

BEFORE THE
FEDERAL ELECTION COMMISSION

Brad Woodhouse
American Democracy Legal Fund
455 Massachusetts Avenue, NW
Washington, DC 20001

Complainant,

v.

Senator Bernard Sanders
221 Van Patten Parkway
Burlington, VT 05408

Bernie 2016, and Susan Jackson, Treasurer
PO Box 905,
Burlington, VT 05402

Respondents.

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Senator Bernard Sanders, Bernie 2016, and Susan Jackson, its Treasurer, in her official capacity (collectively, "Respondents") for violating the Federal Election Campaign Act of 1971, as amended ("the Act") and Federal Election Commission (the "Commission") regulations, as described below.

A. FACTS

Senator Sanders is a declared candidate for the Democratic Party's presidential nomination.¹ His principal campaign committee is Bernie 2016.² Following the New Hampshire Democratic primary, Bernie 2016 purchased a "sponsored" advertisement on Facebook

¹ See FEC Form: Statement of Candidacy, available at <http://docquery.fec.gov/pdf/533/15031422533/15031422533.pdf>.

² FEC Committee ID: C00577130.

MUR # 7039

OFFICE OF GENERAL
COUNSEL

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promoting Senator Sanders's win and encouraging Facebook users to donate to his campaign.³ However, this advertisement did not contain any visible political disclaimer disclosing who paid for or authorized the communication.⁴ In addition, the ActBlue landing page that a user is directed to if they click the "Donate Now" button on the advertisement also does not contain a political disclaimer noting the source of the advertisement.⁵ The ActBlue landing page does, however, include ActBlue's disclaimer at the bottom of the webpage.⁶

B. LEGAL ARGUMENT

Under federal law, when a political committee makes a disbursement for any type of general public political advertising, or whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, the communication must identify who paid for the communication and whether such communication was authorized by a candidate or candidate's committee.⁷ Commission regulations state that all "public communications" by an authorized committee require a disclaimer that "clearly and conspicuously" declares that the communication has been paid for by the authorized committee.⁸ Commission regulations also state that Internet communications "placed for a fee on another person's Web site" are public communications and therefore require a disclaimer.⁹

Commission regulations recognize two relevant exceptions that may apply to Internet communications: (1) exempt "small items" that because of their size cannot conveniently include disclaimer language such as bumper stickers, pens, and buttons; and (2) communications in

³ See Attachment A.

⁴ See, *id.*

⁵ See Attachment B.

⁶ *Id.*

⁷ 52 U.S.C. § 30120(a).

⁸ 11 C.F.R. § 110.11(b).

⁹ See, *id.* 11 C.F.R. §§ 100.26, 110.11.

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which the "inclusion of a disclaimer would be impractical," such as skywriting, water towers, and clothing apparel.¹⁰ The Commission has extended the "small item" exemption to text message communications limited to 160 characters and determined that these communication did not require a disclaimer.¹¹ Additionally, in 2010 the Commission approved a proposed plan for "text ads" that have limited characters and could not therefore include a disclaimer, but only on the condition that "a full disclaimer would appear on the landing page that appears when a user 'clicks through' a text ad."¹² The Commission has declined to extend the "small items" or the "impracticability" exceptions to graphical Internet advertisements such as a sponsored Facebook advertisement. The Commission did hear a request in 2011 for an advisory opinion on whether Facebook advertisements qualified for these exceptions, but could not reach a majority conclusion. However, all six commissioners would have supported a conclusion that a small graphical Internet advertisement may omit a disclaimer if it links to a website page containing a full disclaimer.¹³ Thus, the current status under Commission regulations and guidance is that an Internet advertisement, like a Facebook advertisement, requires a disclaimer unless it is too small or impractical to include the advertisement in which case the "landing page" that the advertisement links to must contain the full disclaimer.

Here, Bernie 2016 has failed to put a proper disclaimer on the Facebook advertisement even though the advertisement is neither too small or impractical for it to have such a disclaimer, and has failed to include its full disclaimer on even the landing page where a user who clicks the advertisement is directed. A member of the public who sees this Facebook advertisement, and who interacts with it, is encouraged to contribute money to Bernie 2016 but is nowhere made

¹⁰ *Id.* § 110.11(f)(1).

¹¹ See FEC Advisory Opinion 2002-9 (Target Wireless).

¹² See FEC Advisory Opinion 2010-19 (Google).

¹³ See FEC Advisory Opinion 2011-09 (Facebook).

Disclaimers are necessary and needed to prevent the public from being misled. Here, the failure by Bernie 2016 to include any disclaimer at all on this communication is a clear violation of 52 U.S.C. 30120(a) and 11 C.F.R. § 110.11.

As shown the facts indicate that Respondents have violated the Act and Commission regulations by failing to include the required disclaimer on a public communication soliciting political contributions. We respectfully request that the Commission investigate these violations, and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

Brad LaRue

Walter H. Fitt

My Commission Expires:

ATTACHMENT A

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Bernie Sanders

Sponsored · 🌐

Like Page

You can be certain that our victory tonight will prompt a desperate response from those who see our campaign as a dangerous threat. We must be ready to respond, organize, and win.



You Showed Them Tonight!

WWW.BERNIESANDERS.COM

Not affiliated with Facebook

Donate Now

7 Likes · 1 Comment



Like

Comment

Share

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ATTACHMENT B

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We just won the New
Hampshire primary.

Make a contribution to our
campaign and we are going to
win this Democratic primary, the
White House, and take our
country back from the billionaire
class.

① Amount	② Name	③ Email	④ City
Your Contribution			
Your contribution will benefit Bernie Sanders .			
<input type="checkbox"/> \$15	<input type="checkbox"/> \$27	<input type="checkbox"/> \$50	<input type="checkbox"/> \$100
<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	<input type="checkbox"/> \$1,000	<input type="text" value="\$"/>
<input type="text"/>			

Contribution Rules

1. 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.
2. 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.
3. I am not a federal contractor.
4. I am at least eighteen years old.
5. I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).

To donate by check: *Bernie 2016*, PO Box 905 Burlington, VT 05402

ActBlue — We just won the New Hampshire primary.

Paid for by ActBlue (actblue.com) and not authorized by
any candidate or candidate's committee.

Contributions or gifts to ActBlue are not deductible as
charitable contributions for Federal income tax purposes.

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