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January 15, 2016

CONFIDENTIAL

VIA E-MAIL

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Jeff S. Jordan, Assistant General Counsel
999 E Street, NW
Washington, DC 20436

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

Dear Mr. Jordan:

I have been retained as counsel for 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 once again that Kasich For America violated the Federal Election Campaign Act of 1971 (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

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Governor John Kasich.¹ The allegations in this Complaint are duplicative of, and similar to, earlier, frivolous allegations brought for political gain by Mr. Woodhouse. *See* MUR 6955. The allegations against Kasich For America in this Complaint are also frivolous, and the Commission should dismiss the Complaint without taking further action.

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. 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 to 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 to create the commercials aired on August 5, 2015. If the Commission adopted the interpretation promoted by ADLF, every Presidential candidate in the field could potentially be in violation of the Commission’s rules and regulations. Because 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

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

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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 then registered with the Internal Revenue Service as a political committee as defined by Internal Revenue Code § 527. *Id.* at ¶ 4.

On July 21, 2015, Governor Kasich announced for the first time his intention to run for President. Hansen Decl. at ¶ 5. On July 23, 2015, Governor Kasich filed his Statement of Candidacy for President of the United States with the Federal Election Commission. *Id.* at ¶ 6. Also on July 23, 2015, Kasich For America registered with the Federal Election Commission as Governor Kasich's principal campaign committee. *Id.* at ¶ 7.

II. Kasich For America Has Not Accepted Any In-Kind Contribution From New Day For America.

ADLF alleges that Kasich For America has accepted an in-kind contribution from New Day For America 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, 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, 2015.² 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

² Kasich For America's response to MUR 6955 filed on September 9, 2015 specifically addresses the fact that Governor did not become a candidate for President until July 21, 2015.

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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.

To the contrary, 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 ¶ 8. 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. *Id.* at ¶ 9. 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.* at ¶ 10. 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 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 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

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of, a candidate, a candidate's authorized committee, or a political party committee.” *See* 11 C.F.R. §§ 109.20 and 109.21. The advertisements mentioned by ADLF fall outside the Commission’s definition of a coordinated communication. This Complaint should be dismissed without further action.

III. Conclusion.

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

Sincerely,

A handwritten signature in cursive script that reads "E. Mark Braden".

E. Mark Braden

Attachment

EXHIBIT A

**BEFORE THE
FEDERAL ELECTION COMMISSION**

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

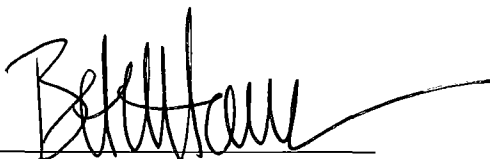
Declaration of Beth Hansen

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. 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.
6. On July 23, 2015, Governor Kasich filed his Statement of Candidacy for President of the United States with the Federal Election Commission.
7. On July 23, 2015, Kasich For America registered with the Federal Election Commission as Governor Kasich's principal campaign committee.

8. 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.
9. 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.
10. 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: 
Beth Hansen
Campaign Manager
Kasich For America

Date: January 14, 2016