

SANDLER REIFF

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September 28, 2021

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

Re: MUR 7926

Mr. Keeys:

The undersigned serves as counsel to Congresswoman Alexandria Ocasio-Cortez, H8NY15148, and her authorized campaign committee Alexandria Ocasio-Cortez for Congress, C00639591, with Frank Llewellyn in his capacity as Treasurer (collectively, “AOC for Congress”).

This letter responds on behalf of AOC for Congress to the Commission’s notification of a complaint from Mr. Richard A. Light of Montgomery County, Texas (the “Complainant”, the “Complaint”) alleging that AOC for Congress violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations.

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

1. The Complaint’s stated facts do not give rise to any violation of the Act or Commission regulations.

The Complainant states that they, a foreign national, have received Facebook advertisements from AOC for Congress soliciting contributions to the Congresswoman’s campaign.¹ According to the Complaint, their Facebook settings make clear that they are “not a US citizen and [are] in fact an Australian citizen,” and that AOC for Congress violated the Act by soliciting a foreign national for political contributions.

¹ The Complaint also makes allegations against Congresswoman Katie Porter. This response is limited to the allegations against AOC for Congress.

However, these facts do not give rise to any violation of the Act, as Mr. Light was not “knowingly” solicited. In addition, AOC for Congress’ solicitation sends potential contributors to a website maintained by ActBlue. ActBlue is a political committee that serves as a conduit for contributions to federal candidates and committees. ActBlue’s contribution pages require that individual contributors certify that they are *not* a foreign national (and are otherwise a permissible contributor) – specifically to meet the safe-harbor described in previous Commission opinions.

For these reasons, the Commission should not find any reason to believe in this matter and should close the file.

a. AOC for Congress did not knowingly solicit the Complainant.

AOC for Congress had no knowledge or reason to know the Complainant is a foreign national, and therefore, could not violate the Act in this way. The Commission’s regulations state that “[n]o person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation” in connection with Federal, state or local elections, to a political committee or party organization, or to a party’s office building fund.²

In order to meet the “knowingly” requirement, a person must “have actual knowledge” or “be aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national.”³ Alternatively, a knowing violation exists where a person is “aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry.”⁴

This knowledge or fact simply does not exist in this case. AOC for Congress solicits individuals within the United States for political contributions, as does every other campaign in the country. Contrary to the Complainant’s assertion, we are aware of no Facebook settings that reveal a person’s nationality, country of origin, or citizenship: as a result, AOC for Congress did not have – and could not have – the actual knowledge that (or any idea that) the Complainant is a foreign national.

Rather, AOC for Congress simply purchased a Facebook advertisement campaign, and the Facebook algorithm placed it in front of the Complainant, in the same way that the algorithm places any other advertisement. From this, the Complaint’s facts do not give rise to a violation of the Act or Commission regulations.

² 11 C.F.R.110.20(g).

³ 11 C.F.R. 110.20(a)(4)(i)-(ii).

⁴ 11 C.F.R. 110.20(a)(4)(iii).

b. The Committee’s online solicitations send donors to ActBlue, which requires contributors to certify that they are U.S. citizens or lawful permanent residents.

Separately, the Complainant also expresses concern for other “ignorant” foreign nationals who may inadvertently contribute to United States political campaigns. However, AOC does not explicitly receive direct online contributions: online solicitations steer prospective donors to a political committee, ActBlue, who serves as a conduit for these contributions. ActBlue has a certification requirement to safeguard against this exact scenario, preventing a committee’s acceptance of these (and other) prohibited contributions.⁵

When contributing to AOC for Congress through ActBlue, donors are required to certify that:

1. “I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).
2. This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
3. I am at least eighteen years old.
4. I am not a federal contractor.
5. I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person.”

These certifications are directly in-line with the safe-harbor for collecting contributions over the Internet that the Commission has described in multiple opinions.⁶ In the event that an

⁵ See ActBlue, “Donate to AOC”, available at https://secure.actblue.com/donate/aoc-ads-google-q3july-2021?source=ads_ms_AOC_20210701-DD-GS-Q3_electkywd-Natl-1865U-MF_respad&gclid=Cj0KCQjwqKuKBhCxARIsACf4XuFwTl5cjiMULiPfk6ufmXCjDyCRMD1qh6tn5tHQAaOuDv2tAJIXW5AaAhSrEALw_wcB (last accessed Sept. 27, 2021).

⁶ See Advisory Opinions:

- 2021-08 (PACMS) (mirroring ActBlue’s certification language), July 29, 2021, Opinion at <https://www.fec.gov/files/legal/aos/2021-07/2021-07.pdf>, Request at https://www.fec.gov/files/legal/aos/2021-07/202107R_1.pdf;
- 1999-22 (Aristotle) (affirming safe harbor), September 24, 1999, at <https://www.fec.gov/files/legal/aos/1999-22/1999-22.pdf>;
- 1999-09 (Bill Bradley for President, Inc.) (establishing safe harbor for procedure to screen contributions made over the Internet), June 10, 1999, at <https://www.fec.gov/files/legal/aos/1999-09/1999-09.pdf>;

“ignorant” foreign national who received this advertisement without the knowledge of AOC for Congress clicks through to make a contribution, they would be making an inaccurate assertion if they chose to contribute.

As a result, AOC for Congress cannot knowingly accept contributions from a foreign national – *as each contributor must certify that they are not a foreign national in order to give to the campaign, under the safe harbor as described in previous Commission opinions.*

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

A complaint is required to allege facts that give rise to a violation of the Act or Commission regulations.⁷ While AOC for Congress is sympathetic that the Complainant does not appear to be an attorney and does not appear to be represented by counsel, accusations made in a complaint must “describe a violation of a statute or regulation over which the Commission has jurisdiction”, and must simply be supported by fact, even for a complaint filed by a member of the general public.⁸

This Complaint fails to do so. As a result, we request that the Commission determine that there is no reason to believe that any violation alleged in the Complaint has occurred, and close the file in this matter.

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- 1995-09 (NewtWatch) (origin of screening requirements for contributions over the Internet), April 21, 1995, at <https://www.fec.gov/files/legal/aos/1995-09/1995-09.pdf> (last accessed September 27, 2021).

⁷ 11 C.F.R. 111.4; Federal Election Commission MUR 5878, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Peterson at 5-6 (“[Reason to believe] requires some assessment by the Commission of the facts and their credibility as well as the law before finding reason to believe.

The Commission cannot find reason to believe unless it considers a properly submitted response, and the Commission cannot investigate alleged violations until it makes this finding.

Together, these requirements provide procedural safeguards that protect respondents from frivolous complaints meant to harass, prevent unwarranted or premature discovery, and streamline enforcement by excluding innocuous respondents while allowing the Commission to better focus its resources”), available at <https://www.fec.gov/files/legal/murs/5878/13044342628.pdf> (last accessed September 27, 2021).

⁸ 11 C.F.R. 111.4(d)(3).

Sincerely,



Neil Reiff



David Mitrani

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