

**From:** [Paula Swearengin](#)  
**To:** [CELA: Robb Ryerse](#)  
**Subject:** Re: MUR 7592  
**Date:** Friday, May 31, 2019 4:25:28 PM  
**Attachments:** [MUR 7592.pdf](#)

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Good afternoon:

RE: MUR 7592

Committee Name: Paula Swearengin 2018

Attached is my official response. Please let me know if you have any questions.

Thank you for your time and consideration.

Best,

Paula Jean Swearengin

(2 attachments)

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Statement of Designation of Counsel

Provide one form for each Respondent/Witness  
Note: You May E-Mail Form to: CELA@fec.gov

CASE: 7592

Name of Counsel: Neil Reiff and David Mitrani

Firm: Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.

Address: 1090 Vermont Ave, NW, Suite 750  
Washington, DC 20005

Telephone: (202) 479-1111 Fax: (202) 479-1115

The above named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

5/31/2019  
Date

Paula Swearengen  
Signature

Candidate-Treasurer  
Title

RESPONDENT: Paula Swearengen  
(Committee Name/Company Name/Individual Named In Notification Letter)

MAILING ADDRESS:  
PO Box 1688 Sophia WV 25921

Telephone:(H): \_\_\_\_\_ (W): 304-894-7472

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person receiving the notification or the person with respect to whom the investigation is made.

SANDLER  
REIFF

SANDLER REIFF LAMB  
ROSENSTEIN & BIRKENSTOCK,  
P.C.

1090 Vermont Ave NW, Suite 750  
Washington, DC 20005  
www.sandlerreiff.com  
T: 202-479-1111  
F: 202-479-1115

May 29, 2019

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

Re: MUR 7592

Ms. Ross:

The undersigned serves as counsel to:

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

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

Candidates joining this response are: [COMMITTEES].

This letter responds on behalf of the Parties to the Commission’s notification of a complaint from the Coolidge-Reagan Foundation (the “Foundation”, the “Complaint”) alleging that the Parties violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations.<sup>2</sup>

As described below, there is no reason to believe that the Parties have violated the Act or any of the Commission’s regulations. The Complaint was filed purely for political purposes – to create an additional press story against Congresswoman Ocasio-Cortez.<sup>3</sup>

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<sup>2</sup> The Parties wish to note that the incendiary language used in the Complaint (“funneled”, “shadowy web”) – beyond being indicative of the political nature of the Complaint – are wholly unsubstantiated accusations of very serious crimes. To that end, a public news search of the Foundation – Mr. Dan Backer – calls the veracity of the Complaint into question in general. See:

POLITICO, “The rise of 'scam PACs” (January 26, 2015), available at <https://www.politico.com/story/2015/01/super-pac-scams-114581>;

POLITICO, “Trump backers face 'scam PAC' charges” (May 16, 2016), at <https://www.politico.com/story/2016/05/scammers-feast-of-trump-fundraising-disarray-223141>;

Buzzfeed, “This Hyperpartisan Conservative Site Is Connected To Several Pro-Trump PACs” (June 15, 2017) at <https://www.buzzfeednews.com/article/craigsilverman/how-a-dc-lawyer-uses-hyperpartisan-websites-to-raise-money#.rcq7Xl4Qzg> (last accessed May 17, 2019).

<sup>3</sup> During March of 2019, the National Legal and Policy Center filed a complaint with incendiary language regarding Brand New Congress LLC’s operations as a political vendor, which allowed for right-wing press outlets to make exaggerated and outlandish accusations against the Parties. See, e.g.:

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

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

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

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

Business Insider, “A conservative group accused Alexandria Ocasio-Cortez of campaign finance violations, but experts say the charges are overblown” (March 7, 2019), at <https://www.businessinsider.com/alexandria-ocasio-cortez-was-accused-of-campaign-finance-violations-2019-3> (last accessed May 17, 2019).

The Complaint attempts to create a smokescreen which clumsily paints the Parties in the worst possible light.<sup>4</sup> The Foundation premises the Complaint on innuendo and allusions to a “shadowy web” of entities to attempt to score political points, instead of stating facts that could give rise to a violation of the Act, or providing the Commission with substantive evidence to justify the many mistruths underlying the Complaint.<sup>5</sup>

The Parties respect the rights of concerned citizens to file complaints in good faith for what are perceived as violations of federal campaign finance law. This Complaint was in no way filed in good faith, and appears to be nothing more than a veiled attempt to harass the Parties at the expense of the Commission’s limited resources.

The sheer number of false and inaccurate statements made by the Foundation in the Complaint are staggering, and clearly serve to advance the political purpose of the Complaint, the Foundation, and Mr. Backer as its President. The Complaint simply states a “fact” that it *assumes* is true, then draws ludicrous and unsubstantiated conclusions from those “facts.” As such, this response catalogues and responds to each of those false statements – as the Complaint fails to state facts that give rise to any violation of the Act or Commission regulations.<sup>6</sup>

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<sup>4</sup> Of note, the Complaint was announced in an article in Fox News, and covered exclusively by traditionally right-wing press outlets. See:

Fox News, “Alexandria Ocasio-Cortez hit with FEC complaint for alleged 'subsidy scheme’” (April 3, 2019), available at <https://www.foxnews.com/politics/alexandria-ocasio-cortez-hit-with-fec-complaint-for-alleged-subsidy-scheme>;

Washington Examiner, “AOC ran a ‘subsidy scheme’ to fund her campaign, FEC complaint says” (April 3, 2019), at <https://www.washingtonexaminer.com/news/alexandria-ocasio-cortez-ran-a-subsidy-scheme-to-fund-her-campaign-fec-complaint-says>;

Accuracy in Media, “Left-Leaning Outlets Fail to Cover FEC Complaint Against Ocasio-Cortez” (April 8, 2019), at <https://www.aim.org/aim-column/left-leaning-outlets-fail-to-cover-fec-complaint-against-ocasio-cortez/> (last accessed April 10, 2019).

<sup>5</sup> The Accuracy in Media article cited above notes that the Foundation – Mr. Backer – is the Chairman of the board of directors of Accuracy in Media – which leads to its own, *actually shadowy web*, where Mr. Backer files a complaint on behalf of the Coolidge-Reagan Foundation (a 501(c)(3) charitable organization) where he is President, raises funds for a PAC that he controls (“Stop the AOC PAC”), and comments on that complaint with a “media” organization that he also controls. It is difficult to concoct an echo chamber that is *more* questionable under the various tax laws prohibiting partisan intervention by a 501(c)(3).

<sup>6</sup> See 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”).

In actuality – the work of JD and BNC PAC to elect non-traditional candidates, the work of Brand New Congress LLC to service the PACs and candidates (and AOC as one of those campaigns), have been and are structured to comply with the Act and Commission regulations.

The Foundation’s core allegation – that Brand New Congress LLC was set up to “subsidize cheap assistance for Ocasio-Cortez and other candidates at rates far below market value” is false and unsubstantiated. Brand New Congress LLC’s pricing model was based on economies-of-scale, a widely recognized business model, and was universally applied amongst all of its clients, including the other Parties.

Additionally, the vast majority of payments made by Justice Democrats and Brand New Congress PACs *were for services rendered before any candidates began their operations – to recruit those candidates to run for office*. These expenditures for candidate-recruitment constituted roughly three-quarters of JD’s and BNC PAC’s expenditures to Brand New Congress LLC. There was simply no attempt to subsidize the candidates’ campaigns with payments by JD and BNC PACs.

In addition to this core allegation, the Foundation “throws the kitchen sink” at the Parties, making unsubstantiated and legally spurious allegations that JD is an authorized committee of AOC, a leadership PAC, and that Brand New Congress LLC – a for-profit vendor – operated as a “political committee” under the Act. These allegations are simply false. The Commission should find no reason to believe on each of the Foundation’s allegations, and close the file.

Given the wide scope of the Complaint and the many issues addressed in this response, a table of contents is below.

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## 1. Factual Background

### a. Timeline of Events

#### i. Initial Concept – “Can a regular person run for Congress?”

Beginning in 2016 (BNC PAC) and 2017 (JD), the PACs sought to implement a national program to recruit non-traditional, first-time candidates for United States House of Representatives and United States Senate, and to support them with an infrastructure to effectively run their campaigns as an integrated, national effort.<sup>7</sup> BNC PAC and JD sought to recruit a candidate in every congressional district in the country, and to provide those candidates with access to the tools that they needed to run a winning campaign, within the boundaries of the Act.

Mr. Chakrabarti – then the Executive Director of Justice Democrats – summarized the concept in an online post dated May 8, 2018, and speaks to Parties effort and intent to comply with the Act:<sup>8</sup>

*Our goal with Brand New Congress [and Justice Democrats] was to recruit candidates who were not thinking about running already and to actually fully run all of their campaigns as if it was one big presidential race. This was right after the Bernie [Sanders] campaign, so this was our thought for how to recreate that Bernie movement in a giant 400-candidate national race. . .*

*. . . This would let us have all kinds of efficiencies that come with a big national race and also, we believed, was one way we could create a national movement around taking over Congress. It would also, we believed, let us recruit different kinds of candidates who may not have had a lot of experience running campaigns but who believed in this big vision to change our country. . .*

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<sup>7</sup> See, e.g.,

Mic.com, “Cenk Uygur, Bernie Sanders staffers team up to take over the Democratic Party” (January 23, 2017) (“. . . Cenk Uygur, a board member on the project, said the goal of Justice Democrats is to run hundreds of Democratic candidates in 2018. . .”), available at <https://mic.com/articles/166390/cenk-ugyur-bernie-sanders-staffers-team-up-to-take-over-the-democratic-party#.GzG1yh7xf>;

The Verge, “Meet the tech-savvy activists trying to take over the Democratic Party” (May 8, 2017) (“[The candidates] may be civil engineers, they may be activists, they may be nurses, they may be librarians or teachers or principals, but they don’t necessarily have the skills to run a winning campaign,” Trent said. Chakrabarti says they’re looking for people with a good “life record,” such as participating in various forms of activism, or just being well-liked community members.”), at <https://www.theverge.com/2017/5/8/15579810/tech-savvy-justice-democrats-bernie-sanders-the-young-turks> (last accessed May 17, 2019).

<sup>8</sup> The complete post is attached as Exhibit A, below.



... So, we knew that in addition to a PAC to recruit and train candidates, we needed some mechanism to charge the campaigns for the work we'd be doing for them as cheaply as possible while doing it all legally and according to FEC rules. . .

With [Brand New Congress LLC], our plan was to essentially run the full campaigns for the vast majority of our candidates, so we were advised that this would definitely be too much fee-for-service work for a Federal PAC to do and still maintain its status as a Federal PAC. The ONLY way to do work for multiple candidates legally at this scale is to create an LLC and act as a vendor.<sup>9</sup>

## ii. Brand New Congress LLC

Based on this concept, Brand New Campaign LLC – eventually renamed as Brand New Congress LLC – was formed to serve as a “campaign in a box” vendor to provide communications, field, online organizing, fundraising, and similar services, specifically for the purpose of providing those services to BNC PAC, JD, and the various first-time candidates that those committees supported (including AOC for Congress). More specifically, Brand New Congress LLC’s operations can be best thought of in three phases:<sup>10</sup>

- **Phase 1, Candidate Recruitment (January through May 2017):** Justice Democrats and Brand New Congress PACs pay Brand New Congress LLC to vet and recruit first-time, non-traditional candidates throughout the country, with the goal of recruiting a candidate *in every congressional district in the country*. 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 Brand New Congress LLC. ~~Justice Democrats and Brand New Congress sought nominations for potential candidates from their email lists, which Brand New Congress LLC evaluated and vetted.~~
- **Phase 2, Brand New Congress LLC Operation (June, July, and August 2017):** Brand New Congress LLC provides strategic consulting services, “campaign in a box,” to those candidates recruited by Justice Democrats and

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<sup>9</sup> Justice Democrats, “When I look at the FEC report for Justice Democrats in 2017, why are there so many expenditures to “Brand New Congress”?” (May 8, 2018), available at <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> (last accessed May 17, 2019).

<sup>10</sup> As of the time of its winding-down, Brand New Congress PAC, Justice Democrats, and the thirteen recruited candidates were Brand New Congress LLC’s only clients. *This said*, the strategic consulting services provided by Brand New Congress LLC would be applicable to any type of organization, from a candidate to a corporation – and the LLC did not foreclose the possibility that it would take on different types of clients in the future.

Brand New Congress PACs and *separately* provides services to the PACs to grow their brands and influence.

- **Phase 3, Wind Down:** Brand New Congress LLC winds down operations and collects outstanding balances from each of its clients.

This “campaign in a box” suite of services – from communications, field, finance, digital, and the like – is very common business model on both sides of the aisle, and serves as a way for new candidates that may not have the connections or funding to afford the most sought-after (and costly) consultants to have access to the services to run for office in a single company. This was certainly the case for the candidates recruited to run by either or both of Justice Democrats and Brand New Congress.

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

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

Brand New Congress LLC operated under this structure through August of 2017, when it determined that its efforts to provide services for an integrated, national campaign were not sustainable and ceased its operations. Mr. Chakrabarti, the sole owner of Brand New Congress LLC, did not receive any compensation – by way of salary, profit or otherwise – from Brand New Congress LLC, BNC PAC, JD, or from AOC. Justice Democrats continues to provide services to candidates at its costs, to offset a contribution.<sup>11</sup>

**b. The Complaint conveniently disregards the *timings* of JD’s and BNC PAC’s payments to Brand New Congress LLC, which show that the Foundation’s accusations of a subsidy are blatantly false.**

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<sup>11</sup> Justice Democrats, “About” (“The FEC requires that we charge campaigns money for any direct campaign services we do (otherwise, the service would count as a donation to the campaign), so we do these services at-cost to us, making no profit. By creating a scalable infrastructure that candidates can use to run their campaigns, we are able to start creating a party-like infrastructure that not only endorses and fundraises for candidates, but also provides them with the tools and people necessary to run a successful campaign. If you are curious about what Justice Democrats charges its candidates, you can view our fee schedule here: <http://justicedemocrats.com/services>.”), available at <https://www.justicedemocrats.com/about> (last accessed May 17, 2019).

The Complaint’s accusations of a “shell game,” a “subsidy scheme,” and a “funnel” are tissue-thin when even lightly scrutinized. While it is true that between January and November of 2017 Justice Democrats and Brand New Congress PACs paid Brand New Congress LLC \$867,014.30, and candidates paid the LLC \$173,101.92, ***the Complaint disregards when these payments were made.***

In actuality, 74% of what JD and BNC PAC paid to Brand New Congress LLC were for services provided *to recruit* candidates for office, services that were provided ***before any of the thirteen individuals became a candidate under the Act.***<sup>12</sup>

FEC data is clearly illustrative of the three phases of Brand New Congress LLC’s operations, separated based on amounts paid ***for the LLC’s services already performed*** for Justice Democrats and Brand New Congress PACs, and by the thirteen candidates recruited to run for Congress by those PACs:<sup>13</sup>

Phase	Brand New Congress LLC Income	Receipts from JD and BNC PACs	Receipts from Candidates	PAC % in Phase
<i>Phase 1 - Candidate Recruitment</i> January – May 2017	\$643,258.87	\$643,258.87	\$ -	<b>100.00%</b>
<i>Phase 2 - BNCLLC Operation</i> June, July, August 2017	\$368,516.92	\$198,065.00	\$170,451.92	<b>53.75%</b>
<i>Phase 3 - Wind-Down</i>	\$28,340.43	\$25,690.43	\$2,650.00	<b>90.65%</b>

Before candidates were recruited, the JD and BNC PACs paid for all of Brand New Congress LLC’s services, since the LLC’s staff and consultants were extensively seeking to recruit first-time, non-traditional candidates in every district in the country. A nationwide recruitment effort – involving many different staff, dozens of meetings, and the like – proved to be a very expensive proposition, between travel, staff, office space, costs to vet and interview candidates from all around the country, and the like. Candidate recruitment efforts continued in some form through August of 2017 as well.

Candidate recruitment is ***not*** regulated by the Act. In fact, by registering with the FEC to recruit candidates for Congress, Justice Democrats and Brand New Congress PACs were *more*

<sup>12</sup> Brand New Congress LLC did not attempt to recruit candidates to run for office who were not already considering doing so – JD and BNC PACs sought nominations for potential candidates, which the LLC vetted. See FEC Advisory Opinion 1991-32 (CEC, Inc.) at 8-9, available at <https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf> (last accessed May 17, 2019). As the PACs sought to recruit first-time, non-traditional candidates, viability was not a consideration.

<sup>13</sup> Chart based on search of “All Disbursements” on FEC website, with Recipient Name “Brand New Congress LLC”, 2017 – 2018, available at [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&recipient\\_name=brand+new+congress+LLC&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&recipient_name=brand+new+congress+LLC&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018) (last accessed May 17, 2018).

transparent with their activities then they were required to be under the Act and Commission regulations.<sup>14</sup>

Once candidates were recruited and began to run for Congress, this ratio shifted based on work performed, to the PACs paying 54% of the LLC's operations in Phase 2, and the candidates paying 47% - a difference of **\$27,613.08** between the two (and \$2,124.08 when divided between the thirteen candidates, within the primary contribution limit from the LLC, of which Mr. Chakrabarti was the sole member).

Given the fundraising for the PACs during this time period – which significantly dwarfed the fundraising for the candidates themselves, a disparity of this small amount is more than justifiable given the work performed for each (and in no way indicates a “brazen scheme” as the Complaint posits).

A complete timeline of payments to Brand New Congress LLC, including when candidates that paid Brand New Congress LLC for *bona fide* services filed their Statements of Candidacy, is outlined below:<sup>15</sup>

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<sup>14</sup> See, e.g., FEC Advisory Opinion 1991-32 (CEC, Inc.) at 8-9, available at <https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf> (last accessed May 17, 2019).

<sup>15</sup> Chart based on:

1. Search of “All Disbursements” on FEC website, with Recipient Name “Brand New Congress LLC”, 2017 – 2018, available at [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&recipient\\_name=brand+new+congress+LLC&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&recipient_name=brand+new+congress+LLC&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018);
2. FEC Form 2 for:
  - a. Michael Hepburn (filed April 1 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8FL27011/1154520/>;
  - b. Hector Morales (filed April 6, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8TX29045/1155194/>;
  - c. Ryan Stone (filed April 8, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8TX10086/1155556/>;
  - d. Cori Bush (filed April 20, 2017), at <http://docquery.fec.gov/pdf/043/201704210300154043/201704210300154043.pdf>;
  - e. Paula Swearingin (filed May 8, 2017), at <http://docquery.fec.gov/pdf/574/201705220200154574/201705220200154574.pdf>;
  - f. Adrienne Bell (filed May 10, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8TX14120/1161787/>;

PHASE	Committee Name	Payment Date	Amount
1	BRAND NEW CONGRESS	1/3/2017	\$1,408.29
1	BRAND NEW CONGRESS	1/18/2017	\$20,000.00
1	BRAND NEW CONGRESS	1/27/2017	\$5,000.00
1	BRAND NEW CONGRESS	2/13/2017	\$30,000.00
1	JUSTICE DEMOCRATS	2/18/2017	\$60,000.00
1	BRAND NEW CONGRESS	2/24/2017	\$50,000.00
1	JUSTICE DEMOCRATS	3/10/2017	\$60,000.00
1	MICHAEL HEPBURN - FORM 2	4/1/2017	
1	HECTOR MORALES - FORM 2	4/6/2017	
1	JUSTICE DEMOCRATS	4/7/2017	\$60,000.00
1	RYAN STONE - FORM 2	4/8/2017	
1	CORI BUSH - FORM 2	4/20/2017	
1	BRAND NEW CONGRESS	4/28/2017	\$30,000.00
1	BRAND NEW CONGRESS	5/2/2017	\$40,000.00
1	BRAND NEW CONGRESS	5/3/2017	\$20,000.00
1	BRAND NEW CONGRESS	5/5/2017	\$2,000.00
1	JUSTICE DEMOCRATS	5/5/2017	\$60,000.00
1	PAULA SWEARENGIN - FORM 2	5/8/2017	
1	ADRIENNE BELL - FORM 2	5/10/2017	
1	ALEXANDRIA OCASIO-CORTEZ - FORM 2	5/10/2017	
1	ANTHONY CLARK - FORM 2	5/10/2017	
1	LETITIA PLUMMER - FORM 2	5/10/2017	
1	SARAH SMITH - FORM 2	5/11/2017	
1	BRAND NEW CONGRESS	5/15/2017	\$15,000.00
1	CHARDO RICHARDSON - FORM 2	5/18/2017	
1	ROBB RYERSE - FORM 2	5/18/2017	
1	PAUL PERRY - FORM 2	5/20/2017	
1	JUSTICE DEMOCRATS	6/1/2017	\$60,000.00
1	JUSTICE DEMOCRATS	6/14/2017	\$129,850.58

- g. Alexandria Ocasio-Cortez (filed May 10, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8NY15148/1161740/>;
- h. Anthony Clark (filed May 10, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8IL07103/1161831/>; Letitia Plummer (filed May 10, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8TX22206/1161799/>;
- i. Sarah Smith (filed May 11, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8WA09054/1162024/>;
- j. Chardo Richardson (filed May 18, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8FL07054/1163118/>;
- k. Robb Ryerse (filed May 18, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8AR03066/1163144/>;
- l. Paul Perry (filed May 20, 2017), at <http://docquery.fec.gov/cgi-bin/forms/H8PA07143/1163717/> (last accessed May 17, 2019).

2	ADRIENNE BELL 2018	6/30/2017	\$4,407.00
2	ALEXANDRIA OCASIO-CORTEZ FOR CONGRESS	6/30/2017	\$4,516.00
2	ANTHONY CLARK 2018	6/30/2017	\$4,516.00
2	CHARDO RICHARDSON FOR CONGRESS	6/30/2017	\$508.00
2	COMMITTEE TO ELECT RYAN STONE	6/30/2017	\$399.00
2	CORI BUSH 2018	6/30/2017	\$4,955.00
2	CORI BUSH 2018	6/30/2017	\$11,863.43
2	HECTOR MORALES FOR CONGRESS	6/30/2017	\$1,448.46
2	LETITIA PLUMMER 2018	6/30/2017	\$907.00
2	PAULA SWEARENGIN 2018	6/30/2017	\$6,140.00
2	SARAH SMITH 2018	6/30/2017	\$1,791.70
2	CORI BUSH 2018	7/14/2017	\$12,870.22
2	JUSTICE DEMOCRATS	7/14/2017	\$43,886.00
2	PAULA SWEARENGIN 2018	7/14/2017	\$12,539.39
2	ADRIENNE BELL 2018	7/19/2017	\$4,254.19
2	ANTHONY CLARK 2018	7/19/2017	\$6,669.97
2	COMMITTEE TO ELECT RYAN STONE	7/19/2017	\$6,406.93
2	ROBERT RYERSE 2018	7/19/2017	\$2,758.35
2	CHARDO RICHARDSON FOR CONGRESS	7/20/2017	\$3,526.77
2	HEPBURN FOR CONGRESS	7/21/2017	\$5,348.45
2	HEPBURN FOR CONGRESS	7/21/2017	\$3,700.25
2	PERRY FOR PENNSYLVANIA	7/21/2017	\$6,800.54
2	SARAH SMITH 2018	7/21/2017	\$6,688.95
2	ALEXANDRIA OCASIO-CORTEZ FOR CONGRESS	7/26/2017	\$8,172.82
2	HECTOR MORALES FOR CONGRESS	7/26/2017	\$3,154.19
2	LETITIA PLUMMER 2018	7/26/2017	\$3,658.72
2	BRAND NEW CONGRESS	7/28/2017	\$32,611.00
2	JUSTICE DEMOCRATS	8/14/2017	\$39,068.00
2	PAULA SWEARENGIN 2018	8/15/2017	\$11,677.27
2	ROBERT RYERSE 2018	8/15/2017	\$1,832.00
2	ALEXANDRIA OCASIO-CORTEZ FOR CONGRESS	8/27/2017	\$6,191.32
2	ANTHONY CLARK 2018	8/27/2017	\$4,691.25
2	<b>BRAND NEW CONGRESS LLC CEASES OPERATIONS</b>	<i>On or around</i> 8/27/2017	
2	CORI BUSH 2018	8/28/2017	\$10,919.26
2	JUSTICE DEMOCRATS	8/31/2017	\$82,500.00
2	ADRIENNE BELL 2018	9/1/2017	\$1,875.07
2	ANTHONY CLARK 2018	9/1/2017	\$2,700.00
2	COMMITTEE TO ELECT RYAN STONE	9/30/2017	\$1,544.21
2	PAULA SWEARENGIN 2018	9/30/2017	\$1,020.21
3	BRAND NEW CONGRESS	10/10/2017	\$12,354.90
3	BRAND NEW CONGRESS	10/24/2017	\$2,790.99
3	JUSTICE DEMOCRATS	11/1/2017	\$2,531.00
3	COMMITTEE TO ELECT RYAN STONE	11/6/2017	\$200.00
3	JUSTICE DEMOCRATS	11/14/2017	\$8,013.54
3	PAULA SWEARENGIN 2018	5/24/2018	\$2,450.00

It is clear from this data that no “illegal subsidy” could have taken place as the Complaint accuses. Almost three-quarters of what Justice Democrats and Brand New Congress PACs would pay to Brand New Congress LLC was for services provided before any candidate would begin their operations – during the “candidate recruitment” phase.

**c. Brand New Congress LLC’s pricing model was structured to comply with the Act and Commission regulations.**

Although the Complaint seeks to describe a nefarious conspiracy to circumvent contribution limits, the reality is much less newsworthy – Brand New Congress LLC operated as a for-profit entity to provide services to political clients. Each client of Brand New Congress LLC paid a fee based on multiple metrics, including but not limited to fundraising, use of Brand New Congress LLC staff, and the like.

As described above, Justice Democrats and Brand New Congress PACs paid Brand New Congress LLC for services related to recruiting candidates in Phase 1 – these payments were generally retainers for services for staff dedicated to recruiting first-time, non-traditional candidates on behalf of the PACs in every congressional district in the country.

In Phases 2 and 3, Brand New Congress LLC’s pricing model became a hybrid of “*a la carte*” services selected by the client, a percentage of fundraising for digital fundraising services, and a “resources used” model for use of operations and compliance staff. The LLC’s financial model was based on “economies of scale” – the more candidates that the Justice Democrats and Brand New Congress PACs could recruit to run non-traditional campaigns for House or Senate in Phase 1, the more clients that Brand New Congress LLC would have in Phase 2. The more clients that the LLC could have, the more staff it could hire to service those clients, and the like.

Since Brand New Congress LLC was a single-member LLC owned by an individual (Mr. Chakrabarti). Consequently, it has elected partnership taxation, and is not held to the same legal standard as a corporation with respect to any profit requirements or motives when providing services to a campaign – for example, the FEC’s rules on a corporation extending credit to a candidate or committee are inapplicable.<sup>16</sup>

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<sup>16</sup> See:

- 11 C.F.R. § 116.3;
- FEC Advisory Opinions 2008-10 (VoterVoter.com), available at <https://www.fec.gov/files/legal/aos/2008-10/AO-2008-10.pdf>, 1994-30 (Conservative Concepts / Pence) at <https://www.fec.gov/files/legal/aos/1994-30/1994-30.pdf>, 1989-21 (Create-a-Craft), at <https://www.fec.gov/files/legal/aos/1989-21/1989-21.pdf>;
- MURs 5474/5539, General Counsel’s Report (FEC did not find reason to believe, relating to an LLC that had elected partnership status) (May 25, 2005), at <https://www.fec.gov/files/legal/murs/5474/000045EB.pdf> (last accessed May 17, 2019).

With a goal of running up to 400 campaigns at once, internal controls were built into the operations of the LLC when it began operations in early 2017, to ensure that no one entity subsidized another – ***to rebut the unsubstantiated accusation the Foundation has made.*** Brand New Congress LLC itself had multiple staffers in an operations department, which tracked the billing and income of the entity very closely to ensure compliance under federal campaign finance laws.

While the Complaint’s allegations may drive clicks to right-wing outlets, they are not based in reality. In truth, Brand New Congress LLC’s business model was carefully designed, implemented and monitored with the assistance of counsel (the undersigned), to ensure compliance with the Act and FEC regulations.

## 2. The Complaint’s allegations are unsubstantiated and false.

With these facts in mind, it is clear that the Complaint’s allegations are at best flimsy subjected to scrutiny. Each assertion and allegation made are analyzed and discussed below:

- a. **Counts I, II, III, IV, V, VI, VII, VIII, IX, X: Congresswoman Ocasio-Cortez or her authorized committee Alexandria Ocasio-Cortez for Congress has not and does not “establish, finance, maintain or control” Justice Democrats.**

The Complaint spends a great deal of its page count spinning a yarn of three potential options for Congresswoman Ocasio-Cortez’s relationship with Justice Democrats – that it is either an authorized committee, a leadership PAC, or an unauthorized committee that engaged in coordinated expenditures. In actuality – ***Justice Democrats is none of the three impermissible arrangements that the Complaint posits.*** JD is and was at all times an unauthorized committee – founded to elect non-traditional candidates to the House of Representatives and Senate, and not one particular candidate.

While the Complaint seeks to link Congresswoman Ocasio-Cortez and her congressional Chief of Staff Mr. Chakrabarti in sentence after sentence, it does so by completely disregarding and combining the timeline of events – assuming that activities took place all at the same time. The reality of the situation was, until Congresswoman Ocasio-Cortez began to gain momentum for her primary victory in June of 2018, ***she was just one of the many candidates that JD and BNC PAC had recruited to run for Congress, and one of the many candidates that they had supported.***

The Complaint assumes that, since Congresswoman Ocasio-Cortez was the **only-highest-profile** JD and BNC-recruited candidate that won their primary election, she must have been JD and BNC PAC’s ***only*** focus. This assumption is blatantly false. JD and BNC PAC worked to elect dozens of candidates in the 2018 cycle, of which the Congresswoman was ***one***.<sup>17</sup> Even within the thirteen candidates recruited by JD and BNC PAC to run for Congress,

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<sup>17</sup> See, e.g., Justice Democrats, “2018-Slate for Justice”, available at <https://www.justicedemocrats.com/candidates/> (last accessed May 17, 2019).



Congresswoman Ocasio-Cortez’s fundraising was average until she broke onto the national stage before her primary.<sup>18</sup>

This is best illustrated by an overview of fundraising by each of the candidates recruited to run for Congress by JD and BNC PAC:<sup>19</sup>

Campaign	Reporting Period	Receipts
Adrienne Bell 2018		\$12,109.46
Anthony Clark 2018		\$13,798.24
Alexandria Ocasio-Cortez for Congress		\$17,992.91
Chardo Richardson for Congress		\$4,095.41
Cori Bush 2018		\$50,402.12
Hector Morales for Congress		\$5,165.81
Hepburn for Congress	<b>July Quarterly 2017</b>	\$12,813.14
Letitia Plummer 2018		\$6,493.28
Paula Swearengin 2018		\$82,962.51
Perry for Pennsylvania		\$16,526.28
Robert Ryerse 2018		\$5,237.11
Ryan Stone		\$10,012.05
Sarah Smith 2018		\$9,625.20
Adrienne Bell 2018		\$11,550.26
Anthony Clark 2018		\$13,945.05
Alexandria Ocasio-Cortez for Congress		\$20,828.76
Chardo Richardson for Congress		\$7,622.56
Cori Bush 2018		\$22,703.33
Hector Morales for Congress		\$2,917.98
Hepburn for Congress	<b>October Quarterly 2017</b>	\$1,366.59
Letitia Plummer 2018		\$12,447.26
Paula Swearengin 2018		\$33,864.03
Perry for Pennsylvania		\$62,399.19
Robert Ryerse 2018		\$6,443.49
Ryan Stone		\$5,131.21
Sarah Smith 2018		\$11,933.03
Adrienne Bell 2018	<b>Year-End 2017</b>	\$17,513.22
Anthony Clark 2018		\$18,957.25
Alexandria Ocasio-Cortez for Congress		\$20,945.81
Chardo Richardson for Congress		\$10,270.53
Cori Bush 2018		\$11,633.44
Hector Morales for Congress		\$157.79

<sup>18</sup> AOC for Congress’ advertisement released on May 30, 2018, “The Courage to Change” is widely cited as the “turning point” in her primary election. See Youtube, “The Courage to Change” (posted May 30, 2018), available at <https://www.youtube.com/watch?v=rq3QXIVR0bs>; Inc., “The DIY Viral Ad That Will Change Politics Forever” (June 29, 2018), at <https://www.inc.com/erik-sherman/this-128-second-viral-ad-can-teach-you-everything-you-should-know-about-marketing.html> (last accessed May 17, 2019).

<sup>19</sup> Chart based on review of reports of Adrienne Bell 2018, Anthony Clark 2018, Alexandria Ocasio-Cortez for Congress, Chardo Richardson for Congress, Cori Bush 2018, Hector Morales for Congress, Hepburn for Congress, Letitia Plummer 2018, Paula Swearengin 2018, Perry for Pennsylvania, Robert Ryerse 2018, Ryan Stone, Sarah Smith 2018.

Hepburn for Congress		\$5,965.63
Letitia Plummer 2018		\$45,837.89
Paula Swearengin 2018		\$23,397.64
Perry for Pennsylvania		\$11,967.98
Robert Ryerse 2018		\$7,756.35
Ryan Stone		\$300.31
Sarah Smith 2018		\$10,752.60
<b>Adrienne Bell 2018</b>		
Adrienne Bell 2018		\$17,444.64
Anthony Clark 2018		\$24,542.20
Alexandria Ocasio-Cortez for Congress		\$58,835.41
Chardo Richardson for Congress		\$3,766.33
Cori Bush 2018		\$7,737.85
Hector Morales for Congress	<b>First 2018 Report</b> , through March 31, 2018 at the latest (unless terminated previously).	\$1,875.47
Hepburn for Congress		\$3,571.41
Letitia Plummer 2018		\$17,682.14
Paula Swearengin 2018		\$38,874.07
Perry for Pennsylvania		
Robert Ryerse 2018		\$13,431.00
Ryan Stone		
Sarah Smith 2018		\$4,657.32

From this, the Complaint’s assertions that JD, BNC PAC, Brand New Congress LLC, and others were all formed to support and subsidize Congresswoman Ocasio-Cortez’s election are simply ludicrous.

Additionally, to the Complaint’s allegation that Justice Democrats made coordinated expenditures to AOC for Congress, *JD intentionally did not engage in any independent expenditures, or any expenditures to advocate for a particular candidate’s election.*<sup>20</sup> Therefore, any allegation of coordination is completely irrelevant as a matter of law.

Given this, the timeline of relevant events related to allegations that Congresswoman Ocasio-Cortez “established, financed, maintained, or controlled” Justice Democrats are as follows:

**1. January 2017:**

- a. Justice Democrats was formed as an unauthorized committee to elect non-traditional candidates to Congress. Saikat Chakrabarti served as the PAC’s executive director until June of 2018.<sup>21</sup>

<sup>20</sup> A simple search of Justice Democrats’ records on the FEC’s website would show this to be the case: <https://www.fec.gov/data/committee/C00630665/?tab=spending> (last accessed May 17, 2019).

<sup>21</sup> See The Young Turks, “Meet The Exec Director Of Justice Democrats Saikat Chakrabarti” (January 26, 2017), available at <https://www.youtube.com/watch?v=5guXxPsd0YM> (last accessed May 17, 2019).

- b. Brand New Congress LLC began its operations, recruiting non-traditional, first-time candidates to run for Congress.
2. **May 10, 2017:** Alexandria Ocasio-Cortez files her Form 2 to run for Congress.<sup>22</sup>
  3. **May – August 2017:** AOC for Congress pays Brand New Congress LLC for strategic consulting services.<sup>23</sup>
  4. **August 2017:** Brand New Congress LLC ceases and winds-down its operations.
  5. **November 2017 – December 2018:** AOC for Congress pays Justice Democrats on a fee-for-service basis, to offset a potential contribution from the PAC.<sup>24</sup>
  6. **November 18, 2017:** Mr. Chakrabarti and Congresswoman Ocasio-Cortez join Justice Democrats’ board of directors. ***At no point did Congresswoman Ocasio-Cortez control the “fundraising, expenditures, and disbursements” of Justice Democrats.***
  7. **On or around February 2, 2018 through March 20, 2018:** Mr. Chakrabarti is temporarily appointed as AOC for Congress’ Treasurer.<sup>25</sup>
  8. **June 2018:** Mr. Chakrabarti resigns as Executive Director of Justice Democrats.

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<sup>22</sup> FEC Form 2 for Alexandria Ocasio-Cortez (filed May 10, 2017), available at <http://docquery.fec.gov/cgi-bin/forms/H8NY15148/1161740/> (last accessed May 17, 2019).

<sup>23</sup> FEC Search of Disbursements to Brand New Congress LLC by Alexandria Ocasio-Cortez for Congress, 2017-2018, at [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00639591&recipient\\_name=BRAND+NEW+CONGRESS+LLC&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00639591&recipient_name=BRAND+NEW+CONGRESS+LLC&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018) (last accessed May 17, 2019).

<sup>24</sup> FEC Search of Disbursements to Justice Democrats by Alexandria Ocasio-Cortez for Congress, 2017-2018, at [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00639591&recipient\\_name=JUSTICE+DEMOCRATS&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00639591&recipient_name=JUSTICE+DEMOCRATS&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018) (last accessed May 17, 2019).

<sup>25</sup> See FEC Form 1s for Alexandria Ocasio-Cortez for Congress, filed February 6, 2018, available at <http://docquery.fec.gov/cgi-bin/forms/C00639591/1207045/>, filed March 20, 2018, at <http://docquery.fec.gov/cgi-bin/forms/C00639591/1215849/> (last accessed May 17, 2019).

**June 30, 2018:** Congresswoman Ocasio-Cortez resigns from the board of directors of Justice Democrats.

From this, the Complaint misstates two key facts – in actuality, Brand New Congress LLC and Justice Democrats *did not provide services to candidates (including AOC for Congress) at the same time*, and *Mr. Chakrabarti’s role in AOC for Congress through June of 2018 was as the uncompensated Executive Director of Justice Democrats, which provided services to the campaign. During this time, Mr. Chakrabarti wore two hats – both for the campaign, and for JD, while ensuring that any JD costs to support AOC for Congress were offset as fee-for-service.*

**i. Justice Democrats is an unauthorized committee, and is not an authorized committee or leadership PAC of Congresswoman Ocasio-Cortez.**

The Complaint conveniently misstates the Act and Commission regulations in order to draw a favorable conclusion for itself. In an attempt to show that Justice Democrats was an authorized committee or a leadership PAC of Congresswoman Ocasio-Cortez, it contorts the facts of the situation into an unrecognizable mixture of false assumptions and theories. It is especially telling that authority cited by the Complaint in this section to prove this theory is limited to the Act and Commission regulations, and not the Commission’s rich history on this issue.

The Foundation’s argument relies solely on Justice Democrats being “controlled by” Congresswoman Ocasio-Cortez, such that it can be treated as “affiliated” under the Commission’s regulations.<sup>26</sup> Tellingly, the Complaint does not cite affiliation under 11 C.F.R. 100.5(g)(3)(v) – “Affiliated committees sharing a single contribution limitation under paragraph (g)(2) of this section include all of the committees established, financed, maintained or controlled by. . . [t]he same person or group of persons”, as 11 C.F.R. 100.5(g)(4)’s more *expansive test for “affiliation” is inapplicable between an authorized committee and an unauthorized committee.*<sup>27</sup>

By the FEC’s rule, an authorized committee *cannot* be affiliated with an authorized committee.<sup>28</sup> Justice Democrats was at no time authorized to receive contributions or make expenditures for Congresswoman Ocasio-Cortez as a candidate, or for any candidate – despite

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<sup>26</sup> 11 C.F.R. § 100.5(e)(6) (“Leadership PAC”), (g)(1), (g)(5) (“All authorized committees of the same candidate for the same election to Federal office are affiliated. . . no authorized committee shall be deemed affiliated with any entity that is not an authorized committee.”).

<sup>27</sup> 11 C.F.R. § 100.5(g)(3)(v), (g)(4)(ii), (g)(5).

<sup>28</sup> 11 C.F.R. § 100.5(g)(5).

the Foundation’s convoluted “subsidy” argument addressed at length below. *As such, it is not an authorized committee of Congresswoman Ocasio-Cortez.*

Justice Democrats was not “established”, “financed”, or “maintained” by Congresswoman Ocasio-Cortez – JD was established months before the Congresswoman became a candidate, and its operations were maintained separately from her campaign.<sup>29</sup> Even when she was a director of Justice Democrats, she did not “control” its activities, as she had no say on day-to-day operations or strategy, did not have “the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees”, did not have an “an active or significant role” in its operations, and other indicia of control.<sup>30</sup>

In truth, the Commission has been very careful to analyze when a committee has been “controlled” by a federal candidate.<sup>31</sup> MURs 5672/5733 are most persuasive on this point – as

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<sup>29</sup> While either Brand New Congress LLC or Justice Democrats may have provided administrative services to AOC for Congress for compensation, this does not rise to the level of “maintained” for the analysis of a Leadership PAC.

<sup>30</sup> See 11 C.F.R. § 100.5(g)(3)(v), (g)(4)(ii). While Justice Democrats was initially registered as a “PAC with Non-Contribution Account”, it changed its registration after realizing the grassroots potential of its goals and mission, without receiving any funds outside of the limits and prohibitions of the Act.

<sup>31</sup> See:

- FEC Advisory Opinions 2011-12 (Majority PAC and House Majority PAC) (federal candidates may raise federally-permissible funds for entities that engage in independent expenditures), available at <https://www.fec.gov/files/legal/aos/2011-12/AO-2011-12.pdf>; 2011-21 (Constitutional Conservatives Fund PAC) (Leadership PACs may not receive funds outside of the limits and prohibitions of the Act), at <https://www.fec.gov/files/legal/aos/2011-21/AO-2011-21.pdf> (last accessed May 17, 2019).
- FEC MURs:
  - 5672 (Save American Jobs Association, Inc.) / 5733 (Save Jobs Party), *FEC did not find reason to believe 6-0*, in agreement with the Office of General Counsel on the points relevant to this analysis. See Certifications, available at <https://www.fec.gov/files/legal/murs/5672/00005C5A.pdf> (January 10, 2007), <https://www.fec.gov/files/legal/murs/5672/00005C44.pdf> (December 18, 2006); General Counsel’s Report, at <https://www.fec.gov/files/legal/murs/5733/00005C51.pdf>.
  - 6753 (People for Pearce), *FEC dismissed the complaint 6-0*. See Certification (August 13, 2015), at <https://www.fec.gov/files/legal/murs/6753/15044375883.pdf>; First General Counsel’s Report at 7-10 (noting that – in the context of affiliation under BCRA – that the “context of the overall relationship” must be considered, and that “hire or fire” authority, as well as “active[] or significant[]” participation is required) (June 20, 2014), at <https://www.fec.gov/files/legal/murs/6753/15044375871.pdf>;
  - 5328 (PAC to the Future), *FEC found reason to believe 5-0*, where a candidate established two Leadership PACs which then contributed to the same candidates. See

the Office of General Counsel discusses potential affiliation between an authorized committee and an unauthorized committee as follows:

*“Furthermore: the Davis 2006 Committee cannot be affiliated with either the Party or the Association because an authorized committee can only be affiliated with another authorized committee.”*<sup>32</sup>

The complaint in MURs 5672/5733 made very similar arguments as the Foundation does in this Complaint – “a web of non-profit and political entities,” “web of shadow entities,” “sham committees.”<sup>33</sup> Still, the Office of General Counsel simply stated the rule that an authorized committee **cannot** be affiliated with an unauthorized committee. MUR 6852 comes to the same conclusion, in a footnote.<sup>34</sup>

Additionally, the Complaint’s focus on Mr. Chakrabarti’s role in AOC for Congress is misplaced. The Commission’s regulations require a “candidate”, and **not** a “candidate or their agents” to form a Leadership PAC or an authorized committee. No matter the involvement of Mr. Chakrabarti, Justice Democrats would not be a Leadership PAC or an authorized committee – as the PAC came before Congresswoman Ocasio-Cortez’s campaign, and not afterwards.

Accordingly, Justice Democrats is an unauthorized committee, and cannot as a matter of law be “affiliated” with AOC for Congress. Justice Democrats was at no point “controlled” by Congresswoman Ocasio-Cortez, so is not a Leadership PAC.

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Certification (October 8, 2003), at <https://www.fec.gov/files/legal/murs/5328/000008CB.pdf>; First General Counsel’s Report (August 18, 2003), at <https://www.fec.gov/files/legal/murs/5328/000008CA.pdf> (last accessed May 17, 2019).

<sup>32</sup> FEC MUR 5672 (Save American Jobs Association, Inc.) / 5733 (Save Jobs Party), General Counsel’s Report at 19, at <https://www.fec.gov/files/legal/murs/5733/00005C51.pdf> (last accessed May 17, 2019).

<sup>33</sup> FEC MUR 5672 (Save American Jobs Association, Inc.) / 5733 (Save Jobs Party), Complaints, available at <https://www.fec.gov/files/legal/murs/5672/00005C3D.pdf> (July 22, 2005), <https://www.fec.gov/files/legal/murs/5672/00005C40.pdf> (August 15, 2005), <https://www.fec.gov/files/legal/murs/5672/00005C42.pdf> (October 18, 2005), <https://www.fec.gov/files/legal/murs/5733/00005C4B.pdf> (March 29, 2006).

<sup>34</sup> FEC MUR 6789 (Zinke for Congress) / 6852 (Special Operations for America, et. al.), First General Counsel’s Report at fn 97 (“. . . we make no recommendations with respect to the assertion that [PAC] is affiliated with [Campaign] as a result of coordination between the two committees. . . As an independent-expenditure-only committee, [PAC] does not meet the definition of an authorized committee, despite the close relationship between [PAC] and [Campaign].”) (September 11, 2017), available at <https://www.fec.gov/files/legal/murs/6852/19044462611.pdf> (last accessed May 17, 2019).

**ii. The Complaint’s allegations that Justice Democrats is an authorized committee, that it is a leadership PAC, and that it violated the Act as an unauthorized committee are baseless.**

From this, the following statements related to these accusations are false:

1. *“As of December 25, 2017, Justice Democrats PAC’s website said its board members Kulinski, Ocasio-Cortez, and Chakrabarti. The website confirms Ocasio-Cortez and Chakrabarti retained majority control of Justice Democrats PAC. Chakrabarti was also serving as the PAC’s Executive Director, further cementing their control.”*

*“Thus, from December 2017 (if not earlier) through at least the end of June 2018, Ocasio-Cortez and Chakrabarti expressly and as a matter of law controlled Justice Democrats PAC.”<sup>35</sup>*

This allegation is simply false. While Mr. Chakrabarti controlled Justice Democrats as its Executive Director, Congresswoman Ocasio-Cortez in no way “controlled” Justice Democrats. As described above, candidates may be involved with PACs – including serving on PAC boards – without an issue of affiliation. The FEC (and OGC) have been very clear in their

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<sup>35</sup> Complaint at 5-6. These false statements related to Congresswoman Ocasio-Cortez’s capacity with Justice Democrats are repeated on:

1. Page 7, 24 (*“Ocasio-Cortez and/or her campaign manager, Chakrabarti, controlled Justice Democrats PAC’s fundraising, expenditures, and disbursements.”*);
2. Page 10, 30, 32, 43 (*“Ocasio-Cortez and Chakrabarti controlled Justice Democrats PAC through both their control of its board, as well as Chakrabarti’s dual role as Ocasio-Cortez’s campaign manager and Justice Democrats PAC’s Executive Director.”*);
3. Page 19 (*“Rather than charging candidates the fair market value of the campaign-related services it was providing, the Chakrabarti-run Brand New Congress LLC subsidized the cost of those services through contributions from the Chakrabarti-run Brand New Congress PAC and Justice Democrats PAC, the latter of which was also controlled by Ocasio-Cortez.”*);
4. Pages 25, 26, 27, 28, 29 (*“Justice Democrats PAC was an authorized committee of Ocasio-Cortez.”*);
5. Page 25 (*“As an authorized committee of Ocasio-Cortez, Justice Democrats PAC was deemed affiliated with her other authorized committees, including her principal campaign committee, AOC for Congress.”*);
6. Page 28 (*“AOC for Congress and Justice Democrats PAC were subject to a single shared contribution limit of \$2,700 per person in connection with each election in 2018.”*); and
7. Page 30, 31, 32 (*“Justice Democrats PAC constituted a leadership PAC of Ocasio-Cortez.”*).

analysis of affiliation – that an authorized committee cannot as a matter of law be affiliated with an unauthorized committee.

2. *“Justice Democrats PAC sought to promote Ocasio-Cortez's election to Congress, raised money to facilitate her election to Congress, and made expenditures to assist in her campaign. . .In particular, Justice Democrats PAC disbursed up to \$605,849.42 to Brand New Congress LLC to subsidize and defray the cost of the campaign services Brand New Congress LLC was providing to Ocasio-Cortez and AOC for Congress.”*<sup>36</sup>

This allegation is false as well – and is an example of the Complaint assuming one fact, then drawing that false assumption to a conclusion most violative of the Act. Justice Democrats made no expenditures to assist AOC for Congress. JD’s spending was solely to promote its own brand, and to provide services to candidates ***which those candidates paid for***.

The falsity of the statement *“Justice Democrats PAC disbursed up to \$605,849.42 to Brand New Congress LLC to subsidize and defray the cost of the campaign services Brand New Congress LLC was providing to Ocasio-Cortez and AOC for Congress”* is discussed at length above, and in Section 2(b) below.

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<sup>36</sup> Complaint at 7, 11. These false statements regarding Justice Democrats’ expenditures on particular elections – ***of which there were none*** – are repeated on:

1. Page 11 (*“Under the control of Ocasio-Cortez and Chakrabarti, Justice Democrats PAC made expenditures, which were at least partly intended to, and had the primary effect of, benefiting Ocasio-Cortez's campaign.”*);
2. Page 24 (*“Ocasio-Cortez and Chakrabarti directed Justice Democrats PAC to make expenditures, including but not limited to disbursements to Brand New Congress LLC, to benefit Ocasio-Cortez.”*);
3. Page 31 (*“Justice Democrats PAC made expenditures on behalf of Ocasio-Cortez despite being an unauthorized leadership PAC of hers.”*); and
4. Page 32 (*“Justice Democrats PAC made coordinated expenditures with AOC for Congress to benefit and further Ocasio-Cortez's congressional campaign.”*);
5. Page 32 (*“While under the control of Ocasio-Cortez and Chakrabarti, Justice Democrats PAC made expenditures in support of Ocasio-Cortez's campaign. Specifically, Justice Democrats PAC paid \$605,849.42 to Brand New Congress LLC to provide campaign services for AOC for Congress and other far-left progressive Democrats.”*); and
6. Page 35, 36 (*“Justice Democrats PAC provided in-kind contributions to AOC for Congress by. . .Making expenditures for the benefit of Ocasio-Cortez while it was subject to the control of Ocasio-Cortez and Chakrabarti, who also ran Ocasio-Cortez's campaign and AOC for Congress.”*).



3. *“Because these expenditures were made subject to Ocasio-Cortez and Chakrabarti's control, they are deemed coordinated with Ocasio-Cortez, 11 C.F.R. § 109.20(a), and therefore constitute in-kind contributions to Ocasio-Cortez's campaign, id. § 109.20(b).”*<sup>37</sup>

Like the entirety of the complaint, the allegation is false and without any legal logic or relevance. Congresswoman Ocasio-Cortez did not “control” Justice Democrats. Additionally, Justice Democrats did not engage in any independent expenditures, and did not engage in expenditures to advocate for the success or defeat of a particular candidate. Mr. Chakrabarti was an uncompensated Executive Director to Justice Democrats through June of 2018, which did not engage in any expenditures to support Congresswoman Ocasio-Cortez’s election (instead, providing services of compensated employees at cost to offset a contribution).

The Complaint does not identify any communication paid for by Justice Democrats, nor does it identify the content of any communication by the PAC – *likely because they do not exist*.

Notwithstanding this, the Complainant’s reliance upon 11 C.F.R. § 109.20 is completely inapplicable to the allegations of the complaint. This provision regulates whether an independent communication is attributable to a clearly identical federal candidate. Neither BNC PAC nor JD made or disclosed any independent expenditures.

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<sup>37</sup> Complaint at 11. These false statements relating to the functioning of the FEC’s coordination standards are repeated on:

1. Page 13 (“*Justice Democrats PAC coordinated its expenditures with Ocasio-Cortez and AOC for Congress, both through Ocasio-Cortez's and Chakrabarti's service on its board, as well as through Chakrabarti's dual role as Ocasio-Cortez's campaign manager and Justice Democrats PAC's Executive Director. Accordingly, its expenditures relating to Ocasio-Cortez are coordinated and constitute in-kind contributions.*”);
2. Page 32 (“*Justice Democrats PAC made coordinated expenditures with AOC for Congress to benefit and further Ocasio-Cortez's congressional campaign.*”);
3. Page 33 (“*Some or all of the \$605,849.42 total payments Justice Democrats PAC made to Brand New Congress LLC to provide campaign services to Ocasio-Cortez must be deemed coordinated expenditures with, and therefore in-kind contributions to, AOC for Congress.*”); and
4. Page 36, 37 (“*Brand New Congress LLC made coordinated expenditures with AOC for Congress to benefit and further Ocasio-Cortez's congressional campaign.*”).

4. “*Ocasio-Cortez, acting through AOC for Congress and Justice Democrats PAC, accepted illegal contributions from Chakrabarti that exceeded the joint limit these committees shared.*”<sup>38</sup>

This allegation is false. AOC for Congress could not be “affiliated” with Justice Democrats, as a matter of law. Accordingly, they do not share contribution limits.

**b. Counts XI, XII, XIII, XIV: Brand New Congress LLC *in no way* operated an “illegal subsidy scheme.” The actions of the Parties were at all times compliant with the Act, and structured with compliance in mind.**

**i. The FEC has generally deferred to vendors to determine their own pricing model. As a *bona fide* vendor of political consulting services, Brand New Congress LLC set its own prices.**

The Complaint hinges many of its arguments on what it calls an “illegal subsidy scheme” – the false assertion that Brand New Congress LLC was set up to “funnel” money from JD and BNC PAC to candidates, in the form of services rendered. In fact, the Complaint does not state any facts that charge that Brand New Congress LLC did not charge the “usual and normal” rate for its services.<sup>39</sup>

This assertion is unfounded as an initial matter for the reasons stated above – that the Complaint mixes the timing of the payments from the PACs for services related to candidate recruitment, and services provided to the candidates for operations. In addition to this, Brand New Congress LLC’s prices were uniformly applied amongst all of its clients – no one client (PAC or candidate) was given a favorable deal over another. As the numbers show, there was simply no attempt to subsidize candidate work with PAC work.

From this, the Foundation’s accusations of an “illegal subsidy” are simply false. The Complaint makes wildly false statements of fact related to these accusations – and even (futilely) attempts to twist the undersigned counsel’s words against the Parties.<sup>40</sup> The Complaint does not, however, point to *any* example of Brand New Congress LLC selling its services for less than the usual or normal charge, or engage in any analysis of how those prices differed from prevailing market rates. Instead, the Complaint *assumes* that the candidates received discounted rates, which is untrue. Nevertheless, the Foundation’s assumptions cannot be the valid basis of a proper complaint.

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<sup>38</sup> Complaint at 9.

<sup>39</sup> See 11 C.F.R. § 100.7(a)(1)(iii)(A) (standard for a proper complaint).

<sup>40</sup> See Complaint at 15-16, 22.

## 1. Brand New Congress LLC's operations were designed to comply with the Act.

Brand New Congress LLC's pricing model was the subject of a great deal of consideration in the LLC's inception, in order to ensure compliance with the Act. Given that JD and BNC PAC initially sought to recruit a candidate for Congress in every congressional district in the country – over 400 – and to assist in their campaigns under a fee-for-service structure, both tax and campaign finance considerations led to the creation of Brand New Congress LLC.

Brand New Congress LLC's contracts with the candidates – Congresswoman Ocasio-Cortez and the twelve other candidates discussed above – were appropriately arms-length.<sup>41</sup> The candidates had the opportunity to make requested changes to Brand New Congress LLC's contract, and to be represented by their own counsel – and many of them did make changes, and were represented by counsel. Brand New Congress LLC's contracting process was similar to that of any other political consulting vendor.

Phase 1 of Brand New Congress LLC's operations – the process of identifying and recruiting candidates to run for office on a national scale – were paid by retainers from Justice Democrats and Brand New Congress PACs. In Phases 2 and 3 – when candidates began to run for office – Brand New Congress LLC shifted from a retainer model to a hybrid of an “*a la carte*,” “percentage of fundraising,” and “resource used model – where:

- Most services were based on flat-fee per-service (that clients could select which they wanted),
- Digital fundraising services were based on the amount of raised by the client in that time period, and
- Operations and compliance were based on the amount of staff time used by the client.

An example of such a contract is attached as Exhibit B, which represented this hybrid model. A billing schedule for Brand New Congress LLC's June work – which shows how certain services were offered for flat fees ***standard for all clients*** and others based on other metrics – is attached as Exhibit C.

The “economies of scale” model is and was viable in that the more candidates that the PACs recruited, the more potential clients that would be the services offered by the LLC.<sup>42</sup>

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<sup>41</sup> With regards to Brand New Congress LLC's contracts with JD and BNC PAC, *see* FEC Advisory Opinion 1991-32 at 11-12 (CEC, Inc.) (holding that even contracts not negotiated at arms' length are permissible if for the “usual and normal charge”), available at <https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf> (last accessed May 17, 2019).

<sup>42</sup> *See, e.g.*, FEC MUR 5939 (MoveOn.org Political Action), ***FEC voted 5-0 to find no reason to believe*** related to a volume discount made in the ordinary course of business. *See* Certification (April 9, 2009), available at <https://www.fec.gov/files/legal/murs/5939/29044241247.pdf>, First General Counsel's Report

By the time that Brand New Congress LLC decided to cease operations, it had roughly 20 staff members in five different divisions (Field, Communications, Operations and Technology, Recruitment, and Management) – which included multiple staffers in an operations department, to track billings, client accounts-receivable, and the like. The makeup of Brand New Congress LLC was like any other “campaign in a box” political consulting vendor – and its pricing models were consistently thought of with the Act in mind.

**2. Brand New Congress LLC’s pricing model was universally applied to all of its clients – and was permissible under FEC guidance.**

As an initial matter, Brand New Congress LLC – as a single-member limited liability company, with Mr. Chakrabarti as its sole member – *was not a corporation, nor an LLC that chose corporate taxation*. Accordingly, it was not subject to the same, strict legal standard as a corporation, including but not limited to rules about profit motivation and extension of credit.<sup>43</sup>

With regards to the prices charged by Brand New Congress LLC to its clients, the FEC generally defers to vendors to set their own prices as long as they are the “usual and normal charge”.<sup>44</sup> MUR 6916 is most persuasive on this point. In MUR 6916, a complaint was filed

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(March 23, 2009), at <https://www.fec.gov/files/legal/murs/5939/10044262997.pdf> (last accessed May 17, 2019).

<sup>43</sup> See:

- 11 C.F.R. § 116.3;
- FEC Advisory Opinions:
  - 2012-31 (AT&T) (a corporation’s rate structure lower than their usual charge was not a “contribution”, since their rates covered the company’s costs and profit, and was offered on the same terms to all political committees); offered on the same terms to all political committees), available at <https://www.fec.gov/files/legal/aos/2012-31/AO-2012-31.pdf>;
  - 2008-10 (VoterVoter.com), available at <https://www.fec.gov/files/legal/aos/2008-10/AO-2008-10.pdf>,
  - 1994-30 (Conservative Concepts / Pence) at <https://www.fec.gov/files/legal/aos/1994-30/1994-30.pdf>,
  - 1989-21 (Create-a-Craft), at <https://www.fec.gov/files/legal/aos/1989-21/1989-21.pdf>;
- MURs 5474/5539, General Counsel’s Report (May 25, 2005), at <https://www.fec.gov/files/legal/murs/5474/000045EB.pdf> (last accessed May 17, 2019).

<sup>44</sup> 11 C.F.R. § 100.52(d) (“ . . . usual and normal charge for any services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.”); see also:

against a data services vendor – where, like this Complaint, the vendor was accused of charging certain clients less than others, based on FEC reports that showed varying amounts paid to the vendor. The FEC voted 6-0 against finding reason to believe, using the following criteria:

1. The vendor used a “consistent market driven pricing schedule across the board”, a “fixed criteria to set prices,”
2. No “favored deals” were given to candidates or committees;
3. Contracts were negotiated at arms-length; and
4. Data services were a legitimate business in the marketplace.<sup>45</sup>

- FEC Advisory Opinions:

- 2004-06 (Meetup) (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 candidates. . . and other members of the. general public who are similarly situated with respect to the respective classes of candidates and political committees.”), available at <https://www.fec.gov/files/legal/aos/2004-06/2004-06.pdf>;
- 2014-09 (Reed Marketing) (a corporation “covering its costs” cited as a consideration for “usual and normal charge”), at [https://www.fec.gov/files/legal/aos/2014-09/AOR-2014-09-\(REED\)-Final-\(8-14-14\).pdf](https://www.fec.gov/files/legal/aos/2014-09/AOR-2014-09-(REED)-Final-(8-14-14).pdf);

- MURs:

- 6916 (Democratic National Committee, et. al.), ***FEC found no reason to believe 6-0.*** See Certifications (March 15, 2016), at <https://www.fec.gov/files/legal/murs/6916/16044392649.pdf>, <https://www.fec.gov/files/legal/murs/6916/16044392646.pdf>, First General Counsel’s Report (October 22, 2015), at <https://www.fec.gov/files/legal/murs/6916/16044392597.pdf>;
- 6435 (Charles Rangel), ***FEC did not find reason to believe 6-0***, where both a campaign and Leadership PAC paid the same law firm for services, on the basis that both paid separately for separate services rendered. See Certification (November 6, 2014), at <https://www.fec.gov/files/legal/murs/6435/14044364425.pdf>; First General Counsel’s Report (September 30, 2014), at <https://www.fec.gov/files/legal/murs/6435/14044364410.pdf>;
- 6040 (Charles Rangel), ***FEC found reason to believe 6-0***, when a campaign was given preferential treatment from other customers for rates on a rental, and paid “less than usual and normal charge. . . under terms and conditions that the landlord did not offer to similarly situated non-political committee tenants”. See General Counsel’s Report #2 (August 11, 2011), at <https://www.fec.gov/files/legal/murs/6040/12044312868.pdf> (last accessed May 17, 2019).

Unlike in MUR 6916, Brand New Congress LLC's *only* clients were committees under the Act – federal candidates, JD, and BNC PAC. From this, the traditional analysis of “usual and normal charge for similarly situated non-political clients” is inapplicable. While Brand New Congress LLC did not foreclose the possibility of providing services to corporations, nonprofits, or other groups that were not “political committees” under the Act, the LLC wound-down its operations before it had the opportunity to do so.

Contracts with the Brand New Congress LLC's candidate clients – the core of the Foundation's allegations – were negotiated at arms-length, where the candidates had the opportunity to make changes to the contracts, and to consult their own counsel – just as with any other political vendor. It goes without saying that the political consulting services that Brand New Congress LLC provided are a legitimate business in the marketplace.<sup>46</sup>

Like Catalist in MUR 6916, Brand New Congress LLC applied its prices across-the-board – each client was subject to the same pricing model, and no “favored deals” were given to particular candidates or committees. *This is clear in the attached Exhibit C*, a billing schedule for Brand New Congress LLC's June work, which shows that the candidates were charged the same as JD and BNC PAC for the different packages selected, for digital fundraising services, and compliance and operational support.

Even setting aside the test that the Office of General Counsel discussed in MUR 6916, the Complaint conveniently disregards the timing of payments made by the Parties. As described at length above, three-quarters of what Justice Democrats and Brand New Congress PACs would pay to Brand New Congress LLC were for services rendered *during the candidate recruitment phase*, and not while the LLC simultaneously providing services to the thirteen candidates.

Precedent cited by the Foundation is easily distinguishable. Advisory Opinion 1994-33, which is primarily relied on by the Foundation – is about a corporation, and not a limited liability company with a single, individual owner (like Brand New Congress LLC).<sup>47</sup> Further cutting against the Foundation's argument, Advisory Opinion 1994-33 clearly states that covering administration and overhead expenses is a predominant consideration for the FEC, as well as that

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<sup>45</sup> MUR 6916 (Democratic National Committee, et. al.), Response from Catalist, LLC (April 8, 2015), available at <https://www.fec.gov/files/legal/murs/6916/16044393229.pdf>, First General Counsel's Report (October 22, 2015), at <https://www.fec.gov/files/legal/murs/6916/16044392597.pdf> (last accessed May 17, 2019).

<sup>46</sup> See Vox, “Trump exposed the limits of political consulting. But the industry will continue to thrive” (November 21, 2016) (“But the multibillion-dollar business of politics continues to thrive for reasons other than the services it provides. So long as politicians must secure vast sums to insure their electoral survival, political consultants will play a critical role in raising and spending money in campaigns.”), available at <https://www.vox.com/polyarchy/2016/11/21/13699244/trump-political-consulting-limits> (last accessed May 17, 2019).

<sup>47</sup> See FEC Advisory Opinion 1994-33 (VITEL), available at <https://www.fec.gov/files/legal/aos/1994-33/1994-33.pdf> (last accessed May 17, 2019).

an up-front retainer or regular billing are permissible methods of operation.<sup>48</sup> Brand New Congress LLC made every attempt to stay in operation, but was forced to wind-down its operations.

Advisory Opinions 1991-18 and 1991-32 run contrary to the Foundation’s argument as well – as concerns about impermissible corporate contributions or extension of credit are nonexistent here.<sup>49</sup> Citing Advisory Opinion 1991-32 to stand for the proposition that Brand New Congress LLC operated at a sustained “long term” loss is also unfounded, as the entity was only in operation for *eight* months. Even, *assuming arguendo*, if losses were incurred, the LLC wound-down its services before any could be considered “long term.”<sup>50</sup>

**ii. The Complaint makes numerous false statements about Brand New Congress LLC’s operations.**

From this, the following statements related to Brand New Congress LLC’s operations are false:

1. *“Respondent Representative Alexandria Ocasio-Cortez and her campaign manager, Saikat Chakrabarti, engaged in a brazen scheme involving multiple political and commercial entities under their control to violate federal election law, circumvent federal contribution limits and reporting requirements, and execute an unlawful subsidy scheme.”*<sup>51</sup>

This statement is false. Brand New Congress LLC operated as a *bona fide* vendor, charging its clients for its services rendered, based on a universally applied pricing model across its client base. No “subsidy scheme” existed, as the LLC did not have candidate clients in Phase 1 (as Phase 1 was centered around potential candidate *recruitment*), and Brand New Congress LLC charged clients in Phase 2 of its operations based on the universally-applied model described above.

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<sup>48</sup> FEC Advisory Opinion 1994-33 at 3 (VITEL).

<sup>49</sup> FEC Advisory Opinions 1991-18 (New York Democrats), available at <https://www.fec.gov/files/legal/aos/1991-18/1991-18.pdf>; 1991-32 (CEC, Inc.) at <https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf> (last accessed May 17, 2019).

<sup>50</sup> FEC Advisory Opinion 1991-32 at 10-11 (CEC, Inc.) at <https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf> (last accessed May 17, 2019).

<sup>51</sup> Complaint at 2.

2. *“Beginning in 2017, Ocasio-Cortez and several other far-left progressive Democratic candidates paid Brand New Congress LLC a total of over \$170,000 to run their campaigns and provide other campaign-related services. Fueled by hundreds of thousands of dollars in additional payments from political committees controlled by Ocasio-Cortez and Chakrabarti - Brand New Congress PAC and Justice Democrats PAC - Brand New Congress LLC provided those candidates well over a half-million dollars’ worth of campaign services.”*<sup>52</sup>

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<sup>52</sup> Complaint at 2. These false statements related to Brand New Congress LLC’s operations as a vendor are repeated on:

1. Page 2 (*“Brand New Congress provided cheap campaign services to Ocasio-Cortez and other candidates in part by failing to amortize its overhead and infrastructure costs among the amounts it charged them. Rather than recouping part of these fixed costs from its supposed clients, Brand New Congress LLC bore these overhead and infrastructure costs itself, relying on money funneled to it by Brand New Congress PAC and Justice Democrats PAC”*),
2. Page 3 (*“By funneling hundreds of thousands of dollars to Brand New Congress LLC to subsidize the services it was providing candidates, Brand New Congress PAC and Justice Democrats PAC likewise violated contribution limits and reporting requirements.”*);
3. Page 11 (*“In particular, Justice Democrats PAC disbursed up to \$605,849.42 to Brand New Congress LLC to subsidize and defray most of the cost of the campaign services Brand New Congress LLC was providing to Ocasio-Cortez and AOC for Congress.”*);
4. Page 19 (*“Despite receiving a total of only \$173,101.92 from Ocasio-Cortez and the other Involved Candidates, Brand New Congress LLC provided campaign-related services to them far in excess of that amount, likely in excess of \$1 million.”*);
5. Page 19 (*“Brand New Congress PAC, which Chakrabarti ran, disbursed a total of \$261,165.18 to Brand New Congress LLC, which Chakrabarti owned and controlled, over the course of 2017 to subsidize the cost of Brand New Congress LLC’s overhead and operations and allow it to provide services to Ocasio-Cortez and the other Involved Candidates below their fair market value.”*);
6. Page 20 (*“Justice Democrats PAC, which Ocasio-Cortez and Chakrabarti controlled, disbursed a total of \$605,849.12 to Brand New Congress LLC, which Chakrabarti owned and controlled, over the course of 2017 to subsidize the cost of Brand New Congress LLC’s overhead and operations and allow it to provide services to Ocasio-Cortez and the other Involved Candidates below their fair market value.”*);
7. Page 21 (*“Between the two of them, Brand New Congress PAC and Justice Democrats PAC funneled a total of \$867,014.30 to Brand New Congress LLC to defray its operating expenses and subsidize its provision of campaign services to Ocasio-Cortez and the other Involved Candidates far below market value, without a commercial profit motivation, and without recouping an appropriate share of its overhead and infrastructure costs from those “client” candidates.”*);
8. Page 22 (*“By funneling funds to Brand New Congress LLC to defray the cost of its campaign-related services for Ocasio-Cortez and the other Involved Candidates, Brand New Congress PAC*



While the candidates did pay Brand New Congress LLC for strategic consulting services rendered, the conclusion it draws completely disregards *when* payments were made to the LLC. During Phases 2 and 3 of Brand New Congress LLC's operations, Justice Democrats and Brand New Congress PACs paid the LLC \$223,755.32, which represented the value of services provided to the two PACs based on the billing models described above.

There is simply no substantiation or fact cited that Brand New Congress LLC "provided those candidates well over a half-million dollars' worth of campaign services." It is extremely common for political consultants to have both candidate and PAC clients, and for those entities

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*and Justice Democrats PAC made excessive, unreported contributions to Ocasio-Cortez and the Involved Candidates.");*

9. Page 22 ("*Through this complex web of shadowy entities, Ocasio-Cortez and Chakrabarti ensured the flow of hundreds of thousands of dollars of unreported, illegal, dark-money contributions to aid the campaigns of Ocasio-Cortez and other far-left Progressive Democrats.");*");
10. Page 23 ("*Justice Democrats pumped \$605,849.12 into Brand New Congress LLC, allowing it to make over a half-million dollars' worth of expenditures to support far-left progressive Democrat candidates without having to publicly disclose the nature, amounts, or purposes of those disbursement.");*");
11. Page 27 ("*The funds Justice Democrats PAC provided to Brand New Congress LLC were used in part to defray the campaign expenses not only of Ocasio-Cortez, but other far-left progressive Democratic candidates.");*");
12. Page 33 ("*Justice Democrats PAC paid \$605,849.42 to Brand New Congress LLC to provide campaign services for AOC for Congress and other far-left progressive Democrats.");*");
13. Page 38 ("*Justice Democrats PAC, which Chakrabarti and Ocasio-Cortez controlled, paid a total of \$605,849.42 to Brand New Congress LLC primarily or exclusively to provide campaign services for, and run the campaigns of, Ocasio-Cortez and the other Involved Candidates.");*");
14. Page 39 ("*Brand New Congress PAC, which Chakrabarti controlled, paid a total of \$261,165.18 to Brand New Congress LLC primarily or exclusively to provide campaign services for, and run the campaigns of, Ocasio-Cortez and the other Involved Candidates.");*");
15. Page 39 ("*Relying on these infusions totaling \$867,014.60-as well as quite likely additional dark money funds Chakrabarti engineered-Brand New Congress LLC provided campaign services to Ocasio-Cortez and the other Involved candidates with a market value that far exceeded the \$173,101.92 they paid Brand New Congress LLC. The fair market value of the services Brand New Congress LLC provided Ocasio-Cortez and the other Involved Candidates likewise exceeded the total amount Brand New Congress LLC received from them, even taking into account amounts those candidates paid to Brand New Congress LLC indirectly through Chakrabarti-controlled intermediaries such as Justice Democrats PAC.");*");
16. Page 44 ("*Justice Democrats PAC transferred \$605,849.42 to Brand New Congress LLC to pay Justice Democrats PAC's staff(cross-designated as Brand New Congress LLC employees) to run the campaigns and provide other campaign-related services without a commercial profit motivation at below market prices to the candidates Justice Democrats PAC supported.");*");

to pay more (or less) based on the services that consultant provides to those clients. That is precisely the situation here, as evidenced by Brand New Congress LLC's internal pricing document attached as Exhibit C.

The Complaint does not state any facts whatsoever as to the *amounts* that candidates were charged – the Complaint's accusation of wrongdoing because “the amount the PACs paid is larger” (which is irrelevant, as they received more services) is completely misplaced.

3. *“Ocasio-Cortez is one of several far-left Progressive Democratic candidates for Congress who provided campaign funds to Justice Democrats PAC for essential campaign functions. . .Justice Democrats PAC, in turn, provided a total of \$605,849.12 to Brand New Congress LLC, to actually provide those services to her and other congressional candidates on its behalf.”*<sup>53</sup>

As explained above, this particular statement is false, as it confuses the timing of events. Candidates paid Brand New Congress LLC for services rendered between their launches and August of 2017. Justice Democrats did not begin providing fee-for-service work for candidates until after Brand New Congress LLC had begun to wind-down its operations.

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<sup>53</sup> Complaint at 12-13. This false statement related to the separate arrangements between Brand New Congress PAC and Brand New Congress LLC, Justice Democrats and Brand New Congress LLC, and the candidates and Brand New Congress LLC (and *later – not at the same time* – the candidates and Justice Democrats) are repeated on:

1. Page 13 (“*The fair market value of the services Justice Democrats PAC contracted with Brand New Congress LLC to provide to Ocasio-Cortez and her candidate committee far exceeded the amount Ocasio-Cortez paid to Justice Democrats PAC.*”);
2. Page 14 , 31 (“*Additionally, AOC for Congress paid Justice Democrats PAC \$41,848.44 to essentially run its campaign. Justice Democrats PAC paid Brand New Congress LLC \$605,849.12 to provide such campaign-related services to thirteen far-left Progressive Democratic candidates, including Ocasio-Cortez.*”);
3. Page 16 (“*The campaign committees of thirteen far-left progressive Democratic candidates for Congress (collectively, "Involved Candidates") paid Justice Democrats PAC a total of \$173,101.92 for "Strategic Consulting" over the course of the 2018 campaign cycle (2017-2018).*”); and
4. Page 34, 37 (“*Justice Democrats PAC, on its own and by subcontracting with Brand New Congress LLC, provided far more than \$41,818.44 in campaign-management and other campaign.- related services to AOC for Congress, even though AOC for Congress paid it only \$41,818.44.*”).

4. *“Brand New Congress LLC was operating at a loss-sustaining itself through constant infusions of cash from Ocasio Cortez's and Chakrabarti's PACs- specifically to subsidize cheap assistance for Ocasio-Cortez and other candidates at rates far below market value and without a commercial profit motivation.”*<sup>54</sup>

This statement is false, and once again misstates the timing of events to fit its own narrative. Congresswoman Ocasio-Cortez did not join the board of directors of Justice Democrats until December of 2017, months after Brand New Congress LLC had ceased operations (and even then, she did not control day-to-day activities of the committee). Three-quarters of payments made by Justice Democrats and Brand New Congress PACs were for services rendered for candidate recruitment, before any candidate began their run for office.

With regards to the statement that Brand New Congress LLC provided services at “rates far below market value and without a commercial profit motivation,” the FEC is deferential to vendors to set their own pricing as long as it is widely applied across their client-base (even if potential losses are anticipated).<sup>55</sup> There is no violation in what is effectively an issue of microeconomic supply and demand in the short-term, even with Advisory Opinion 1991-32’s

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<sup>54</sup> Complaint at 2. These false statements related to the pricing of Brand New Congress LLC’s services are repeated on:

1. Page 19, 22: (*“Rather than charging candidates the fair market value of the campaign-related services it was providing, the Chakrabarti-run Brand New Congress LLC subsidized the cost of those services through contributions from the Chakrabarti-run Brand New Congress PAC and Justice Democrats PAC, the latter of which was also controlled by Ocasio-Cortez.”*);
2. Page 19: (*“Brand New Congress LLC impermissibly subsidized the campaigns of Ocasio-Cortez and the other Involved Candidates by providing services at rates that did not reflect an appropriate share of Brand New Congress LLC's overhead cost of the substantial infrastructure it required to be able to provide those services. By failing to amortize the cost of its overhead among the amounts it charged to Ocasio-Cortez and the other Involved Candidates, Brand New Congress LLC provided its services to them at below fair market value*
3. Page 19, 22 (*“Brand New Congress LLC was not operated with the intent, or for the purpose, of generating a profit by providing services to Ocasio-Cortez and the other Involved Candidates. Rather, it was established to operate at a loss by failing to recover the full cost of providing its services to Ocasio-Cortez and the other Involved Candidates, ultimate leading to its termination.”*); and
4. Page 34, 39 (*“Ocasio-Cortez's campaign manager, Chakrabarti, was on all sides of all of these transactions. He created, owned, and/or controlled all of the entities involved. He operated these entities as a shell game to evade contribution limits and provide heavily subsidized services at well below market value to AOC for Congress without a commercial profit motivation and without seeking to recover an appropriate share of the entities' overhead or infrastructure costs.”*).

<sup>55</sup> See FEC Advisory Opinion 1991-32 at 10-11 (CEC, Inc.) at <https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf> (last accessed May 17, 2019).

rebuttable presumption of a “contribution” for long-term, sustained losses. Brand New Congress LLC wound down its operations before any potential losses could be considered long-term, and charged its clients based on the same pricing schedule.

5. *“Justice Democrats PAC and Brand New Congress LLC were alter egos, operating with the same staff and subject to the same control.”*<sup>56</sup>

This statement is addressed separately, as it must be noted that it would not give rise to any violation of the Act even if true.<sup>57</sup>

**c. Count XV, XIV, XVII, XVIII: Brand New Congress LLC is not a political committee under the Act.**

The Complaint asserts that Brand New Congress LLC is a “political committee,” and was required to file registration statements and reports of its activities with the Commission.<sup>58</sup> In a complaint filled with accusations that “throw violations at the Parties and see what sticks”, this is the most unbelievable.

Put simply, Brand New Congress LLC *cannot* in any circumstance be a “political committee” under the Act, as it is solely one “person.” Brand New Congress LLC is a single-member LLC, owned by Mr. Chakrabarti – and the definition of “political committee” requires a “group of persons.”<sup>59</sup> From this, Brand New Congress LLC could not be a “political committee,” could not be “affiliated” with a political committee, and could not be required to file disclosure reports.

Additionally, as Brand New Congress LLC did not engage in any express advocacy communications, solicitations, or electioneering communications, Count XVII would be inapplicable even if the Foundation’s wildly inaccurate accusation were correct. There is simply no legal or factual basis to argue that Brand New Congress LLC *could be* a “political committee” under the Act.

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<sup>56</sup> Complaint at 23.

<sup>57</sup> Complaint at 23, 43.

<sup>58</sup> Complaint at 40-43.

<sup>59</sup> See 52 U.S.C § 30100(4)(A); 11 C.F.R. § 100.5. See also FEC Advisory Opinions 2008-10 (VoterVoter.com), available at <https://www.fec.gov/files/legal/aos/2008-10/AO-2008-10.pdf>; 2009-02 (True Patriot Network) at [https://www.fec.gov/files/legal/aos/2009-02/AOR-2009-02-\(TPN\)final.pdf](https://www.fec.gov/files/legal/aos/2009-02/AOR-2009-02-(TPN)final.pdf), 2009-13 (Black Rock Group) (holding that a single-member LLC cannot be a “group of persons”) at [https://www.fec.gov/files/legal/aos/2009-13/AO-2009-13-Black-Rock-Group\\_final.pdf](https://www.fec.gov/files/legal/aos/2009-13/AO-2009-13-Black-Rock-Group_final.pdf); Advisory Opinion 2009-13, Statement of Reasons of Commissioners Petersen, Hunter, and McGahn (October 15, 2009), available at <https://www.fec.gov/files/legal/aos/2009-13/1084940.pdf> (last accessed May 17, 2019).

**d. Count XIX: Disbursements to Brand New Congress LLC were properly reported as “strategic consulting.”**

The Complaint asserts that Brand New Congress LLC engaged in “shell transactions” to allow “those funds to be spent without any public reporting or accountability.” *This assertion is false*, as the Parties sought and followed the guidance of the FEC’s Reports and Analysis Division on precisely how payments to Brand New Congress LLC (as a vendor) would be reported.

The core legal question presented in this Count is whether a committee is required to itemize (or provide a memo entry) for subvendors used by a consulting firm such as Brand New Congress LLC. According to the Commission’s extensive precedent on the subject, the answer to this question is “no.”

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

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

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

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

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

In her email, Ms. Chacona cited an SEIU COPE 2008 audit report as substantiation, where the FEC did not find a violation where SEIU COPE had “. . .transferred \$14,427,267 to SEIU, its connected organization, which subsequently disbursed the funds to various payees on behalf of SEIU COPE. SEIU COPE reported the payments as independent expenditures with the purpose of door-to-door voter ID and get-out-the-vote efforts on behalf of Barack Obama or opposing John McCain.”<sup>60</sup>

The Final Audit Report noted that the FEC’s 3-3 vote on the audit finding was in part because “Some Commissioners concluded that additional itemization and reporting of the ultimate payees of the independent expenditures was necessary, since the lack of itemization of these independent expenditures limited the Audit Division’s ability to verify the dates of the public dissemination for the independent expenditures, the timeliness of any 24-hour or 48-hour notices filed, or the use of any proper disclaimers for any public communications contained in those expenditures” – *which is not the case in this situation*.<sup>61</sup>

In this situation, none of the Parties engaged in independent expenditures, so there is no concern about the timeliness of reports for any secondary expenditures made by subvendors. Like SEIU COPE, the committees – AOC, BNC PAC, and JD – properly identified the purpose of their payments to Brand New Congress LLC for “strategic consulting,” which is an acceptable expenditure purpose.<sup>62</sup>

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

**1. 2013 Interpretive Rule**

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

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

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<sup>60</sup> FEC, “Final Audit Reports of the Commission on SEIU COPE, January 1, 2007 – December 31, 2008” (May 18, 2011), available at [https://transition.fec.gov/audits/2008/SEIU\\_COPE\\_Service\\_Employees\\_International\\_Union\\_Committee\\_on\\_Political\\_Education/FinalAuditReportoftheCommission1188234.pdf](https://transition.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/FinalAuditReportoftheCommission1188234.pdf); Amended Certification (May 18, 2011), at [https://transition.fec.gov/audits/2008/SEIU\\_COPE\\_Service\\_Employees\\_International\\_Union\\_Committee\\_on\\_Political\\_Education/VoteCertification-ProposedFinalAuditReport1188232.pdf](https://transition.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/VoteCertification-ProposedFinalAuditReport1188232.pdf) (last accessed May 17, 2019).

<sup>61</sup> FEC, Amended Certification for Final Audit Report, SEIU COPE, January 1, 2007 – December 31, 2008 (May 18, 2011), at [https://transition.fec.gov/audits/2008/SEIU\\_COPE\\_Service\\_Employees\\_International\\_Union\\_Committee\\_on\\_Political\\_Education/VoteCertification-ProposedFinalAuditReport1188232.pdf](https://transition.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/VoteCertification-ProposedFinalAuditReport1188232.pdf) (last accessed May 17, 2019).

<sup>62</sup> FEC, “Purposes of disbursement” (rev. August 21, 2018), available at <https://www.fec.gov/help-candidates-and-committees/purposes-disbursement/> (last accessed May 17, 2019).

- *“The committee reimburses an individual who used personal funds to pay committee expenses aggregating more than \$200 to a single vendor;*
- *The committee’s payment of its credit card bill includes charges of more than \$200 to a single vendor; and*
- *In the case of an authorized committee, the candidate used personal funds to pay committee expenses aggregating more than \$200 to a single vendor without receiving reimbursement.”*<sup>63</sup>

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

A committee reading this guidance would have no indication that ultimate payees *besides the ones discussed in the Interpretive Rule* would be reportable – a fact that Commissioners have pointed out in subsequent MURs.<sup>64</sup>

## 2. 2006 Statement of Policy

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

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

*. . . As discussed above, however, if the committee were to provide additional detail with respect to the type of consulting the vendor provided (e.g., ‘Fundraising Consulting’), an unassociated person would have no difficulty discerning the purpose of the disbursement.”*<sup>65</sup>

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<sup>63</sup> FEC, “Interpretive rule on reporting ultimate payees of political committee disbursements” (July 9, 2013), available at <https://www.fec.gov/updates/interpretive-rule-on-reporting-ultimate-payees-of-political-committee-disbursements/> (last accessed May 17, 2019).

<sup>64</sup> MUR 6698 (United Ballot PAC), Statement of Reasons of Commissioners Petersen, Hunter, and Goodman (December 5, 2016) (“The 2013 policy does not address a vendor “purchas[ing] goods and services on the committee’s behalf from subvendors”), available at <https://www.fec.gov/files/legal/murs/6698/16044403706.pdf> (last accessed May 17, 2019).

<sup>65</sup> FEC Notice 2006-23, 72 Fed. Reg. No. 5 at 887-889 (January 9, 2007), available at [https://transition.fec.gov/law/policy/purposeofdisbursement/notice\\_2006-23.pdf](https://transition.fec.gov/law/policy/purposeofdisbursement/notice_2006-23.pdf) (last accessed May 17, 2019).

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

### 3. Advisory Opinions

Thirdly, FEC advisory opinions clearly state that subvendor reporting is not required.<sup>66</sup> Advisory Opinion 1983-25 states the general proposition:

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

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

*. . . Moreover, they do not address the concepts of ultimate payee, vendor, agent, contractor, or subcontractor in this context.”<sup>67</sup>*

The Commission considered multiple facts in coming to this conclusion – that the vendor had a legal existence “separate and distinct from the operations of the Committee”, that “its principals [did] not hold any staff position with the Committee,” and the vendor “conduct[ed] arms-length negotiations” where the committee would not have any interest in the contracts.<sup>68</sup>

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

While Mr. Chakrabarti was the sole member of Brand New Congress LLC while he was the Executive Director of Justice Democrats, ***he did not receive any compensation*** – by way of salary, profit, or otherwise – from Brand New Congress LLC, BNC PAC, JD, or from AOC.

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<sup>66</sup> See FEC Advisory Opinions 1983-25 (Mondale); 1991-32 at 11-12 (CEC, Inc.) (holding that even contracts not negotiated at arms’ length are permissible if for the “usual and normal charge”), [available at https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf](https://www.fec.gov/files/legal/aos/1991-32/1991-32.pdf) (last accessed May 17, 2019).

<sup>67</sup> FEC Advisory Opinion 1983-25 at 2 (Mondale). It is important to note that 2 U.S.C. § 434(b)(5)(A) (now 52 U.S.C. § 30104(b)(5)(A)) ***has not substantively changed since this opinion.***

<sup>68</sup> FEC Advisory Opinion 1983-25 at 3 (Mondale).



From this, there could not have been concerns about self-dealing or profiteering, which the Commission considered in issuing its opinion in 1983-25.

#### 4. FEC MURs

Multiple FEC MURs illustrate that intent to obfuscate reporting requirements is a prerequisite for the FEC to require subvendors to be reported – ***and that intent is not present in this case***. MURs 6961 (Donald J. Trump for President), 6698 (United Ballot PAC), 6510 (Mark Steven Kirk) and 6894 (Steve Russell for Congress) show that this is especially true when a vendor is providing a “broad[] range” of *bona fide* services, then only the main vendor paid is reported.<sup>69</sup>

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

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

*As recently as last October [2016], this appeared to be the unanimous position of the Commission. At that time, all current Commissioners found no reason to believe that a committee violated section 30104(b) by reporting disbursements to its media vendor but not reporting the vendor's subsequent payments to other entities.<sup>70</sup>*

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<sup>69</sup> See: FEC MURs:

- 6961 (Donald J. Trump for President Inc.), First General Counsel’s Report at fn 36 (March 7, 2016) (“The Commission has determined that merely reporting the immediate recipient of a committee’s payment will not satisfy the requirements of 52 U.S.C. § 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds”), available at <https://www.fec.gov/files/legal/murs/6961/17044405316.pdf>, ***FEC did not find reason to believe***;
- 6698 (United Ballot PAC), First General Counsel’s Report (September 4, 2014), at <https://www.fec.gov/files/legal/murs/6698/16044390137.pdf>, Statement of Reasons of Commissioners Petersen, Hunter, and Goodman at 3-4 (December 5, 2016), at <https://www.fec.gov/files/legal/murs/6698/16044403706.pdf>, ***FEC did not find reason to believe***;
- 6510 (Mark Steven Kirk), First General Counsel’s Report at 16 (March 8, 2013), at <https://www.fec.gov/files/legal/murs/6510/13044341743.pdf>, ***FEC did not find reason to believe***;
- 6894 (Steve Russell for Congress), First General Counsel’s Report at 3 (August 26, 2015), at <https://www.fec.gov/files/legal/murs/6894/15044381398.pdf>, ***FEC did not find reason to believe*** (last accessed May 17, 2019).

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

While the Complaint calls this a “shell transaction,” it was in fact a way to service the efforts of multiple candidates and committees, as is commonplace in the political consulting industry. It is for this reason that Brand New Congress LLC sought guidance from the Reports and Analysis Division as to how payments from the entity’s clients would be reported – to follow the Act, not to subvert it.

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

**e. Count XX: Justice Democrats has refunded the cited contributions above the limits.**

Justice Democrats have refunded the cited contribution overages from Kamilka Malwatte (\$500) and Buck Arden (\$2,500). These refunds will appear on JD’s July semiannual report. Given these refunds, the FEC should exercise its prosecutorial discretion, and not take any action on this Count.<sup>71</sup>

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<sup>70</sup> MUR 6698 (United Ballot PAC), Statement of Reasons of Commissioners Petersen, Hunter, and Goodman at 3 (December 5, 2016), available at <https://www.fec.gov/files/legal/murs/6698/16044403706.pdf> (last accessed May 17, 2019), citing:

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

MUR 6894 (Steve Russell for Congress), First General Counsel’s Report at 3 (August 26, 2015) (“... where a committee vendor makes a payment to a sub-vendor for services or goods used in the performance of the vendor’s contract with the committee, a committee need not separately report its vendor’s payment”), at <https://www.fec.gov/files/legal/murs/6894/15044381398.pdf> (last accessed May 17, 2019).

<sup>71</sup> See Heckler v. Chaney, 470 U.S. 821, 831-32 (1985); FEC MUR 7433 (Calvin D. Turnquest for Congress) (dismissing a potential refund issue of \$2,000 for prosecutorial discretion), Dismissal Report

**f. Count XXI: AOC has refunded the cited contributions above the limits.**

AOC for Congress refunded the \$250 contribution overage by Natalie Elsborg cited in the Complaint, disclosed on its April Quarterly report.<sup>72</sup> Given this, the FEC should exercise its prosecutorial discretion, and not take any action on this Count.<sup>73</sup>

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

Given this, it is clear that the allegations made in the Complaint are demonstrably false (or with regards to counts XX and XXI, *de minimis*). A complaint is required to allege facts that give rise to a violation of the Act or Commission regulations. This Complaint does no such thing, and only wildly speculates on allegations that the Parties have clearly refuted in this response.<sup>74</sup>

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(November 28, 2018), available at <https://www.fec.gov/files/legal/murs/7433/19044456121.pdf> (last accessed May 9, 2019).

<sup>72</sup> AOC for Congress, April Quarterly Report, Line 20a, available at <http://docquery.fec.gov/cgi-bin/forms/C00639591/1326159/sb/20A> (last accessed May 17, 2019).

<sup>73</sup> See Heckler v. Chaney, 470 U.S. 821, 831-32 (1985); FEC MUR 7458 (Arizona Republican Party) (dismissing a complaint on in-kind contributions of \$250 per month for prosecutorial discretion), Dismissal Report (February 6, 2019) available at <https://www.fec.gov/files/legal/murs/7458/19044456794.pdf> (last accessed May 9, 2019).

<sup>74</sup> See FEC MUR 7135 (Donald J. Trump for President, et. al.), Statement of Reasons of Commissions Hunter and Petersen at fn 31 (September 6, 2018, spacing for clarity), citing MURs 6296, 6056, 5467 (“We have on multiple occasions shown that the reason to believe standard found at 52 U.S.C. § 30109(a)(2) means more than merely a reason to suspect.

See, e.g., MUR 6296 (Buck for Colorado), Statement of Reasons of Vice-Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 7 (“[T]he Act’s complaint requirements and limits on Commission investigative authority serve no purpose if the Commission proceeds anytime it can imagine a scenario under which a violation may have occurred.”);

MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n.12 (“[T]he RTB standard is not met if the Commission simply 'did not have ... sufficient information to find no reason to believe' .... The Commission must have more than ... unanswered questions before it can vote to find RTB and thereby commence an investigation.”);

MUR 5467 (Michael Moore), First Gen. Counsel’s Rpt. at 5 (“Purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [Act] has occurred.”); see also FEC v. Machinists Non-Partisan Political League, 655 F.2d 380,388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice

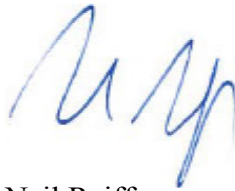
While we respect the Foundation’s right to file complaints against the Parties for what they believe are good-faith violations of the Act and Commission regulations, his political motivation is blatant. When asked by the Daily Mail why he was filing numerous complaints against the Parties, the Foundation’s President Mr. Backer’s response was a political one, and ***not one rooted in law*** – what he described as “a deeply personal labor of love’ related to his disdain for socialism.”<sup>75</sup>

Mr. Backer’s response says it all – that the complaints that he has filed are bogus and have a purely partisan motivation. While outrageous and spurious claims against the Parties may drive clicks and contributions to political committees and nonprofits that he himself controls, they are not rooted in fact or law.

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

[Signature Page Follows]

Sincerely,



Neil Reiff

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as the basis for FEC investigations"); in administrative agencies that are "vested to conduct periodic investigations concerning statutory functions"), available at [https://eqs.fec.gov/eqsdocsMUR/7135\\_2.pdf](https://eqs.fec.gov/eqsdocsMUR/7135_2.pdf) (last accessed May 17, 2019).




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<sup>75</sup> The Daily Mail, “Mediocre cocktail slinger’ Ocasio-Cortez faces THIRD election ethics complaint as pro-Trump PAC’s lawyer claims her chief of staff’s firm illegally did cheap political work for AOC and a dozen other Democrats” (April 3, 2019), available at <https://www.dailymail.co.uk/news/article-6882513/Ocasio-Cortez-faces-election-ethics-complaint-lawyer-calls-mediocre-cocktail-slinger.html> (last accessed May 17, 2019).

David Mitrani

Counsel for:

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

Saikat Chakrabarti,

Brand New Congress, Amy Vilela,  
Treasurer,

Justice Democrats, Natalie Trent, Treasurer,

Brand New Congress LLC,

**[OTHER CANDIDATES].**

## Exhibit A

### Justice Democrats' Executive Director, Saikat Chakrabarti

**“When I look at the FEC report for Justice Democrats in 2017, why are there so many expenditures to "Brand New Congress"?”<sup>76</sup>**

This is a longer answer because we'd like to be as transparent as possible about how we got started and why this is the case.

To give some context, many of the founding members of Justice Democrats also helped start Brand New Congress in April of 2016. At that time, the goal was not just to endorse existing candidates who have campaigns. Our goal with Brand New Congress was to recruit candidates who were not thinking about running already and to actually fully run all of their campaigns as if it was one big presidential race. This was right after the Bernie campaign, so this was our thought for how to recreate that Bernie movement in a giant 400-candidate national race.

This would let us have all kinds of efficiencies that come with a big national race and also, we believed, was one way we could create a national movement around taking over Congress. It would also, we believed, let us recruit different kinds of candidates who may not have had a lot of experience running campaigns but who believed in this big vision to change our country.

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

That way each candidate would not have to become an expert in campaigns -- they would just need to be an expert in the policies and getting the message out. It was definitely a very new idea in the world of politics in the US (though anyone familiar with parliamentary politics in Europe would find this to be a very obvious idea as this is basically how new parties work there), and in hindsight was perhaps too ambitious, but we did believe it could be possible if we could unleash a movement similar in size to the one Bernie had just unleashed. Here's a video of us talking about this model on MSNBC from April of that year:

<https://www.youtube.com/watch?v=rvGtVu8gmtg>

Legally, however, this was incredibly complicated. One thing we knew we needed to have was a Federal PAC (not a SuperPAC -- Federal PACs have a \$5,000 donation limit, and we

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<sup>76</sup> Justice Democrats, “When I look at the FEC report for Justice Democrats in 2017, why are there so many expenditures to "Brand New Congress"?” (May 8, 2018), available at <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> (last accessed May 17, 2019, spacing added).

wanted to make sure that we had a cap on donations). This PAC would be necessary to do the work of policy development and candidate recruiting. So we created Brand New Congress as a PAC.

But actually running the campaigns -- meaning doing direct work for campaigns -- is not something a PAC can do for a candidate for free. If a PAC did free work for a campaign, that would literally be the definition of dark money (technically, a PAC can 'in-kind' work like this, but we'd be capped at \$5,000 worth of work). The FEC puts value on many kinds of campaign work (e.g. direct message consulting, writing press statements, any field work or voter outreach work, etc.). So, we knew that in addition to a PAC to recruit and train candidates, we needed some mechanism to charge the campaigns for the work we'd be doing for them as cheaply as possible while doing it all legally and according to FEC rules.

We originally thought that we could set ourselves up similar to PCCC (boldprogressives.org). They do something similar, where the PAC is set up to do activities like training and recruiting candidates, and then they provide some campaign services for a fee to candidates. However, when we talked to our lawyer, he explained to us that this kind of 'fee-for-service' work has to be a small percentage of a PAC's total work. With BNC, our plan was to essentially run the full campaigns for the vast majority of our candidates, so we were advised that this would definitely be too much fee-for-service work for a Federal PAC to do and still maintain its status as a Federal PAC. The ONLY way to do work for multiple candidates legally at this scale is to create an LLC and act as a vendor.

For that reason, we created Brand New Congress, LLC. To keep things simple, we put all our staff in that LLC and had it act as the vendor for both the PAC and all the candidates. We had in our operating agreement that the goal of the LLC was not to make a profit, and as such, we made our prices as low as possible while still satisfying the FEC's requirement that we are charging something reasonable because, again, if we weren't we would essentially be doing heavily discounted work for candidates and that is illegal and immoral since fighting dark money is literally what we want to do.

To try to make this as clean as possible, we not only had the language in our operating agreement about the LLC's purpose, but we also made sure that Saikat Chakrabarti was the only controlling member of the LLC, and that he took no salary (either from the LLC, from Justice Democrats, or from Brand New Congress the PAC). Saikat is lucky to have a small side business that generates him enough income that he is able to do all of this work as a volunteer.

Fast forward to January. Cenk Uygur and Kyle Kulinski approached us with the idea of starting Justice Democrats. We decided to partner up, so Saikat was a co-founder of Justice Democrats and we decided to keep the same structure because with JD, at that stage, we still wanted to recruit non-traditional candidates and give them the infrastructure to run their campaigns.

The first 10 campaigns we launched in April had this setup -- at that stage we were not sure we'd be able to get to a big national campaign, but we realized that with our LLC structure we had two big advantages: 1) we were able to get a campaign going from 0 to 60 in a very short

period of time and extremely cheaply and 2) we were able to keep DCCC consultants from taking over the campaigns. Our experience with campaigns at this stage has taught us that the DCCC consultants are a big part of the problem -- they push candidates to move away from progressive ideas as the strategy to 'win' and we all know how well that's worked for Democrats. Of course, there are good progressive campaign workers out there too, and so we began to make it our job to try to get as many campaigns as possible to start hiring these progressive workers.

Fast forward to today. JD has moved away from the model of fully running campaigns from the bottom-up and has now backed a number of candidates whose campaign teams are at various stages of formation.

We moved to this model for a few reasons:

- 1) An unprecedented number of progressives began running for office on their own so it started to make sense for us to back those candidates instead of trying to continue putting lots of effort into recruiting new candidates and running their full campaigns,
- 2) A lot of great progressive campaign workers who came out of the Bernie movement have continued working on campaigns, and
- 3) We did not ignite a movement as big as the Bernie Sanders presidential campaign, so our all-in-one model for running these candidates as a big national race no longer made sense.

We still have a number of campaigns where we are doing most of the work, but we also have a number that have a large campaign team doing their work for them and where we help in other ways like providing organizing support or connecting their campaign workers with our supporters. This mix of candidates is something that started to become the case at around August of 2017 as tons of new progressives began running for office, so we made the decision in September of 2017 to move all our staff from the LLC onto Justice Democrats PAC and have moved to a aforementioned 'fee-for-service' model in which we charge for services at-cost because it is no longer a majority of the PAC's business (since the majority of our campaigns don't need to rely fully on us for their work).

This is the reason that when you look at the FEC reports for Justice Democrats from 2017, you will see large expenditures to Brand New Congress, LLC because the entire staff of Justice Democrats was working within that LLC.

TLDR: Justice Democrats started off running full campaigns for candidates and the only way to do that legally is with a vendor. Therefore, since the entire staff of JD was within that vendor, there are large expenditures to Brand New Congress, LLC in 2017. We've since moved to a mix of candidates and therefore are able to do this work through a fee-for-service model through Justice Democrats PAC. All JD staff now work directly for JD and their salaries are published in our latest FEC reports.



## Exhibit D

### Email from Reports and Analysis Division to Counsel

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

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

**To:** Neil P. Reiff

**Subject:** Sub-vendor follow up

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

[http://www.fec.gov/audits/2008/SEIU\\_COPE\\_Service\\_Employees\\_International\\_Union\\_Committee\\_on\\_Political\\_Education/FinalAuditReportoftheComm](http://www.fec.gov/audits/2008/SEIU_COPE_Service_Employees_International_Union_Committee_on_Political_Education/FinalAuditReportoftheComm)

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

-Debbie