

3. "If the Commission, upon receiving a complaint ... has reason to believe that a person has committed, or is about to commit, a violation of [FECA] ... [t]he Commission *shall* make an investigation of such alleged violation" 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

4. Until February 2017, Rep. Tom Price was a Member of Congress representing Georgia's 6th Congressional District. His campaign committee is Price for Congress.
5. On November 29, 2016, President-Elect Donald Trump announced his intention to nominate Rep. Price as Secretary of Health and Human Services.¹
6. On January 18 and 24, 2017, Rep. Price faced Senate confirmation hearings, which media described as "tough" and "heated" and "focused on ethical issues."²
7. On January 26, 2017, Rep. Price's campaign committee, Price for Congress, paid \$40,000 to America Rising Corp., according to the committee's reports filed with the Commission.³

¹ Amy Goldstein and Philip Rucker, *Trump Names Rep. Tom Price as Next HHS Secretary*, WASH. POST (Nov. 29, 2016), https://www.washingtonpost.com/news/powerpost/wp/2016/11/28/trump-to-name-rep-tom-price-as-next-hhs-secretary/?utm_term=.f742037e7c78.

² Allison Kodjak, *Senate Health Committee Questions Rep. Tom Price in HHS Confirmation Hearing*, NPR (Jan. 18, 2017), <http://www.npr.org/2017/01/18/510472472/senate-health-committee-questions-rep-tom-price-in-hhs-confirmation-hearing>; Robert Pear, *Tom Price's Heated Hearing Is Unlikely to Derail His Nomination*, N.Y. TIMES (Jan. 24, 2017), <https://www.nytimes.com/2017/01/24/us/politics/tom-price-nominee-secretary-of-health-and-human-services.html>;

³ Price for Congress, April 15 Quarterly Report of Receipts and Disbursements, FEC Form 3X at 9 (filed Apr. 13, 2017), <http://docquery.fec.gov/pdf/840/201704149052172840/201704149052172840.pdf>. It is not clear whether the payment to "America Rising Corp." at the address 1555 Wilson Blvd., Suite 307 in Arlington, VA was directed to America Rising LLC or the 501(c)(4) nonprofit America Rising Squared (AR2), yet both entities appear to be located at the same address described on the report, and both regularly engage in joint projects. *See e.g.* Comments from America Rising Squared to Karen Gregory, Secretary, Federal Maritime Commission, (Aug. 3, 2015), http://www.finc.gov/assets/1/Documents/15-05_America_Rising%20comments.pdf (submitted under the name AR2, and signed jointly by representatives of AR2 and America Rising LLC, at 1555 Wilson Blvd., Suite 307); *see also* FOIA Request on behalf of America Rising Squared (Apr. 12, 2016),

8. America Rising describes itself as an “opposition research and communications organization.”⁴
9. On or around the date that Price for Congress reported its \$40,000 payment to America Rising Corp., America Rising Squared began promoting research and videos supporting Price’s confirmation as Secretary of Health and Human Services.⁵
10. On February 1, 2017, the Senate Health, Education, Labor, and Pensions Committee voted to recommend Price’s nomination, and on February 10, 2017, the Senate confirmed Price as HHS Secretary.⁶
11. On July 3, 2017, *Slate* reported that, in addition to Price, three other presidential cabinet nominees (or their close associates) had also paid America Rising to promote their Senate confirmation; Price was the only nominee to do so using funds from his federal campaign committee.⁷ *Slate* reported that Brian Rogers, the head of America Rising Squared, claimed that “his group was necessary for these nominees, since they faced a wall of obstruction from the Democratic Party.”⁸

SUMMARY OF THE LAW

<https://www.nrc.gov/docs/ML1610/ML16104A017.pdf> (describing AR2’s address at 1555 Wilson Blvd., Suite 307); FOIA Request on behalf of America Rising LLC (Jan. 31, 2017), <https://assets.documentcloud.org/documents/3439281/ACFrOgBDV7H4PtU599Py-0xNmU.pdf> (at the same address). The payment does not appear to have been directed to the political committee “America Rising PAC” (ID: C00542902) which is registered with the Commission at a different address.

⁴ See, e.g. Comments from America Rising to Amy Beckett, Senior Litigation Counsel, U.S. Office of Special Counsel, RE: FOIA/Touhy Regulation (May 18, 2016), <https://osc.gov/Resources/5.18.16%20America%20Rising%20comment%20to%20OSC%20FOIA%20regulation.pdf>; see also Press Release, *America Rising Corp. Announces New Leadership Structure and Staffing Additions* (Jan. 8, 2017), <https://www.scribd.com/document/335999574/America-Rising-Corp-Announces-New-Leadership-Structure-And-Staffing-Additions>.

⁵ See, e.g. <http://arsquared.org/?s=tom+price>

⁶ PN33 — Thomas Price — Department of Health and Human Services, 115th Congress (2017-2018), <https://www.congress.gov/nomination/115th-congress/33?r=21>.

⁷ David Freedlander, *Confirmation, Inc.*, *Slate* (July 3, 2017), http://www.slate.com/articles/news_and_politics/politics/2017/07/trump_s_cabinet_nominees_were_so_toxic_they_needed_outside_help_from_america.html.

⁸ *Id.*

12. FECA provides that contributions accepted by a candidate may be used by the candidate for, *inter alia*, "otherwise authorized expenditures in connection with the campaign for Federal office of the candidate," 52 U.S.C. § 30114(a)(1), and that such contributions "shall not be converted by any person to personal use," *id.* § 30114(b)(1); *see also* 11 C.F.R. § 113.2(f)(5).
13. Campaign funds are considered to have been converted to "personal use" if the funds are used "to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 52 U.S.C. § 30114(b)(2).
14. Commission regulations similarly define "personal use" as the use of funds in a campaign account "to fulfill any commitment, obligation, or expense of any person that would exist irrespective of the candidate's election campaign or duties *as a Federal officeholder*." 11 C.F.R. § 113.1(g) (emphasis added).
15. As used in this section, "Federal officeholder" only applies to *elective* Federal office: President or Vice President, or a Senator or Representative in Congress, or a Delegate or Resident Commissioner to Congress. *Id.* § 113.1(c).
16. The Commission has explained the "irrespective" test as follows:
- If campaign funds are used for a financial obligation that is caused by campaign activity or the activities of an officeholder, that use is not personal use. However, if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use.
- Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7863-64 (Feb. 9, 1995).
17. FECA and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

For uses of campaign funds not on this list, the Commission determines, on a case-by-case basis, whether they constitute personal use. 11 C.F.R. § 113.1(g)(1)(ii).

CAUSES OF ACTION

I. Price for Congress Illegally Converted Campaign Funds to Personal Use

18. A candidate or officeholder may not convert campaign funds to personal use. 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(f)(5). “Personal use” is defined as any expense that would exist “irrespective of the candidate’s campaign or duties as a Federal officeholder,” 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g), meaning one’s duties as a Member of Congress, *see id.* § 113.1(c) (defining “Federal officeholder” as an individual elected to or serving in the office of President or Vice President, or a Senator or Representative in Congress).
19. As Rep. Price faced Senate confirmation hearings for his nomination to become HHS Secretary, his campaign committee paid \$40,000 to America Rising, which in turn engaged in opposition research and grassroots lobbying activities to promote Price’s confirmation and influence the Senators voting on Price’s confirmation to post-Congressional employment.
20. Price for Congress’ payments to America Rising were not related to Price’s reelection campaign in Georgia’s Sixth Congressional District, nor were the payments in any way connected to Price’s duties as a Federal officeholder—meaning, under Commission regulations, his duties as a member of Congress.⁹ Instead, the payments appear related

⁹ Rep. Price’s eligibility for HHS Secretary did not depend on his being a Member of Congress: Price is the first former Member of Congress to become HHS Secretary since Margaret M. Heckler, who was confirmed in 1983, after she lost her reelection to Congress. *See, e.g.,* https://en.wikipedia.org/wiki/United_States_Secretary_of_Health_and_Human_Services#List_of_Secretaries_of_Health_and_Human_Services. Thus, even if the President valued Price’s Congressional experience in deciding to nominate him, his nomination expenses were not “ordinary and necessary expenses incurred in connection with [his] duties as a [Member of Congress].” *See* 52 U.S.C.

only to Price's confirmation hearings for his desired role as HHS Secretary, meaning the payments were for expenses that existed irrespective of his campaign or his duties of a Member of Congress.

21. In effect, Price for Congress paying \$40,000 to America Rising amounted to the use of campaign funds to help Rep. Price get his next job. Using campaign funds to secure future employment outside of Congress is indisputably a personal use,¹⁰ just as it would be personal use were Rep. Price to use campaign funds to apply for a job at a lobbying firm, or to use campaign funds to hire a career counselor.
22. Accordingly, based on published reports and the committee's reports filed with the Commission, there is reason to believe that Price for Congress converted campaign funds to personal use by paying America Rising to help Rep. Price secure his next job after Congress, in violation of 52 U.S.C. § 30114(b)(1) and 11 C.F.R. § 113.2(f)(5).

PRAYER FOR RELIEF

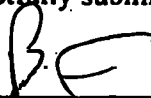
23. Wherefore, the Commission should find reason to believe that Price for Congress has violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).

§ 30114(a)(2). To consider these "officeholder expenses" would mean that any Member could use campaign funds to obtain post-Congressional employment; lobbying firms, for example, highly value Congressional experience. But just as it would be personal use to use campaign funds to land a lobbying job, it is personal use to use campaign funds to secure a cabinet position.


¹⁰ Although the Commission has allowed Federal candidates to use campaign funds for election to state or local office, *see e.g.* Advisory Opinion 2012-06, this is because FECA expressly permits the use of campaign funds for donations to state and local candidates. 52 U.S.C. § 30114(a)(5); 11 C.F.R. § 113.2(d). Similarly, the Commission has permitted the transfer of campaign funds to a campaign for local political party office, Advisory Opinion 2007-29, since FECA expressly permits unlimited transfers of campaign funds to national, state, or local party committees. 52 U.S.C. § 30114(a)(4) and 11 C.F.R. § 113.2(c). The Commission has never allowed the use of campaign funds to secure future employment outside of these expressly permitted contexts.

24. Further, the Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

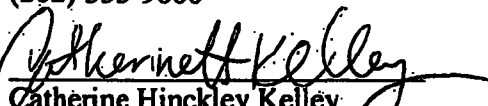
Respectfully submitted,



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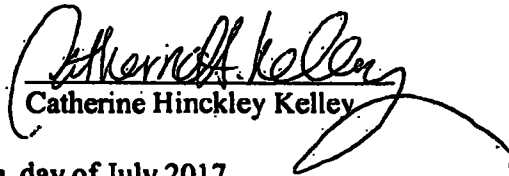
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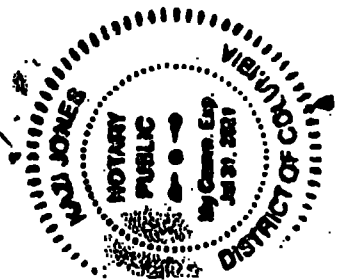
VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

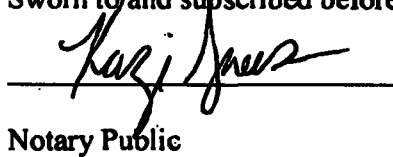
Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Catherine Hinckley Kelley

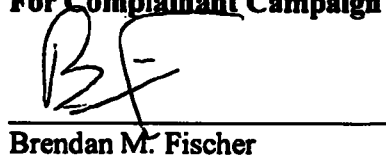

Catherine Hinckley Kelley

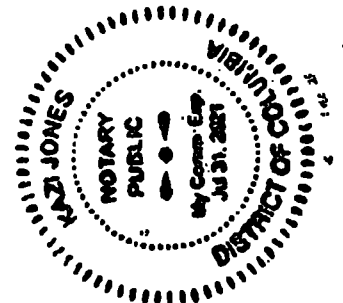


Sworn to and subscribed before me this 6 day of July 2017.

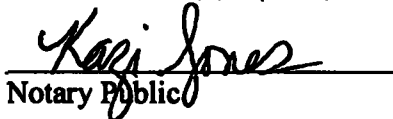

Notary Public

For Complainant Campaign Legal Center


Brendan M. Fischer

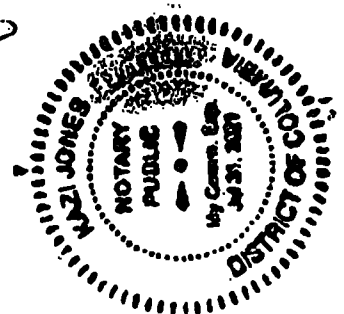


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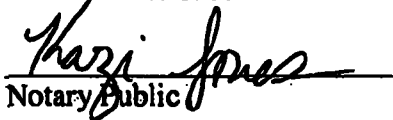

Notary Public

For Complainant Democracy 21


Fred Wertheimer



Sworn to and subscribed before me this 6 day of July 2017.


Notary Public