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September 28, 2022

RECEIVED

By OGC/CELA at 2:22 pm, Sep 28, 2022

Mr. Roy Q. Lockett
Acting Assistant General Counsel
Office of Complaints Examination
and Legal Administration
Federal Election Commission
Attn: Trace Keeyes, Paralegal
1050 First Street, N.E.
Washington, D.C. 20463

VIA E-mail to CELA@fec.gov

Re: MUR 8044

Dear Mr. Lockett:

The undersigned serves as counsel to Annette Taddeo, Taddeo for Congress (the “Committee”), and Shelby Green, in her official capacity as Treasurer (collectively, “Respondents”). This letter responds on behalf of Respondents to the Commission’s notification that it received a complaint (the “Complaint”) from the Foundation for Accountability & Civic Trust (“Complainant”) alleging that the Respondents violated the Federal Election Campaign Act (the “Act”) and Federal Election Commission (the “Commission”) regulations.

Background

The Complaint alleges that Respondents used campaign resources from Ms. Taddeo’s 2021 gubernatorial campaign during her 2022 congressional campaign. While video footage from the gubernatorial campaign’s announcement was used in the congressional campaign’s announcement, the Respondents have paid fair market value for that footage.¹

Ms. Taddeo, a current member of the Florida State Senate, announced her gubernatorial campaign on October 18, 2021.² To accompany that announcement, the campaign released a video advertisement produced by AL Media.³ The advertisement was produced using footage

¹ Exhibit A (check from the Committee to the state gubernatorial campaign); Exhibit B – Patrick Kennedy Declaration.

² Brendan Farrington, *Taddeo enters Florida’s Democratic primary for governor* (AP News, Oct. 18, 2021), available at <https://apnews.com/article/coronavirus-pandemic-florida-health-congress-charlie-crist-5fb483e4c66d04e42da83a2adecc75f0>.

³ Exhibit B; Annette Taddeo for Florida Governor, *Fighting Spirit* (Oct. 20, 2021), available at <https://www.youtube.com/watch?v=vkfnA7EEoic>.

obtained from a production shoot paid for by the gubernatorial campaign. Upon paying, AL Media \$34,768 for the total cost of that production shoot, Taddeo for Governor was the rightful owner of the footage used in the video.⁴

On June 6, 2022, Ms. Taddeo announced that she would be withdrawing from the Florida gubernatorial campaign to run for Florida's 27th congressional district.⁵ Once again, that announcement was accompanied by a video produced by Adelstein Liston Media.⁶ This video used about 90 seconds of video from the gubernatorial campaign footage created in the original production shoot.⁷

On August 2, 2022, the Committee paid the state gubernatorial campaign \$3,000 for the fair market value for a license to use the original footage from the production shoot, which represented the pro-rated value of the small amount of footage used.⁸ Because the congressional campaign paid fair market value for the footage to the gubernatorial campaign, who was the rightful owner of the footage, the re-used footage was not a transfer of any sort from the state campaign to the Committee. Rather, it was paid for in line with Commission precedent.

Legal Analysis

The Complaint alleges that the Respondents violated the Act and regulations by using state campaign assets in support of a federal campaign, in contravention of the Act and Commission regulations, which prohibit (1) spending funds not subject to the limitations, prohibitions, and reporting requirements of the Act in connection with an election for federal office, and (2) transferring assets from a state campaign committee to a federal campaign committee.⁹

Because the Committee has paid for the assets at issue here, no facts exist that would lead to a violation of federal law, and the Commission should find no reason to believe Respondents violated the Act or Commission Regulations.

Under 11 C.F.R. §110.3(d), a candidate's non-federal campaign may not transfer assets to the candidate's principal campaign committee. However, the Commission has also "permitted the transfer of a nonfederal committee's assets to the campaign committee of a candidate for federal office where the federal committee pays the fair market value or the 'usual and normal charge' for the use of such asset."¹⁰

⁴ Exhibit B.

⁵ Jim Defede, *Annette Taddeo drops governor bid to challenge Maria Elvira Salazar instead* (CBS Miami, June 6, 2022), available at <https://www.cbsnews.com/miami/news/annette-taddeo-drops-out-governor-race-challenge-maria-elvira-salazar/>.

⁶ Taddeo for Congress, *Annette Taddeo is ready to flip FL-27* (June 6, 2022), available at <https://www.youtube.com/watch?v=l3rRtygbZgU>; Exhibit B.

⁷ Exhibit B.

⁸ Exhibits A, B.

⁹ 52 U.S.C. § 30125(e); 11 C.F.R. § 110.3(d); *see also* 11 C.F.R. § 300.61.

¹⁰ MUR 6784 (Lizbeth Benacquisto for Congress), Factual & Legal Analysis at 5; *see also* 58 Fed Reg 3474, 3475 (stating that the prohibition of transfer of assets from a state campaign committee "should not be read to proscribe

In MUR 6784, the Commission voted unanimously to find no reason to believe that a violation occurred when images used by a federal candidate's state campaign were later purchased by that candidate's federal committee for fair market value.¹¹ In that MUR, Lizbeth Benacquisto, a Florida state senator, ran for federal office in Florida's 19th Congressional District. Similar to the Complaint here, that complaint alleged that "an impermissible transfer of value from the state to the federal campaign may have occurred because images used in the state senate campaign television advertisements later appeared in television advertisements for the federal campaign."¹² Because the federal committee paid for the images "under current market practices and at the usual and normal charges," the Commission voted unanimously to find that no reason to believe that a violation occurred with regard to the use of the images.¹³

Although this MUR involved a payment to a third party (namely, a paid media vendor who likely owned the footage) rather than the state committee, the same logic should ring true here – a federal committee's payment of fair market value for a state committee's assets is not an impermissible transfer under 11 C.F.R. § 110.3(d). Indeed, the Commission voted unanimously to find no reason to believe that a violation occurred in MUR 6784 once presented with evidence that the federal committee paid fair market value.¹⁴

In MUR 5964, the Commission considered whether Schock for Congress, Aaron Schock's federal committee, received an impermissible transfer from his state committee, Citizens for Schock.¹⁵ That MUR hinged on whether the federal committee's payment of \$750 constituted a usual and normal charge for the federal committee's used of video footage that was originally produced for the state committee.¹⁶ Because the federal committee provided scant evidence that \$750 was the usual and normal charge, the Office of General Counsel recommended finding reason to believe, but the Commission voted 5-0 to dismiss as an exercise of prosecutorial discretion.¹⁷

Unlike the Schock for Congress committee in MUR 5964, the Respondents here have provided clear evidence that the re-used footage did not constitute a transfer. As shown through the attached exhibits, the Committee has paid the state campaign the fair market value for the prorated share of the footage used in the congressional campaign announcement.¹⁸ And as a result, like in MUR 6784, no impermissible transfer has occurred, so the Commission should not find reason to believe any violation occurred.

the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value").

¹¹ MUR 6784, Factual & Legal Analysis at 7-8.

¹² *Id.* at 1, 4-5 ("Images from the state advertisements showing Benacquisto interacting with or talking to various groups of persons — e.g., seniors, veterans,, and employees of a business — also appeared in advertisements that ran during Benacquisto's federal campaign").

¹³ *Id.* at 5-6; *see also* MUR 6784, Second Amended Certification at 1.

¹⁴ MUR 6784, Factual & Legal Analysis at 5-6; MUR 5964 (Schock for Congress), Statement of Reasons of Comm'rs Walther, Petersen, Bauerly, Hunter, and Weintraub at 2-3.

¹⁵ MUR 5964 (Schock for Congress), First General Counsel's Report at 2.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5; *but see* MUR 5964 (Schock for Congress), Statement of Reasons of Comm'rs Walther, Petersen, Bauerly, Hunter, and Weintraub at 2-3.

¹⁸ Exhibits A, B.

Even if the Commission does find a violation, it should still dismiss this Complaint given the small amount at issue. Indeed, in other cases involving alleged violations of 11 C.F.R. 110.3(d), “the Commission [has] exercise[d] its prosecutorial discretion and dismis[s]e[d] the allegations” when the potential violations are of a *de minimis* value, ranging from \$750 to \$8,095.84.¹⁹ Given the *de minimis* value at issue here, the Commission should once again exercise its discretion and dismiss the allegation.

Conclusion

As described above, the Committee did not accept an impermissible transfer from Ms. Taddeo’s state gubernatorial campaign. Rather, it paid fair market value to the rightful owner for the prorated share of the footage used in the congressional campaign announcement. Therefore, the Commission should vote to find no reason to believe that any violation of the Act or Commission regulations occurred. Even if the Commission determines that a potential violation does exist here, the amount is of a *de minimis* value, and as a result, this matter should be dismissed as an exercise of prosecutorial discretion.

If you have any questions regarding this Response, my daytime number is (202) 479-1111. My email address is reiff@sandlerreiff.com.

Sincerely,



Neil P. Reiff
Aaron Barden
Counsel to Annette Taddeo, Taddeo for
Congress, and Shelby Green, Treasurer

¹⁹ MUR 7367 (Anthony J. Brindisi), Factual & Legal Analysis at 2 (total alleged violation of \$2,000); MUR 7338 (Rick for Congress), Factual & Legal Analysis at 2-3 (total alleged violation of \$1,940.48); MUR 7323 (Walters for Congress), Factual & Legal Analysis at fn.2, 4 (total alleged violation of \$8,095.84); MUR 7281 (Mackenzie for Congress), Factual & Legal Analysis at 2 (total alleged violation of \$4,754.69); MUR 5964 (Schock for Congress), Statement of Reasons of Comm’rs Walther, Petersen, Bauerly, Hunter, and Weintraub at 2-3.


Exhibit A


A TADDEO FOR CONGRESS
 2800 S ADAMS ST
 TALLAHASSEE, FL 32314-7808


63-9138/2631 1052

DATE 8/2/22

PAY TO THE ORDER OF Taddeo for Governor \$ 3,000.00
Three Thousand Dollars DOLLARS

TRUIST 

MEMO Production Costs - Sale to Taddeo for 

Security features  Details on back

**BEFORE THE
FEDERAL ELECTION COMMISSION**

IN RE)
)
Taddeo for Congress (MUR 8044))
)
)

DECLARATION OF PATRICK KENNEDY

1. I currently serve as the Chief Financial Officer at AL Media. I have served in that position since 2015. As Chief Financial Officer, I assisted in and oversaw the creation of the two video advertisements at issue in this Complaint.

2. On October 18, 2021, Sen. Taddeo announced her candidacy for the Florida gubernatorial campaign. AL Media produced the video announcement for that campaign using footage obtained from a production shoot paid for by the Taddeo Gubernatorial campaign. The overall production cost of that production shoot was \$34,768. Upon paying this cost, the gubernatorial campaign became the proper owner of the campaign announcement footage used to create the gubernatorial announcement video.

3. On June 6, 2022, Sen. Taddeo withdrew from the gubernatorial campaign to announce her candidacy for Florida's 27th Congressional District. Once again, AL Media produced that video announcement. This federal announcement video used approximately 90 seconds of the video footage created during the gubernatorial campaign announcement production shoot, plus a few additional clips and sound bites.

4. On August 2, 2022, Taddeo for Congress paid Taddeo for Governor \$3,000 for the license to use the original video footage from the production shoot in the

new congressional announcement video. This expenditure paid only for the video footage seen in the campaign announcement videos and no other archived footage from the production shoot.

5. The original cost of the gubernatorial campaign announcement shoot was \$34,768. This falls within the usual and normal charge that AL Media charges to its candidate clients. The congressional campaign only used a small portion of this original gubernatorial campaign shoot footage, and as a result the pro-rated value of this footage was valued at \$3,000. Because the congressional campaign paid this amount to the gubernatorial campaign, the proper owner of the footage, for the right to use this video footage in the congressional announcement video, the \$3,000 payment should be considered fair market value for the pro-rated value of the original footage.

Under the penalty of perjury, I declare that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 28th day of September, 2022.



Patrick Kennedy
Chief Financial Officer
AL Media