



FEDERAL ELECTION COMMISSION  
 WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
Governor Scott Walker	)	
Scott Walker, Inc. and Kate Teasdale in her official	)	
capacity as treasurer	)	MURs 6917 and 6929
Our American Revival and C. Ryan Burchfield	)	
in his official capacity as treasurer	)	
	)	
and	)	
	)	
In the Matter of	)	
	)	
John R. Kasich	)	
Kasich for America, Inc. and	)	
J. Matthew Yuskewich in his capacity as treasurer	)	MURs 6955 and 6983
New Day For America and	)	
J. Matthew Yuskewich in his capacity as treasurer	)	

**STATEMENT OF REASONS OF  
 VICE CHAIR ALLEN DICKERSON AND COMMISSIONERS SEAN J. COOKSEY  
 AND JAMES E. “TREY” TRAINOR III**

These matters concern allegations that two candidates for the Republican nomination for President in 2016—former Ohio Governor John R. Kasich and former Wisconsin Governor Scott Walker—and their respective presidential campaign committees accepted excessive and impermissible contributions in the form of testing-the-waters expenditures from organizations associated with the candidates. In Kasich’s case, the complaints alleged that New Day for America and J. Matthew Yuskewich in his official capacity as treasurer (“New Day”) made such contributions to Kasich for America, Inc. and J. Matthew Yuskewich in his official capacity as treasurer (“Kasich Committee”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). In Walker’s case, the complaints alleged that Our American Revival and C. Ryan Burchfield in his official capacity as treasurer (“OAR”) made such contributions to Scott Walker, Inc. and Kate Teasdale in her official capacity as treasurer (“Walker Committee”) in violation of the Act. After full deliberation by the Commission, and considering that the allegations in these matters relate to the 2016 election cycle and the Commission currently faces a significant

backlog of cases due to its previous loss of a quorum, we voted to exercise our prosecutorial discretion to dismiss these matters and close the files.<sup>1</sup>

\* \* \*

On April 23, 2019, the Commission found reason to believe a violation had occurred in both of these matters and subsequently commenced its investigations.<sup>2</sup> In relation to Walker, the Commission found reason to believe that he and the Walker Committee violated the Act by accepting excessive contributions in the form of testing-the-waters expenditures,<sup>3</sup> that the Walker Committee failed to report these testing-the-waters expenditures,<sup>4</sup> and that Walker violated the Act by filing a late statement of candidacy.<sup>5</sup> Further, the Commission found reason to believe that OAR violated the Act by making excessive contributions in the form of testing-the-waters expenditures.<sup>6</sup>

As it pertains to Kasich, the Commission found reason to believe that he and the Kasich Committee violated the Act by accepting excessive and impermissible contributions for testing-the-waters activity<sup>7</sup> and in the form of coordinated communications,<sup>8</sup> that the Kasich Committee failed to report these testing-the-waters expenditures and coordinated communications,<sup>9</sup> and that Kasich violated the Act by filing a late statement of candidacy.<sup>10</sup> Additionally, the Commission found reason to believe that New Day violated the Act by making excessive and impermissible contributions in the form of testing-the-waters expenditures and by making excessive and

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<sup>1</sup> Certification, MURs 6917 and 6929 (Mar. 31, 2021) (Scott Walker, *et al.*) (recording the Commission’s vote to dismiss the matters as to all Respondents and close the file); Certification, MURs 6955 and 6983 (Mar. 31, 2021) (John R. Kasich, *et al.*) (recording the Commission’s vote to dismiss the matters as to all Respondents and close the file).

<sup>2</sup> See Certification, MURs 6917 and 6929 (Apr. 24, 2019) (“Walker RTB Certification”) and Factual and Legal Analyses, MURs 6917 and 6929 (Gov. Scott Walker, *et al.*); Certification, MURs 6955 and 6983 (Apr. 24, 2019) (“Kasich RTB Certification”) and Factual and Legal Analyses, MURs 6955 and 6983 (Gov. John R. Kasich, *et al.*).

<sup>3</sup> See 52 U.S.C. § 30116(f) and 11 C.F.R. §§ 100.72(a) and 100.131(a); Walker RTB Certification ¶ 2.a.

<sup>4</sup> See 52 U.S.C. § 30104(b); Walker RTB Certification ¶ 2.c.

<sup>5</sup> See 52 U.S.C. § 30102(e)(1) and 11 C.F.R. § 101.1(a); Walker RTB Certification ¶ 2.d.

<sup>6</sup> 52 U.S.C. § 30116(a); Walker RTB Certification ¶ 2.b. The Commission also decided to take no action as to allegations that the Walker Committee violated 52 U.S.C. §§ 30103(a) and 30104, and allegations that OAR violated 52 U.S.C. § 30125(e). Walker RTB Certification ¶¶ 2.e-f.

<sup>7</sup> See 52 U.S.C. §§ 30116(a) and 30118(a) and 11 C.F.R. §§ 100.72 and 100.131; Kasich RTB Certification ¶ 2.a.

<sup>8</sup> See 52 U.S.C. §§ 30116 and 30118(a); Kasich RTB Certification ¶¶ 2.f, g.

<sup>9</sup> 52 U.S.C. § 30104(b); Kasich RTB Certification ¶ 2.b.

<sup>10</sup> 52 U.S.C. § 30102(e)(1); Kasich RTB Certification ¶ 2.d.

impermissible contributions in the form of coordinated communications and by failing to report those coordinated communications.<sup>11</sup>

OGC conducted investigations to determine the full scope of the activities in these matters. The Commission issued initial subpoenas and OGC engaged in both formal and informal discovery. During the time that OGC was conducting its investigations, the Commission was without a quorum for approximately 15 months: it lost its quorum for approximately nine months beginning on September 1, 2019,<sup>12</sup> regained its quorum for approximately one month,<sup>13</sup> and then lost its quorum again for nearly six months.<sup>14</sup> The Commission has been operating with a full quorum since December 18, 2020.<sup>15</sup> During the periods where the Commission lacked a quorum, it was unable to vote on matters.<sup>16</sup>

During the time in which the Commission lacked a quorum, OGC sent General Counsel's Briefs stating that it was prepared to recommend that the Commission find probable cause to believe that the Respondents (Walker, the Walker Committee, and OAR in MURs 6917 and 6929; and Kasich, the Kasich Committee, and New Day in MURs 6955 and 6983) violated the Act when OAR and New Day made, and Walker, Kasich, and their respective committees accepted and did not report, excessive and prohibited contributions. Respondents in both matters submitted Reply Briefs. After considering the arguments raised in the Reply Briefs, OGC notified the Commission that it was recommending probable cause to believe as to the Respondents in both matters.

When OGC circulated the notices as to Walker, the Walker Committee, and OAR on July 7, 2020, the statute of limitations had expired as to some of the allegations in the Walker matters, but there was some time remaining on the statute of limitations on the allegations concerning the Committee's reporting violations and on the allegation that Walker had filed a late statement of candidacy.<sup>17</sup> There was no quorum at the time that OGC circulated these notices and

<sup>11</sup> See 52 U.S.C. §§ 30104(a), 30116(f) and 30118(a); Kasich RTB Certification ¶¶ 2.c, h. The Commission also decided to take no action as to allegations that New Day violated §§ 30103(a) and 30125(e). Kasich RTB Certification ¶¶ 2.e, j.

<sup>12</sup> See Press Release, FEC, FEC remains open for business, despite lack of quorum (Sept. 11, 2019), <https://www.fec.gov/updates/fec-remains-open-business-despite-lack-quorum/>.

<sup>13</sup> See Press Release, FEC, James E. Trainor III sworn in as Commissioner (June 5, 2020), <https://www.fec.gov/updates/james-e-trainor-iii-sworn-commissioner/>.

<sup>14</sup> See Press Release, FEC, Caroline C. Hunter to depart Federal Election Commission (June 26, 2020), <https://www.fec.gov/updates/caroline-c-hunter-depart-federal-election-commission/>.

<sup>15</sup> See Press Release, FEC, Shana Broussard, Sean Cooksey, Allen Dickerson sworn in as Commissioners (Dec. 18, 2020), <https://www.fec.gov/updates/shana-broussard-sean-cooksey-allen-dickerson-sworn-commissioners/>.

<sup>16</sup> During the pendency of these matters, the Commission was also unable to take any action during the federal government shutdown that took place from December 22, 2018 through January 25, 2019.

<sup>17</sup> See Notice to the Commission Following the Submission of Probable Cause Briefs (Gov. Scott Walker and Scott Walker, Inc.) (Jul. 7, 2020); Notice to the Commission Following the Submission of Probable Cause Briefs (Our American Revival) (Jul. 7, 2020). OGC also recommended that the Commission find probable cause to believe that Walker had filed a late Statement of Candidacy.

the remaining time on the statute of limitations lapsed before the quorum was restored. Similarly, when OGC circulated the notices as to Kasich, the Kasich Committee, and New Day on March 3, 2021, the statute of limitations had also lapsed during the time that the Commission had lacked a quorum.<sup>18</sup>

Following the restoration of the quorum, and after the expiration of the five-year statute of limitations, the Commission considered the notices circulated by OGC, as well as the General Counsel's Briefs setting forth OGC's reasons for the recommendations, and the Reply Briefs and Supplemental Reply Briefs submitted by the Respondents. Against this background, and considering the significant case backlog the Commission amassed while it lacked a quorum, we concluded that it would not be prudent to continue to expend valuable Commission resources to pursue probable cause conciliation with Respondents and instead voted to dismiss the matters in an exercise of our prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).




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Allen Dickerson  
Vice Chair

April 29, 2021

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Date



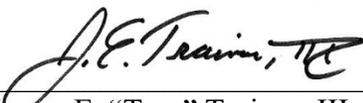

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Sean J. Cooksey  
Commissioner

April 29, 2021

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Date




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James E. "Trey" Trainor, III  
Commissioner

April 29, 2021

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Date

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<sup>18</sup> See Notice to the Commission Following the Submission of Probable Cause Briefs (John R. Kasich and Kasich for America, Inc.) (Mar. 3, 2021); Notice to the Commission Following the Submission of Probable Cause Briefs (New Day for America) (Mar. 3, 2021).