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June 16, 2019

**CONFIDENTIAL**

**VIA ELECTRONIC MAIL**

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
Attn: Mark Shonkwiler, Esq.  
1050 First Street, NW  
Washington, DC 20463

Re: MUR# 6955 and 6983, *American Democracy Legal Fund v. John R. Kasich, et al.*

Dear Mr. Shonkwiler:

We represent Governor John R. Kasich, Kasich For America, and J. Matthew Yuskewich<sup>1</sup> (collectively “Kasich”) in the above referenced matters. On April 23, 2019, the Commission found reason to believe that Kasich violated 52 U.S.C. §§ 30116 and 30118(a) and 11 C.F.R. §§ 100.72 and 100.131 by accepting impermissible and excessive in-kind contributions, and 52 U.S.C. § 30102(e)(1) by failing to timely file his statement of candidacy. The Commission also found reason to believe that Kasich violated 52 U.S.C. §§ 30104(b), 30116, and 30118(a) and 11 C.F.R. §§ 100.72 and 100.131 by accepting and failing to report impermissible and excessive in-kind contributions. The Commission subsequently notified

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<sup>1</sup> Mr. Yuskewich replaced Suzanne E. Marshall as Treasurer and was not named in the ADLF Complaints as the Treasurer of Kasich For America.

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Kasich of its findings, posed additional questions and sought production of certain documents and other information. Kasich responds as follows:

**I. Introduction and Background.**

In its Initial Complaint, MUR #6955, 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 Commission (the “Commission”) and (2) making an excessive, in-kind contribution to Kasich For America and Governor John Kasich.<sup>2</sup>

In its Second Complaint, MUR # 6983, ADLF alleges once again that Kasich For America violated the Act by 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, Treasurer, New Day For America made an excessive, in-kind contribution through a coordinated communication with Kasich For America and Governor John Kasich. The allegations in that Complaint are duplicative of, and similar to, the earlier, frivolous allegations brought for political gain by Mr. Woodhouse in MUR # 6955.

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<sup>2</sup> 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.

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On March 30, 2016, ADLF then filed a Supplemental Complaint that was never received by Kasich until June 4, 2019.<sup>3</sup> The Supplemental Complaint addressed additional background information related to the previous filing and, for the first time, asserted that Governor Kasich used New Day For America to “test-the-waters” of a possible, future Presidential run. As an initial matter, Kasich did no such thing. But because Kasich never received notice of, or a copy of, this Supplemental Complaint, Kasich has never responded to the allegations contained in it.

On April 23, 2019, the Commission found reason to believe that Kasich violated various provisions of the Act. Kasich received a copy of that Factual and Legal Analysis on or about May 8, 2019. Because Kasich did not receive a copy of the Supplemental Information until June 4, 2019, this response is timely filed. In addition, Kasich will continue to supplement the information provided herein on a rolling basis to provide a complete and thorough analysis of these important issues. Once these facts are made available to the Commission, Kasich is confident the Commission will determine these allegations are without merit.

## **II. Kasich Did Not Engage in “Testing-the-Waters” Activities**

The Factual and Legal Analysis found reason to believe that Kasich violated the Act by accepting impermissible and excessive in-kind contributions for what the ADLF complaints deemed “Governor Kasich’s testing-the-waters activities.” The Commission’s Legal and Factual Analysis assumes Governor Kasich engaged in testing-the-waters activities. Kasich did not engage in testing-the-waters activities.

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<sup>3</sup> Because Kasich did not receive a copy of this Supplemental Complaint until June 4, 2019, the response to this inquiry is not due until 30 days from that date, which was the date Kasich received the full notification.

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FEC regulations define “testing-the-waters” as any activity “undertaken to determine whether the individual should become a candidate.” 11 C.F.R. 100.72. Those activities include conducting a poll, telephone calls, or travel if the activity was done for the purposes of determining whether an individual should become a candidate. *See* 11 C.F.R. 100.72; 100.131.

The Factual and Legal Analysis concludes simply that Governor Kasich was testing the waters. Once the Factual and Legal Analysis reached that conclusion, it simply found Governor Kasich to have violated the Act. The facts are different than those laid out in the Factual and Legal Analysis.

Governor Kasich’s activities with New Day are consistent with the activities he was been engaging in for over 30 years. During that extended time period, he has consistently traveled around the country to share and discuss his ideas—ideas involving balancing the budget, tax reform, and healthcare. Those moments have drawn national attention, applause from critics and supporters, and—sometimes—the ire of his own Republican Party. In fact, in a moment that spoke to Governor Kasich’s efforts to change the national conversation, he attended a national policy conference and angered potential donors with his position on Medicaid expansion in 2014.<sup>4</sup> Governor Kasich has always been involved in the national policy discussion, and he has always, and always will, attempted to draw focus the issues that he thinks will have the most impact. His involvement in discussions around issues of national importance was not an effort to determine whether he should run for President—his involvement was an effort to start a conversation about his vision to improve the country based on the successes he achieved in Ohio.

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<sup>4</sup> Alex Isenstadt, Operation Replace Jeb, available at: <https://www.politico.com/story/2015/06/john-kasich-replace-jeb-bush-2016-candidate-119191#ixzz3fXN7TwoF>

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In fact, Governor Kasich has continued those policy discussions even now. And the chatter from the media, and the questions, continue about a possible presidential run.

That chatter continues despite Governor Kasich expressly saying he's not running for President.<sup>5</sup> This article, from May 31, 2019, details a CNN interview in which Governor Kasich states, "I've never gotten involved in a political race I didn't think I could win, and right now there's no path." *See id.* Governor Kasich didn't need to travel, take a poll, or make phone calls to reach that conclusion—he simply used the expertise and experience he has gained from years as a successful politician to reach a conclusion. He could be right, he could be wrong, but this activity could certainly not be deemed testing-the-waters by the Commission even though CNN, once again, speculated on Governor Kasich running for President.

But here, in the same article that quotes Governor Kasich denying that he is running for President, a Kasich advisor stated that Kasich "is still leaving the door open." The problem here is that the advisor, John Weaver, did not say that. Instead those were the words of the author. And even if this advisor had said so, it is beyond comprehension why the words of an advisor would be more credible when they expressly contradict the words of Governor Kasich himself. Since this article says that Kasich "is still leaving the door open," is Governor Kasich now testing the waters? That is simply not a reasonable conclusion under the Act or this

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<sup>5</sup> Alison Durkee, John Kasich Throws in the Towel, Admits It's Trump's Party Now, Vanity Fair, available at: <https://www.vanityfair.com/news/2019/05/john-kasich-throws-in-the-towel-2020-trump-primary>

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Commission's precedent, and this erroneous conclusion contradicts Governor Kasich's own assertions.<sup>6</sup>

Newspaper articles that quote named or unnamed advisors are simply not reliable when it comes to the activities of Governor Kasich. It is much more important to look at the contemporaneous articles, documents, and statements from the Governor himself. As Governor Kasich explained, he formed New Day for America to promote successful policies implemented in Ohio, collect facts on policies from other states, and advocate for a balanced budget to spur economic growth. The contemporaneous briefing material, which was never intended to be seen by the public, is attached hereto and confirms that mission because the purpose of the Governor's travel to South Carolina confirms it was: "To discuss Ohio's successes, your background and beliefs through various earned media events and meetings." The Governor of one of the most important states traveling the country to inform other states of the success he achieved in his own state is not testing-the-waters activity. If this activity is testing-the-waters, how can any Governor tell his or her success story? Just because John Kasich later became a candidate for President, the Act does not contain any provision that deems this activity illegal.

In addition, Governor Kasich never authorized or conducted any polling or made any phone calls regarding his potential status as a presidential candidate. In fact, had he engaged in testing-the-waters activities, he may not have entered the race considering his low support around the country based on polls once he entered the race. He might have heard the people of

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<sup>6</sup> As the Commission may recall, this article is nearly identical to the article that prompted the initial complaint and serves as the basis for Governor Kasich becoming a candidate before his announcement on July 21, 2015. This article from June 28, 2015 will be addressed herein.

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South Carolina preferred Donald Trump or Ben Carson. He didn't conduct these activities, and his time working with New Day For America was not for testing-the-waters. Instead, his goal was to promote the success of the turnaround in Ohio and to discuss issues of great public importance including the need for a balanced budget, creating jobs, reforming the tax code, and arguing for Medicaid reform. As a sitting Governor of one of the most important states in the Country, Governor Kasich used New Day, and other entities, to share the successes he accomplished.

Contemporaneous news articles support this conclusion. An April 20, 2015 article in the Cleveland Plain Dealer titled *John Kasich begins raising money to test the waters for a 2016 presidential run*<sup>7</sup> expressly states that New Day was not formed as an exploratory committee. Importantly, the article states that “Kasich’s 527 is not an official statement of candidacy. It’s also not a formal federal exploratory committee, which potential White House hopefuls such as retired neurosurgeon Ben Carson have established.”<sup>8</sup> Thus, contrary to the allegations in the ADLF Complaint, New Day For America was not formed to test the waters. Instead, as described herein, and in contemporaneous documentation, it was formed to spread the successes in Ohio and impact the trajectory of states across the country.

The Complaints and the Factual and Legal Analysis next turn to a CNN article by Gloria Borger and Brian Rokus. The article, dated May 17, 2015, is titled, “*John Kasich ‘very likely’*

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<sup>7</sup> Henry J. Gomez, *Ohio Gov. John Kasich begins raising money to test the waters for a 2016 presidential run*, CLEVELAND PLAIN DEALER (Ap. 20, 2015), available at [https://www.cleveland.com/open/2015/04/ohio\\_gov\\_john\\_kasich\\_begins\\_ra.html](https://www.cleveland.com/open/2015/04/ohio_gov_john_kasich_begins_ra.html)

<sup>8</sup> *Id.*

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*to run in 2016.*”<sup>9</sup> The article describes trips to South Carolina and New Hampshire and the fact that Governor Kasich is “making media appearances” to support a conclusion that Governor Kasich is revving up for a Presidential run. *See id.* But the article fails to mention that none of these trips were paid for by New Day For America. Instead, they were paid for by the Ohio Republican Party because Governor Kasich was taking the trips to spread his message of success in Ohio, and the party supported him because it advanced the goals of the Ohio Republican Party. Other trips, including at least one to South Carolina, were paid for by a group called Balanced Budget Forever. The sole mission of that group was to advocate for a balanced budget amendment. These trips had nothing to do with Governor Kasich running for President, thinking about running for President, or testing-the-waters to run for President. They were simply efforts to spread the success story of Ohio or, in the case of Balanced Budget Forever, promote an issue that has been central to Governor Kasich’s ideology for decades. These trips, nestled among trips to Arizona, Utah, and South Dakota, were not for testing-the-waters—while fine states, there is no evidence that Arizona, Utah, or South Dakota had much of a say in the next Republican nominee for President of the United States of America.

But if the news articles and contemporaneous documentation are not convincing, it is also important to listen to what Governor Kasich said at the time. Turning to the CNN article relied upon by ADLF, Gloria Borger twice prods Governor Kasich about whether he is running for President. First, she directly asks him if he is testing-the-waters. Governor Kasich

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<sup>9</sup> Gloria Borger and Brian Rokus, *Source: John Kasich ‘very likely’ to run in 2016*, CNN (May 17, 2015), available at <https://www.cnn.com/2015/05/17/politics/john-kasich-election-2016-running-announcement/index.html>.



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responds, “not really,” and then essentially jokes that his traveling around will garner him more attention to tell the Ohio story. Ms. Borger then asks him if he is going to run for President. Governor Kasich responds, “I don’t know.”<sup>10</sup> He continued, “It’s a process that—you know—I have really not spent an enormous amount of time studying internally.” He then immediately pivoted to talking about the success he achieved in Ohio. In fact, the only certain statement Governor Kasich makes in the article or in the attached interview is that his goal is to “tell the people what’s happened in Ohio. . . I think people need to hear about the way we think out there, what we do. . . [Ohio] is a formula for the country.”<sup>11</sup> Promoting his own state on national tv does not implicate the Act. But then, after hearing a denial directly from the Governor, the article then turns to anonymous sources who claim that John Kasich is “very likely” to run.<sup>12</sup> But even that anonymous source said that nothing was for certain.<sup>13</sup> Again, this activity does not implicate the Act.

Finally, the complaints rely upon a June 28, 2015 Politico article claiming that Governor Kasich was going to announce his candidacy on July 21, 2015.<sup>14</sup> The chatter in that article followed the format of the Vanity Fair article mentioned herein, but with even less specificity. As the Vanity Fair article explained, John Kasich is not running for President, but, a now disclosed advisor, says the door is still open. Such generalized statements do not implicate the Act, and they never have. If they did, former Vice President Joe Biden has been running since at

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Mike Allen, *John Kasich to Announce Presidential Bid July 21*, POLITICO (June 28, 2015), available at <https://www.politico.com/story/2015/06/john-kasich-2016-presidential-bid-119517>.

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least January—or possibly 2015 when the Borger CNN article notes that Joe Biden was spending time visiting South Carolina—activity the ADLF automatically deems testing-the-waters activities. Moreover, according to an article in the Delaware New Journal, not only was the former Vice President “expected to announce in the coming weeks,” he had extensive discussions with family and friends regarding his entry into the race.<sup>15</sup> The title of this article? Metadata reveals the original article was titled, “Delaware’s Joe Biden: Announcement on Presidential Run Coming Soon.” And, just like Governor Kasich, Joe Biden did announce he was running for President. Was this activity testing-the-waters? Under the interpretation advocated by the ADLF, it was. Under any reasonable reading of the Act, it was not, and should not, be testing-the-waters activities.

For these reasons, the allegations that Governor Kasich was testing-the-waters through New Day, or at all, are without merit.

### **III. 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 allegation revolves around one news article: 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 July 21.” Specifically, this allegation 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

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<sup>15</sup> Scott Goss. Delaware News Journal. Original Title: Delaware’s Joe Biden: Announcement on Presidential Run Coming Soon. Available at: <https://www.delawareonline.com/story/news/politics/2019/01/04/joe-biden-decision-presidential-run-could-come-soon/2462970002/>

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his alma mater, The Ohio State University, in Columbus, advisers tell POLITICO.”<sup>16</sup> 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. Moreover, Kasich For America had no one in charge until July 16, when it hired a campaign manager, it didn’t even set up a press email address until July 14, and it didn’t have a scheduling account until July 16. In fact, volunteers signed the contract for a security team to control traffic for a potential announcement late in the day on July 13. Nothing Governor Kasich or Kasich for America did—other than this article—indicated he was a candidate any earlier than then July 13-16 window.

In reality, 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

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<sup>16</sup> 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>.

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protracted period of time. (5) The individual has taken action to qualify for the ballot under State law.”

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.

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 conduct 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 showed, Kasich For America did not raise excess funds prior to July 21, 2015—two early adopters made contributions on July 3. No one else made a contribution for another 10 days. And then lion’s share of contributions started, as expected, on July 21. The contributions came in on July 21, 2015 because 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. Moreover, the Vanity Fair article mentioned herein would not amount to a declaration of candidacy, even though it has even more detail than the article in 2015. Specifically, the Commission has found that even when confronted with a direct comment by a named advisor

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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 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.

#### **IV. 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.

#### **V. The New Day Advertisements Were Not Coordinated Communications.**

ADLF and the Factual and Legal Analysis allege that Kasich For America has accepted an in-kind contribution from New Day For America through a coordinated communication on behalf

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of Governor Kasich's candidacy for President in violation of 52 U.S.C. § 30116(a)(7)(B)(i). Specifically, ADLF's Complaint refers to advertisements that included video footage that was shot of Governor Kasich *before* he announced his candidacy for President on July 21, 2015. ADLF makes no factual allegation that the video footage used in the advertisements was shot after July 21, 2015, when Governor Kasich announced his candidacy for President of the United States. Nor does the Complaint make any allegations that Governor Kasich was in any way involved in the decisions regarding the use of this prior interview footage for creation of commercials that aired on August 5, 2015.

First and foremost, Kasich For America had a stringent firewall policy in place. That policy is included with this response. Moreover, Governor Kasich did not participate in any film sessions, or conduct 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. Kasich For America and Governor Kasich were not involved in any decisions regarding the content, intended audience, timing, media outlet, media market, media purchase, or duration of the advertisements aired on or about August 5, 2015. That the commercials contained portions of prior footage of interviews with Governor Kasich does not in any way evidence any involvement by the Governor or his campaign or by any person at the request of the Governor. Any editing of the pre-candidacy footage was not done "in cooperation, consultation or concert" with Governor Kasich. As such, the Complaint fails to contain any factual allegations that these expenditures were "in cooperation, consultation or concert, with . . . a candidate . . . ." ADLF's blanket assertion that Governor Kasich was "materially involved" simply because prior video footage of him was used without specific facts identifying his material

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involvement in the creation of these specific commercials as defined in 11 C.F.R. § 109.21(d)(2) falls well short of demonstrating any violation.

It cannot be stressed enough that neither Governor Kasich nor Kasich for America had any role in the decisions regarding the content, intended audience, means or mode, the specific media outlet, or the air time and frequency of airing any of these advertisements. The advertisements were not supported by Governor Kasich, they were not promoted by Governor Kasich—in fact, Kasich later condemned ads issued by the Super PAC because he felt uncomfortable with their content.<sup>17</sup> He simply sat for an interview—which the Commission has never deemed to be a violation of the Act. Governor Kasich had no role in creating, producing or distributing the advertisements, nor was he involved in any decisions regarding them. This complaint should be dismissed.

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<sup>17</sup> Lisa Hagen, Kasich ‘not comfortable’ with ad from Super PAC Supporting Him, available at: <https://thehill.com/blogs/ballot-box/presidential-races/270368-kasich-not-comfortable-with-ad-from-super-pac-supporting>

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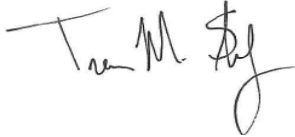
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**VII. Conclusion**

For the foregoing reasons, Kasich believes the complaints should be dismissed. Because Kasich had fewer than two weeks days to respond to the allegations therein, Kasich will supplement this response as new information is discovered.

Sincerely,

A handwritten signature in black ink, appearing to read "Trevor M. Stanley". The signature is written in a cursive, flowing style with a large, stylized "S" at the end.

Trevor M. Stanley  
Partner

Enclosures