

FILE 2800 – July 28, 2023

**ABUSE OF POSITION; MISUSE OF PUBLIC POSITION;
CONFLICT OF INTEREST; GIFT PROHIBITIONS**

**STATE UNIVERSITY BOARD OF TRUSTEES MEMBER AUTHORIZING
CONTENT FOR PUBLICATIONS REGARDING MATTERS
RELATED TO HIS STATE UNIVERSITY**

To: William S. Galvano, Esq., Attorney for New College of Florida

SUMMARY:

A trustee of a state university is not prohibited, in his private capacity, from writing and accepting payment for publishing content on written or online media platforms concerning matters related to the university, provided the content concerns only publicly available information. Additional guidance is provided concerning whether the contractual relationships formed due to his journalism present a prohibited conflict of interest for him, and whether he is limited in soliciting personal donations through the online media platform. Referenced are CEO 23-1, CEO 22-4, CEO 22-3, CEO 19-13, CEO 16-2, CEO 16-1, CEO 08-20, CEO 08-19, CEO 08-2, CEO 06-6, CEO 95-28, CEO 92-21, CEO 90-15, CEO 89-21, and CEO 86-6.

QUESTION 1:

Would a member of the board of trustees for an institution within the State University System be in violation of the statutory and Constitutional prohibitions over which the Commission has jurisdiction were he to author and accept payment for content related to the institution?

Question 1 is answered as follows.

In your letter of inquiry and additional information provided to our staff, you indicate you are the General Counsel for New College of Florida (NCF), a public liberal arts college in the State University System of Florida. You are bringing this inquiry on behalf of a recently appointed member of the University's Board of Trustees.¹ You indicate the Trustee produces newsletters, commentaries, and videos for two different platforms—a written journal published by the Manhattan Institute for Policy Research and an online service called *Substack*. The Trustee would like to publish content related to NCF on these platforms, and promote such content through his *Twitter* account. He inquires whether this constitutes a prohibited conflict of interest with his role as a NCF Trustee. Before engaging in legal analysis, the following discussion is offered concerning the Trustee's involvement with both media platforms.

Regarding the Manhattan Institute for Policy Research, the organization is a think tank based in New York City and comprised of scholars, journalists, activists, and civic leaders.² The organization focuses upon offering commentary and research concerning a range of topics, such as urban affairs, policing, education, and housing. The organization's efforts include publishing the *City Journal*, which you indicate is a public policy magazine and website. The Trustee is a paid employee and director of the Manhattan Institute, and he serves as the editor for the *City Journal*. As part of his editorial duties, he writes articles, editorials, and commentaries for the *City Journal*.

Regarding *Substack*, you indicate it is an online platform for journalists and content creators where they can publish newsletters, articles, and videos, and engage in discussions with readers.

¹ Section 1000.21(6)(k), Florida Statutes, lists NCF as part of the State University System, and Section 1004.32(3), Florida Statutes, authorizes the Governor to appoint all twelve members of its Board of Trustees.

² The information in this paragraph comes from your responses to staff inquiries, as well as from publicly available information accessed at: <https://manhattan.institute/about>.

The Trustee is not employed by *Substack*, but he has signed an agreement allowing him to have an account on its platform. On this account, he publishes articles, commentary, and videos on a variety of issues, including higher education matters. You indicate the majority of the content that the Trustee produces on *Substack* can be viewed without any monetary charge, although certain content—kept behind a paywall—requires a paid subscription. As will be explained in subsequent questions in this opinion, the money paid by subscribers is sent to a third-party payment processor, which—in turn—takes a percentage for its services, sends a pre-set portion of the subscription fee to *Substack*, and then distributes the remaining money to the Trustee. The Trustee is not paid by *Substack*; his compensation comes from the subscriptions made to his account.

Importantly, these journalism opportunities did not arise due to his appointment to NCF's Board of Trustees. The Trustee's employment at the Manhattan Institute, his work on the *City Journal*, and his involvement with *Substack* all preceded his appointment to the Board.

You indicate that now, following his appointment, he wants to continue these journalistic endeavors, in part by publishing content in the *City Journal* and on his *Substack* account pertaining to NCF.³ He also intends to use his *Twitter* account to draw attention to these articles. You emphasize the "strong majority of his content" for both the *City Journal* and *Substack* will not relate to NCF specifically, but will be more general in nature, concerning broader issues affecting education and schools. However, you indicate some of the content will specifically refer to and offer commentary regarding NCF, and he inquires whether this will trigger any statutory or Constitutional prohibition over which the Commission has jurisdiction.

Of note, you indicate any content generated by the Trustee concerning or referring to NCF

³ You indicate the Trustee authors his own content for the *City Journal* and on *Substack*.

will be non-monetized and non-paywalled, meaning this content will not generate any income for him. Because it appears he is employed by the Manhattan Institute, presumably at an established salary, this appears more relevant to content on his *Substack* account. Accordingly, from what you indicate, any content posted on his *Substack* account specifically related to or concerning NCF will be freely available, meaning it will be viewable without a paid subscription. However, you indicate even non-monetized and non-paywalled articles on *Substack* do include a link for interested readers to subscribe to the Trustee's account, as that option is built natively into the platform.

We have issued past advisory opinions regarding whether public officers may report or offer commentary for public consumption on matters affecting their public agencies. These prior opinions have analyzed this issue under two statutes, Sections 112.313(6) and 112.313(8), Florida Statutes, which state:

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. [Section 112.313(6), Florida Statutes]

DISCLOSURE OR USE OF CERTAIN INFORMATION.-
-A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. [Section 112.313(8), Florida Statutes]

These provisions prohibit the Trustee from corruptly⁴ using his public position or the resources

⁴ Section 112.312(9), Florida Statutes, defines "corruptly" as:

thereof, or using "inside information," to benefit himself or any other person or entity. Also relevant—although it did not become effective until December 31, 2020—is the Constitutional prohibition found in Article II, Section 8(h)(2), Florida Constitution,⁵ which provides:

A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts, in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest. The Florida Commission on Ethics shall, by rule in accordance with statutory procedures governing administrative rulemaking, define the term "disproportionate benefit" and prescribe the requisite intent for finding a violation of this prohibition for purposes of enforcing this paragraph. Appropriate penalties shall be prescribed by law.

In the prior opinions, which are summarized below, we concluded there was no violation of Sections 112.313(6) or 112.313(8) for two main reasons: (1) any reporting or journalism was done in a private capacity, separate and apart from the use of the public officer's official position; and (2) the reporting or journalism was confined to publicly available information.⁶

For example, CEO 90-15 addressed a city commissioner who was employed by a

. . . done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

⁵ On December 31, 2022, the constitutional subsection found in Section 8(g)(2) of Article II of the Florida Constitution was redesignated as Section 8(h)(2).

⁶ Typically, we are cautious in applying Section 112.313(6) in the context of an advisory opinion, given that the statute often hinges upon evidence of a corrupt intent, which is difficult to determine outside the context of an ethics complaint, where a full investigation and administrative hearing can be conducted to collect all relevant information and judge the credibility of witness testimony. See CEO 22-4, Question 2 and CEO 22-3, Question 2. However, the opinions cited herein did not need to reach the question of corrupt intent, as they determined Section 112.313(6) was inapplicable on an alternate basis, namely the lack of public capacity conduct.

newspaper to write columns and articles concerning the activities of the city commission. We acknowledged that using his status as a reporter to promote his stance on a political issue or to criticize the stance of an opponent might achieve a political benefit for him. Nevertheless, we concluded that he was not using his office to generate this content, as would be needed for the prohibition in Section 112.313(6) to apply. We emphasized "his actions in writing [the columns and articles] would be taken in his private capacity rather than in his public capacity." And, regarding Section 112.313(8), we concluded the statute would not be violated so long as all the information in the columns or articles that he wrote was available to the public, and could be discussed or explained with any member of the public.

More recently, in CEO 16-2, Question 3, we found no violation of Section 112.313(6) would occur if a member of a county parks and recreation council wrote columns for a local newspaper addressing matters pertaining to county parks. We wrote:

[A]lthough your use of the newspaper could achieve benefits for you, such an action, without more, will not violate Section 112.313(6). Because you will not be acting in a public capacity by writing a column or making comments concerning park-related issues, it cannot be said that these actions will be a use of public office under Section 112.313(6).

Similarly, in CEO 92-21, we found the statutory prohibitions would not preclude a county sheriff from owning a local newspaper that was reporting on county business. We advised the sheriff that because his ownership of the newspaper was in his private capacity, and so long as he did not use public resources to produce any of its articles or columns, Section 112.313(6) would not apply. We did caution the sheriff, though, not to use confidential criminal investigative information to give his newspaper an advantage over other publications, as such conduct would violate Section 112.313(8).

And, finally, CEO 86-6 addressed whether a public employee could be paid by a newspaper for writing a job-related article. In particular, the opinion involved a chief assistant public defender who was paid \$150 by a local newspaper for writing commentary on the juvenile justice system and on a particular client whom the public defender's office had represented. We found no violations of Section 112.313(6) or 112.313(8), noting that "all information contained in the commentary about the case is a matter of court record" and "was available to members of the general public[.]"

Considering the reasoning in these prior opinions, we find the Trustee will not automatically violate Section 112.313(6) or the prohibition in Article II, Section 8(h)(2), Florida Constitution, simply by reporting or publishing content related to NCF in the *City Journal* or on *Substack*. His authoring of such content will be in his private capacity; it will not be done through his public position, as would be needed for the statutory prohibition to apply. Moreover, so long as the content deals with information fully available to the public, there will be no violation of Section 112.313(8). This means, of course, that the Trustee will have to confine his articles, commentary, and videos to information derived from public records or public meetings, and he cannot use information that is exempted or not subject to the public records law. Similarly, while he can use conversations with NCF staff consisting of information that is public record and can be discussed or explained with any member of the public, any information exempted from or not subject to the Sunshine Law or the public records law should not be referenced. The Trustee will need to keep his content within these parameters to avoid a violation of the prohibitions discussed herein.⁷

We recognize an argument could be made that public officers—such as the Trustee—should

⁷ So long as the Trustee follows this guidance, he also will not violate these prohibitions by posting about his content on *Twitter*. While ultimately not integral to the analysis herein, we note you have indicated the Trustee is not compensated for his *Twitter* postings.

not profit in any way from the information or skills that they acquire in their public positions. However, so long as the Trustee confines his articles, videos, and commentary to publicly available information, as described above, his content will not rely upon his service on the Board of Trustees and could be written by anyone. We decline to find, without more, that such actions constitute use of one's public position.

We also acknowledge that readers may be more prone to subscribe to the *City Journal* to the Trustee's *Substack* account given his newly-appointed status as a NCF Trustee, particularly if he will be publishing content related to NCF. However, the possibility that readers may be more interested in the Trustee's content due to his public position does not provide a basis for applying the prohibitions discussed above. In CEO 90-15, which dealt with a city commissioner acting as a paid reporter, we found "[a]lthough most reading the article[s] will recognize his name and know that he is a [c]ity [c]ommissioner, this factor of name recognition alone is not sufficient to constitute a use of public office. To find otherwise would prohibit a public official from engaging in almost any private business." See also CEO 16-2 (stating "that while readers might recognize [the public officer's] name on [his] articles and realize he was a public officer, name recognition [is] not sufficient to constitute a use of public office"). In other words, the possibility that the Trustee's readership and subscriptions may increase due to his public position does not automatically equate to a misuse or abuse of his public position.⁸

⁸ We note the Trustee also intends to identify himself as a NCF Trustee in the "author biography" on his *Substack* account. While this may be, in a strict sense, a "use of position" under Section 112.313(6), we have found the mere identification of one's title, without more, does not suggest the type of wrongful intent, or the type of action inconsistent with the proper performance of public duties, necessary to constitute "corrupt" conduct under the statute. See CEO 19-3, Question 3 (finding a police chief could identify himself by title when engaging in fundraising for a nonprofit, provided he obtained permission from the city manager) and CEO

However, we do offer some words of caution to the Trustee. It is critical that he not use NCF personnel to prepare the content that he privately publishes. He must author the content personally—or with others not affiliated with NCF—to avoid an application of the statutory prohibitions previously discussed. Also, to prevent any confusion, when the Trustee comments on matters related to NCF, he should emphasize he is sharing only his personal opinions and not the opinions of the university board on which he serves. This will clarify he is offering only his personal opinion and is not speaking for the university itself, which could be construed as a use of his public position.

Question 1 is answered accordingly.

QUESTION 2:

Does the Trustee have a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, if he continues in his employment or contractual relationships with the media platforms for which he is publishing content?

Question 2 is answered in the negative.

In your inquiry, you indicate the Trustee seeks to clarify "whether his journalism or social media presence creates a conflict of interest with his role as a Trustee of NCF." This requires analysis beyond merely considering whether he can publish articles related to NCF in the *City Journal* and on *Substack*. His employment and contractual relationships with these media platforms also must be examined to ensure they do not create a prohibited conflict of interest.

08-20 (finding a State Senator would not be in violation of Section 112.313(6) were he to allow his private equity firm to identify his public position in memoranda and publications).

The statute relevant to such an examination is Section 112.313(7)(a), Florida Statutes, which states:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

The first part of Section 112.313(7)(a) prohibits the Trustee from having employment or a contractual relationship with any agency or business entity that is subject to the regulation of, or is doing business with, his agency, which would be NCF. The second part of the statute prohibits him from having employment or a contractual relationship that will create a "continuing or frequently recurring" conflict of interest with his duties as a Trustee, or that will "impede the full and faithful discharge of [his] public duties." The following analysis will apply the statute to the Trustee's employment with the Manhattan Institute for Policy Research—which includes his service and writings for the *City Journal*—as well as his relationship with *Substack*.

Turning first to his employment with the Manhattan Institute for Policy Research, you indicate this entity is not doing business with NCF and is not subject to NCF's regulation. Assuming there is no other connection between the Institute and NCF, it does not appear this employment creates any prohibited conflicts of interest for the Trustee under Section 112.313(7)(a).

Turning next to the Trustee's relationship with *Substack*, the application of Section 112.313(7)(a) depends upon understanding how this media platform operates. As discussed in Question 1, *Substack* is an online platform on which authors can create accounts and post content,

similar to having a *YouTube* channel or creating an *Instagram* account. The Trustee is not employed by *Substack* and is not paid by it. Instead, the Trustee is compensated when individuals subscribe to his account to view content kept behind a paywall. Each subscription is paid to a third-party payment processor, which separately distributes percentages of the subscription fee to *Substack* and to the Trustee.

Publicly available information indicates that authors creating an account on *Substack* have to sign a publisher's agreement. While they continue to own any original content that they post, the publisher's agreement gives *Substack* a limited license to promote that content. You indicate the Trustee entered into this publisher's agreement with *Substack* when he first established his account.

It also appears there is a contractual relationship between each *Substack* author and the third-party payment processor, inasmuch as the processor is legally obligated to remit a portion of each subscription fee to the author. To this end, the third-party payment processor must annually prepare and provide each *Substack* author with a Form 1099-K, which is a Federal form used by credit card companies and third-party payment processors to report the payment transactions that they have processed for retailers and third parties. The Form 1099-K is purely informational and does not create an employment or independent contractor relationship between the third-party payment processor and the *Substack* author. It merely summarizes the sales activity on each account, and the processor sends copies of it to both the author and the IRS.

In short, by having a *Substack* account, the Trustee has ongoing contractual relationships with both *Substack* and the third-party payment processor. The question then becomes whether either entity is conducting business with NCF or is being regulated by NCF, as would trigger the statutory prohibition in Section 112.313(7)(a). Because you indicate neither *Substack* nor the third-

party payment processor have any such relationship with NCF, and assuming no other connection arises between these entities and NCF, the Trustee's contractual relationships with them do not create prohibited conflicts of interest for him under Section 112.313(7)(a).

Question 2 is answered accordingly.

QUESTION 3:

Does the Trustee have a prohibited conflict of interest under Section 112.313(7)(a), Florida Statutes, given the contractual relationship that he has with each subscriber to his online media account?

Question 3 is answered as follows.

An additional issue under Section 112.313(7)(a) concerns whether the Trustee will have a prohibited conflict of interest due to his relationship with each subscriber to his *Substack* account. From what you indicate, and as previously discussed, certain content that the Trustee posts on *Substack* can be freely accessed and viewed by any reader, regardless of whether they have subscribed to his account. This first category of readers does not create any conflicts of interest for the Trustee. However, additional content, kept behind a monetized paywall, is available only to those who have subscribed to the Trustee's account by transmitting money to the third-party payment processor. The question then becomes whether the Trustee's relationship to this second category of readers—his subscribers—could trigger the statutory prohibition in Section 112.313(7)(a).⁹

⁹ Because the Trustee's subscriptions are being given in exchange for a particular consideration—namely, the ability to access the paywalled content—we find the subscription fees are not "gifts"

Regarding these subscribers, you indicate the Trustee has the discretion to set and modify his subscription fee without any involvement from *Substack*. Moreover, *Substack* has little to no involvement in dealing with account subscribers. You indicate that account holders, such as the Trustee, have the authority to remove subscribers from their accounts unilaterally. Moreover, *Substack's* Terms of Use indicate that it is not liable for any disagreement between its account holders and their subscribers, including disputes over the payment of subscription fees.

Considering how *Substack* operates, we find a contractual relationship exists between the Trustee and each of his subscribers. In the past, we have adopted the substantive law of contract when evaluating whether a "contractual relationship" exists for purposes of Section 112.313(7)(a), and have cited the following definition from Black's Law Dictionary (Fifth Edition, 1979) when interpreting the phrase:

[a]ny relationship between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

See CEO 23-1 and CEO 95-28. We also cited a similar definition in CEO 89-21, indicating:

The term 'contract' has been defined as a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. Another definition is that a 'contract' is an agreement upon a sufficient consideration to do or refrain from doing a particular law thing. [11 Fla. Jur. 2d Contracts, Section 1.]

Here, based on the Trustee's promise of allowing access to paywalled content, the subscribers provide consideration to him in the form of subscription fees paid to the third-party payment

or "expenditures." See Section 112.312(12)(a), Florida Statutes (defining the term "gift" as excluding items of value for which equal or greater consideration has been provided within 90 days) and Section 112.3215(1)(d) (defining an "expenditure" to include only those items of value

processor. *Substack* itself is not a party to this arrangement and the Trustee has the authority to end the relationship by removing individual subscribers on his own. Accordingly, it appears the Trustee has a contractual relationship with each paid subscriber to his *Substack* account.

Applying this finding to the statute, the Trustee is prohibited under Section 112.313(7)(a) from accepting or continuing a subscription with any "business entity" or "agency" that is doing business with NCF or is being regulated by NCF. Such a contractual relationship would create a prohibited conflict of interest for him under the first part of the statute. Importantly, the statutory prohibition applies only to contractual relationships with business entities¹⁰ and agencies,¹¹ not private individuals. Accordingly, the Trustee should examine his subscription list to ascertain if any current subscribers are business entities or agencies engaged in a business or regulatory relationship with NCF. You indicate the Trustee is able to view the username and email address of each of his subscribers, and, to the best of his knowledge, none of his current subscribers are conducting business with NCF. We encourage him to be vigilant in this regard, if he chooses to continue allowing subscriptions to his *Substack* account.

"made by an [executive branch agency] lobbyist or principal for the purpose of lobbying").

¹⁰ The term "business entity" is defined in Section 112.312(5), Florida Statutes, to mean:

any corporation, partnership, limited partnership, company, limited liability association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

¹¹ The term "agency" is defined in Section 112.312(2), Florida Statutes, to mean:

any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district as defined in s. 189.012.

QUESTION 4:

Do donations given to the Trustee through his online media account constitute prohibited "gifts" under Section 112.3148, Florida Statutes, or prohibited "expenditures" under Section 112.3215, Florida Statutes?

Question 4 is answered as follows.

Language on the Trustee's *Substack* page also asks readers to "become a patron" of his work by donating money to him. In particular, the Trustee's *Substack* page states, "If you want to support my work, you can contribute via credit card, PayPal, or Bitcoin." There are hyperlinks on the page taking readers to webpages where the donations can be made. The Trustee's *Substack* page also indicates, "[1]arger donors can make a tax-deductible contribution to my 501(c)(3) nonprofit" and provides information where such a contribution can be sent. You indicate any donations to the Trustee or his nonprofit are separate and apart from a subscription to his *Substack* account. In other words, a reader can donate money to the Trustee or his nonprofit regardless of whether they are a subscriber. The following analysis addresses whether the Trustee is prohibited or limited in engaging in such solicitations.

Initially, we note NCF is part of the State University System within the Executive Branch (see Section 1001.705(1)(d), Florida Statutes), and the Trustee, as a member of a state university board of trustees, must annually file the CE Form 1 ("Statement of Financial Interests"). See Section 112.3145(1)(c)3., Florida Statutes. Accordingly, the Trustee is subject to Section 112.3148, Florida Statutes (the "gifts" law), and Section 112.3215(6)(a), Florida Statutes (the "expenditure ban"), as he is an Executive Branch agency "reporting individual" required to file financial

disclosure. See CEO 16-1 and CEO 08-2, Question 2. The question then becomes what portions of the gift law and the expenditure ban will apply to the donations being solicited by the Trustee through his *Substack* account.

The statute most pertinent is Section 112.3148(3), Florida Statutes, which provides:

A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

Section 112.3148(3) prohibits the Trustee from soliciting for himself or his personal nonprofit a gift of any amount from a lobbyist of NCF,¹² the partner, firm, employer, or principal of such a lobbyist, a vendor of NCF,¹³ or a political committee (hereinafter, throughout the remainder of this opinion, "prohibited sources"). See also Section 112.31485(2)(a), Florida Statutes (specifically prohibiting "reporting individuals" from soliciting gifts of any amount from political committees).

We acknowledge that the Trustee is not engaging in a direct or in-person solicitation

¹² The term "lobbyist" is defined in Section 112.3148(2)(b)1., Florida Statutes, to mean

any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his or her agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his or her agency.

¹³ The term "vendor" is defined in Section 112.3148(2)(f), Florida Statutes, to mean "a business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods

through his *Substack* page, but is making a general or collective request for funding from anyone who wants to contribute. However, we recently found the term "soliciting," as used in Section 112.3148(3), does not have to be personal or direct, but encompasses general funding requests made collectively to a group or community. See In re Douglas Underhill, Complaint Nos. 20-060, 20-073, 20-103 (consolidated), Final Order No. 22-041.¹⁴ Accordingly, we find the general request for donations on the Trustee's *Substack* page qualifies as "soliciting" for purposes of Section 112.3148(3).

Given the applicability of the statute, the Trustee has two choices. Clearly, he would not be in violation of Section 112.3148(3) if he were to remove all language on his *Substack* page requesting donations for himself or his nonprofit. His other choice is to keep the language requesting donations, but also specify that the prohibited sources identified above cannot contribute. Only by adding this limiting language will he be able to continue soliciting donations through *Substack* without violating Section 112.3148(3).

The following guidance is also provided concerning any donations that the Trustee may receive on behalf of himself or his personal nonprofit. If a prohibited source were to offer a donation unprompted—meaning the Trustee did not solicit it—three prohibitions will apply.

First, the Trustee, as a "reporting individual," will be prohibited from accepting a donation of any amount to himself or his nonprofit if it is offered by a political committee. Section 112.31485(2)(a), Florida Statutes, imposes a flat ban on such donations, stating:

A reporting individual or procurement employee or a member of his or her immediate family is prohibited from soliciting or knowingly

or services."

¹⁴ The First District Court of Appeal is currently reviewing Final Order No. 22-041. See Douglas Underhill v. State of Florida, Commission on Ethics, Appeal No. 1D22-3429.

accepting, directly or indirectly, any gift from a political committee.

The only exception, described in Section 112.31485(1)(a), Florida Statutes, would be if the gift being offered by the political committee is "primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106." Otherwise, donations to the Trustee or his nonprofit coming from political committees should be refused.

Second, any donation to the Trustee or his personal nonprofit by a lobbyist or principal of a lobbyist will be considered an "expenditure," subject to the restrictions in Section 112.3215(6)(a). The term "expenditure" is defined in Section 112.3215(1)(d) to mean "a payment, distribution, loan, advance, reimbursement deposit, or *anything of value* made by a lobbyist or principal for the purpose of lobbying." (emphasis added). While a donation to the Trustee or his nonprofit may not, at first blush appear, to be made "for the purpose of lobbying," the statute clarifies that "lobbying" can encompass any "attempt to obtain the goodwill of an agency official or employee." See Section 112.3215(1)(f), Florida Statutes and Rule 34-12.180, F.A.C. We find a donation to the Trustee or his personal nonprofit fits within this description.¹⁵

The question then becomes under what circumstance the Trustee can accept such an expenditure. Section 112.3215(6)(a) addresses this by stating:

¹⁵ Florida Administrative Code Rule 34-12.180(1) further explains:

Activities by a lobbyist which do not involve directly attempting to influence a specific decision of an agency in the area of policy or procurement may nonetheless be considered "lobbying" pursuant to Section 112.3215, F.S., and this rule chapter, where an expenditure is made by a lobbyist or principal for the personal benefit of an agency official or employee. Such expenditures will be considered to have been for the purpose of engendering goodwill, unless the agency official or employee is a relative of the lobbyist or principal paying for the expenditure.

Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no agency official, member, or employee shall knowingly accept, directly or indirectly, any expenditure.

This provision is tailored only to Executive Branch agency reporting individuals, such as the Trustee, accepting gifts from lobbyists or principals of lobbyists of Executive Branch agencies. See Sections 112.3215(1)(a) and 112.3215(1)(f), Florida Statutes. But its meaning is clear: the Trustee as an Executive Branch agency reporting individual cannot accept a donation (i.e., a goodwill-engendering "expenditure") of any amount on behalf of himself or his personal nonprofit from any Executive Branch agency lobbyist or principal. See CEO 06-6. This applies even if the lobbyist or principal has no connection to NCF, as the prohibition is an across-the-board ban on expenditures coming from any Executive Branch agency principal or lobbyist. See CEO 08-19, Question 3.

Third, even if the donation is not coming from a political committee or an Executive Branch agency lobbyist or lobbyist principal, the Trustee as a reporting individual is subject to the prohibition in Section 112.3148(4), Florida Statutes, which states:

A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011, or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or, directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

Section 112.3148(4) prohibits the Trustee, or anyone acting on his behalf, from accepting "directly

or indirectly" any donation to himself or his personal nonprofit worth more than \$100 from a vendor, lobbyist, or principal of a lobbyist of NCF, or from a political committee. Please note the statutory definition of a "lobbyist" for purposes of Section 112.3148(4)—which, as previously noted, is found in Section 112.3148(2)(b)1.—does not contain the exemptions for the term found in Section 112.3215(1)(h), meaning the term as it is used in Section 112.3148 is broader than in Section 112.3215.

And, finally, if the donation to the Trustee or his personal nonprofit is coming from an individual or entity who is not a prohibited source mentioned above, he may accept the donation, but he will be subject to the reporting requirements of Section 112.3148(8), Florida Statutes. These requirements would apply, for example, if a private citizen or business entity with no connection to NCF offers a donation. Section 112.3148(8) states:

Each reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

1. Gifts from relatives;
2. Gifts prohibited by subsection (4) or s. 112.313(4).
3. Gifts otherwise required to be disclosed by this section.

In essence, if the Trustee receives a donation to himself or his personal nonprofit exceeding \$100 from a non-prohibited source, he must disclose it. This disclosure should be made on our Form 9, "Quarterly Gift Disclosure," by the last day of the calendar quarter following the quarter in which the donation was received. For example, if a gift is received in March, it should be reported by June 30.

Because this analysis is lengthy, the following summary is offered: (1) the Trustee must remove the solicitation for donations on his *Substack* page or add limiting language to the solicitation; (2) the Trustee must decline any donations to himself or his nonprofit from a political committee, or an Executive Branch agency lobbyist or lobbyist principal, as those terms are defined in Section 112.3215; (3) the Trustee may not accept donations to himself or his nonprofit of more than \$100 from a vendor or lobbyist of NCF, as those terms are defined in Section 112148; and (4) the Trustee must report any other donations not otherwise prohibited to himself or his nonprofit of more than \$100 on a quarterly CE Form 9.

Question 4 is answered accordingly.

GG/gps/kjs

cc: William S. Galvano, Esq.

Steverson, Kathryn

From: Stillman, Kerrie
Sent: Monday, April 10, 2023 5:48 AM
To: Zuilkowski, Steven; Steverson, Kathryn
Subject: FW: Request for Opinion
Attachments: Letter to Ethics Commission - EXE.pdf; Letter to Ethics Commission - EXE.pdf

From: Katie Morrissey <KMorrissey@grimesgalvano.com>
Sent: Thursday, April 06, 2023 11:48 AM
To: Stillman, Kerrie <STILLMAN.KERRIE@leg.state.fl.us>
Subject: Request for Opinion

Good morning Ms. Stillman:

Please see the attached letters requesting advisory opinions from the Florida Commission on Ethics. I am also providing hard copies via regular mail.

Thank you.

Katie Morrissey
Paralegal to Bill Galvano, Esq.



Bradenton Office:
1023 Manatee Ave. West
Bradenton, FL 34205
Phone: 941.748.0151 | Fax: 941.748.0158

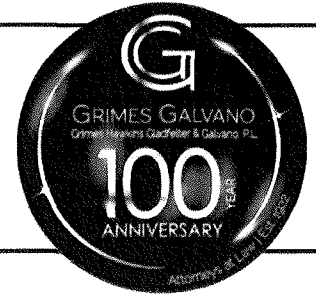
Sarasota Office:
Plaza at Five Points
50 Central Ave., Suite 920
Sarasota, FL 34236

Email: kmorrissey@grimesgalvano.com

Website: www.grimesgalvano.com



PRIVILEGED COMMUNICATION: The information contained in this transmittal may be an attorney-client communication or may otherwise be privileged and confidential. If the reader of this message is not the intended recipient or if you otherwise suspect that you have received this message in error, any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at 941-748-0151 and delete this message and all its attachments. **SPAM FILTERING:** If your e-mail account and/or ISP are flagged as a SPAM generator your mail might not be received by us. Therefore, if your e-mail correspondence is urgent or time sensitive you should verify receipt of e-mail in person or provide follow-up with an alternative communication method. Grimes Hawkins Gladfelter & Galvano, P.L. will not be held responsible for lost, delayed, blocked and/or SPAM tagged e-mail.



FLORIDA
COMMISSION ON ETHICS
APR 11 2023
RECEIVED

Caleb J. Grimes
Jack Hawkins
Leslie Horton Gladfelter
Bill Galvano
Derin Parks
Kyle W. Grimes
Neil G. Taylor
Stephen R. Josephik

Of Counsel
Mitchell O. Palmer

March 30, 2023

Via Electronic and Regular Mail

Kerrie Stillman, Executive Director
The Florida Commission on Ethics
P. O. Drawer 15709
Tallahassee, FL 32317-5709
Stillman.kerrie@leg.state.fl.us

Re: Request for Opinion

Dear Ms. Stillman:

Please be advised that I have been retained as General Counsel for New College of Florida (“NCF”) – a public liberal arts college in the State University System of Florida.

Mr. Christopher Rufo is a current member of the NCF Board of Trustees. The Board of Trustees are vested with a range of authority for governing and managing NCF under the Regulations of the Florida Board of Governors. Specific powers include the making of cost-effective policy decisions, the power to acquire and dispose of real and personal property, the authority to adopt rules, the power to create degree programs, and the general administrative responsibility needed to support NCF.

Mr. Rufo is a senior fellow and director at The Manhattan Institute and an editor for *City Journal*. Mr. Rufo also runs a newsletter and video series on *Substack* where subscribers can pay for the articles he has written. In addition, Mr. Rufo has a very active *Twitter* account that he uses as a forum to advertise his commentaries and articles on *Substack*. Mr. Rufo would like to publish NCF related articles and videos on these platforms that are non-monetized and non-paywalled.

Mr. Rufo asked me in my capacity as General Counsel whether his journalism or social media presence creates a conflict of interest with his role as a Trustee of NCF.


Based on my review of Fla. Stat. §112.313(7)(a), Mr. Rufo's journalism and social media endeavors are permitted with no conflict of interest since they are not the subject NCF regulation, Mr. Rufo is not doing business with NCF through these outlets, nor are they impeding the full and faithful discharge of his duties as a Trustee of NCF. With that said, I recommended that Mr. Rufo continue to keep any NCF related content non-monetized and non-paywalled. Finally, in an abundance of caution, I recommended to Mr. Rufo that he seek an opinion regarding this issue from the Florida Commission on Ethics. He asked if I could help solicit the same.

Therefore, on behalf of Mr. Rufo in his official capacity, I am seeking an opinion from the Florida Commission on Ethics regarding the potential existence of a conflict of interest that may arise from Mr. Rufo's role as Trustee of NCF and his journalism and social media presence.

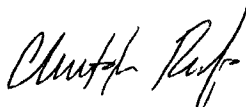
Thank you for your time, and we look forward to reading your analysis.

Sincerely,

GRIMES HAWKINS
GLADFELTER & GALVANO, P.L.

By: 
William S. Galvano, Esq.

APPROVED

By: 
Christopher Rufo

WSG/gmt/km

cc: client

Schafer, Grayden

Subject: FW: [EXTERNAL] Ethics Inquiries

From: Bill Galvano <BGalvano@grimesgalvano.com>
Sent: Tuesday, May 09, 2023 12:11 PM
To: Schafer, Grayden <SCHAFFER.GRAYDEN@leg.state.fl.us>
Cc: Katie Morrissey <KMorrissey@grimesgalvano.com>
Subject: RE: [EXTERNAL] Ethics Inquiries

Gray,

Please move forward with a formal opinion on the Rufo request. I will confirm Speir very soon.

Thank you, Bill.

Bill Galvano, Esq.



Bradenton Office:
1023 Manatee Ave. West
Bradenton, FL 34205
Phone: 941.748.0151 | Fax: 941.748.0158

Sarasota Office:
Plaza at Five Points
50 Central Ave., Suite 920
Sarasota, FL 34236

Email: bgalvano@grimesgalvano.com

Website: www.grimesgalvano.com



PRIVILEGED COMMUNICATION: The information contained in this transmittal may be an attorney-client communication or may otherwise be privileged and confidential. If the reader of this message is not the intended recipient or if you otherwise suspect that you have received this message in error, any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at 941-748-0151 and delete this message and all its attachments. **SPAM FILTERING:** If your e-mail account and/or ISP are flagged as a SPAM generator your mail might not be received by us. Therefore, if your e-mail correspondence is urgent or time sensitive you should verify receipt of e-mail in person or provide follow-up with an alternative communication method. Grimes Hawkins Gladfetter & Galvano, P.L. will not be held responsible for lost, delayed, blocked and/or SPAM tagged e-mail.

Schafer, Grayden

Subject: FW: Ethics Inquiry - Rufo

From: Schafer, Grayden
Sent: Tuesday, May 09, 2023 3:42 PM
To: 'Bill Galvano' <BGalvano@grimesgalvano.com>
Subject: Ethics Inquiry - Rufo

Mr. Galvano:

Thank you for letting me know. As we discussed by phone, I have some questions regarding this inquiry, especially regarding the context of Mr. Rufo's various employments. If you would, please provide answers in writing to the following question by replying to this email. Once I have the answers, I will be able to begin preparing a response. And if you need to have any of the following questions clarified, please let me know as well.

1. What are Mr. Rufo's responsibilities as the senior fellow and director of The Manhattan Institute?
2. You indicate Mr. Rufo is an editor for the City Journal. Is the City Journal published by the Manhattan Institute?
3. Is Mr. Rufo separately employed by the Manhattan Institute and the City Journal, or does he fulfill his editorial responsibilities at the City Journal as part of his duties for the Manhattan Institute?
4. What is the City Journal? Is it a subscription-based publication?
5. Does Mr. Rufo write articles and commentaries for the City Journal, or does he merely edit work prepared by others?
6. Regarding Substack, the following questions are designed to clarify his work there. Initially, what is Substack? Is it a platform for journalists to publish newsletters, videos, and articles?
7. Is Mr. Rufo an employee of Substack or does he merely have an account there that allows him to publish articles and videos?
8. If Mr. Rufo is not an employee at Substack, how is he paid for content that he publishes on Substack? Does he receive payment whenever people subscribe to his Substack account? If so, does he receive the subscription money directly or through Substack? If he receives the subscription money directly, does he then pay a percentage to Substack?
9. Am I correct in understanding that certain content published by Mr. Rufo on Substack requires a paid subscription to his account, while other content can be accessed by anyone—even by those without a subscription (i.e., non-monetized and non-paywalled)?
10. If an article published by Mr. Rufo on Substack is non-monetized and non-paywalled, will it include links for individuals to pay to subscribe to Mr. Rufo's Substack account?
11. Is Mr. Rufo compensated in any way for the postings that he makes on Twitter?

12. Am I correct in understanding that Mr. Rufo's work for the Manhattan Institute/City Journal and his involvement with Substack preceded his appointment as a NCF Trustee?
13. From what you indicate, Mr. Rufo would like to publish NCF-related newsletters and videos through the Manhattan Institute/City Journal and on Substack, and promote this content through Twitter. Does he anticipate publishing content about issues relevant only to NCF, or would the content be more general in nature (i.e., general issues affecting education or schools)?
14. Does Mr. Rufo intend to generate content for these platforms regarding issues unrelated to NCF as well?
15. Would the content published by Mr. Rufo for these platforms be created/authored by Mr. Rufo? Or would he be posting content separately created by NCF?
16. You indicate the NCF-related content published by Mr. Rufo on these platforms would be non-monetized and non-paywalled. Does that mean Mr. Rufo would not be paid or compensated for the publication of this content?
17. Can Mr. Rufo provide examples of the types of NCF-generated content that he anticipates publishing on these platforms?
18. Would the content generated by Mr. Rufo be in the form of editorials?
19. Does Mr. Rufo intend to identify himself—in any of the content generated—as a NCF Trustee?
20. Do any of the platforms involved here—particularly the Manhattan Institute/City Journal and Substack—have any business-related or regulatory interface with NCF? If so, please describe this interface.

Thank you,

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864

Schafer, Grayden

Subject: FW: Ethics Inquiry - Rufo
Attachments: FL Comm on Ethics - C. Rufo Answers.pdf

From: Katie Morrissey <KMorrissey@grimesgalvano.com>
Sent: Friday, May 19, 2023 12:18 PM
To: Schafer, Grayden <SCHAFFER.GRAYDEN@leg.state.fl.us>
Cc: Bill Galvano <BGalvano@grimesgalvano.com>
Subject: RE: Ethics Inquiry - Rufo

Good afternoon Mr. Schafer,

Please see the attached responses regarding Christopher Rufo's employment.

If you have any questions or need further information please do not hesitate to contact us.

Thank you.

Katie Morrissey
Paralegal to Bill Galvano, Esq.



Bradenton Office:
1023 Manatee Ave. West
Bradenton, FL 34205
Phone: 941.748.0151 | Fax: 941.748.0158

Sarasota Office:
Plaza at Five Points
50 Central Ave., Suite 920
Sarasota, FL 34236

Email: kmorrissey@grimesgalvano.com

Website: www.grimesgalvano.com



PRIVILEGED COMMUNICATION: The information contained in this transmittal may be an attorney-client communication or may otherwise be privileged and confidential. If the reader of this message is not the intended recipient or if you otherwise suspect that you have received this message in error, any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at 941-748-0151 and delete this message and all its attachments. **SPAM FILTERING:** If your e-mail account and/or ISP are flagged as a SPAM generator your mail might not be received by us. Therefore, if your e-mail correspondence is urgent or time sensitive you should verify receipt of e-mail in person or provide follow-up with an alternative communication method. Grimes Hawkins Gladfelter & Galvano, P.L. will not be held responsible for lost, delayed, blocked and/or SPAM tagged e-mail.

1. What are Mr. Rufo's responsibilities as the senior fellow and director of The Manhattan Institute?

Producing journalism and policy research.

2. You indicate Mr. Rufo is an editor for the City Journal. Is the City Journal published by the Manhattan Institute?

Yes.

3. Is Mr. Rufo separately employed by the Manhattan Institute and the City Journal, or does he fulfill his editorial responsibilities at the City Journal as part of his duties for the Manhattan Institute?

He fulfills his editorial responsibilities at *City Journal* as part of his employment for Manhattan Institute.

4. What is the City Journal? Is it a subscription-based publication?

***City Journal* is a public policy magazine and website, published by the Manhattan Institute for Policy Research, that covers a range of topics on urban affairs, such as policing, education, housing, and other issues.**

5. Does Mr. Rufo write articles and commentaries for the City Journal, or does he merely edit work prepared by others?

He writes articles and commentaries for *City Journal*.

6. Regarding Substack, the following questions are designed to clarify his work there. Initially, what is Substack? Is it a platform for journalists to publish newsletters, videos, and articles?

Substack is a platform for journalists and other content creators to distribute newsletters, articles, videos, and engage with their readers.

7. Is Mr. Rufo an employee of Substack or does he merely have an account there that allows him to publish articles and videos?

He is not an employee of Substack. He merely has an account which allows him to publish articles and videos.

8. If Mr. Rufo is not an employee at Substack, how is he paid for content that he publishes on Substack? Does he receive payment whenever people subscribe to his Substack account? If so, does he receive the subscription money directly or through Substack? If he receives the subscription money directly, does he then pay a percentage to Substack?

Readers on Substack may view most of the content he produces for free but have the option to upgrade to a paid subscription to see additional content. Subscription money is received through Substack. The company keeps a percentage.

9. Am I correct in understanding that certain content published by Mr. Rufo on Substack requires a paid subscription to his account, while other content can be accessed by anyone—even by those without a subscription (i.e., non-monetized and non-paywalled)?

This is correct.

10. If an article published by Mr. Rufo on Substack is non-monetized and non-paywalled, will it include links for individuals to pay to subscribe to Mr. Rufo's Substack account?

Yes, that option is built natively into the platform.

11. Is Mr. Rufo compensated in any way for the postings that he makes on Twitter?

No.

12. Am I correct in understanding that Mr. Rufo's work for the Manhattan Institute/City Journal and his involvement with Substack preceded his appointment as a NCF Trustee?

Correct.

13. From what you indicate, Mr. Rufo would like to publish NCF-related newsletters and videos through the Manhattan Institute/City Journal and on Substack, and promote this content through Twitter. Does he anticipate publishing content about issues relevant only to NCF, or would the content be more general in nature (i.e., general issues affecting education or schools)?

More general in nature, typically commenting on higher education issues, with references to work and commentary regarding NCF.

14. Does Mr. Rufo intend to generate content for these platforms regarding issues unrelated to NCF as well?

Yes, the strong majority of his content is not related to NCF.

15. Would the content published by Mr. Rufo for these platforms be created/authored by Mr. Rufo? Or would he be posting content separately created by NCF?

The content would be created/authored by Mr. Rufo.

16. You indicate the NCF-related content published by Mr. Rufo on these platforms would be non-monetized and non-paywalled. Does that mean Mr. Rufo would not be paid or compensated for the publication of this content?

Correct.

17. Can Mr. Rufo provide examples of the types of NCF-generated content that he anticipates publishing on these platforms?

**This is a recent piece of commentary he published related to NCF:
<https://rufo.substack.com/p/burn-the-colleges-buildings-to-the>.**

18. Would the content generated by Mr. Rufo be in the form of editorials?

Yes, he authors opinion content, editorials, journalism, and analysis.

19. Does Mr. Rufo intend to identify himself—in any of the content generated—as a NCF Trustee?

He has included this fact in his author biography.

20. Do any of the platforms involved here—particularly the Manhattan Institute/City Journal and Substack—have any business-related or regulatory interface with NCF? If so, please describe this interface.

No.

Schafer, Grayden

Subject: FW: Ethics Inquiry - Rufo

From: Schafer, Grayden
Sent: Monday, May 22, 2023 4:43 PM
To: 'Katie Morrissey' <KMorrissey@grimesgalvano.com>
Cc: Bill Galvano <BGalvano@grimesgalvano.com>
Subject: RE: Ethics Inquiry - Rufo

Thank you for these responses. I was out of the office on Friday when you sent them, but I received and reviewed them this afternoon. I have several more questions that I will be sending you, based on these responses and my review of content on Mr. Rufo's Substack account. As soon as the questions are prepared, I will send them to you.

Gray Schafer

Schafer, Grayden

From: Schafer, Grayden
Sent: Wednesday, May 24, 2023 4:47 PM
To: Bill Galvano
Cc: 'Katie Morrissey'; Naomi, Amelia
Subject: Additional Questions regarding ethics inquiry

Good afternoon:

This email relates to the ethics inquiry that you have brought on behalf of Christopher Rufo. As we discussed yesterday, after reviewing Mr. Rufo's Substack account, it seems the ethics issues presented with him working for Substack go beyond just whether he may author articles dealing with New College of Florida. Since you asked the Ethics Commission to look into all areas of his journalism presence, I do not believe an ethics opinion can be written without addressing these other matters.

The following questions are focused solely on his Substack account, and concern the way in content-providers are paid, his soliciting of personal donations through Substack, and whether the contractual relationships that he appears to have with subscribers presents a prohibited conflict of interest. I have compiled these questions after reviewing Substack's publisher agreement with content providers, its terms of use, and its content concerning subscriber dashboards. In essence, these additional questions are primarily aimed at understanding the complexity of how Substack works. This platform is likely to be unfamiliar to the members of the Ethics Commission, and I want to be well prepared if they have questions regarding it.

If you would, please provide your written answers by responding to this email. And if you have any questions of your own—or need to have any of the following questions clarified—please let me know as well.

1. When Mr. Rufo became a content provider on Substack, did he have to sign a publisher's agreement with Substack?
2. When Mr. Rufo became a content provider on Substack, did he have to sign a limited license allowing Substack to use the content that he generated?
3. Assuming Mr. Rufo signed the agreement/license mentioned in the above questions, was it in his personal capacity? Or did he form an LLC to sign them in a corporate capacity?
4. Is Mr. Rufo considered a Substack Pro author?
5. My understanding is that Substack uses a third party payment processor called Stripe, and that any subscriptions to Mr. Rufo's content on Substack are processed first by Stripe. Is that correct?
6. My understanding is that those who choose to subscribe to Mr. Rufo's paywall-protected articles must subscribe, and that the subscription fee is set at Mr. Rufo's discretion—and can be changed and modified at his discretion—without any involvement from Substack. Is that correct? If so, what is his current subscription fee?
7. According to the Terms of Use, Substack is not involved—and is not liable for or a party to—any interface or disagreement between Mr. Rufo and his subscribers. Is that a correct understanding?
8. Does Mr. Rufo alone have the authority to remove subscribers, such as if they are actin inappropriately or if he does not wish to interact with them anymore? This is stated in the "Guide to the Substack Dashboard," but I wanted to make sure it was correct.

9. In terms of payment, my understanding is that: (1) subscribers pay their subscription fee to Stripe; (2) Stripe takes its percentage for processing the fee; (3) Stripe sends a pre-set percentage of the subscription fee to Substack; and (4) Stripe then distributes the remaining money to Mr. Rufo. Is this correct?

10. From prior answers by Mr. Rufo, and according to the Publisher's Agreement, he is not an employee of Substack. But the FAQs provided by Substack to its content providers indicates they annually receive an IRS 1099 Form from Stripe. Am I correct, then, in understanding that Mr. Rufo is an independent contractor of Stripe?

11. Is Stripe a lobbyist, principal of a lobbyist, or vendor of the New College of Florida?

12. To the best of Mr. Rufo's knowledge, are any of his current Substack subscribers conducting business with the New College of Florida?

13. Does Mr. Rufo have the ability to see the identities of his Substack subscribers?

14. Can an individual or entity have more than one subscription to Mr. Rufo's Substack account?

15. Is Mr. Rufo under any obligation to produce articles regularly for Substack to maintain an account with them?

16. Mr. Rufo's Substack account has a page in which he asks for donations (<https://rufo.substack.com/p/support>). Am I correct in understanding these donations are separate and apart from subscriptions?

17. Regarding the donations referenced in paragraph 16, are these donations made directly to Mr. Rufo's personal credit card/Paypal/Bitcoin accounts?

Thank you, again.

Gray Schafer
Assistant General Counsel
Florida Commission on Ethics
(850)-488-7864

Schafer, Grayden

Subject: FW: Additional Questions regarding ethics inquiry
Attachments: FL Comm on Ethics - C. Rufo follow up answers.pdf

From: Katie Morrissey <KMorrissey@grimesgalvano.com>
Sent: Monday, June 05, 2023 9:45 AM
To: Schafer, Grayden <SCHAFER.GRAYDEN@leg.state.fl.us>
Cc: Naomi, Amelia <NAOMI.AMELIA@leg.state.fl.us>; Bill Galvano <BGalvano@grimesgalvano.com>
Subject: RE: Additional Questions regarding ethics inquiry

Good morning,

Please see the attached responses regarding Mr. Rufo's Substack account.

If you have any questions or need further information please do not hesitate to contact us.

Thank you.

Katie Morrissey
Paralegal to Bill Galvano, Esq.



Bradenton Office:
1023 Manatee Ave. West
Bradenton, FL 34205
Phone: 941.748.0151 | Fax: 941.748.0158

Sarasota Office:
Plaza at Five Points
50 Central Ave., Suite 920
Sarasota, FL 34236

Email: kmorrissey@grimesgalvano.com

Website: www.grimesgalvano.com



PRIVILEGED COMMUNICATION: The information contained in this transmittal may be an attorney-client communication or may otherwise be privileged and confidential. If the reader of this message is not the intended recipient or if you otherwise suspect that you have received this message in error, any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at 941-748-0151 and delete this message and all its attachments. **SPAM FILTERING:** If your e-mail account and/or ISP are flagged as a SPAM generator your mail might not be received by us. Therefore, if your e-mail correspondence is urgent or time sensitive you should verify receipt of e-mail in person or provide follow-up with an alternative communication method. Grimes Hawkins Gladfelter & Galvano, P.L. will not be held responsible for lost, delayed, blocked and/or SPAM tagged e-mail.

1. When Mr. Rufo became a content provider on Substack, did he have to sign a publisher's agreement with Substack?

By using Substack he automatically agreed to their Publisher Agreement, found here:

<https://substack.com/pa>

2. When Mr. Rufo became a content provider on Substack, did he have to sign a limited license allowing Substack to use the content that he generated?

Yes, as part of the standard Publisher Agreement, here: <https://substack.com/pa>

3. Assuming Mr. Rufo signed the agreement/license mentioned in the above questions, was it in his personal capacity? Or did he form an LLC to sign them in a corporate capacity?

Personal capacity.

4. Is Mr. Rufo considered a Substack Pro author?

No.

5. My understanding is that Substack uses a third party payment processor called Stripe, and that any subscriptions to Mr. Rufo's content on Substack are processed first by Stripe. Is that correct?

Correct.

6. My understanding is that those who choose to subscribe to Mr. Rufo's paywall-protected articles must subscribe, and that the subscription fee is set at Mr. Rufo's discretion—and can be changed and modified at his discretion—without any involvement from Substack. Is that correct? If so, what is his current subscription fee?

Correct. The current subscription fee is either \$8 monthly or \$80 annually, or a user-determined higher amount.

7. According to the Terms of Use, Substack is not involved—and is not liable for or a party to—any interface or disagreement between Mr. Rufo and his subscribers. Is that a correct understanding?

Correct.

8. Does Mr. Rufo alone have the authority to remove subscribers, such as if they are acting inappropriately or if he does not wish to interact with them anymore? This is stated in the "Guide to the Substack Dashboard," but I wanted to make sure it was correct.

Yes, he can block users on his own or, from Substack's Publisher Agreement, flag them for Substack:

"You can flag that a user that is violating our Terms of Use by sending an email to tos@substackinc.com.

After you provide us with written notice of this violation, we will determine whether this user's access to some or all of your newsletters should be suspended or terminated. We will also decide at our sole discretion whether this user's access to the rest of Substack will be suspended or terminated."

9. In terms of payment, my understanding is that: (1) subscribers pay their subscription fee to Stripe; (2) Stripe takes its percentage for processing the fee; (3) Stripe sends a pre-set percentage of the subscription fee to Substack; and (4) Stripe then distributes the remaining money to Mr. Rufo. Is this correct?

Correct.

10. From prior answers by Mr. Rufo, and according to the Publisher's Agreement, he is not an employee of Substack. But the FAQs provided by Substack to its content providers indicates they annually receive

an IRS 1099 Form from Stripe. Am I correct, then, in understanding that Mr. Rufo is an independent contractor of Stripe?

I don't believe so. To best best of my understanding, I believe it is just a service agreement. Stripe sends me a 1099-K, explained in this document: <https://support.stripe.com/questions/1099-k-forms-issued-by-stripe>.

11. Is Stripe a lobbyist, principal of a lobbyist, or vendor of the New College of Florida?

Not to my knowledge.

12. To the best of Mr. Rufo's knowledge, are any of his current Substack subscribers conducting business with the New College of Florida?

Not to my knowledge.

13. Does Mr. Rufo have the ability to see the identities of his Substack subscribers?

He can see their selected username and email address.

14. Can an individual or entity have more than one subscription to Mr. Rufo's Substack account?

Yes, as long as they use multiple email addresses to sign up.

15. Is Mr. Rufo under any obligation to produce articles regularly for Substack to maintain an account with them?

No.

16. Mr. Rufo's Substack account has a page in which he asks for donations (<https://rufo.substack.com/p/support>). Am I correct in understanding these donations are separate and apart from subscriptions?

Correct.

17. Regarding the donations referenced in paragraph 16, are these donations made directly to Mr. Rufo's personal credit card/Paypal/Bitcoin accounts?

Yes, there is also information on how to contribute to his own 501(c)(3) nonprofit, American Studio.