

**RECEIVED**

By OGC/CELA at 5:51 pm, May 03, 2024

250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

May 3, 2024

VIA E-MAIL

Wanda D. Brown, Assistant General Counsel
Attn: Trace Keeys, Paralegal
Federal Election Commission
Office of Complaints Examination and Legal Administration
1050 First Street, NE
Washington, DC 20463
Email: CELA@fec.gov

Re: Matter Under Review 8230 (Mandela Barnes; The Long Run PAC)

Dear Ms. Brown:

We write as counsel to Mandela Barnes and The Long Run PAC (collectively, the “***Respondents***”), in response to the complaint filed by the Foundation for Accountability and Civic Trust (“***Complainant***”) in MUR 8230 (the “***Complaint***”).

The Complaint implies that Respondents accepted contributions in violation of the Federal Election Campaign Act of 1971, as amended (the “***Act***”) and Federal Election Commission (“***Commission***” or “***FEC***”) regulations. However, these accusations are illogical, unsupported, and undercut by the Complainant’s own admission. **As the Complaint itself acknowledges, Mr. Barnes was not a candidate at the time he received the compensation at issue as he had lost the 2022 election.** He received all the compensation after his candidacy ended and he is not a current 2024 federal candidate, nor was he a candidate in 2023 when he received the compensation. Therefore, the compensation cannot be considered a contribution to Respondents.¹

The Complaint fails to allege sufficient facts that, if true, would constitute a violation of the Act or Commission regulations. We urge the Commission to dismiss this frivolous Complaint immediately.

¹ Moreover, the compensation Mr. Barnes received was in exchange for *bona fide* work. Therefore, even if Mr. Barnes had been a candidate, the compensation was permissible under the Act.

I. FACTUAL BACKGROUND

Mandela Barnes was a candidate for U.S. Senate in Wisconsin during the 2022 election.² On November 8, 2022, Mr. Barnes was defeated in that election.³ Since his defeat, Mr. Barnes has not sought another elected office. He is not a candidate for office in 2024.

The Long Run PAC is an unauthorized multicandidate committee.⁴ The Long Run PAC was previously Mr. Barnes' principal campaign committee, Mandela Barnes for Wisconsin. On February 7, 2023, the committee converted into a multicandidate committee.⁵

After the 2022 election, Mr. Barnes applied for and was selected to be a part of a fellowship with the American Mainstream Policy Leadership Institute (“**AMPLI**”). AMPLI is a project of the Our American Future Foundation (“**OAFF**”), an entity organized pursuant to Section 501(c)(3) of the Internal Revenue Code.⁶

AMPLI supports the development of innovative mainstream public policy strategies and solutions. AMPLI conducts a fellowship program in which public policy leaders experiment with innovations in messaging and mobilizing citizens around common-sense public policy solutions. The fellowship paid a monthly stipend of \$10,000 to all fellows. Participants were not permitted to engage in any activities to explore a run for any public office or to manifest intent to run for a specific public office. Engaging in any such activities required resignation from the program.

Mr. Barnes became a participant in the fellowship program in January of 2023. He received his first payment as part of the program that month. Mr. Barnes then received monthly stipends for the rest of 2023. This money was deposited in Mr. Barnes' personal bank account, not in the account of The Long Run PAC or any other federal committee.

To participate in the program, Mr. Barnes performed research and developed public policies. Mr. Barnes participated in monthly virtual meetings along with other fellows in which he shared information about the research he was conducting. Throughout the program he learned about the research other fellows were conducting and used his expertise to advise and discuss those topics. Mr. Barnes drafted monthly memos regarding his experiences with the policy solutions.

Mr. Barnes has extensive experience in public policy. He has served as the Lieutenant Governor of the State of Wisconsin, in the Wisconsin state legislature, and has firsthand experience as a

² See Mandela Barnes, Statement of Candidacy (July 20, 2021), <https://docquery.fec.gov/pdf/099/202107209451755099/202107209451755099.pdf>.

³ See Scott Bauer, *Wisconsin's Johnson beats Barnes; key Senate seat stays GOP*, AP (Nov. 9, 2022), <https://apnews.com/article/2022-midterm-elections-wisconsin-congress-government-and-politics-551c97b4ee13b4fb1163e361ad6bc189>.

⁴ See The Long Run PAC, Statement of Organization (Feb. 7, 2023), <https://docquery.fec.gov/pdf/137/202302079578177137/202302079578177137.pdf>.

⁵ *Id.*

⁶ When Mr. Barnes began the fellowship, AMPLI's fiscal sponsor was the New Politics Leadership Academy. OAFF took over sponsorship of AMPLI in February of 2023.

community organizer. Mr. Barnes served as the chair of the Wisconsin Governor’s Task Force on Climate Change as well as the Governor’s Health Equity Council, Wisconsin Criminal Justice Coordinating Council, Wisconsin Missing and Murdered Indigenous Women Task Force, the Governor’s Council on Financial Literacy and Capability, and the statewide 2020 Census Complete Count Committee.

Mr. Barnes completed the fellowship program in December of 2023.

II. LEGAL DISCUSSION

The Complaint alleges that AMPLI has made illegal “contributions” to Mr. Barnes. It therefore appears to allege that Mr. Barnes and his authorized campaign committee accepted such contributions. **But by its own admission, the Complaint acknowledges that Mr. Barnes was not a candidate at the time of the fellowship.** Therefore, the Commissions’ compensation regulations do not apply to the payments he received.

Moreover, all compensation paid to Mr. Barnes was given for *bona fide* work. Therefore, even if the Commission regulations applied when Mr. Barnes was not a candidate—which they do not—Mr. Barnes’ compensation from OAFF would not constitute a contribution.

The Commission considers payments to a candidate made by a third party to be “contributions” unless the payment would have been made irrespective of the candidacy.⁷ Payments for candidate compensation specifically are considered to be 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.⁸

As noted above, the regulation on compensation applies to candidates. A candidate is “an individual who seeks nomination for election, or election, to federal office.”⁹ In Matter Under Review 7816, the Commission acknowledge that payments made after a candidate loses an election are payments that occur when an individual is “not a candidate.”¹⁰

⁷ 11 C.F.R. § 113.1(g)(7).

⁸ 11 C.F.R. § 113.1(g)(7)(iii); see e.g. MUR 7816 (Daniel Feehan, et al.), Factual & Legal Analysis (Apr. 11, 2022) at 7.

⁹ 11 C.F.R. § 100.3.

¹⁰ See MUR 7816 (Daniel Feehan, et al.), Factual & Legal Analysis (Apr. 11, 2022) at 11.

Mr. Barnes ceased to be a candidate on November 8, 2022, following his defeat in the 2022 election, and he has not sought office since that date.¹¹ The Complaint itself acknowledges this fact, listing Mr. Barnes' "Candidacy Dates" as beginning on July 20, 2021 and, importantly, ending on November 8, 2022.¹² The Act, naturally, does not treat compensation to *former* candidates as contributions.¹³ At no point was any compensation from the fellowship deposited into The Long Run PAC's accounts.

In short, there was no "candidacy" during the fellows program. Therefore, compensation paid to Mr. Barnes as part of the program was not governed by the Act or Commission regulation. The Commission's analysis of the claims against Mr. Barnes and The Long Run PAC can and should end there.¹⁴

CONCLUSION

Based on the foregoing, there is no reason to believe that Respondents violated the Act. The Commission should dismiss this matter against Respondents immediately.

Very truly yours,



Rachel L. Jacobs
Maxwell C. Schechter
Counsel to Respondents

¹¹ See e.g. 11 C.F.R. § 113.1 (stating one way that a person "ceases to be a candidate" is "by losing an election.").

¹² See Complaint at 3.

¹³ See 11 C.F.R. § 113.1(g)(7).

¹⁴ Even if Mr. Barnes were a candidate during the fellowship—which he was not—any payments for participation in the AMPLI fellowship constitute *bona fide* compensation, not contributions, as shown under the three-prong analysis in 11 C.F.R. § 113.1(g)(7)(iii). First, the fellowship is entirely independent from Mr. Barnes' candidacy. The fellowship did not begin until months after his candidacy had ended, nor did it overlap with his candidacy at all. Second, the compensation was only made in consideration for his work on the fellowship. Mr. Barnes' compensation was entirely done for the fellowship—he did not do any candidacy work during the fellowship. The Complaint offers no example of Mr. Barnes performing any candidacy work for the compensation. Finally, the compensation does not exceed the amount that would be paid for similarly qualified persons. OAFF set the compensation for *all* fellows at \$10,000 per month. That is the amount OAFF has decided is fair compensation for participation in the program. As described above, Mr. Barnes was extremely well-qualified to work on public policy issues. The Commission has specifically found that a candidate can accept a fellowship for which they were well-qualified. See e.g. MUR 7816 (Daniel Feehan, et al.), Factual & Legal Analysis (Apr. 11, 2022) at 9; Adv. Op. 2013-03 (Bilbray Kohn).