

December 16, 2015

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VIA EMAIL

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: Comments on Draft Advisory Opinions for Advisory Opinion Request 2015-14

Dear Commissioners:

We submit these comments on behalf of Hillary for America (“HFA” or the “Campaign”) to respond to Draft Advisory Opinions A and B in the above referenced Advisory Opinion request.

Both Draft A and Draft B reflect a rigid and unnecessary extension of the Act to prohibit activity that the Commission ought to encourage: the active engagement of young Americans from all backgrounds and socio-economic levels in our democratic electoral process. In an era in which the Commission itself publicly acknowledges a lack of enforcement ability, it is both puzzling and troubling that the issue it has chosen to rigorously police is the provision of educational stipends to students of ordinary means who seek nothing more than a financially feasible way to obtain a valuable learning experience.

If adopted, either draft will turn the Act into an insurmountable financial barrier, preventing students from less affluent backgrounds from participating at the same levels in our electoral process as students lucky enough to come from wealthy backgrounds. We request that the Commission take pause before adopting either draft to articulate what regulatory purpose is possibly being served here. What regulatory purpose comes close to justifying a result that will so disproportionately and undemocratically burden students of color? In an era of unfettered spending by outside groups, the idea that a \$3,000 educational stipend from a university may have a corrupting influence on our elections makes no sense.

The drafts, in denying the ability of DePauw University (“DePauw”) to provide the educational stipend to Ms. Houghtalen (the “Stipend”), rely on both a rigid application of 52 U.S.C. § 30101(8)(A)(ii) and a denial of the key differences between the request at hand and prior advisory opinions dealing with internship stipends.¹

¹ Draft A at 6; Draft B at 6-7.

DePauw does not, as the Commission suggests, seek to provide Ms. Houghtalen with the Stipend as compensation for campaign services.² Rather, as explained in the request, DePauw offered Ms. Houghtalen the Stipend for the *sole purpose of assisting her with an educational experience*.³ The Commission is correct that past advisory opinions have noted, in an entirely conclusory fashion, that a stipend provided to an intern by a corporation for campaign related activities would result in a prohibited corporate contribution. However, this precedent diverges from the facts at hand. Unlike the internship stipend programs considered by the Commission in the past and cited in the drafts, the Hubbard Center Summer Internship Grant Program does not operate to fund politically oriented internships.⁴ Rather, it is administered for a general educational purpose, without a connection of any kind to politics or federal electoral activity. DePauw, in offering the Stipend to Ms. Houghtalen pursuant to this general program, does not seek to influence or pay her to work for a political campaign. Under these unique facts, the Commission should reach the prudent and reasonable conclusion that the Stipend falls outside of the scope of a prohibited corporate contribution.

Moreover, the conclusion that the Stipend does not fit within the scope of 11 CFR § 100.54(c) relies upon a unnecessarily technical read of that exception. Requestor does not claim that the Stipend is offered to students without the exercise of any discretion whatsoever by DePauw. Both drafts dismiss the applicability of 11 CFR § 100.54(c) on the narrow grounds that the process of awarding the Stipend entails partially subjective factors.⁵ However, the Commission ignores that the amount of discretion remains sufficiently limited to meet the underlying purpose of the exception: to ensure that there is an insufficient connection between the provision of the Stipend and an attempt to influence a federal election. The longstanding nature of the Hubbard Center Summer Internship Grant Program, the availability of the program to any student that applies, and the rigid scoring rubric that is applied uniformly to each applicant all serve to ensure that the Stipend is provided without regard to any intent to influence a federal election. As such, the Commission should find that the Stipend fits within 11 CFR § 100.54(c).

² Draft A at 6; Draft B at 6.

³ See AOR006.

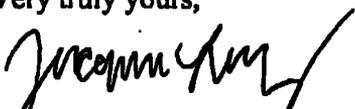
⁴ See e.g., FEC Adv. Ops. 1979-67 (RNC/DNC) (requiring the internship to be at the Democratic National Committee or the Republican National Committee and either a Senate or Congressional office or a campaign headquarters for the participant's home state); 1985-17 (Congressional Youth Leadership Council) (requiring the internship to be at a Senator or Representative's office or on a Congressional committee staff).

⁵ Draft A at 8-10; Draft B at 8-10.

Federal Election Commission
December 16, 2015
Page 3

Pursuant to the above, we urge the Commission to reconsider before adopting either draft and prevent the harm to students that is sure to otherwise follow.

Very truly yours,



Marc E. Elias
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