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By OGC/CELA at 5:49 pm, May 03, 2024

HARRIS BEACH PLLC
ATTORNEYS AT LAW

May 2, 2024

VIA EMAIL (cela@fec.gov)

Wanda D. Brown

Assistant General Counsel

Federal Election Commission

Office of Complaints Examination

& Legal Administration

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JKASSCHAU@HARRISBEACH.COMRE: MUR 8230, Foundation for Accountability and Civic Trust v.
American Mainstream Policy Leadership Institute

Dear Assistant General Counsel Brown:

We are counsel to and write on behalf of Josh Riley and Josh Riley for Congress (collectively "Riley") in response to your letter dated March 19, 2024,¹ regarding the complaint ("Complaint") that the Foundation for Accountability and Civic Trust ("FACT") filed in the above-referenced Matter Under Review ("MUR"). Though Riley is not named as a party to the Complaint², Riley was referenced in it, and we appreciate this opportunity to submit the following statement in response on Riley's behalf.

As set forth below and in the accompanying affidavit of Josh Riley, Riley has not engaged in any wrongdoing, much less any unlawful conduct. It is respectfully requested that the Commission either dismiss the Complaint or make a determination of "no reason to believe" that a violation has occurred, at least with respect to Riley.

¹ The letter was received on March 20, 2024. On April 2, 2024, the FEC granted an extension of time in which to respond to and including May 3, 2024.

² We understand that the Complaint was filed against AMPLI and that it names several other Democratic congressional candidates from across the country. We do not take a position as to, nor do we speak for, those other parties.

I. During Riley’s Short Stint As An AMPLI Fellow, He Conducted Policy Research And Development Regarding Access To Healthcare In Rural Communities, And He Published An Article Setting Forth Policy Proposals Based On That Work.

Following the 2022 election, when Riley was not a candidate for office, he was invited to participate in a fellowship program with the American Mainstream Policy Leadership Institute (“AMPLI”), which offered a monthly stipend to research and develop public policy solutions to difficult challenges facing Upstate New York.³ The fellowship afforded an opportunity to collaborate with more than ten other fellows from across the country who were working on similar projects in issue areas of their choosing.⁴ Each fellow had previously run for office in a highly competitive district, and each was encouraged to draw on that experience in identifying public policy proposals that have mainstream appeal and potential for consensus during these divisive political times.⁵

Riley focused his work on access to healthcare in rural communities, with a particular emphasis on children’s healthcare.⁶ The topic was a natural fit for Riley. In his first case out of law school, Riley worked with the American Academy of Pediatrics on a civil rights lawsuit to improve access to healthcare for children from low-income families, many of whom lived in rural areas.⁷ During his 2022 congressional campaign, Riley spoke with countless people who were experiencing challenges accessing healthcare across Upstate New York’s rural communities, particularly in places like Sullivan, Chenango, and Delaware Counties, which are some of New York’s most rural counties and also have some of New York’s worst health outcomes.⁸

Riley participated in the AMPLI program for approximately three months, beginning in early January 2024.⁹ During that time, Riley conducted research into healthcare policy for rural communities, reviewing academic literature and proposed legislation on the subject.¹⁰ Riley also developed a framework for

³ Riley Aff. ¶ 1

⁴ *Id.* ¶ 2

⁵ *Id.* ¶ 3

⁶ *Id.* ¶ 4

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* ¶ 5

¹⁰ *Id.*

policy solutions that would have mainstream support, and he published an article laying out some of those ideas.¹¹ Riley also participated in meetings with other AMPLI fellows during which participants' shared their own work.¹²

Had Riley remained in the fellowship program, he anticipated drafting model legislation to implement his proposals, along with other supporting materials like talking points and legal analyses.¹³ However, in April 2024, Riley became a candidate for Congress again, and he withdrew from the fellowship program.¹⁴ Riley disclosed his participation in the AMPLI program, along with the stipend he received, in his publicly available financial disclosure forms filed with the House Ethics Committee.¹⁵

II. Riley Was Not A Candidate During His Fellowship And, Even If He Had Been, His Work Satisfies The FEC's Standard For Bona Fide Employment.

In its Complaint, FACT alleges that the stipend AMPLI paid to Riley was an impermissible campaign "contribution" under the Federal Elections Campaign Act ("FECA"). FACT's argument is very obviously foreclosed by both the plain text of FECA and its implementing regulations as well as the Federal Election Commission's ("FEC") precedent applying them.

A. The Stipend Riley Received Cannot Possibly Be A "Contribution" Under The Law Because Riley Was Not A Candidate When He Received It.

A campaign contribution is a "direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to *any candidate*, campaign committee, or political party or organization, in

¹¹ *Id.* ¶ 5; *See also* "Reimagining Schools As Part Of Healthcare Delivery In Rural Communities," Hudson Valley 360 (available at https://www.dailygazette.com/hv360/%20opinion/editorials/reimagining%20-schools-as-part-of-healthcare-delivery-in-rural-communities/image_e1d6aec8-ec32-51d3-879b-50d661342d76.html) also attached as Exhibit A to the Riley Aff.

¹² Riley Aff. ¶ 5.

¹³ *Id.* ¶ 6

¹⁴ *Id.*

¹⁵ Since the Complaint was filed, candidate Marc Molarino has said repeatedly that Riley was "caught" accepting a stipend, which is nonsense given that Riley publicly disclosed it over a year ago. It is respectfully submitted, that Mr. Molinaro and/or his supporters are using this Complaint as a sword for his campaign, instead of a shield against violations of the Federal Election Campaign Act.

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 ATTORNEYS AT LAW

connection with any election” covered by FECA.¹⁶ The stipend Riley received cannot possibly meet that definition because he was not a candidate when he received it (and FACT has not even tried to meet its burden of showing otherwise). That conclusion is reinforced by FECA’s implementing regulations, which provide that a payment to a candidate is *not* a contribution if it was made “before the candidate became a candidate,”¹⁷ as was the case here. That should be the end of the inquiry.

Dismissing the Complaint on these grounds is not only compelled by the statute and the regulation, but also required by FEC precedent. In MUR 7816, the FEC considered whether stipends paid by the New Politics Leadership Academy (“NPLA”) and by Leadership for Educational Equity (“LEE”) to Daniel Feehan, a candidate for Congress, were “contributions” under FECA.¹⁸ The FEC ruled that they were not contributions because, *inter alia*, Feehan’s work with NPLA was “entirely outside the time during which Feehan was a candidate”¹⁹ and because his work with LEE was “a time during which Feehan was not a candidate.”²⁰

The same analysis applies and the same result follows here as in MUR 7816. Because Riley was not a candidate during his fellowship, the stipend he received during that fellowship is not a “contribution” under FECA. The FEC need go no further in its analysis to dismiss the Complaint.²¹

B. The Stipend Riley Received Was For *Bona Fide* Employment Independent Of His Eventual Candidacy.

Even if Riley *had* been a candidate when he received a stipend—which he was not and which FACT has not even tried to establish—the stipend *still* would not be a “contribution” under the law. FECA’s implementing regulations provide that “[p]ayments that are compensation shall be considered contributions unless (A) [t]he compensation results from bona fide employment that is genuinely independent of the candidacy; (B) [t]he compensation is exclusively in

¹⁶ 52 USC § 30118(b)(2) (emphasis added)

¹⁷ 11 CFR § 1113.1(g)(g)(iii)

¹⁸ See MUR 7816, First General Counsel’s Report, dated July 21, 21 (MUR781600100-122).

¹⁹ *Id.* at pg. 11.

²⁰ *Id.*

²¹ Were the FEC to conclude otherwise—*i.e.*, that a payment to an individual could be a “contribution” even when that individual is not a candidate—it would create an unworkable and unwise precedent. Under that rule, any salary received by anyone who went on to run for federal office would suddenly become the subject of FEC complaints and investigations as to the salary they received before becoming a candidate.

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consideration of services provided by the employee as part of this employment; and (C) [t]he 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.”²² Riley’s work with AMPLI satisfies each element of that test, and FACT has not come remotely close to meeting its burden of raising a reasonable inference otherwise.²³

Riley’s work with AMPLI was *bona fide* employment independent of his candidacy (which, again, did not even exist at the time), and the stipend he received was exclusively in consideration for that work. Riley, who possessed unique experience and insight relevant to the subject area, conducted policy research and development, participated in meetings with other fellows, and wrote a public policy proposal.²⁴

This is exactly the type of work that the FEC has found to constitute *bona fide* employment in other contexts. For example, in MUR 7816, the FEC dismissed a similar complaint where the candidate participated in a fellowship to do “a research project on the ‘urban-rural’ divide using his experience as a congressional candidate.”²⁵ As here, that work included “conducting a research project geared to his expertise” and “performing research relevant to the organizations mission.”²⁶

III. The Complaint Should Be Dismissed Immediately So Riley Can Clear His Name Before The Election.

We respectfully request that the FEC immediately dismiss the Complaint, at least as to Riley. The Complaint has no merit, and it was obviously filed solely to generate negative press stories against Riley. For example, one recent article in a major local newspaper carried the headline, “*Josh Riley Received Illegal Contributions, Complaint Alleges.*”²⁷

²² 11 CFR § 1113.1(g)(g)(iii)

²³ FACT does not even argue, and therefore has waived, whether the stipend is in line with the amount of compensation which would be paid to any other similarly qualified person, so we do not address that element here.

²⁴ See § I supra

²⁵ MUR 7816, First General Counsel’s Report, dated July 21, 2021.

²⁶ *Id.*

²⁷ <https://www.timesunion.com/hudsonvalley/news/article/josh-riley-ampli-18972036.php>

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With the election just months away, it is important that Riley is afforded an opportunity to clear his name of these baseless allegations. If the FEC does not dismiss the Complaint quickly, it risks sending a message to candidates across the country that they can file frivolous complaints against their opponents, generate negative headlines against them, and get away with it.

Respectfully Submitted,

HARRIS BEACH PLLC

Jared A. Kasschau

JAK:jak
Attachment (as stated)
cc: Josh Riley
Melissa Nissen

OFFICE OF GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

-----X

Foundation for Accountability and Civic Trust
1717 K Street NW
Suite 900
Washington, D.C. 20006

MUR 8230

v.

AFFIDAVIT OF
JOSH RILEY

American Mainstream Policy Leadership Institute
Our American Future Foundation
1015 18th Street NW
Suite 1000
Washington, D.C. 20036

-----X

STATE OF NEW YORK)
)ss.:
COUNTY OF TOMPKINS)

JOSH RILEY, being duly sworn, deposes and says:

1. Following the 2022 election, when I was not a candidate for office, I was invited to participate in a fellowship with the American Mainstream Policy Leadership Institute (“AMPLI”), which offered a monthly stipend to research and develop public policy solutions to difficult challenges facing Upstate New York.

2. The fellowship afforded an opportunity to collaborate with more than ten other fellows from across the country who were working on similar projects in issue areas of their choosing.


3. Each fellow had previously run for office in a highly competitive district, and each was encouraged to draw on that experience in identifying public policy proposals that have mainstream appeal and potential for consensus during these divisive political times.

4. I focused my work on access to healthcare in rural communities, with a particular emphasis on children’s healthcare. I chose the topic for several

reasons. In my first case out of law school, I worked with the American Academy of Pediatrics on a civil rights lawsuit to improve access to healthcare for children from low-income families, many of whom lived in rural areas. During my 2022 congressional campaign, I spoke with countless people who were experiencing challenges accessing healthcare across Upstate New York's rural communities, particularly in places like Sullivan, Chenango, and Delaware Counties, which are some of New York's most rural counties and also have some of New York's worst health outcomes.

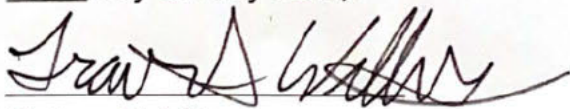
5. I participated in the AMPLI program for approximately three months, beginning in early January 2024. During that time, I conducted research into healthcare policy for rural communities, reviewing academic literature and proposed legislation on the subject. I also developed a framework for policy solutions that would have mainstream support, and I published an article laying out some of those ideas. My article is attached here as Exhibit A. I also participated in meetings with other AMPLI fellows during which participants shared their own work.

6. Had I remained in the fellowship program, I anticipated drafting model legislation to implement my proposals, along with other supporting materials like talking points and legal analyses. However, in April 2024, I became a candidate for Congress again, and I withdrew from the fellowship program. I disclosed my participation in the AMPLI program, along with my stipend, in my publicly available financial disclosure forms filed with the House Ethics Committee.



JOSH RILEY

Sworn to before me this
2nd day of May 2024.



Notary Public

TRAVIS WILLIAMS
Notary Public, State of New York
No. 01WI6433552
Qualified in Chenung County
Commission Expires 05/23/2026



EXHIBIT A

Reimagining schools as part of healthcare delivery in rural communities

The Daily Mail (Catskill, New York)

April 1, 2023 Saturday

Print Edition

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Section: H_EDITORIALS; Pg. A4

Length: 549 words

Body

After graduating from law school, I partnered with the American Academy for Pediatrics on a landmark civil rights lawsuit representing children from low-income families who were unable to access the healthcare services they needed. Many of the kids I represented lived in rural areas where healthcare services were scarce. The wait times to get appointments were long, and the journey to see doctors was far.

As I campaigned for Congress in New York's 19th District last year, I heard similar stories-both from parents who needed access to care for their kids and from nurses who were overworked and underpaid trying to provide it. These problems have been exacerbated by provider shortages and budget cuts in rural counties, including in Columbia and Greene Counties.

One potential solution to this problem: let's reimagine our schools as an integral part of the healthcare delivery system. Not all communities have healthcare facilities nearby, but every community has a school. Instead of requiring parents to take time off work to travel long distances with their kids to get care, why not expand access to healthcare in schools, meeting kids where they are?

Many schools already do this to varying degrees. Most have a nurse on-site. Others have more extensive care available, including screenings, immunizations, and mental health services. The evidence from these experiences is clear: school-based healthcare services improve outcomes for kids, parents, communities, providers, and taxpayers.

For example, a 2019 federal study found that school-based healthcare improves access to care for kids in rural areas, increases the amount of time kids spend in the classroom, and reduces major causes of youth mortality, including suicide. Investing in school-based healthcare is money well spent: a series of academic studies show that every dollar spent on school-based healthcare returns about two dollars or more in economic benefits because parents miss fewer days of work and kids need less (often more costly) care later in life. These benefits are especially pronounced in rural communities.

Unfortunately, instead of supporting these investments, many politicians are now proposing massive cuts to education and healthcare programs. They say they're cutting "reckless spending," but what they're really doing is kicking the can down the road and balancing the budget on the backs of those who can least afford it. That's the opposite of what we should be doing.

Instead, I've called on Congress to update the Elementary & Secondary Education Act to fully support the "community schools model," an ambitious initiative that helps schools deliver healthy meals, healthcare services, experiential learning, and other supports that kids need to thrive. Instead of thinking of schools simply as a place for classroom instruction, "community schools" are places where kids' needs are met and their potentials fully explored.

At a minimum, Congress should continue to fund school-based healthcare services, particularly mental health services and particularly in rural communities.

Reimagining schools as part of healthcare delivery in rural communities

Josh Riley was the 2022 Democratic nominee for Congress in New York's 19th District. He is a Fellow with the American Mainstream Policy Leadership Institute, focused on access to healthcare in rural communities.

Graphic

Josh Riley

Load-Date: April 1, 2023

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