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January 31, 2018

VIA ELECTRONIC AND CERTIFIED MAIL

Mr. Jeff S. Jordan
Assistant General Counsel – Complaints Examination & Legal Administration
c/o Kathryn Ross, Paralegal
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

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Re: MUR 7302—Joint Response of Tom Campbell and Tom Campbell for North Dakota (Paul Kilgore, Treasurer)

Dear Mr. Jordan:

We write on behalf of Mr. Tom Campbell and Tom Campbell for North Dakota (Paul Kilgore, Treasurer) in response to a recent complaint filed by American Democracy Legal Fund, which claims that "Tom Campbell used equipment from his private company in a political advertisement" in a campaign advertisement[1] without reporting the use "as an expenditure from or in-kind contribution to his principal campaign committee in violation of Commission regulations."[2] This complaint has no merit, both because any use of equipment did not result in an in-kind contribution and because, even if it can somehow be said that an in-kind contribution technically occurred, the associated value of the contribution would be *de minimis*. We therefore urge the Commission to dismiss this matter expeditiously.

1. Any Use of Equipment Did Not Result in an In-Kind Contribution.

Commission regulations define a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office."[3] The term "anything of value," in turn, includes "the provision of goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services."[4]

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[1] The campaign advertisement at issue was released on September 14, 2017. *See* Tom Campbell for North Dakota, *New Crop*, YouTube (Sept. 14, 2017), https://www.youtube.com/watch?v=T4yqB26VV1E.

[2] Fed. Election Comm'n MUR 7302, Complaint of Brad Woodhouse (Nov. 28, 2017) ("Complaint").

[3] 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a).

[4] 11 C.F.R. § 100.52(a).

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The complaint appears to allege that Tom Campbell for North Dakota received something "of value"—and therefore received an in-kind contribution—due to the appearance of an idle truck featuring a "Campbell Farms" window decal during part of a campaign advertisement. Neither the window decal nor the idle truck, however, imparted "value" to Tom Campbell for North Dakota in a manner that would cause in an in-kind contribution under Commission precedent.

a. The Appearance of a "Campbell Farms" Window Decal Did Not Cause An In-kind Contribution

A campaign's use of a corporate trademark or name may be "of value" and an in-kind contribution in certain circumstances. The Commission has found that a campaign's extensive use of the word "Tweezerman" was "of value" where that word was a registered trademark and where it was part of a "co-operative advertising campaign" carried out jointly by a corporation and a campaign that appeared to enhance the campaign's ability to place its advertisements.[5] Additionally, the Commission has concluded, in a fundraising context, that a campaign cannot use a corporate trademark or name if its purpose is "*to facilitate contributions* to a political committee."[6]

In other situations, the Commission has held that the use of a corporate trademark or name is not "of value" in a manner that causes an in-kind contribution. The Commission has, for example, consistently allowed corporate names to be used to identify individuals appearing in campaign advertisements when no fundraising solicitation occurs.[7] In one enforcement case, the Commission found that "there was no corporate contribution" when a campaign used the phrase "America's Most Wanted" to identify the host of a popular television show appearing in a campaign ad and the following were true: (1) "the Committee never used the trademarked logo" associated with the show; (2) "the Committee paid for all advertising expenses"; (3) the advertisement did not include or suggest a corporate endorsement"; and (4) the host "appeared in

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[5] *See, e.g.*, Fed. Election Comm'n MUR 4340, First General Counsel's Report (Dec. 24, 1999) (Commission approved). *See also* Fed. Election Comm'n MUR 5410, First General Counsel's Report (Nov. 12, 2004) (referencing joint advertising effort by dairy corporation and campaign) (Commission approved).

[6] Fed. Election Comm'n Adv. Op. 2007-10 at 3 (Aug. 21, 2007) (emphasis in original). *But see* Fed. Election Comm'n MUR 6218, First General Counsel's Report at 10-11 (Apr. 15, 2010) (recommending dismissal of corporate-facilitation complaint where the underlying even did not "appear to have raised significant funds" and where the candidate subsequently withdrew from the race) (Commission approved).

[7] Fed. Election Comm'n Adv. Op. 2007-10 at 3 (Aug. 21, 2007) (citing Fed. Election Comm'n Adv. Ops. 1984-43, 1978-77, which permitted the use of corporate names for identification purposes). *See also* Fed. Election Comm'n MUR 6110, First General Counsel's Report at 17-18 (Aug. 26, 2009) (discussing Adv. Op 2007-10, noting that "the Commission distinguished AO 1984-43 ... and AO 1978-77 ..., in which the Commission concluded that a candidate's endorsers may be identified with their corporate positions in campaign-funded advertisements, noting that neither involved the use of corporate resources to facilitate contributions...") (Commission approved).

his individual capacity."[8] Commission staff has subsequently used this same test to analyze whether an in-kind contribution occurred under similar circumstances.[9]

The campaign advertisement at issue features Mr. Campbell leaning against a truck with a "Campbell Farms" window decal, which is visible for only eight seconds of the 30-second commercial. During the time the decal is on screen, Mr. Campbell states "I'm Tom Campbell. Growing potatoes, you learn..." and "I'm Tom Campbell. I'm a potato farmer, a businessman, and a conservative outsider." The decal appears at times when Mr. Campbell discusses his farming background in order to help identify him. No campaign contributions are solicited in the advertisement.

The window decal's limited appearance did not cause an in-kind contribution under Commission precedent. The graphic art featured on the decal is not a registered trademark. The decal is not part of a "co-operative advertising campaign" involving any corporation, and it is not connected to a solicitation of campaign funds. Like "America's Most Wanted" in the Commission's prior enforcement case, the decal's function here is to identify Mr. Campbell. And like the campaign in that same case, Tom Campbell for North Dakota was free to use the decal to identify Mr. Campbell without receiving an in-kind contribution because: (1) the campaign did not use a trademarked logo; (2) the campaign paid for all advertising expenses; (3) the advertisement did not include or suggest a corporate endorsement, as the decal was merely a personal identifier placed in the advertisement's background; and (4) Mr. Campbell appeared in the advertisement in his personal capacity as a candidate. An in-kind contribution therefore did not result when a "Campbell Farms" window decal appeared on a limited portion of the advertisement.

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b. The Appearance of a Stationary Truck Was Not An In-Kind Contribution

The use of equipment is potentially a "thing of value" and may result in an in-kind contribution equal to the "usual and normal charge" associated with that use.[10] Commission rules, however, permit employees of a corporation to use company equipment and resources without causing an in-kind contribution to a campaign when that use is "occasional, isolated, or incidental" and does not "interfere with the corporation in carrying out its normal activities."[11]

The appearance of an idle truck in the campaign advertisement at issue does not cause an in-kind contribution under this standard. The truck was already property of the farm, and thus the incremental cost of using the stationary truck already at the site of the video shoot was $0. Moreover, because the truck used in the advertisement was simply sitting outside, there was no interference with the work of the farm during the course of a brief video shoot. Featuring that truck for a limited portion of the advertisement may well be the paradigmatic example of

[8] Fed. Election Comm'n MUR 5578, First General Counsel's Report at 7 (Feb. 15, 2006) (Commission approved).

[9] *See, e.g.*, Fed. Election Comm'n MUR 6110, First General Counsel's Report at 16-18 (Aug. 26, 2009) (discussing and applying test articulated in MUR 5578) (Commission approved).

[10] *See, e.g.*, Fed. Election Comm'n Advisory Opinion 1994-08 at 2 (May 12, 1994).

[11] 11 C.F.R. § 114.9(a).

"occasional, isolated, or incidental" use. In any event, the idle truck's appearance did not cause an in-kind contribution.

2. **Even If the Use of Equipment Resulted in an In-Kind Contribution, the Value of that Contribution Would Be *De Minimis***

Commission precedent states that when the value of a campaign's use of corporate resources is "insubstantial," such as when there is "virtually no cost associated" [12] with the activity, then "further use of the Commission's resources for an investigation is not warranted" and the matter should be dismissed.[13] The Commission, for example, declined to pursue a case against a candidate committee, Oberweis for U.S. Senate, even where the candidate's campaign materials contained the trademarked logo of a corporation and this trademarked logo appeared on "various web sites" and physical "bumper stickers and banners" of the campaign.[14]

Here, the value associated with any equipment use would clearly be "insubstantial" for several reasons, including:

- The "Campbell Farms" window decal and the idle truck appeared for mere seconds in a single campaign advertisement, which is significantly less than the use that occurred in the Oberweis case;
- The graphic art featured on the "Campbell Farms" window decal was not a registered trademark, meaning that whatever property right and value held by Mr. Campbell's farm in that decal was materially lower than the trademarked logo involved in the Oberweis case; and
- The cost of using the truck was nominal, since the truck was already on the farm property where the video shoot occurred and was not even driven during the filming of the advertisement.

Even if appearance of the "Campbell Farms" window decal and the stationary truck somehow resulted in an in-kind contribution, then, the value of that contribution is so insubstantial that the Commission's established approach would dictate a dismissal of the complaint here.

[12] *See, e.g.*, Fed. Election Comm'n MUR 6173, First General Counsel's Report at 7 (Sept. 8, 2009) (quoting 71 Fed. Reg. at 18596) (Commission approved).

[13] *See* Fed. Election Comm'n MUR 6110, First General Counsel's Report at 18 (Aug. 26, 2009) (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)) (Commission approved). *See also* Fed. Election Comm'n MUR 6110, First General Counsel's Report at 20 (Aug. 26, 2009) (Commission approved); Fed. Election Comm'n MUR 6322, First General Counsel's Report at 8 (Dec. 20, 2010) (Commission approved); Fed. Election Comm'n General Counsel's Report MUR 5243 at 5 (dated Aug. 15, 2002) (Commission approved).

[14] Fed. Election Comm'n MUR 5243, General Counsel's Report at 5 (Aug. 15, 2002) (recommending the Commission take no action in MUR 5243 because the use of a logo was "*de minimis*") (Commission approved).

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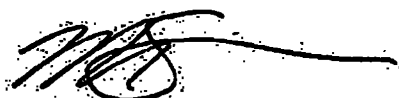
3. **Conclusion**

Mr. Campbell and Tom Campbell for North Dakota have made their best efforts to comply with all federal election laws and Commission regulations. Tom Campbell for North Dakota's FEC Reports already contain all contributions and expenditures that the committee is aware of. Simply put, the limited use of the "Campbell Farms" decal and the idle truck for a campaign advertisement did not cause Tom Campbell for North Dakota to receive an in-kind contribution, as those uses do not have cognizable value for these purposes. We therefore respectfully ask that the Commission find no reason to believe a violation occurred and promptly dismiss this Matter.

Respectfully Submitted,



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