

BakerHostetler

January 5, 2016

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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

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

Dear Ms. Collins:

I have been retained as counsel for New Day For America and J. Matthew Yuskewich, Treasurer, New Day For America (collectively “New Day For America”) in the above-referenced matter. In its Complaint, American Democracy Legal Fund and Hillary Clinton advisor Brad Woodhouse (collectively “ADLF”) allege once again that New Day For America violated the Federal Election Campaign Act of 1971 (the “Act”) by making an excessive, in-kind contribution through a coordinated communication with Kasich For America and Governor John Kasich. In addition, the Complaint alleges that Governor Kasich and Kasich For America violated the Act by accepting an excessive, in-kind contribution from New Day For America.¹

¹ A response to the allegations against Governor Kasich, Kasich For America, and Suzanne Marshall, Treasurer, Kasich For America, is outside the scope of this response, and will be addressed in a separate response by them.

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The allegations in this Complaint are duplicative of, or similar to, earlier, frivolous allegations brought for political gain by Mr. Woodhouse. *See* MUR 6955.

The Commission should promptly dismiss this matter. The allegations in the Complaint center around three commercials aired in New Hampshire on or about August 5, 2015. The ADLF alleges that because these commercials featured “B-roll” footage of Governor Kasich recorded prior to Governor Kasich’s decision to run for President of the United States, the commercials amount to an excessive, in-kind contribution as a coordinated communication by New Day For America with Governor Kasich and Kasich For America. But the use of the prior interviews in this manner is not a coordinated communication under the Commission’s rules and regulations because Kasich For America and Governor Kasich were in no way involved with the use of this old footage for creation of the commercials aired on August 5, 2015. 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. Because the ADLF’s Complaint fails to allege facts showing specific violations, the matter should be dismissed without further action.

I. Background.

On April 14, 2015, New Day For America was incorporated as a non-profit corporation in the State of Ohio. *See* Declaration of Matthew J. Carle at ¶ 2, attached as Exhibit A. New Day For America is organized primarily 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 and to engage in other activities as may be necessary and proper to accomplish the foregoing objects and purposes. *Id.* at ¶ 3. New Day For America then

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registered with the Internal Revenue Service as a political committee as defined by Internal Revenue Code § 527. *Id.* at ¶ 4. Once New Day For America registered with the IRS, it discussed issues of general public importance and made non-candidate related expenditures. *Id.* at ¶ 5. It did not support or oppose any candidate for federal office, and it disclosed all expenditures and contributions to the IRS. *Id.* at ¶ 6.

On July 21, 2015, Governor Kasich announced for the first time his intention to run for President. Carle Decl. at ¶ 7. On that same date, New Day For America determined that it would make, and only make, independent expenditures supporting or opposing candidates for federal office, including Governor Kasich. *Id.* at ¶ 8. Consequently, on July 23, 2015, New Day For America timely registered with the Federal Election Commission. *Id.* at ¶ 9.

II. New Day For America Has Not Made 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 through a coordinated communication 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 refers to advertisements that included video footage that was shot of Governor Kasich *before* he announced his candidacy for President on July 21, 2015. Carle Decl. at ¶ 10.² The 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 or Kasich For

² New Day For America's response to MUR 6955 filed on August 28, 2015 specifically addresses the fact that Governor did not become a candidate for President until July 21, 2015.

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America were 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.

To the contrary, neither Governor Kasich nor Kasich For America were involved in any decisions regarding the content, intended audience, means or mode, the specific media outlet, or the time and frequency for the advertisements aired on or about August 5, 2015 as described in the Complaint. Carle Decl. at ¶ 11. Indeed, as the Complaint recognizes, New Day For America's FEC filing identified that the expenditure was not made "in cooperation, consultation, or concert with . . . a candidate." 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. Any editing of the pre-candidacy footage was not done "in cooperation, consultation or concert" with Governor Kasich. *Id.* As such, the Complaint fails to contain any factual allegations that these expenditures were "in cooperation, consultation or concert, with . . . a candidate" The 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 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.

Additionally, the interviews of Governor Kasich in the advertisements cited in the ADLF's Complaint only discussed issues of national importance, and they did not promote any potential candidacy for President of the United States. Consequently, any advertisement using this B-roll footage of Governor Kasich filmed before he became a candidate does not constitute an expenditure "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

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C.F.R. §§ 109.20 and 109.21. The advertisements mentioned by the ADLF fall outside the Commission's definition of a coordinated communication. This claim should be dismissed without further action.

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 black ink, appearing to read "Robert J. Tucker", with a long horizontal flourish extending to the right.

Robert J. Tucker

Attachment

**BEFORE THE
FEDERAL ELECTION COMMISSION**

American Democracy Legal Fund	:	
	:	MUR# 6983
Complainant,	:	
	:	
vs.	:	
	:	
John R. Kasich, et al.	:	
	:	
Respondents.	:	

Declaration of Matthew J. Carle

I, Matthew J. Carle, declare under penalty of perjury that the following is true and accurate.

1. I am the Executive Director of New Day For America. My business address is 105 E. Mound Street, Suite 103, Columbus, Ohio 43215. The statements in this declaration are based upon my personal knowledge.
2. On April 14, 2015, New Day For America was incorporated as a non-profit corporation in the State of Ohio.
3. The Corporation is organized primarily 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, and to engage in other activities as may be necessary and proper to accomplish the foregoing objects and purposes.
4. New Day For America registered with the Internal Revenue Service as a political committee as defined by Internal Revenue Code § 527.
5. Once New Day For America registered with the IRS, it discussed issues of general public importance and made non-candidate related expenditures.
6. It did not support or oppose any candidate for federal office, and it disclosed all expenditures and contributions to the IRS.
7. On July 21, 2015, Governor Kasich announced his intention to run for President of the United States in a public ceremony at The Ohio State University. This was the first time that New Day For America became aware the Governor Kasich would run for President.
8. On that same date, I determined, in my role as Executive Director of New Day For America, that New Day For America would make, and only make, independent

expenditures supporting or opposing candidates for federal office, including Governor Kasich.

9. On July 23, 2015, New Day For America registered with the Federal Election Commission (the "FEC").
10. The video footage included in the commercials described in the Complaint was pulled from interviews of Governor Kasich recorded by New Day For America before Governor Kasich announced his candidacy for President of the United States on July 21, 2015.
11. Governor Kasich was not involved in any decisions regarding the content, intended audience, means or mode, the specific media outlet, or the time and frequency or duration for the advertisements aired on or about August 5, 2015. Any editing of the pre-candidacy footage was not done in cooperation, consultation or concert with Governor Kasich.

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

By:


Matthew J. Carle
Executive Director
New Day For America

Date: January 5, 2016