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Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: Comments on AOR 2018-06

Dear Ms. Stevenson:

On behalf of Secretary Hillary Rodham Clinton, we write to comment on Advisory Opinion Request 2018-06, which was submitted by Liuba Grechen Shirley, who is running for Congress in New York. The Federal Election Commission (“Commission” or “FEC”) should allow Ms. Shirley to use campaign funds to pay for the child care expenses she must incur to run for office. Denying Ms. Shirley’s request would undermine the Commission’s previous advisory opinions, discourage young mothers from seeking elective office, and deprive parents of ordinary means of the opportunity to serve.

The Commission first answered this basic question over 20 years ago, when Representative Jim McCrery obtained permission to use campaign funds to pay for “occasional” childcare expenses incurred when his wife attended campaign events, and when neither of them could take care of their son.¹ Concluding that these child care costs were “incurred only as a direct result of campaign activity and would not otherwise exist,” the Commission approved Representative McCrery’s request to use campaign funds to pay for child care, when he and his wife were engaged in campaign-related activities, and neither he nor she could not provide care themselves.²

The Commission has not narrowed the availability of campaign funds to pay for child care costs since this 1995 decision.³ Subsequent events have only confirmed the wisdom of its conclusion.

¹ See FEC Adv. Op. 1995-42 (McCrery).

² *Id.*

³ In instances where minor children must travel with their parents because of their young age, the Commission has allowed candidates and officeholders to use campaign funds to pay those travel costs, effectively preempting the question of childcare costs by allowing children to remain with their parents on campaign and official trips, and by allowing individuals to use campaign funds to pay for those travel costs. See FEC Adv. Op. 1995-20 (Roemer); FEC Adv. Op. 2005-09 (Dodd). In 2008, a congressional candidate sought approval from the FEC to use campaign funds to pay for full-time day care and after-school care for his children. See FEC Adv. Op. Req. 2008-02. At the time, the Commission had only two sitting Commissioners, so it was unable to issue a formal opinion. The draft

Young women like Ms. Shirley are now running for office in record-breaking numbers.⁴ For young mothers like her, the ability to seek office hinges on access to child care. Ms. Shirley's case is especially striking. Before she became a candidate, she worked from home, cared for her infant children herself, and needed no outside child care. Thus, under a plain reading of the law, as applied to Ms. Shirley's facts, the answer to her question can only be "yes."

Under federal law, a candidate can use campaign funds to "defray[] expenses in connection with a campaign for federal office" or for any other "authorized expenditures in connection with the campaign for Federal office."⁵ However, such spending may not result in the conversion of campaign funds to the "personal use" of a candidate. The Commission has created the "irrespective" test to determine whether a particular use of campaign funds constitutes personal use: if campaign funds are used "to fulfill a commitment, obligation or expense of any person that would exist *irrespective of the candidate's campaign*" using campaign funds for that expense constitutes an impermissible personal use of the funds.⁶ Some expenses have been definitively categorized as personal use, such as household food items, or clothing.⁷ However, child care is different—it is not identified as *per se* personal use, and so the Commission considers on a case-by-case basis whether the expense would exist irrespective of candidacy.⁸

Before she ran for Congress, Liuba Grechen Shirley was the full-time caregiver for her three-year-old daughter and one-year-old son.⁹ Due exclusively to her rigorous campaign schedule, she can no longer provide this care to her children, and so she must pay for a part-time caregiver. Because this expense directly results from her campaign and would not otherwise exist, she should be able to use campaign funds to defray these costs. There is no reason to treat child care differently than any other campaign-related expense, nor is there any sound policy reason to differentiate child care costs from other necessary expenses of running for office.

The Commission has consistently recognized that "candidates have wide discretion over the use of campaign funds" as long as such funds are not converted to personal use.¹⁰ Indeed, relying on the "irrespective" test, the Commission has allowed candidates to use campaign funds to purchase copies of a candidate's own book when the candidate did not earn royalties from the

opinion, signed by both sitting Commissioners, did allow for campaign funds to be used to pay for the proposed child care costs.

⁴ See, e.g., Heather Caygle, *Record-breaking Number of Women Run for Office*, POLITICO (Mar. 8, 2018), available at <https://www.politico.com/story/2018/03/08/women-rule-midterms-443267>; Danielle Kurtzleben, *More Than Twice As Many Women Are Running for Congress in 2018 Compared with 2016*, NPR (Feb. 20, 2018), available at <https://www.npr.org/2018/02/20/585542531/more-than-twice-as-many-women-are-running-for-congress-in-2018-compared-to-2016>.

⁵ 52 U.S.C. § 30114(a)(b); 11 C.F.R. § 113.2(a).

⁶ 11 C.F.R. § 113.1(g)(1)(ii)(emphasis added).

⁷ *Id.* § 113.1(g)(1)(i).

⁸ *Id.* § 113.1(g)(1)(ii).

⁹ FEC Adv. Op. Req. 2018-06, at 2.

¹⁰ 60 Fed. Reg. 7,868 (Feb. 9, 1995); 11 C.F.R. § 113.2(a).

purchase,¹¹ pay for legal fees incurred by a consultant,¹² upgrade a Congressman's home security system,¹³ and—significantly—to pay for the travel expenses of minor children when necessary to enable the parents' participation in campaign or officially connected activities.¹⁴ The payment of Ms. Shirley's child care expenses would not simply be a proper exercise of permissible discretion, as was true in these cases. Such payment is absolutely necessary to the responsible pursuit of her candidacy.

For these reasons, we ask the Commission to grant the request in Advisory Opinion Request 2018-06. We further request that the Commission grant relief from the deadline to submit written comments on Advisory Opinion Request 2018-06, so that it may fully consider Secretary Clinton's views on this important issue. Having experienced recently the demands of a modern campaign, having herself been a young mother when her spouse ran for office, and having long been active in public and professional life on issues of parenthood and responsible citizenship, Secretary Clinton brings a unique perspective to Ms. Shirley's request that we hope the Commission finds useful.

Very truly yours,



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¹¹ FEC Adv. Op. 2014-10 (Farr); FEC Adv. Op. 2014-06 (Ryan).

¹² FEC Adv. Op. 2011-07 (Chuck Fleischmann for Congress).

¹³ FEC Adv. Op. 2009-08 (Gallegly); *see also* FEC Adv. Op. 2011-17 (Giffords).

¹⁴ FEC Adv. Op. 1995-20 (Roemer); FEC Adv. Op. 2005-09 (Dodd).