

August 28, 2014

RECEIVED
FEDERAL ELECTION
COMMISSION

Federal Election Commission
Office of General Counsel
999 East Street, N.W.
Washington, D.C. 20463

2014 SEP -3 PM 3:19

OFFICE OF GENERAL
COUNSEL

RE: FEC ID# C00554949

Dear Commissioners:

Pursuant to 2 U.S.C. § 437f, I am requesting an advisory opinion confirming the permissibility of the Memorandum of Understanding (MOU) I have entered into with my employer, Randolph-Macon College (the "College"), under the Federal Election Campaign Act of 1971 (the "Act").

I have been employed by the College since September 1, 1996, and am currently a full-time, tenured professor. This past spring, I won the Republican nomination for the general election in Virginia's 7th Congressional District for the United States House of Representatives, to be held on November 4, 2014.

Upon my nomination, the College offered and I accepted a leave of absence beginning on August 8, 2014. The attached MOU outlines the agreement that the College and I have entered for the duration of my congressional campaign. As a condition of this MOU, I have agreed to seek an advisory opinion from the Federal Election Commission regarding the terms and conditions therein.

Among the terms in the MOU is a provision for the continuation of benefits for which I was eligible prior to this leave of absence, including pre-existing medical insurance, life insurance, tuition reduction, exchange and/or remission benefits, and disability insurance. The continuation of these benefits is dependent on my timely payment of all applicable employee contributions to maintain these plans. These benefits are being continued under a pre-existing policy by the College to cover fringe benefits during a leave of absence. This policy is generally applicable to all employees of the College, and not one which was created for this particular situation.

Pursuant to 2 U.S.C. § 437f(a)(1), a request for an advisory opinion submitted by a federal candidate, like myself, may be expedited if there are fewer than 60 days remaining before the election. Although this request is being sent more than 60 days before the election, I would request that the Federal Election Commission provide an expedited response within 20 days, if possible, to ensure that the terms of this MOU are consistent with federal election laws and regulations.

Sincerely,



David Alan Brat



**Randolph-Macon
College**

Ashland, Virginia

Office of the Provost

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www.rmc.edu

July 29, 2014

Professor David A. Brat
11601 Hickory Lake Terrace
Glen Allen, VA 23059

Dear David,

Randolph-Macon College ("R-MC" or the "College") once again congratulates you for your primary nomination to campaign for the U.S. House of Representatives seat for Virginia's 7th Congressional District. We continue to be pleased by the excitement and engagement elicited by the College's connection to both major candidates in this historic election. Pursuant to our meeting on June 19, 2014, we have prepared this document which we believe reflects the best interests of both you and the College.

Because of the time commitment required to engage in such a high-profile campaign, we have agreed that you will take an unpaid leave of absence from your employment with the College during your congressional campaign. This memorandum of understanding (MOU) outlines our agreement with respect to that leave of absence.

- Your leave of absence will begin on August 8, 2014. You will be paid your full salary and/or applicable wages in your pay check dated August 20, 2014, which will be your final payment prior to your leave of absence pursuant to this MOU.
- You are expected to inform the College, through me, of your intent to return to work no later than the third business day following the earlier of (i) the certification of the election results or (ii) the concession of the losing candidate.
- If you are elected and wish to be employed by the College between the date of your election and the beginning of your term in office then an interim job description will be generated which is acceptable to both you and the College, and you will be paid commensurate with those duties pending your resignation to begin your term of office. Upon your termination of that service to our Country as a member of Congress, if you return to the College and assume your past full teaching duties, you will retain your current status as a full time, tenured Professor at the College. You understand that the College cannot hold your position open for an indefinite period of time and we all hope that a position might then be available, but we cannot guarantee that.
- If you are unsuccessful in your candidacy and wish to return to work prior to January 1, 2015, then an interim job description will be generated which is acceptable to both you

and the College, and you will be paid commensurate with those duties until the start of either the January or spring term as you may select, at which time you will resume your duties, compensation and status as a full time tenured member of our Faculty. Under this circumstance you must return to work no later than January 1, 2015, so that you can prepare for teaching in the spring term. Should you return to work on December 1, 2014, or earlier, there will be an expectation that you will teach a course in January Term 2015.

- You recognize that the College may not participate or intervene on your behalf, nor on any other candidates' behalf, during the campaign. As such, you expressly agree that you shall not use your office, or any other resource of the College, for any campaigning or soliciting for your campaign. Prior approval of the College shall be required for any use of College resources by you during your leave. Your participation in a debate hosted by the College is exempted from this provision.

- You agree not to solicit any campaign funds or assistance from any active student at Randolph-Macon College.

- Consistent with this MOU, during the duration of your leave, the College shall continue to provide to you those benefits for which you were eligible prior to the start of your leave, and you shall not be rendered ineligible for such benefits by merit of your leave status. The College's financial insurance subsidy provided to you for your insurance coverage, and the amount of your contribution for the insurance premium, will remain at the same rate through December 31, 2014. Such benefits include your pre-existing medical insurance, life insurance, tuition reduction, exchange and/or remission benefits, and disability insurance plans with the College, if any. Provided, however, that in order to continue such benefits, you shall timely pay all applicable employee contributions for the maintenance of such plans, if any.

- Notwithstanding the above, any benefits which are wholly or partly subject to the control of outside institutions or other third-parties, specifically including but not limited to tuition reduction, exchange and/or remission benefits, shall be subject to the applicable terms and conditions of those institutions or third parties, and the College does not warrant or guarantee the continuance of such benefits. Provided, however, that such benefits shall be continued to the extent that such benefits are under the College's control, and that the College shall take reasonable and appropriate steps to assist you with the maintenance of such benefits with any controlling third parties.

- You expressly agree to assume full liability (if any such liability may exist) for any and all federal and state income taxes, plus any penalties, interest, costs and/or fees you may incur based on any benefits received from the College or any other term or condition of your leave or this MOU.

- You agree that you shall seek an advisory opinion letter from the Federal Election Commission ("FEC") regarding the terms and conditions provided for in this MOU,



On behalf of Katie Payne (Re: Randolph-Macon College Leave Policy)
[IWOV-IWOVRIC.FID137753]

Steigman, Rose J. to: jwaldstreicher@fec.gov

09/02/2014 03:18 PM

Cc: "Payne, Katherine"

Dear Ms. Waldstreicher –

As you know, Randolph-Macon College (the "College") currently employs two candidates for the general election in Virginia's 7th Congressional District – David Brat and Jack Trammell. Both employees entered into separate Memoranda of Understanding (MOU) with the College for leaves of absence. One condition of each MOU was that the employees would seek an advisory opinion from the Federal Election Commission to confirm the permissibility of the continuation of benefits for which the employees were eligible prior to their leave of absence, including pre-existing medical insurance, life insurance, tuition reduction, exchange and/or remission benefits, and disability insurance.

You asked for the College to provide you with information about its policies and procedures for granting employees' leave requests and continuing their benefits. I have summarized that information below:

- The College has both a Faculty Handbook and a Staff Handbook.
- David Brat is full-time, tenured Professor. As such, he is governed by the Faculty Handbook.
- Jack Trammell is the Director of Disability Support Services and an Associate Professor. He is also governed by the Faculty Handbook, per Section 5.1.1, excerpted below:

"Some full-time employees hold faculty rank. They have an annual contract, hold the ranks of Professor, Associate Professor, Assistant Professor, and Instructor; are evaluated yearly by their Department or Program Chair and the Provost; are evaluated by the Committee on the Faculty every three years with regard to teaching duties, principally in terms of teaching effectiveness; may be eligible for faculty development as defined in 12.1 and as prescribed in their contracts; are eligible to serve on standing committees; may vote at faculty meetings; receive benefits according to 11.1; are promoted according to the procedures outlined in 8.1; must teach or contribute to the academic program; and are ineligible to apply for tenure. All other rights and privileges are outlined in the Staff Handbook."

- Section 11.1 of the Faculty Handbook describes all benefits granted to faculty members. It is attached in its entirety to this email.
- Section 12.1.4 of the Faculty Handbook addresses leaves of absence:

"Leaves of absence may be granted by the Provost for such reasons and for such duration as the Provost believes are in the best interests of the applicant and of the College. Recommendations on such leaves are made by the Committee on the Faculty."

- As you can see, the policy on leaves of absence is fairly broad and general. Typically, the College uses the following procedures to determine whether a leave is granted:
 1. A faculty member seeking approved leave of absence would initiate a discussion with the Provost regarding leave request. Topics addressed would include reason(s) for leave and length of requested leave in order to determine appropriateness for approval purposes.

2. Medical reasons, government or military service, and professional advancement (that also benefits the College and our students) are examples of appropriate reasons for approved leave.
3. If the Provost approves the leave request, the Provost, working with the Director of Human Resources, will make determinations regarding benefits continuation, payment of remaining salary due or salary continuance, and return to work details regarding the requesting faculty member.
4. If the leave request is approved, the Provost will generally approve the continuation of benefits.
5. These terms will be outlined and memorialized with the faculty member generally in writing, often via letter or in a Memorandum of Understanding.
6. The leave agreement governs the terms of the leave.
7. Faculty members on approved leave are required to pay their portion of insurance premiums in order to keep those benefits active.
8. Employees to return to work per the terms in the leave agreement.

Please let me know if you have any additional questions about the information provided:

Sincerely,

Katie Payne

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11.1 Faculty Benefits

The information in the following subsections is subject to regular and frequent change as circumstances dictate. In general, these benefits apply to all full-time faculty and all full-time employees of the College with faculty rank. Randolph-Macon College (R-MC) offers certain benefits to family members including same-sex domestic partners of full-time faculty. Part-time faculty benefits are stipulated in the contract letter. Currently, the College offers the following benefits.

11.1.1 Insurance Benefits

Insurance is one of the most valuable faculty benefits, and Randolph-Macon College provides many forms of coverage for you and your family. Please read the policy certificates and booklets that you are given. Questions about coverage should be referred to the Director of Human Resources.

11.1.1.1 Life Insurance

The College pays the premium on a group life insurance policy that provides coverage equal to twice your annual salary, rounded to the next higher \$1,000, up to a maximum of \$200,000. (For tax purposes, the premium paid for coverage above \$50,000 is taxable imputed income from the faculty.) In the event of accidental death, the policy will pay, upon approval, an additional sum equal to the amount of the life insurance. The policy also pays fixed amounts for dismemberment according to a schedule contained in your certificate.

11.1.1.2 Health and Dental

The College makes available group health and dental insurance to full-time and eligible part-time faculty. If health or dental insurance coverage is elected, a college subsidy is provided to full-time faculty only. Insurance coverage begins on the first calendar day of the month following the hire date, unless employment begins on the first day of the month, whereby coverage begins immediately. Specific details of this coverage are outlined in a booklet provided by Human Resources.

11.1.1.3 Long-Term Disability Insurance

After a full-time Faculty Member has been employed at the College for one year, the college provides long-term disability insurance. This insurance plan provides financial protection by paying a portion of your income while you are disabled. The long-term disability policy has a 6-month elimination period following the date of disability and long-term disability benefits begin, if approved, the day after the elimination period is completed. Optional, supplemental disability insurance is available for purchase at the Faculty Member's expense.

11.1.1.4 General Liability Insurance

The College provides general liability coverage for any Faculty Member "acting within the scope of his duties as such." If a Faculty Member uses a privately-owned vehicle, however, the owner's insurance will be the only carrier providing protection. The College insurance protects only the College.

11.1.1.5 Flexible Spending Accounts

The College provides the option of establishing Flexible Spending Accounts designed to allow faculty to pay for unreimbursed medical and dental expenses (commonly referred to as "out-of-pocket" expenses) and dependent day-care expenses (child care/elderly care) on a pre-tax basis.

11.1.1.6 Workers' Compensation

In accordance with the Virginia Workers' Compensation statute, the College provides Workers' Compensation Insurance for all employees. The cost for this coverage is supported entirely by the College. If you are injured on the job, you must report the accident immediately to your supervisor. All non-emergency injuries occurring on College property should be treated by a physician listed on the panel of providers found in the Office of Human Resources. The employee must notify Human Resources within 24 hours or the next business day to file a First Report of Accident.

If the claim is approved for benefits, the payment of workers' compensation benefits will be determined in accordance with the Virginia workers' Compensation statute.

11.1.1.7 Unemployment Compensation

The College participates in government programs which provide benefits for Faculty Members who become unemployed. The College, rather than its faculty, pays taxes to support these programs. The College does not determine an individual's eligibility for benefits under these programs; however, the Virginia Employment Commission provides this information.

11.1.1.8 Optional Insurance

The College allows certain corporations to offer optional insurance products such as supplemental life insurance, cancer and intensive care insurance, personal accident and short-term disability insurance, and a prepaid legal services program. The College does not make any contribution toward the cost of such products. Rates vary with age and coverage. Information about these programs is made available by the Office of Human Resources.

11.1.1.9 COBRA (Consolidated Omnibus Budget Reconciliation Act)

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that requires the College to offer faculty and their families the opportunity for a temporary extension of health and dental coverage in certain instances where coverage under the College plan would otherwise end. The Faculty Member, spouse, or dependents have the right to continue this coverage for either 18 or 36 months, depending upon the reason why the Faculty Member/dependent is no longer eligible for regular group coverage. The College has engaged a third party firm to administer COBRA benefits, and details of the COBRA plan and eligibility requirements will be provided to you by this firm.

Please note that if you have a spouse or dependents who are covered under the group health and dental plans and a change in status qualified your spouse and/or dependents for COBRA, it is the Faculty Member's responsibility to inform Human Resources of these changes so that proper notification can be sent.

11.1.2 Educational Benefits

11.1.2.1 Tuition Remission for Faculty

Regular, full-time faculty are eligible for the full abatement of tuition and the application fee for two courses per semester at the College. Faculty Members may also take a class in summer school if the minimum number of paying students has enrolled for the course. For both summer and semester courses, faculty must meet the standards appropriate for each course.

11.1.2.2 Tuition Remission for Dependents

If a full-time Faculty Member is responsible for the educational expenses of their dependent child(ren), as defined by the IRS, that Faculty Member's dependent child(ren), spouse and/or same-sex domestic partner become eligible at the next academic cycle following the Faculty Member's date of hire for a remission of tuition (not including fees, room and board) at the College. This remission also includes tuition for summer academic courses. Tuition remission for study abroad programs are limited to degree seeking students at Randolph-Macon College only.

Dependent children, as defined by the IRS, of a retired, totally disabled, or deceased Faculty Member who completed ten (10) or more consecutive years of full-time service to the College and who retired, died, or became totally disabled while employed at Randolph-Macon are eligible for a remission of tuition (not including fees, room and board) at the College, including tuition for summer academic courses.

Such dependents must, of course, meet the usual standards of admission in effect at the time of their applications, and must pay the regular application fee. Applicants wishing to be considered for other financial assistance based on need must submit the appropriate Free Application for Federal Student Aid (FAFSA). Details are available from the Financial Aid Office.

It should be noted that the maximum total of all Randolph-Macon non-need based awards (i.e., scholarships, family grants, minister's family grants, pre-ministerial grants, employee tuition remission, and tuition exchange) plus the Virginia Tuition Assistance Grant may not exceed tuition.

11.1.2.3 Tuition Exchange for Dependents

If a full-time Faculty Member is responsible for the educational expenses of their dependent child(ren), as defined by the IRS, that Faculty Member's dependent child(ren) become eligible to apply for tuition exchange at the next academic cycle following the employee's date of hire. The College participates in the following tuition exchange programs:

- **Tuition Exchange Plan:** Tuition Exchange is an association of over 600 colleges and universities offering scholarships (full tuition not including fees, room and board up to a set rate) to members of faculty and staff families employed at participating institutions. Institutions are required to maintain an import-export balance resulting in not all families receiving an award. For more information and a list of participating institutions go to <https://www.tuitionexchange.org>.
- **Council of Independent Colleges Tuition Exchange Program (CIC-TEP):** CIC-TEP is a network of CIC colleges and universities willing to accept, tuition-free, students from families of full-time employees of other CIC-TEP institutions. Each participating institution in the network agrees to import a limited number of students on the same admission basis as they accept all other students, without regard to the number of students it exports. For more information and a list of participating institutions go to <http://cic.org/>.

For both programs above, dependents must meet the usual standards of admission in effect at the participating institutions at the time of their applications. Application details are available from the Financial Aid Office. Also, if the parent of a dependent child terminates employment at the College during the academic term, the dependent tuition benefit will terminate at the end of that same academic term.

11.1.3 Maternity Accommodations

11.1.3.1 Maternity Policy Guidelines⁸⁵

To accommodate faculty in times of pregnancy and birth, the College will provide birth mothers with release from the equivalent of two (2) courses for a total of 6-8 contact hours.⁸⁶ If additional course releases are necessary, the Faculty Member may use previously accumulated uncompensated overload (i.e., "Banked" courses). If the Faculty Member has no "banked" courses, she may take a course release loan from the College, scheduled to be repaid within a period of five (5) years.

In addition to the two-course release, the Faculty Member will also be released from faculty duties as necessary during the maternity period.

The College provides a Family Leave Advocate to assist in the negotiation of maternity accommodations.

Adoptive parents and birth fathers should consult with the Provost of the College for accommodation under these maternity policy guidelines.

11.3.2 The Family Leave Advocate

Maternity is a complex issue, and the College understands the need for good communication, planning, and fair negotiation. To that end, the College provides a Family Leave Advocate (FLA) to assist Faculty Members in negotiating maternity arrangements. The FLA is appointed for a three-year term by the Provost and is nominated by the Nondiscrimination Committee. The FLA must be a tenured member of the faculty and have a demonstrated understanding of maternity issues. The FLA cannot be a member of the Committee on the Faculty. The FLA will: 1) assist Faculty Members in negotiating maternity accommodations with the Department Chair, the Provost, and the Committee on the Faculty and 2) inform Faculty Members and Department Chairs of maternity leave options.

11.1.4 Retiree Status

In order to have "retiree status" from the College, an employee must meet both a minimum age of 55 years and have a minimum service of 10 years of continuous service as an employee, and the sum of such employee's age and years of service is at least 70.

Employees who meet this qualification and retire are eligible for the College's health/dental insurance plans if they are a participant in the health/dental plans during the 3-month period immediately prior to retirement and are actively at work on the day prior to retirement. An employee's spouse/same-sex domestic partner/dependents are eligible as well provided they too are participants in the health/dental plans during the 3-month period .

immediately prior to the employees' retirement. Employees who retire and were hired prior to January 1, 2001, are eligible for the College's cost sharing of premiums in the College's group health and dental insurance plans. Those hired after January 1, 2001, may participate in the College's group health and dental insurance plans, but the employees must pay the entire cost of the insurance premium.

If the retired employee chooses not to continue in the college's health and/or dental plans upon retirement, then the retired employee and his/her enrolled spouse/same-sex domestic partner/dependents will not be eligible to enroll in the College group plans at a later date. If the retired employee's spouse/same-sex domestic partner/dependents choose not to continue in the College's health and/or dental plans upon the employee's retirement, then they will not be eligible to enroll in the College's group plans at a later date.

Once enrolled, if a retired employee and their insurance spouse/same-sex domestic partner/dependents, if applicable, drop the College's health and/or dental group plans, they will not be eligible to enroll in the College group plans at a later date.

If you are under age 65 when you retire, the College's health insurance plan will serve as the primary carrier until you reach age 65. Once you turn 65, at which time you will be eligible for Medicare, the College offers retirees a retiree medical benefit. Details regarding this benefit are available in Human Resources.

In addition, retiree status provides access to a group term life insurance policy at the retiree's expense in the amount of \$5,000 of coverage.

Additional information concerning retiree status can be obtained from the Office of Human Resources.

11.1.4.1 The College Retirement Plan

The College Retirement Plan has been adopted to provide you with the opportunity to save for retirement on a tax-advantaged basis and to provide additional income for retirement. The Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) is currently approved to provide retirement investment options for the College Retirement Plan. Human Resources has detailed information on TIAA-CREF investment options and appropriate application forms. It is important to plan ahead for retirement. You are encouraged to attend any retirement planning seminars sponsored by the College and to consult with Human Resources on a regular basis concerning your options.

The College offers the following plan:

College Retirement Plan with Employer Match: Employees are eligible for this program after one year of service with a minimum of 1000 hours of service. The year waiting period is waived for employees who have been enrolled in an employer sponsored retirement plan within the 12-

month period immediately prior to the date of employment. The College will apply a 180% match to salary deferrals of up to 5% of the employee's base compensation.

Employee Salary Deferral Amount	Employer Match
5% of base pay	9.0% of base pay
4% of base pay	7.2% of base pay
3% of base pay	5.4% of base pay
2% of base pay	3.6% of base pay
1% of base pay	1.8% of base pay
0% of base pay	0.0% of base pay

Although the money contributed to the plan is under the control of the employee, there are significant tax penalties and mandatory tax withholdings imposed by the Internal Revenue Service if the funds are accessed prior to age 59½. Furthermore, there are no loan options on any monies that have been contributed to the Plan.

All employees are immediately eligible upon hire to defer a portion of their regular compensation into the College retirement plan regardless of whether or not they are eligible to receive the College match.

Details concerning retirement options can be obtained from Human Resources.

11.1.4.2 Emeritus Status

The Board of Trustees established the Emeritus rank for retiring faculty in 1983. To be eligible for this position, a Faculty Member must be approved by the Board of Trustees on the recommendation of the President and the Committee on the Faculty. Normally, to be eligible for the Emeritus rank, a Faculty Member must have served fifteen years at Randolph-Macon College immediately prior to retirement.