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October 7, 2015

CONFIDENTIAL

VIA E-MAIL

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Kim Collins, Paralegal
999 E Street, NW
Washington, DC 20436

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CELA
RECEIVED
FEDERAL ELECTION
COMMISSION

Re: MUR# 6955, *American Democracy Legal Fund v. John R. Kasich, et al.*

Dear Ms. Collins:

I have been retained as counsel for Respondents John R. Kasich, Kasich For America, and Suzanne E. Marshall, Treasurer, Kasich For America (collectively "Kasich For America") in the above-referenced matter. In its Complaint, American Democracy Legal Fund and Hillary Clinton advisor Brad Woodhouse (collectively "ADLF") allege that Kasich For America violated the Federal Election Campaign Act of 1971 (the "Act") by (1) failing to timely register with the Federal Election Commission (the "Commission"); (2) establishing an independent-expenditure only committee in violation of the Act and soliciting "soft" money for that committee; and (3) accepting an excessive, in-kind contribution from New Day For America. In addition, the Complaint alleges that New Day For America and J. Matthew Yuskewich, CPA, Treasurer, New Day For America, violated the Act by (1) failing to timely register with the Federal Election

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

October 7, 2015
Page 2

Commission (the “Commission”) and (2) making an excessive, in-kind contribution to Kasich For America and Governor John Kasich.¹

The Commission should promptly dismiss this matter. All of the allegations rely upon an internet news article to incorrectly assume that Governor Kasich was a candidate for the Presidency prior to July 21, 2015, which is simply not true. Moreover, if the Commission adopted the interpretation promoted by the ADLF, every Presidential candidate in the field could potentially be in violation of the Commission’s rules and regulations. In fact, even Vice President Joe Biden already would potentially be in violation of the Act under the ADLF’s interpretation. Because the ADLF’s Complaint fails to allege facts showing specific violations, the matter should be dismissed without further action.

I. Background

On July 1, 2015, Kasich For America was incorporated as a non-profit corporation in the State of Ohio. *See* Declaration of Beth Hansen at ¶ 2, attached as Exhibit A. Kasich For America is organized primarily: (1) for directly or indirectly accepting contributions or making expenditures, or both, for exempt function activities within the meaning of Section 527 of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law; (2) to engage in any lawful act or activity permitted under the Federal Election Campaign Act of 1971; and (3) to engage in other activities as may be necessary and proper to accomplish the foregoing objects and purposes. *Id.* at ¶ 3. Kasich For America registered with the Internal Revenue Service as a political committee as defined by

¹ A response to the allegations against New Day For America and J. Matthew Yuskewich, CPA, Treasurer, New Day For America, is outside the scope of this response, and a response to those allegations will be addressed in a separate response by them.

October 7, 2015
Page 3

Internal Revenue Code § 527. *Id.* at ¶ 4. It did not support or oppose any candidate for federal office at that time. *Id.* at ¶ 5.

On June 28, 2015, Politico published an article entitled, “John Kasich to Announce Presidential Bid July 21.” *Id.* at ¶ 6. This article contained the following sentence, “Ohio Gov. John Kasich will jump into the crowded Republican presidential field on July 21 at the student union at his alma mater, The Ohio State University, in Columbus, advisers tell POLITICO.”² *Id.* at ¶ 7. Neither Kasich For America nor Governor John Kasich informed Mr. Allen that Governor Kasich would announce his candidacy for President of the United States on July 21, 2015. *Id.* at ¶ 8. On June 28, 2015, Kasich For America had not been incorporated and had no employees. *Id.* at ¶ 9.

On July 21, 2015, Governor Kasich announced for the first time his intention to run for President. *Id.* at ¶¶ 10 and 11. On July 23, 2015, Governor John Kasich filed his Statement of Candidacy for President of the United States with the Commission. *Id.* at ¶ 12. Also on July 23, 2015, Kasich For America registered with the Commission as Governor Kasich’s principal campaign committee. *Id.* at ¶ 13.

II. Argument

A. **Governor Kasich Did Not Become a Candidate on June 28, 2015.**

Governor Kasich did not become a candidate for President of the United States on June 28, 2015. The lynchpin of the ADLF’s Complaint revolves around one factual allegation: On June 28, 2015, Governor Kasich became a candidate for President of the United States when Politico published an article on the Internet entitled, “John Kasich to Announce Presidential Bid

² Mike Allen, John Kasich to Announce Presidential Bid July 21, Politico, June 28, 2015, available at: <http://www.politico.com/story/2015/06/john-kasich-2016-presidential-bid-119517#ixzz3mt27BS9c>.

October 7, 2015

Page 4

July 21.” Specifically, the ADLF’s Complaint is based on the title and first sentence of that article, “Ohio Gov. John Kasich will jump into the crowded Republican presidential field on July 21 at the student union at his alma mater, The Ohio State University, in Columbus, advisers tell POLITICO.”³ Neither Governor Kasich nor any specific adviser is quoted in the article as saying Governor Kasich will announce a Presidential bid on July 21. Instead, the ADLF’s Complaint is based entirely on a statement conceived and written by a news reporter.

Importantly, neither Kasich For America nor Governor John Kasich informed Mr. Allen that Governor Kasich would announce his candidacy for President of the United States on July 21, 2015. *Id.* at ¶ 8. On June 28, 2015, Kasich For America had not been incorporated and had no employees. *Id.* at ¶ 9.

Simply put, Governor Kasich did not become a candidate for federal office before July 21, 2015 under the Act and the Code of Federal Regulations. Pursuant to 11 C.F.R. 100.72(b), an individual becomes a candidate when:

“(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office. (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate. (3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office. (4) The individual conducts activities in close proximity to the election or over a protracted period of time. (5) The individual has taken action to qualify for the ballot under State law.”

The ADLF’s Complaint does not provide any evidence for any of the above factors other than citing an internet news article from June 28, 2015 and incorrectly characterizing certain

³ Mike Allen, John Kasich to Announce Presidential Bid July 21, Politico, June 28, 2015, available at: <http://www.politico.com/story/2015/06/john-kasich-2016-presidential-bid-119517#ixzz3mt27BS9c>.

October 7, 2015

Page 5

advertisements purchased by New Day For America prior to Governor Kasich's statement of candidacy on July 21, 2015.

Before July 21, 2015, Governor Kasich did not conduct or authorize any activities that triggered his candidacy for President of the United States. He did not conducted activities over a protracted period of time, make or authorize any public statements declaring his candidacy, or take action to qualify for the ballot under state law. *See* Hansen Decl. at ¶¶ 14 and 15. In addition, as Kasich For America's FEC filings will show, Kasich For America did not raise excess funds prior to July 21, 2015. Instead, on July 21, 2015, Governor Kasich unambiguously stated, for the first time, "I am here to ask you for your prayers, for your support, for your efforts, because I have decided to run for President of the United States." *See* Governor John R. Kasich, Announcement of Candidacy for President of the United States, The Ohio State University (July 21, 2015). At this moment, Governor Kasich became a candidate in accordance with the Act. No evidence supports the ADLF's position that he became a candidate for President at any point prior to this date.

The Commission has never determined that an individual has become a candidate for President of the United States based on anonymous information by an alleged advisor in a news article. In fact, even when confronted with a direct comment by a named advisor stating that a potential candidate "has made up his mind," the Commission determined that this statement did not amount to a statement of candidacy. *See* Complaint, Matter Under Review 5934; *see also* Statement of Vice Chairman Petersen and Commissioners Hunter, McGahn, and Weintraub, MUR 5934. The ADLF does not, and cannot, cite to a single advisory opinion, matter under review, statute, or regulation that finds that a reporter's written interpretation of an anonymous

October 7, 2015

Page 6

source amounts to a statement of an individual's candidacy, especially here when the organization did not yet exist and the potential candidate did not satisfy any prong of 11 C.F.R. 100.72(b). As such, Governor Kasich did not become a candidate for President until July 21, 2015.

B. Kasich For America Timely Registered With the Commission.

The ADLF alleges that Kasich For America failed to timely register with the Commission, but Kasich For America timely filed FEC Form 1 on July 23, 2015. According to the Regulations, "Each principal campaign committee shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1." *See* 11 C.F.R. 102.1. Kasich For America was not designated as Governor Kasich's principal campaign committee until after he declared his candidacy for President of the United States on July 21, 2015. Thus, the earliest Kasich For America would have had to register as a principal campaign committee under the Act would have been 10 days after Governor Kasich declared his candidacy for President. Kasich For America would timely meet even that earliest of deadlines by completing such registration on July 23, 2015. This claim should be dismissed without further action.

C. Governor Kasich Has Never Solicited Contributions to New Day For America Outside the Prohibitions and Limitations of the Act.

The ADLF asserts that Governor Kasich solicited contributions to New Day For America outside the prohibitions and limitations of the Act. Governor Kasich has not participated in any film sessions, or conducted any interviews, at the request of New Day For America after he became a candidate for President of the United States on July 21, 2015. Hansen Decl. at ¶ 14. Moreover, this video was not made in cooperation, consultation or concert with, or at the request

October 7, 2015

Page 7

or suggestion of, a candidate for federal office because Governor Kasich did not become a candidate for federal office until July 21, 2015. This claim should be dismissed without further action.

D. Kasich For America Has Not Accepted Any In-Kind Contribution in the Form of a Coordinated Communication.

The ADLF alleges that New Day For America has made an in-kind contribution by making expenditures on behalf of Governor Kasich's candidacy for President in violation of 52 U.S.C. § 30116(a)(7)(B)(i). Specifically, the ADLF's Complaint again refers to advertisements that were paid for by New Day For America on July 8, 2015 – before Governor Kasich became a candidate for President. Complaint at 9. Moreover, any video footage that aired in those commercials was likewise shot of Governor Kasich *before* he announced his candidacy for President. Hansen Decl. at ¶ 14. As such, these expenditures could not have been an expenditure “in cooperation, consultation, or concert, with . . . a candidate” See 11 CFR 100.16(a).

Again, as Ms. Hansen makes clear, Governor Kasich has not participated in any film sessions, or conducted any interviews, at the request of New Day For America after he became a candidate for President of the United States on July 21, 2015. Hansen Decl. at ¶ 14. Any advertisement using this footage of Governor Kasich before he became a candidate would not constitute an illegal in-kind contribution because it was not “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee.” See 11 C.F.R. §§ 109.20 and 109.21. Consequently, the advertisements mentioned by the ADLF fall outside the Commission's definition of a coordinated communication. This claim should be dismissed without further action.

October 7, 2015

Page 8

III. Conclusion

For the foregoing reasons, the ADLF's Complaint should be dismissed and the Commission should take no further action.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Mark Braden".

E. Mark Braden

Attachment

EXHIBIT A

**BEFORE THE
FEDERAL ELECTION COMMISSION**

American Democracy Legal Fund	:	
	:	MUR# 6955
Complainant,	:	
	:	
vs.	:	
	:	
John R. Kasich, et al.	:	
	:	
Respondents.	:	

Declaration of Beth Hansen


I, Beth Hansen, declare under penalty of perjury that the following is true and accurate.

1. I am the Campaign Manager of Kasich For America. My business address is 620 E. Broad Street, Suite 2016, Columbus, Ohio 43215. The statements in this declaration are based upon my personal knowledge.
2. On July 1, 2015, Kasich For America was incorporated as a non-profit corporation in the State of Ohio.
3. The Corporation is organized primarily: (1) for directly or indirectly accepting contributions or making expenditures, or both, for exempt function activities within the meaning of Section 527 of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law; (2) to engage in any lawful act or activity permitted under the Federal Election Campaign Act of 1971; and (3) to engage in other activities as may be necessary and proper to accomplish the foregoing objects and purposes.
4. Kasich For America registered with the Internal Revenue Service as a political committee as defined by Internal Revenue Code § 527.
5. Kasich For America did not support or oppose any candidate for federal office at that time.
6. On June 28, 2015, Politico writer Mike Allen published an article entitled, "John Kasich to Announce Presidential Bid July 21."
7. This article contained the following sentence, "Ohio Gov. John Kasich will jump into the crowded Republican presidential field on July 21 at the student union at his alma mater, The Ohio State University, in Columbus, advisers tell POLITICO." See <http://www.politico.com/story/2015/06/john-kasich-2016-presidential-bid-119517> (last visited October 1, 2015).

8. Neither Kasich For America nor Governor Kasich informed Mr. Allen that Governor Kasich would announce his candidacy for President of the United States on July 21, 2015.
9. As of June 28, 2015, Kasich For America had not been incorporated and had no employees.
10. On July 21, 2015, Governor Kasich announced his intention to run for President of the United States at a public ceremony at The Ohio State University.
11. To the best of my knowledge, I am not aware of any public statements by Governor Kasich declaring his intention to run for President of the United States before July 21, 2015.
12. On July 23, 2015, Governor Kasich filed his Statement of Candidacy for President of the United States with the Federal Election Commission.
13. On July 23, 2015, Kasich For America registered with the Federal Election Commission as Governor Kasich's principal campaign committee.
14. Governor Kasich has not participated in any film sessions, or conducted any interviews, at the request of New Day For America after he became a candidate for President of the United States on July 21, 2015.
15. To the best of my knowledge, I am not aware of any action by Kasich For America or Governor Kasich to qualify for the ballot under State law before July 21, 2015.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

By:



Beth Hansen
Campaign Manager
Kasich For America

Date: October 7, 2015