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December 4, 2015

BY HAND DELIVERY

Office of the General Counsel **Complaints Examination & Legal Administration** Federal Election Commission 999 E Street, NW Washington, DC 20463

OFFICE OF GENERAL

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Morgan Lewis

Re: Matter Under Review 6971 (Emil Henry, Respondent)

Dear Sir or Madam:

This response is respectfully submitted on behalf of Respondent Emil Henry to the Complaint filed on October 1, 2015, in the above-referenced Matter Under Review.¹

The allegations in the Complaint, filed by the American Democracy Legal Fund ("ADLF") against Mr. Henry, Mr. John Ellis "Jeb" Bush, Jeb 2016, Inc. ("Jeb 2016"), and Mr. Fred E. Cooper, include fatal factual errors which preclude the Commission from finding reason to believe Mr. Henry violated the Federal Election Campaign Act, 52 U.S.C. §§ 30101, et seq. ("FECA" or the "Act"). The Commission should therefore find no reason to believe that Mr. Henry violated FECA and the Complaint should be dismissed and the matter closed without further action.

BACKGROUND

Mr. Henry is the founder, CEO, and Managing Partner of Tiger Infrastructure Partners, a private equity firm investing in mid-market infrastructure assets in North America and Europe. Mr. Henry has had a long and distinguished career in the financial services industry and in public service, having served as an Assistant Secretary of the Treasury in the George W. Bush

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¹ This amendment is timely filed based on an extension of time granted by the Office of General Counsel on October 29, 2015.

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administration and as the Treasury attaché to the President's Working Group on Financial Markets.

On October 1, 2015, ADLF filed a Complaint alleging that agents working on behalf of Mr. Bush and his principal 2016 presidential campaign committee, Jeb 2016, including Mr. Henry, violated FECA's non-federal fund limitations (colloquially referred to as "soft-money" limitations), by "soliciting, receiving, directly [*sic.*], transferring, and/or spending funds" in connection to a federal election outside of the limitations, prohibitions, and reporting requirements of the Act while serving in the capacity of an agent to Mr. Bush's federal election campaign.

The Complaint specifically alleges that Mr. Henry co-hosted an event for Jeb 2016 on June 24, 2015, and on June 29, 2015, nearly a week later, made an in-kind catering contribution of \$1,224.41 to Right to Rise USA PAC ("Right to Rise"), an independent expenditure-only committee organized to support Mr. Bush's federal candidacy.² In so doing, the Complaint alleges that Mr. Henry was actively involved in fundraising for Jeb 2016 while "simultaneously participat[ing] in events raising money outside of the federal limitations and source restrictions for Right to Rise.³ The Complaint alleges that the Act prohibits Mr. Henry from participating in "a Right to Rise soft money event" in his capacity as an agent for Mr. Bush's presidential campaign.⁴

DISCUSSION

The Commission should find there is no reason to believe that Mr. Henry violated the Act. The factual allegations in the Complaint as to the timing of Mr. Henry's in-kind contribution to Right to Rise are simply erroneous; the actual timeline precludes a finding that Mr. Henry violated FECA. Accordingly, the Commission should find there is no reason to believe Mr. Henry committed any violation of 52 U.S.C. § 30125(e)(1).⁵

² Compl. at 2; see also Right to Rise USA, https://righttorisesuperpac.org/about/rtrusa?lang=en (last visited Nov. 30, 2015) ("Right to Rise USA is the leading independent political action committee strongly supporting Jeb Bush for President.").

³ Compl. at 2-3.

⁴ Compl. at 3-5 (citing 52 U.S.C. 30125(e)(1); 11 C.F.R. § 300.61).

 $^{^{5}}$ 52 U.S.C. § 30125(e)(1) provides in relevant part: "A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not – (A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including foods for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act."

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A "no reason to believe" finding is proper when the complaint, any response filed by the respondent, and any publicly available information, taken together, "fail to give rise to a reasonable inference that a violation has occurred, or even if the allegations were true, would not constitute a violation of law."⁶ Specific examples of where a "no reason to believe" finding would be appropriate include when "a violation has been alleged, but the respondent's response or other evidence demonstrates that no violation has occurred."⁷

The Complaint's central allegation against Mr. Henry is that he made an in-kind contribution of \$1,224.41 for catering to Right to Rise nearly a week after co-hosting a Jeb 2016 fundraiser. However, this allegation is predicated entirely on Right to Rise's semi-annual report, filed on July 31, 2015, which erroneously reported the contribution as being received on June 29, 2015.⁸ In reality, Mr. Henry made the in-kind contribution of \$1,224.41 to Right to Rise for the catering of breakfast for 16 guests at the Links Club in New York *on March 13, 2015*.⁹

Mr. Bush's statement of candidacy and the registration documents for Jeb 2016, which are publicly available FEC records, demonstrate that Mr. Henry's contribution to Right to Rise in March 2015 occurred several months before Mr. Bush became a candidate for president. Mr. Bush did not register as a candidate for the 2016 presidential election with the FEC until June 15, 2015, more than three months after the Links Club breakfast catered by Mr. Henry. The same day he announced his candidacy, Mr. Bush designated Jeb 2016 as his presidential campaign committee.¹⁰

The above facts are patently fatal to the Complaint because they demonstrate that its underlying allegations are premised on a mistake regarding the timing of the events. Complainant's

⁸ Compl. at 3 (citing Right to Ruse USA, Schedule A Itemized Receipts, FEC Form 3X at 486 (July 31, 2015), *available at*: http://docquery.fec.gov/pdf/451/201510279003242451/201510279003242451.pdf). Regardless of the reason for this error, which is understood by the undersigned to have been the result of an oversight on the part of Right to Rise, reporting obligations lie with committees, not the individuals making the contribution. *See generally* 11 C.F.R. pt 104.

⁹ See Exh. A (The Links Club Invoice No. 11081 billed to Emil Henry for breakfast catering for 16 guests on March 13, 2015, totaling \$1,224.41); see also Exh. B (check dated April 13, 2015 for payment to the Links Club for Invoice No. 11081).

¹⁰ John Ellis Bush, Statement of Candidacy, FEC Form 2 (June 15, 2015), available at:

http://docquery.fec.gov/pdf/747/15031431747/15031431747.pdf; Jeb 2016, Inc., Statement of Organization, FEC Form 1 (June 15, 2015), available at: http://docquery.fec.gov/pdf/751/15031431751/15031431751.pdf. Right to Rise registered as an independent expenditure-only organization supporting Mr. Bush's federal candidacy on January 6, 2015. See Right to Rise USA, Statement of Organization, FEC Form 1 (Jan. 6, 2015), available at: http://docquery.fec.gov/pdf/818/15031363818/15031363818.pdf.

⁶ Fed'l Election Comm'n, Guidebook for Complainants and Respondents on the FEC Enforcement Process at 13 (May 2012) [hereinafter *FEC Guidebook*].

⁷ Id.

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allegations that Mr. Henry improperly solicited soft-money while serving as an agent of Mr. Bush are premised entirely on the erroneously alleged temporal relationship between Mr. Henry's service as a co-host at a June 24, 2015 Jeb 2016 fundraising event,¹¹ and the breakfast event at which he provided an in-kind contribution of \$1,224.41 to Right to Rise.¹² To repeat, the record plainly demonstrates that Mr. Henry's in-kind contribution to Right to Rise actually predated Mr. Bush's federal candidacy and the creation of Jeb 2016 by more than three months, making it both factually and legally impossible for Mr. Henry to have been an agent of the campaign at the time the Right to Rise contribution was made.¹³

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For the foregoing reasons, it is urged that the Commission find there is no reason to believe Mr. Henry violated the Act. The Complaint should be promptly dismissed and the matter closed with no further action taken.

Respectfully submitted,

Fred F. Fielding Matthew S. Miner Dallas J. Kaplan Counsel for Emil Henry

¹³ Mr. Henry does not concede that he has ever served as an agent of Mr. Bush's or Jeb 2016.

¹¹ Exh. C.

¹² See Compl. at 2, 5 (alleging that Mr. Henry "was raising money for Jeb 2016, Inc. just days before he was also participating in Right to Rise's event" and therefore was "inherently raising soft money" in his capacity as an agent of Mr. Bush). Other than the erroneously alleged proximity in time between the Jeb 2016 campaign event and the Right to Rise event, the Complaint is devoid of any factual allegations that Mr. Henry was acting with the actual authority of Mr. Bush in raising soft-money funds for Right to Rise, or that Mr. Henry was, in any way, acting at the request or suggestion of Mr. Bush. See Fed'l Election Comm'n Adv. Op. 2015-09 at 7 (holding that "[i]nidviduals who are agents of federal candidates may solicit nonfederal funds" to independent expenditure-only organizations when doing so "on their own" and "not at the request or suggestion" of federal candidates); see also Fed'l Election Comm'n Adv. Op. 2003-09 at 5 (citing 11 C.F.R. § 200.2(b)(3)) (observing that for the purposes of FECA, agency relationships are limited to those of "actual authority, either express or implied ... to solicit, receive, direct, transfer, or spend funds in connection with any election").

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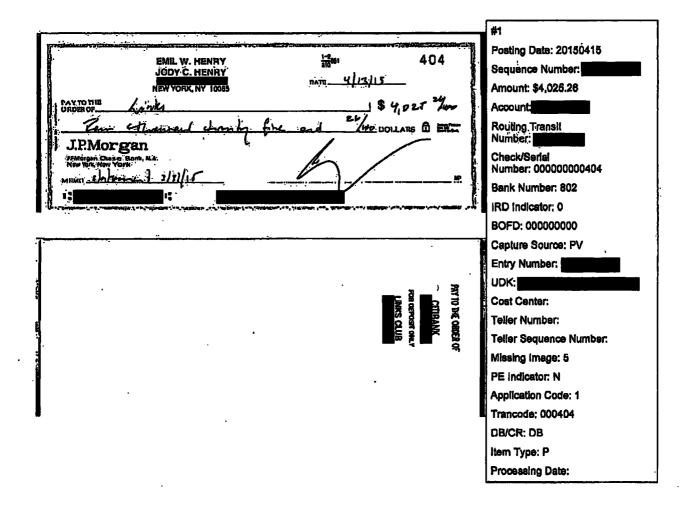
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	Amount Due:	1,224.41
Total Tax:	109.01 Tax Disc:	0.00
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بن 15 MUR-6971 (Henry)_Exhibit A i



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STATEMENT

THE LINKS

36 East 62nd Street New York, N.Y. 10065-8017

212.838.8181

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03/31/201	5	1	
STATEMENT OAT	2,24,20	PAGE NO.	
	4/6/2015		
MEMBER NO.	PAYMENTLOL	E DATE Y	

Club Closed- Mon. 5/25 RdV Wine Dinner-Fri.,4/10 **Reservations Available**

MR. EMIL HENRY JR. Tiger Infrastructure Partners LP 717 Fifth Avenue Floor 12A New York, NY 10022

PLEASE DETACH AND RETURN UPPER PORTION WITH PAYMENT

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MUR-6971 (Henry)_Exhibit B

STATEME	NT
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THE LINKS

36 East 62nd Street New York, N.Y. 10065-8017

212.838,8181

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MR. EMIL HENRY JR. Tiger Infrastructure Partners LP 717 Fifth Avenue Floor 12A New York, NY 10022

PLEASE DETACH AND RETURN UPPER PORTION WITH PAYMENT PAYMENT ONLY FROM THE PERSONAL FUNDS OF THE MEMBER WILL BE ACCEPTED

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Club Closed, Mon. 5/25 RdV Wine Dinner Frl. 4/10 Reservations Available

The Links Club

Event Invoice

Emil Henry

Contract Number: 11081 ۱

HOST: HENRY, EMIL

Friday

Date: 03/13/2015

Day:

PLANNER/CONTACT:HENRY, EMIL

Guaranteed # Of People: 16 Room(s): Stoddard

Type: Breakfast Start Time: 7:00 AM End Time: 9:00 AM Price Total Menu Cat. QTY Item **Table Style** 0.00 0 0.00 Long 0 0.00 0.00 **Bqt Breakfast** Executive Breakfast 16 42.00 672.00 Pre-Plated Fruit and OJ. --poured coffee 0 0.00 0.00 **Bread Baskets** 0 0.00 0.00 Plated Eggs, Bacon & Sausage 0 0.00 0.00 **Room Rental** 275.00 1 275.00 Private Room 6-20 Guests 0 0.00 0.00 Room Occ Tx Occupancy Tx - Pvt Room 1 2.00 2:00 Waiter Assigned & Fee JACK ì 32.00 32.00

Bgt Breakfast Room Occ Tx **Room Rental Table Style** Waiter Assigned & Fee



Guaranteed number of attendance is due no later than 10 A.M. on the day before the function. If no guarantee is submitted, the expected attendance will be the guarantee. Billing is based upon your guaranteed or actual attendance, whichever is greater.

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JEB

CO-CHAIRS*

IRA AKSELRAD HANNAH & DUKE BUCHAN JEFF BUNZEL GREG BUTLER CHRISTIE & TONY DE NICOLA ROBERT E. DIAMOND, JR. PAUL DICKERSON BOB FORESMAN SANDER GERBER EMIL HENRY WENDY DIETZE & BILL HEYMAN MEL IMMERGUT WOODY JOHNSON HON. KENNETH JUSTER SCOTT KAPNICK GEORGE KLEIN DAVID KNOWER HERSH KOZLOV HON. JOE KYRILLOS JAY LEFKOWTIZ STEVE LESSING JOHN MESERVE ALEX NAVAB TIM O'HARA

JACK OLIVER ZACK PACK SCOTT PRINCE JOHN ROGERS ANDREW SAUL TOM SCULLY STEVE SHERRILL SCOTT SOBEL MARC SPILKER TERI & BARRY VOLPERT MARK WALLACE JOHN YING

***COMMITTEE IN FORMATION**

INVITE YOU TO A BREAKFAST RECEPTION WITH

JEB BUSH

WEDNESDAY, JUNE 24, 2015

7:45 AM – CO-CHAIR PHOTO RECEPTION 8:00 AM – CO-HOST RECEPTION 8:30 AM – BREAKFAST RECEPTION

SHERATON HOTEL 811 SEVENTH AVENUE, NEW YORK, NY

(ENTER 53RD STREET & SEVENTH AVENUE)

\$27,000 CO-CHAIR RAISE PHOTO, HOST RECEPTION, BREAKFAST RECEPTION & AND INVITATION FOR 2 TO ALL 27 IN FIFTEEN

ACTIVITES, INCLUDING THE KENNEBUNKPORT.

MAINE RETREAT ON JULY 9-10, 2015

\$10,000 CO-HOST RAISE HOST RECEPTION, BREAKFAST RECEPTION

> \$2,700 INDIVIDUAL BREAKFAST RECEPTION

RSVP TO CHRIS MCMILLAN CHRISCMCMILLAN@GMAIL.COM / 469-323-4142

Contributions to Jeb 2016, Inc. are not deductible as charitable contributions for federal income tax purposes. Federal law requires us to use our best efforts to collect and report the name. mailing address, occupation and name of employer of individuals whose contributions aggregate in excess of \$200 per election cycle. Contributions from corporations, foreign nationals (non-green card holders), federal government contractors and minors under the age of 16 are prohibited.

Paid for by Jeb 2016. Inc.

Jeb 2016, Inc. Donor Form

REPLY INFO:

• Yes, I /we will serve as a co-chair and raise \$27,000 for the event and participate in the 27-15 program.

□ Yes, I /we will serve as a co-host and raise \$10,000 for the event.

Yes, I /we will attend the Breakfast Reception. Enclosed is my contribution of \$_____ (\$2,700 per person / \$5,400 per couple)

□ No, I am unable to attend, but enclosed is my contribution of \$_____.

Step 1: Enter contributor information:

Prefix		First Name:		
Last Name:		Informal Salutation:		
Address:				
City:		State:	Zip:	
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If your contribution is drawn on a joint account, please consider making a joint contribution.

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Joint contributions require the signatures of both constant statement. Signature:	ntributors. Please sign below indicati		
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Please mail your contribution to: Jeb 2016, Inc Fax to: 646-395-1545 OR Scan/Email form to: <u>ct</u>		/ YORK, NY 10185-3957 OK	
	Source Code: 2015ENY00		
If this contribution should be attributed to a volunteer Contributions to Jeb 2016, Inc. are not tax deductible as che to use our best efforts to collect and report the name, mailir contributions aggregate in excess of \$200 per election cycle federal government contractors and minors <u>under the age</u>	fundraiser please note their name or aritable contributions for federal income ng address, occupation and name of em e. Contributions from corporations, foreig	Tracking number above. tax purposes. Federal law requires us ployer of individuals whose	
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