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November 16, 2020

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RMJacobs@Venable.com*Via Email to cela@fec.gov*Federal Election Commission
Office of Complaints Examination & Legal Administration
1050 First Street, NE
Washington, DC 20463

Attn: Trace Keeys, Paralegal

Re: Response to MUR 7816 for Leadership for Educational Equity

Dear Ms. Ross:

On behalf of Leadership for Educational Equity (“LEE”), this letter responds to the baseless complaint filed by Congressman Jim Hagedorn against Daniel Feehan and LEE (along several other entities). The Complaint seems to make two allegations against LEE, neither of which is grounded in any reality. First, it suggests that LEE paid Mr. Feehan \$120,000 from August to December of 2018; in reality LEE did not pay Mr. Feehan anything in 2018. Second, it suggests that from 2017 through 2019, a number of organizations paid Mr. Feehan a large sum that apparently is not justified by the work done. In the case of LEE, Mr. Feehan was an independent contractor in 2017 and received a specific sum to execute a program he was well-suited to run. In 2019, Mr. Feehan was an employee of LEE, conducting a number of important projects. As such, all payments were for bona fide services and the Complaint should be dismissed promptly.

ARGUMENT

The Complaint can be divided into two allegations:

- **2018 Allegations:** LEE paid Mr. Feehan \$120,000 for work done from August through December 2018. This allegation appears to be based entirely on a personal financial disclosure report that included erroneous information and was amended before the Complaint was filed. The Complaint then makes the conclusory statement that “Such wages cannot be justified based upon any reasonable standard, especially considering Mr. Feehan was waging a full-time campaign for Congress in a closely contested race from August 13 thru November 6th.”

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- **Multi-Year Allegations:** The Complaint also alleges that “Mr. Feehan was paid more than \$475,000 to run for Congress by several entities over a two-year period, 2017-19.” It then makes the naked assertion that “[b]ecause it appears unlikely that Mr. Feehan performed bona fide work for these payments, I am bringing this matter to the **Federal** Election Commission for investigation.” The only “evidence” that is presented to support the is a statement about how Mr. Feehan denied receiving funds “during a two-year period” (the period is not specified in the complaint) during a debate and a statement about a newspaper interview in October 2019 asking about what work he had done since the 2018 election.

Nothing more is included in the Complaint to suggest that Mr. Feehan did not do work for LEE. Just speculation, conclusory statements, and irrelevant debate answers and newspaper interviews. Nonetheless, based on these two allegations, the Complaint asks the Commission to “determine if Dan Feehan has or has not taken unlawful campaign contributions” and whether he was given money “in a scheme to pay him to run for Congress.”

But that is not what the Commission is supposed to do. Rather, the Commission is tasked with the job of determining whether there is a “reason to believe” a violation of the Act occurred. It may do so only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act.¹ Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true and the Commission will dismiss a complaint when allegations are refuted with sufficiently compelling evidence.² Complaints that state charges “only in the most conclusory fashion,” without supporting evidence, are dismissed by the Commission. *In re Fed. Election Campaign Act Litig.*, 474 F. Supp. at 1047. And where “the record did not suggest” a violation had occurred and “respondents’ answers to the complaint adequately refuted the complainant’s allegations as to any presumed,” dismissal is likewise warranted. *Democratic Senatorial Campaign Comm.*, 745 F. Supp. at 744.³

¹ See 11 C.F.R. §§ 111.4(a), (d).

² See Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas, MUR 4960 (Dec. 21, 2001).

³ The Commission’s Guidebook explains that “a no reason to believe finding would be appropriate when (1) a violation has been alleged, but the respondent’s response or other evidence demonstrates that no violation has occurred, (2) a complaint alleges a violation but is either not credible or is so vague that an investigation would be unwarranted, or (3) a complaint fails to describe a violation of the Act.”

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The allegations made in the Complaint are both factually and legally flawed and do not support a reason to believe finding in this matter under this standard for two reasons. First, LEE did not pay Mr. Feehan during the period in 2018 at all. Second, when LEE did pay Mr. Feehan, in 2017 and 2019, it was for services that he performed, once as a contractor and once as an employee. Accordingly, the Complaint should be immediately dismissed.

I. LEE Did Not Pay Mr. Feehan at all in 2018.

LEE is a nonprofit leadership development organization inspiring and supporting a network of civic leaders to end the injustice of educational inequity. Through one-on-one coaching, fellowships, workshops and resources, LEE works to develop and inspire its members individually and collectively to serve as a transformative force for and with students, communities and the broader movement for educational equity. As discussed below, in furtherance of its mission, LEE paid Mr. Feehan for services in 2017 and 2019, but not in 2018.

The Complaint's allegations about 2018 compensation are based on Mr. Feehan's 2019 personal financial disclosure candidate report filed on October 31, 2019. In the report, which covers the period of roughly January 2018 to September 2019, Mr. Feehan indicated he had been paid \$120,000 in each of 2018 and 2019.⁴ However, he filed an amended report on September 28, 2020, showing that he had been paid \$120,000 only in 2019 and nothing in 2018.⁵

As such, at least with respect to LEE, the first allegation, that LEE highly compensated Mr. Feehan during some or all of 2018, is factually wrong. As such, there is no possible way that the Commission can find reason to believe with respect to that allegation.

II. The Payments LEE Made in 2017 and 2019 Were for Bona Fide Services Provided.

The Complaint's second allegation is that Mr. Feehan was paid "to run for Congress by several entities over a two-year period, 2017-19." Setting aside that this is a three-year period

⁴ Candidate Financial Disclosure for D. Feehan (2019), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2019/10029720.pdf

⁵ Amended Candidate Financial Disclosure for D. Feehan (2020), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2019/10039145.pdf

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(2017, 2018, and 2019), the money that LEE paid Mr. Feehan was for services (2017) and employment (2019) that he performed for LEE.

Under Commission regulations, payments to a candidate by a third party are considered a contribution unless the payment would have been made irrespective of the candidacy.⁶ Payments specifically for compensation are considered contributions unless:

- (a) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;
- (b) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and
- (c) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.⁷

If compensation during an election cycle results from *bona fide* employment, it is considered part of the candidate's personal funds and is not a contribution.⁸ LEE's compensation to Mr. Feehan satisfies all three prongs of this test.

The Complaint focuses extensively on the amount of compensation for 2018 to argue that it was excessive for any work performed. As set forth above, Mr. Feehan did not work for LEE in 2018 and was not compensated by LEE in 2018, and so those allegations are without any merit. Outside of the 2018 period, there is nothing in the Complaint, other than unsupported speculation, that the payments LEE made to Mr. Feehan in 2017 or 2019 were impermissible.

Given the lack of any supporting evidence for the assertion that there were not *bona fide* services provided, LEE simply responds: there were.

LEE first engaged Mr. Feehan as an independent contractor in May 2017. Mr. Feehan was one of nearly 150 contractors or vendors who were retained to provide project-based services for LEE. Mr. Feehan's project, implementing a leadership development program for veterans, was well suited for Mr. Feehan, a former member of the military and former Acting Assistant

⁶ 11 C.F.R. § 113.1(g)(6).

⁷ *Id.* § 113.1(g)(6)(iii).

⁸ 11 C.F.R. § 100.33(b)(1).

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Secretary of Defense. His compensation was reported on his personal financial disclosure reports and disclosed to the IRS on a W-9.

This contract was signed before he announced his intent to run for Congress in 2018, and the work was completed in calendar year 2017. This timing demonstrates that LEE's compensation to Mr. Feehan stems from "bona fide employment," conducted "genuinely independent of his candidacy."⁹

After his unsuccessful run for Congress in 2018, LEE hired Mr. Feehan as a temporary employee from May 1, 2019 to September 30, 2019. He left LEE before he announced his 2020 run for Congress in October of 2019. He worked on a number of projects important to LEE, filled out timecards, and provided reports of his work. All of his work was in areas where he had relevant skills and knowledge. His compensation was disclosed on his personal financial disclosure report and disclosed to the IRS on a W-2.

Beyond the timing of his work, the nature of Mr. Feehan's engagements show that LEE very clearly hired and retained him for his skills and attributes, not his candidacy. In Advisory Opinion 2013-03, an individual who was exploring a potential federal campaign resigned her job with a nonprofit while the nonprofit retained her as a paid consultant because of her knowledge of the organization and its goals, her expertise and background, and her skills as a mentor. The Commission concluded that these reasons for retaining the consultant had nothing to do with her candidacy, and therefore the fees paid to her after she became a candidate would not be a prohibited contribution.¹⁰ So too here.

The Complaint offers absolutely no information to undermine the contributions or value Mr. Feehan may have made to LEE during the course of his engagements and the Commission should not second-guess LEE's determination of the appropriateness of the relationship or its fees. Nor does the Complaint provide anything other than speculation as to the reasonableness of his compensation. LEE paid him what it thought his services were worth. As such, the second allegation is also baseless and must be dismissed.

⁹ See General Counsel's Report at 11, MUR 5571 (Tanonaka for Congress) (noting that the consulting arrangement between the candidate and the company predated the candidate's announcement of candidacy).

¹⁰ Advisory Op. 2013-03 (Bilbray-Kohn); see also Factual & Legal Analysis, MUR 6853 (Weston Wamp for Congress); General Counsel's Report at 8-9, MUR 5014 (Jeff Flake for Congress) (referencing the candidate's business contacts, lobbying experience, networking, and other relevant skills as reasons why a *bona fide* relationship existed).

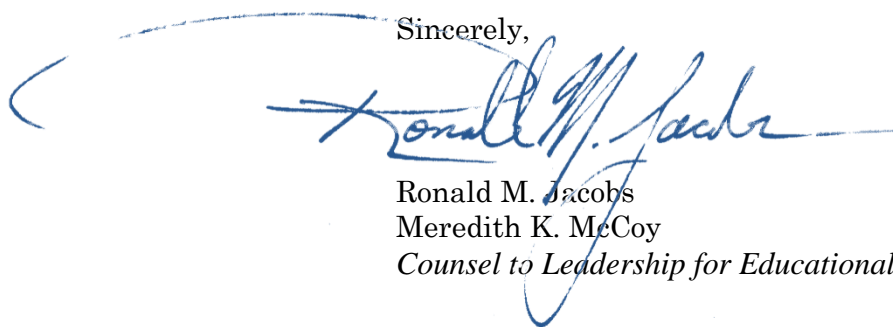
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CONCLUSION

In presenting its factually and legally unsubstantiated arguments, the Complaint fails to demonstrate that LEE violated any provision of the Act or Commission regulations in compensating Mr. Feehan for his services in 2017 or in 2019. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

Thank you for your consideration of this matter. Please do not hesitate to contact me directly at (202) 344-8215 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald M. Jacobs", is written over a large, light blue circular scribble.

Ronald M. Jacobs
Meredith K. McCoy
Counsel to Leadership for Educational Equity