value for the
17 LLC’s services.⁷³ For example, it shows that the LLC charged a recruited candidate committee
18 \$500 for “Campaign Launch” services, which purportedly included initial opposition research,
19 production of a biographical video for media use, messaging strategy, stump speech drafting,

⁷⁰ *Id.* at 14, 25-30.

⁷¹ AO 2012-31 at 4 (quoting Advisory Opinion 2012-26 (m-Qube II)).

⁷² *See* AO 1991-32 at 11 (recognizing that without information on normal industry practice as to charges for certain services, the Commission cannot, in the advisory opinion, make a “definitive determination as to whether the [requestor would] be charging the selected candidates the usual and normal charges”).

⁷³ MUR 7592 Joint Resp., Ex. B (1st Amendment to Consulting Agreement, Scheds. A & B).

1 website creation, social media and other marketing design, press release drafting, compliance
 2 software setup, and filing Commission reports, among other tasks.⁷⁴ The full set of services
 3 offered included for just \$500 were:

- 4 ● Endorsement initiation with DFA, OR and other
- 5 relevant groups
- 6 ● Initial opposition research document
- 7 ● Creation of initial powermap
- 8 ● Headshots
- 9 ● Biographical video for use in future media
- 10 ● 1 hour messaging conversation to create overall
- 11 campaign theme
- 12 ● Creation of a messaging document
- 13 ● Announcement e-mail
- 14 ● One stump speech
- 15 ● Design and creation of website
- 16 ● Design and creation of donation page
- 17 ● Social media profile pictures
- 18 ● Social media cover pictures
- 19 ● T-shirt design
- 20 ● Business card design
- 21 ● Informational postcard design
- 22 ● Donation envelope design
- 23 ● Signup sheet design
- 24 ● Due diligence and background checking of the
- 25 candidate
- 26 ● File FEC-1
- 27 ● File FEC-2
- 28 ● File SS-4
- 29 ● Step-by-step guidance on personal financial disclosure
- 30 ● Creation and setup of bank account
- 31 ● Set up of compliance software and bookkeeping
- 32 ● Press release for local media
- 33 ● Press release for national media
- 34 ● Initiate process to get booking on Jimmy Dore
- 35 ● Initial posts launching campaign to BNC and JD lists

36
 37 The number and scope of services offered for \$500 undermines the assertion that the committee
 38 was paying *fair market* rates, even if it was paying *fixed* rates. Although the Complaints here do

⁷⁴ *Id.*

1 not include information to establish the market rates of specific services offered by the LLC,
2 reported disbursements by all committees from the 2018 election cycle provide, at this stage of
3 the matter, a credible basis for assessing that the LLC charged fees materially lower than the fair
4 market value. Disbursement records indicate that the \$500 fixed price for “Campaign Launch”
5 services would be unlikely to cover what other committees reported paying for even two of the
6 more than two dozen distinct services included in that package.⁷⁵

7 Respondents assert that the LLC’s pricing structure was based on economies-of-scale, but
8 do not demonstrate that the LLC’s fees align with the fair market value of its services.⁷⁶ Further,
9 Respondents’ characterization of Phase 1 payments to the LLC for candidate recruitment does
10 not rebut the allegation that they may have provided in-kind services below market value,
11 whether before or after Respondent candidates declared candidacy. The Response does not
12 explain specific services the LLC provided to BNC and JD in exchange for \$643,258.87 in
13 retainer payments nor does it resolve whether any of those expenditures were in-kind
14 contributions to the ultimate candidate committees or if those expenditures subsidized services
15 provided to the Respondent committees below the market rate.

⁷⁵ See, e.g., *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&disbursement_description=biographical+video&disbursement_description=launch+video (last visited Nov. 23, 2021) (reflecting six disbursements from 2017-18 for “launch video” and “biographical video” ranging from \$620 to \$5,000); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&disbursement_description=opposition+research (last visited Nov. 23, 2021) (reflecting 36 disbursements from 2017-18 for “opposition research” ranging from \$600 to \$38,930.50); *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&two_year_transaction_period=2018&disbursement_description=speech+drafting&disbursement_description=speech+writing&disbursement_description=speechwriting (last visited Nov. 23, 2021) (showing 39 disbursements from 2017-18 for “speechwriting,” “speech writing,” and “speech drafting” ranging from \$400 to \$12,747.18).

⁷⁶ See MUR 7592 Joint Resp. at 4.

1 Accordingly, the Commission finds reason to believe that JD, BNC, the LLC, and
2 Chakrabarti violated 52 U.S.C. § 30116(a) by making excessive in-kind contributions to the 13
3 recruited candidate committees. The available information indicates that there is reason to
4 believe JD, BNC, the LLC, and Chakrabarti, in some arrangement, made excessive in-kind
5 contributions to the 13 recruited candidate committees, whether, for example, BNC and JD
6 contributed to the recruited candidate committees using the LLC as a legitimate vendor of
7 campaign services, whether the LLC acted as a pass-through for BNC and JD’s contributions, or
8 whether the LLC and Chakrabarti — as the LLC’s sole member and a founder of both BNC and
9 JD — contributed to the recruited candidate committees.

10 **B. The Commission Finds Reason to Believe That BNC and JD Failed to Itemize**
11 **and Correctly Report Expenditures Made to the LLC**

12 The Act and Commission regulations require political committees to report the name and
13 address of each person to whom they make expenditures or other disbursements aggregating
14 more than \$200 per calendar year, or per election cycle for authorized committees, as well as the
15 date, amount, and purpose of such payments.⁷⁷ The relevant reporting requirements under the
16 Act and Commission regulations are intended to ensure public disclosure of “where political

⁷⁷ 52 U.S.C. § 30104(b)(5), (6); 11 C.F.R. § 104.3(b)(3)(i), (ix) (political committees other than authorized committees); *id.* § 104.3(b)(4)(i), (vi) (authorized committees); *id.* § 104.9(a), (b) (all political committees).

1 campaign money comes from and how it is spent.”⁷⁸ Disclosure requirements also “deter[] and
2 help[] expose violations” of the Act and Commission regulations.⁷⁹

3 The Complaints in MUR 7575 and MUR 7592 identify expenditures from reports filed
4 with the Commission by BNC and JD to the LLC that include the description “strategic
5 consulting,” and Commission reports reflect JD made \$605,849.12 in disbursements and BNC
6 made \$261,165.18 in disbursements to the LLC associated with that stated purpose.⁸⁰

7 Relying on reported quotations about how the LLC aspired to essentially run the
8 candidates’ campaigns, the MUR 7575 Complaint alleges that describing all of the expenditures
9 as “strategic consulting” was a “mischaracterization of a wide range of activities that should have
10 been reported individually.”⁸¹ The MUR 7575 Complaint provides a detailed list of activities
11 performed by the LLC and asserts that the payments for those activities cannot be discerned from

⁷⁸ *Buckley v. Valeo*, 424 U.S. 1, 66 (1976); *see also Citizens United v. FEC*, 558 U.S. 310, 369-71 (2010) (describing importance of disclosure requirements to serve informational interest, because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

⁷⁹ *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc); *see also Buckley*, 424 U.S. at 67-68 (explaining that disclosure requirements “deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light” and that “recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations” of the Act); *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (concurring with the stated government interests in disclosure requirements described in *Buckley*: “providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce” the Act and Commission regulations).

⁸⁰ MUR 7575 Compl. at 3; MUR 7592 Compl. at 12-20; *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00613810&committee_id=C00630665&recipient_name=brand+new+congress&two_year_transaction_period=2018 (last visited Nov. 23, 2021) (reflecting 24 disbursements by JD or BNC to the LLC).

⁸¹ MUR 7575 Compl. at 3-4. The MUR 7626 Complaint appears to make a similar allegation that “private companies” (presumed to be the LLC) “receiv[ed] reported payments for ‘Political Strategies’” from BNC and JD that “were payments made to further the candidacy of . . . Cori Bush . . . in the form of expenditures for radio commercials, messaging, preparations, speechwriting and coaching, facility and set design,” among other purposes. *See* MUR 7626 Compl. at 2. In response, BNC and JD assert that JD provided limited services to Cori Bush for Congress under a “fee-for-service” model and deny that BNC or JD engaged in independent expenditures. Brand New Congress and Justice Democrats PAC Resp. at 2 (Aug. 19, 2019), MUR 7626.

1 the FEC filings.⁸² The MUR 7575 Complaint further asserts that “[t]he actual vendors, staff, and
2 fundraising expenses were not disclosed. [The LLC] was simply a cutout.”⁸³ The MUR 7626
3 Complaint alleges that disbursements for Cori Bush for Congress “radio commercials,
4 messaging, preparations, speechwriting and coaching,” among other purposes, were not fully
5 reported.⁸⁴ The MUR 7580 Complaint also alleges that Chakrabarti’s two political committees,
6 which appears to refer to BNC and JD, “fail[ed] to disclose where these donations originated
7 from and attempts to conceal the donations [*sic*].”⁸⁵ Thus, the Complaints in MURs 7575, 7580,
8 7592, and 7626 allege that various Respondents misreported the purposes of disbursements to the
9 LLC and misreported the ultimate recipients.⁸⁶

10 1. Purpose of Disbursements

11 Commission regulations define “purpose” as a “brief statement or description of why the
12 disbursement was made.”⁸⁷ “The ‘purpose of disbursement’ entry, when considered along with
13 the identity of the disbursement recipient, must be sufficiently specific to make the purpose of
14 the disbursement clear.”⁸⁸ The Commission has determined that the description of the purpose
15 should be sufficient to allow “a person not associated with the committee [to] easily discern why
16 the disbursement was made when reading the name of the recipient and the purpose.”⁸⁹

⁸² MUR 7575 Compl. at 3-4; *see also* MUR 7592 Compl. at 23 (alleging failure to disclose the “nature” and purposes of payments to the LLC).

⁸³ MUR 7575 Compl. at 3; *see also* MUR 7592 Compl. at 44 (alleging payments to the LLC for JD staff were made “without any public reporting or accountability”).

⁸⁴ *See* MUR 7626 Compl. at 1-2.

⁸⁵ MUR 7580 Compl.

⁸⁶ MUR 7575 Compl. at 3-4; MUR 7592 Compl. at 23, 43-45.

⁸⁷ 11 C.F.R. § 104.3(b)(3)(i)(A), (B); *id.* § 104.3(b)(4)(i)(A).

⁸⁸ Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007) (“Purpose Statement of Policy”) (citing 11 C.F.R. §§ 104.3(b)(3)(i)(B), (4)(i)(A)).

⁸⁹ *Id.* at 888.

1 Examples of sufficient statements of purpose include, but are not limited to, dinner expenses,
2 media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense
3 reimbursement, and catering costs.⁹⁰

4 In addition to the non-exhaustive list of examples included in the regulation, the
5 Commission has provided guidance that descriptions of purpose such as “Consulting-Media,”
6 “Consulting-Fundraising,” “Consulting-Polling,” “Consulting-Legal,” and “Consulting-Get-Out-
7 the-Vote,” are sufficient for a disbursement to a consultant; the sufficiency of the description is
8 read in context with the name of the payee.⁹¹ Additional guidance set forth on the Commission’s
9 website includes “Political Strategy Consulting” and “Strategy Consulting” as sufficient
10 descriptions of consultant and consulting purposes.⁹²

11 The available information indicates that BNC and JD reported inadequate purpose
12 descriptions for payments made to the LLC in reports filed with the Commission. During the

⁹⁰ 11 C.F.R. § 104.3(b)(3)(i)(B); *id.* § 104.3(b)(4)(i)(A); *see also* Purpose Statement of Policy, 72 Fed. Reg. at 888. The Commission has concluded that “[t]he description ‘media’ is considered as a satisfactory description for a payment that is, in fact, made for media, such as the purchase of media time or media space.” Advisory Opinion 1983-25 at 2 (Mondale for President) (“AO 1983-25”).

⁹¹ Purpose Statement of Policy, 72 Fed. Reg. at 888; *see also* FEC, CAMPAIGN GUIDE FOR CONGRESSIONAL CANDIDATES AND COMMITTEES 103 (June 2014) (“The description [of purpose] must be sufficiently specific, when considered within the context of the payee’s identity, to make the reason for the disbursement clear.”).

⁹² *Purposes of Disbursement*, FEC.GOV, <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement> (last updated Aug. 21, 2018) [hereinafter Purposes of Disbursement FEC Site]; *see also* Purpose Statement of Policy, 72 Fed. Reg. at 888 (indicating that additional guidance will be posted on the Purposes of Disbursement FEC Site).

1 2018 election cycle, JD disclosed \$605,849.12 and BNC disclosed \$261,165.18 in disbursements
2 to the LLC for which the purpose was reported as “strategic consulting.”⁹³

3 While “strategic consulting,” for example, is a facially sufficient purpose description
4 under Commission regulations,⁹⁴ Respondents acknowledge that the payments to the LLC
5 described that way were actually for a wide array of diverse purposes. As explained above, the
6 LLC was specifically formed to provide “campaign in a box” services including
7 “communications, field, online organizing, fundraising[,] and the like” to JD, BNC, and the
8 candidate committees.⁹⁵ The MUR 7592 Joint Response attaches a spreadsheet of its June 2017
9 revenues, which itself demonstrates that BNC and JD’s disbursements to the LLC that month
10 paid for communications/press, digital fundraising, field, operations/compliance, and more.⁹⁶
11 Additionally, the MUR 7592 Joint Response explains that BNC and JD paid the LLC to
12 effectuate a national recruitment effort that required “travel, staff, office space, costs to vet and
13 interview candidates from all around the country, and the like.”⁹⁷

14 Respondents’ contention that “strategic consulting” was a sufficient description because
15 the LLC assisted “with nearly every facet of a political campaign” and the range of services were

⁹³ See *supra* note 25.

⁹⁴ See Purposes of Disbursement FEC Site; see also MUR 7575 Joint Resp. at 5 (arguing “strategic consulting” is an acceptable expenditure purpose, citing Purposes of Disbursement FEC Site).

⁹⁵ See MUR 7575 Joint Resp. at 3; MUR 7580 Joint Resp. at 3; MUR 7592 Joint Resp. at 8-9 (describing the “campaign in a box” services the LLC provided, including “communications, field, finance, digital, and the like”); *id.*, Ex. B (demonstrating the LLC would provide services to one candidate committee that included fundraising, financial services, crafting a campaign platform, managing offices and leases, hiring and managing staff, communications, speechwriting, website management, organizing voter registration, recruiting/organizing volunteers, and other services); *id.* at 27 (describing 20 staff members in five different divisions: “Field, Communications, Operations and Technology, Recruitment, and Management”).

⁹⁶ See MUR 7592 Joint Resp., Ex. C. In aggregate, the spreadsheet indicates 18% of the LLC’s June 2017 revenues derived from digital fundraising services, 15% from candidate recruiting, 15% from social media, 12% for technology, 11% for operations and compliance, and 5% or under from each of the following: communications and press, field, campaign database, campaign manager, creative services, helpdesk, and field director services. See *id.*

⁹⁷ MUR 7592 Joint Resp. at 10.

1 “‘strategic’ in nature” is unpersuasive in light of the breadth of services the LLC provided under
 2 the umbrella of “strategic consulting” and the magnitude of those expenditures.⁹⁸ A person
 3 reading these disclosure reports could not have discerned that JD or BNC were disbursing funds
 4 for travel, salary, website design, compliance services, or other reportable purposes within the
 5 full range of “campaign in a box” services from communications to field to finance, by reading
 6 the name of the recipient (*i.e.*, Brand New Congress, LLC) together with the reported purpose
 7 (*i.e.*, strategic consulting).⁹⁹

8 Thus, the available information indicates that BNC and JD did not properly disclose the
 9 purpose of the disbursements to the LLC for what appears to have been a range of services
 10 performed. Where respondents disclosed inadequate or incorrect purposes for disbursements in
 11 amounts similar to BNC’s and JD’s, the Commission has found reason to believe that they
 12 violated the Act.¹⁰⁰ Accordingly, the Commission finds reason to believe that BNC and JD

⁹⁸ MUR 7575 Joint Resp. at 7; MUR 7592 Joint Resp. at 39.

⁹⁹ *See Purpose Statement of Policy*, 72 Fed. Reg. at 888.

¹⁰⁰ *See, e.g.*, Report of the Audit Division at 13-14 (Dallas County Republican Party) (Nov. 19, 2008) (finding committee’s description of generic purposes such as professional fees and fundraising consulting for an aggregate \$215,261 over 50 disbursements was inadequate because a person could not easily discern why disbursements were made); F&LA at 2-3, MUR 6204 (Dallas County Republican Party) (finding reason to believe that committee violated, *inter alia*, 52 U.S.C. § 30104(b)(5) (formerly 2 U.S.C. § 434(b)(5))); Report of the Audit Division at 12-13 (Cranley for Congress) (Apr. 23, 2008) (projecting from sample review that \$1.4 million in disclosed disbursements lacked required information including, but not limited to, missing or inadequate purposes, for which a person could not easily discern why the disbursements were made when reading the payee and purpose together); Certification (Nov. 19, 2008), MUR 6134 (Cranley for Congress) (approving the Report of the Audit Division dated April 23, 2008 as the F&LA); Conciliation Agreement at 4, 6, MUR 5635 (Conservative Leadership Political Action Committee); Final Audit Report, Conservative Leadership Political Action Committee (Nov. 29, 2004) (finding committee failed to disclose a correct or adequate purpose for disbursements totaling over \$1.6 million). However, in matters involving a limited number of inadequately described disbursements or small amount of money, the Commission has dismissed the matter or referred it to the Commission’s Alternative Dispute Resolution Office (“ADRO”). *See, e.g.*, Certification at 3 (June 24, 2015), MUR 6518 (Newt Gingrich, *et al.*) (referring allegations that respondents failed to disclose an adequate purpose for one \$47,005 disbursement to ADRO); F&LA at 3, 5, MUR 6638 (Todd Long for Congress) (dismissing allegation that respondent incorrectly described the purpose of two disbursements totaling \$21,666.66 as “check” where respondent committee corrected the description and terminated); F&LA at 4-5, MUR 7049 (Alaska Democratic Party, *et al.*) (dismissing reporting allegations involving “at least some of” \$20,000 in reported contributions that were actually payments for use of a voter database).

1 violated 52 U.S.C. § 30104(b)(5) and (b)(6) and 11 C.F.R. § 104.3(b)(3) and (b)(4) by failing to
2 include sufficient descriptions showing the purposes for disbursements to the LLC.

3 2. Disclosure of Payees of Disbursements

4 Neither the Act nor Commission regulations expressly address reporting of ultimate
5 payees such as sub-vendors, subcontractors, or vendor employees.¹⁰¹ The Commission
6 concluded in Advisory Opinion 1983-25 (Mondale for President) (“AO 1983-25”) that a
7 committee planning to contract with a media consulting group was not required to separately
8 report or itemize payments made by the consultant to its sub-vendors.¹⁰² The Commission found
9 several facts to be significant in reaching its conclusion: (1) the vendor at issue had a legal
10 existence as a corporation separate and distinct from the operations of the committee; (2) the
11 vendor’s principals did not hold any staff positions with the committee; (3) the committee
12 conducted arm’s-length negotiations with the vendor that resulted in formation of a final
13 contract; (4) the vendor was not required to devote its “full efforts” to the contract and expected
14 to have contracts with other campaigns and entities; and (5) the committee had no interest in the
15 vendor’s other contracts.¹⁰³

16 The Commission has applied the analytical framework identified in AO 1983-25 when
17 considering whether a committee’s reported payment to a vendor satisfies the reporting
18 requirements of section 30104(b) in light of an allegation that the committee should have
19 reported a sub-vendor. For example, the Commission has found no reason to believe a

¹⁰¹ See AO 1983-25 at 2; F&LA at 8, MUR 6724 (Bachmann for President, *et al.*). As discussed below, the Commission has since addressed the requirements of section 30104(b)(5) in certain situations not applicable to these facts. See Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626-27 (July 8, 2013) [hereinafter Ultimate Payee Interpretive Rule] (clarifying committees’ obligation to report “ultimate payees” in three specific scenarios that are not vendor-specific).

¹⁰² AO 1983-25 at 3.

¹⁰³ *Id.* at 1, 3.

1 committee failed to adequately report disbursements when those payments were for services or
2 goods used in the performance of the vendors' contracts with the committees and the sub-
3 vendors provide the same type of services provided by the vendors.¹⁰⁴

4 The Commission has, however, found reason to believe committees violated the Act's
5 reporting requirements in matters where the record suggests facts materially distinguishable from
6 those considered in AO 1983-25, such as when a committee reported a vendor that served merely
7 as a stand-in for payments to another particular recipient the committee avoided disclosing. For
8 instance, in MUR 4872 (Jenkins for Senate 1996, *et al.*), a committee directly hired a vendor to
9 perform phone bank services, but routed its payments through a second vendor to conceal its
10 relationship with the first vendor, and reported the second vendor as the payee on disclosure
11 reports.¹⁰⁵ The committee's reporting violated the Act because the second vendor "had no
12 involvement whatsoever with the services provided by" the first vendor and its only role was "to
13 serve as a conduit for payment" to the first vendor "so as to conceal the transaction."¹⁰⁶

14 Similarly, in MUR 3847 (Friends of Steve Stockman, *et al.*), the Commission laid out the
15 facts relevant to its conclusion in AO 1983-25 that the Mondale committee need not further
16 itemize payments to sub-vendors, found the Stockman facts distinguishable, and conciliated after
17 finding probable cause to believe that Stockman's committee violated the reporting requirements

¹⁰⁴ See, e.g., F&LA at 1-2, MUR 6894 (Steve Russell for Congress) (finding no reason to believe committee failed to adequately report disbursements where media vendor paid television stations for media buys); F&LA at 12-13, MUR 6510 (Kirk for Senate, *et al.*) (finding no reason to believe committee failed to adequately report disbursements where media vendor paid sub-vendor for media and communications consulting); see also *United States v. Benton*, 890 F.3d 697, 708-09 (8th Cir. 2018), *cert. denied*, 2019 WL 1231756 (Benton), 2019 WL 1231758 (Tate), 2019 WL 1231759 (Kesari) (Mar. 18, 2019) (affirming the convictions of three former Ron Paul 2012 campaign officials for, *inter alia*, violating the Act by causing false campaign finance reports to be filed with the Commission and noting that in AO 1983-25 and MUR 6510, "the Commission concluded that the vendors and sub-vendors had provided the services described by the campaign").

¹⁰⁵ Conciliation Agreement at 2-4, MUR 4872 (Jenkins for Senate 1996, *et al.*).

¹⁰⁶ *Id.* at 3-4.

1 of the Act by not itemizing payments to sub-vendors.¹⁰⁷ Stockman’s committee had reported
2 payments to a vendor, which was an unincorporated proprietorship run by two committee
3 officials, for approximately \$470,000 in committee expenses for a variety of purposes, including
4 the costs of at least one “sub-vendor” who created communications pursuant to a direct contract
5 between the sub-vendor and the candidate and his committee.¹⁰⁸ The Commission rested its
6 determination on the facts that the reported vendor’s principals held positions with the
7 committee; the vendor was not incorporated; there was no formal contract between the vendor
8 and the committee; the vendor was devoted largely to the committee, worked out of the
9 committee’s headquarters, and used its facilities; and the principals of the vendor held
10 themselves out to the public as officials of the committee.¹⁰⁹ The Commission concluded that
11 these facts reflected that the reported vendor served as merely an intermediary for payments to
12 the other payees (including the purported “sub-vendor”) and thus, under the Act, the committee
13 was required to report the true purpose and recipients of the payments made through the
14 vendor.¹¹⁰

15 More recently, in MUR 6724 (Bachmann for President, *et al.*), the Commission found
16 reason to believe that the respondent committees misreported disbursements when they agreed to

¹⁰⁷ See Conciliation Agreement at 6-7, MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the Conciliation Agreement at PDF page 1581); Gen. Counsel’s Rpt. at 1, MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the General Counsel’s Report at PDF page 1560).

¹⁰⁸ Gen. Counsel’s Br. at 33-37, MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the Gen. Counsel’s Br. at PDF page 1448); Amended Certification (Dec. 8, 1997), MUR 3847 (Stockman), <https://www.fec.gov/files/legal/murs/3847.pdf> (including the Amended Certification at PDF page 1539).

¹⁰⁹ Conciliation Agreement at 6-7, MUR 3847 (Stockman).

¹¹⁰ Gen. Counsel’s Br. at 37, MUR 3847 (Stockman); Conciliation Agreement at 7, MUR 3847 (Stockman).

1 pay a state senator for his endorsement and as a surrogate but made payments through
2 intermediaries to conceal him as the “true, intended recipient of the disbursements.”¹¹¹
3 The Commission has also addressed the requirements of 52 U.S.C. § 30104(b)(5) in
4 certain situations that do not appear to be applicable to the facts presented here.¹¹² In the
5 Ultimate Payee Interpretive Rule, the Commission clarified a committee’s obligation to report
6 “ultimate payees” in three specific scenarios not articulated in the Act or Commission
7 regulations: (1) reimbursements to individuals who advance personal funds to pay committee
8 expenses; (2) payments to credit card companies; and (3) payments by candidates who use
9 personal funds to pay committee expenses without reimbursement.¹¹³ Although Respondents
10 cite repeatedly to this rule,¹¹⁴ the Ultimate Payee Interpretive Rule explicitly states that it does
11 not apply to the issue of vendors and sub-vendors:

[T]he Commission is only addressing the three issues at hand and
is not extending the clarification to situations in which a vendor,
acting as the committee’s agent, purchases goods and services on
the committee’s behalf from sub-vendors. The relationship
between committees and its vendors raises different issues than the
relationships that exist in these three circumstances.¹¹⁵

18 Respondents also rely on MUR 6698 (United Ballot PAC), in which there was an
19 insufficient number of votes for the Commission to find reason to believe that a candidate

¹¹¹ F&LA at 2-3, MUR 6724 (Bachmann for President, *et al.*); *see* Conciliation Agreement at 2, MUR 6724 (Bachmann for President). In MUR 6724, the committee simply added the state senator’s payments to the monthly fees it was already paying to an intermediary vendor under an existing contract. F&LA at 2-3, MUR 6724 (Bachmann for President, *et al.*); *see* Conciliation Agreement at 2, MUR 6724 (Bachmann for President).

¹¹² *See* Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,625.

¹¹³ *Id.* at 40,626.

¹¹⁴ MUR 7575 Joint Resp. at 5-6; MUR 7592 Joint Resp. at 37-39. Respondents seem to argue that the Ultimate Payee Interpretive Rule’s limitation to the three scenarios specifically means that ultimate payees in other scenarios would not be reportable. *See* MUR 7575 Joint Resp. at 6 (“A committee reading this guidance would have no indication that ultimate payees *besides the ones discussed in the Interpretive Rule* would be reportable.” (emphasis in original)); MUR 7592 Joint Resp. at 38 (same).

¹¹⁵ Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626.

1 committee violated the Act by failing to properly disclose a payment that was passed through
 2 two intermediary entities before being used by a state-registered political organization to pay for
 3 get-out-the-vote activity on the candidate’s behalf.¹¹⁶ In the First General Counsel’s Report in
 4 MUR 6698, the Office of General Counsel reasoned that the candidate committee’s use of
 5 intermediary entities was in an apparent attempt to conceal the arrangement from the public,
 6 which was distinguishable from the material facts of AO 1983-25.¹¹⁷ In a Statement of Reasons,
 7 three Commissioners explained their position that the Ultimate Payee Interpretive Rule does not
 8 address such a scenario and distinguished the matter from MUR 4872 (Jenkins for Senate 1996,
 9 *et al.*) and MUR 3847 (Friends of Steve Stockman, *et al.*), stating there were factual differences
 10 between those matters and MUR 6698.¹¹⁸

11 Contrary to Respondents’ arguments, these matters do not fit cleanly within the facts the
 12 Commission considered in AO 1983-25.¹¹⁹ Unlike the arrangement approved in AO 1983-25,
 13 where a media vendor hired media sub-vendors to effectuate its contract with the candidate
 14 committee for media services, here JD and BNC seemingly failed to report disbursements made
 15 by an LLC vendor hired to provide “strategic consulting” services to a variety of sub-vendors to
 16 conduct a range of different services on behalf of those committees. The MUR 7575 and

¹¹⁶ Certification (Feb. 25, 2016), MUR 6698 (United Ballot PAC); First GCR at 8-16, MUR 6698 (United Ballot PAC); *see* MUR 7575 Joint Resp. at 9-10; MUR 7592 Joint Resp. at 40-41.

¹¹⁷ First GCR at 14-15, MUR 6698 (United Ballot PAC).

¹¹⁸ Statement of Reasons, Comm’rs. Petersen, Goodman & Hunter, at 3-4, MUR 6698 (United Ballot PAC). The Statement of Reasons did not enumerate the factual differences.

¹¹⁹ *See, e.g.*, MUR 7575 Joint Resp. at 7-8 (arguing the facts “meets all of the [AO 1983-25 criteria] save for one,” that Chakrabarti held a position with the LLC); MUR 7592 Joint Resp. at 39-40 (same). The Joint Responses assert that their counsel sought guidance from the Reports Analysis Division (“RAD”) as to how payments to the LLC should be reported and attach an email from RAD describing sub-vendor reporting guidance in, *inter alia*, AO 1983-25. *See* MUR 7575 Joint Resp. at 3-5, Ex. B (March 2017 email from RAD); MUR 7592 Joint Resp. at 36-37, Ex. D (same). Despite Respondents’ assertion that they discussed with RAD “payments by candidates and committees to Brand New Congress LLC,” the RAD email does not mention any candidates, committees, or the LLC. MUR 7575 Joint Resp. at 4, Ex. B; MUR 7592 Joint Resp. at 36, Ex. D.

1 MUR 7592 Joint Responses assert that discrete campaign costs — “from fundraising costs, event
2 costs, as well as all printing and advertising costs” — were paid for directly by the political
3 committees, not by the LLC.¹²⁰ However, the Respondents also appear to admit the LLC made
4 payments to sub-vendors and consultants on behalf of JD and BNC in the process of providing
5 its “strategic consulting” services to those committees.¹²¹

6 Here, though not as stark as the more recent examples in which the Commission has
7 distinguished AO 1983-25, the current record indicates that JD and BNC did not report the
8 appropriate payee with respect to all disbursements to the LLC. Although the record here does
9 not evince an intent to obscure the disbursements to sub-vendors as in some of the MURs
10 described above,¹²² the LLC’s interactions with JD and BNC demonstrate, at best, a mixed
11 record on the significant factors the Commission considered in approving the reporting
12 arrangement in AO 1983-25.

13 First, while the LLC was a separate legal entity from the committees it served, there was
14 pervasive overlap of principals and staff between the LLC and its largest clients, BNC and JD.
15 The LLC’s single member was Chakrabarti, who was extensively involved with BNC, JD, and
16 Ocasio-Cortez for Congress.¹²³ The LLC provided services to the committees via a staff of

¹²⁰ MUR 7575 Joint Resp. at 4; MUR 7592 Joint Resp. at 9.

¹²¹ MUR 7575 Joint Resp. at 3 (“[T]he perceived burden of providing the itemization of subvendors for payments by [the] LLC’s clients was believed to be prohibitive given the scope of services that the LLC provided.”); MUR 7592 Joint Resp. at 36 (same); *see also* MUR 7575 Joint Resp. at 8 (“[The] LLC hired and paid staff and consultants to service its many different clients.”); *id.* at 9 (“[A] committee paid [the] LLC as a vendor, who hired staff and consultants to services its clients in the ordinary course of business.”); *id.* at 10 (“[The] 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.”).

¹²² The record provides some support for the Respondents’ assertion that the LLC was a vendor that performed *bona fide* services for the Respondent committees as a consolidated campaign vendor in furtherance of the aforementioned “national campaign.” *See* JD Online Post.

¹²³ *See* MUR 7592 Joint Resp. at 17-19; JD Online Post; *supra* note 27.

1 employees that was transferred from BNC to effectuate the arrangement.¹²⁴ Next, the
2 MUR 7592 Joint Response contends the LLC’s services would be marketable to corporate and
3 other clients, but BNC, JD, and the 13 recruited committees were the LLC’s only clients during
4 its short existence.¹²⁵ Thus, the LLC seemingly did devote its “full efforts” to the contracts with
5 BNC and JD, which staffed and paid the LLC to recruit and provide services to only those
6 clients, the 13 recruited candidate committees, contemplated by the LLC’s performance of its
7 original two contracts with BNC and JD. On a related note, BNC and JD certainly had an
8 interest in the LLC’s other contracts with the 13 recruited candidate committees because the
9 parties behind BNC and JD created the LLC to advance those candidates’ campaigns by
10 providing services to their committees in an at-cost manner that generated no profit for the LLC.

11 Accordingly, the Commission finds reason to believe that BNC and JD violated
12 52 U.S.C. § 30104(b)(5) by misreporting the payees of disbursements to the LLC.

13 **C. The Commission Dismisses the Allegations That JD Knowingly Accepted**
14 **Excessive Contributions from Arden Buck and Kamilka Malwatte**

15 Under the Act, an individual may not make a contribution to a candidate with respect to
16 any election in excess of the legal limit, which was \$2,700 per election during the 2018 election
17 cycle.¹²⁶ Nor may an individual make a contribution to a multicandidate committee during any

¹²⁴ See JD Online Post.

¹²⁵ See MUR 7592 Joint Resp. at 8 n.10.

¹²⁶ 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 82 Fed. Reg. 10,904, 10,906 (Feb. 16, 2017).

1 calendar year in excess of \$5,000.¹²⁷ Further, the Act prohibits any political committee from
2 knowingly accepting contributions that exceed those limits.¹²⁸

3 The MUR 7592 Complaint alleges and Commission reports reflect that two individuals
4 made excessive contributions to JD. Arden Buck contributed \$7,500 to JD in 2018, \$2,500 in
5 excess of the applicable limit.¹²⁹ Kamilka Malwatte contributed \$5,500 to JD in 2018, \$500 in
6 excess of the applicable limit.¹³⁰ However, the MUR 7592 Joint Response states and
7 Commission reports reflect that JD has refunded the excessive portions of these contributions.¹³¹

8 In light of the limited nature of Arden Buck and Kamilka Malwatte's excessive
9 contributions, and the subsequent reimbursement of those amounts,¹³² the Commission exercises
10 its prosecutorial discretion and dismisses the allegations that JD violated 52 U.S.C. § 30116(f) by
11 knowingly accepting excessive contributions from Arden Buck and Kamilka Malwatte.¹³³

¹²⁷ 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d).

¹²⁸ 52 U.S.C. § 30116(f).

¹²⁹ Justice Democrats PAC, Amended 2018 April Quarterly Report at 20, 21 (Sept. 27, 2018) [hereinafter JD April 2018 Quarterly Report] (\$1,000 contribution on Jan. 24, 2018, \$4,000 contribution on Mar. 7, 2018, and \$2,500 contribution on Mar. 30, 2018); MUR 7592 Compl. at 45.

¹³⁰ JD April 2018 Quarterly Report at 99 (\$5,000 contribution on Feb. 27, 2018); Justice Democrats PAC, Amended 2018 October Quarterly Report at 770 (Jan. 10, 2019) (\$500 contribution on Aug. 30, 2018); MUR 7592 Compl. at 45-46.

¹³¹ JD Mid-Year 2019 Report at 1534, 1536; *see* MUR 7592 Joint Resp. at 42.

¹³² *Cf.* F&LA at 3-4, MUR 7066 (Hillary for America, *et al.*) (exercising prosecutorial discretion to dismiss \$845 in excessive contributions from one individual not timely refunded); F&LA at 7-8, MUR 6438 (Art Robinson for Congress, *et al.*) (exercising prosecutorial discretion to dismiss one \$2,400 and one \$600 excessive contributions that were refunded).

¹³³ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).