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VIA E-MAIL AND HAND DELIVERY

Chairman Steven T. Walther, Vice Chair
Caroline C. Hunter, and Commissioners Lee E.
Goodman, Matthew S. Petersen, Ann M. Ravel,
and Ellen L. Weintraub
Federal Election Commission
c/o Ms. Shawn Woodhead Werth
Secretary and Clerk of the Commission
999 E Street, NW
Washington, DC 20463

Re: Kasich For America: Request for Consideration of Legal Questions by the Commission

Dear Commissioners:

On behalf of our client, Kasich For America, we respectfully request that the Commission review the determination of the Reports Analysis Division with respect to certain contributions received by Kasich For America after May 4, 2016. Specifically, Kasich For America respectfully requests that the Commission review the determination of the Reports Analysis Division that Ohio Governor John R. Kasich made an announcement on May 4, 2016 "not to seek the nomination." He did no such thing.

I. Factual Background

On July 21, 2015, Ohio Governor John R. Kasich announced for the first time his intention to run for President of the United States of America. After ten hard fought months following this announcement, Governor Kasich determined that he would not be able to secure the Republican nomination through the conventional path of the Republican primaries. Consequently, Governor Kasich determined on May 4, 2016, that he would focus his attention on securing the nomination at the Republican nominating convention in Cleveland, Ohio in the event President-elect Donald Trump faltered or withdrew from the presidential campaign.

On May 4, 2016, therefore, Governor Kasich suspended his campaigning in the remaining primary states. He did not, however, make any comment that he would not continue to seek the office of President of the United States. Instead, Governor Kasich stated:

> Throughout my campaign I have said the Lord may have another purpose for me, and it set all the pundits a-twitter. Does that mean he is not committed or he is not focused or he's not energetic? It showed to some degree how little they understand about life. You see, I have always said that the Lord has a purpose for me as he has for everyone, and as I suspend my campaign today, I have renewed faith, deeper faith that the Lord will show me the way forward and fulfill the purpose of my life.

See Announcement of Governor John R. Kasich, May 4, 2016. After this announcement, Governor Kasich discontinued his campaign travels to states around the country. He did, however, continue to seek votes in the remaining primary states by remaining on the ballot. Through his efforts, he received enough support to secure delegates in multiple states. *See* Election 2016—Republican Delegate Count, available at: *http://www.realclearpolitics.com/epolls/2016/president/republican_delegate_count.html.*

In addition to securing additional delegates following the suspension of his campaign on May 4, 2016, Governor Kasich retained each delegate that he won during his presidential campaign. Not only did he retain those delegates, he encouraged those delegates to vote for him at the Republican National Convention in Cleveland, Ohio. *See* http://www.foxnews.com/politics/2016/05/24/kasich-joins-cruz-rubio-in-keeping-delegates-as-campaign-leverage.html. Those delegates did in fact vote for Governor Kasich for the Republican nomination, and he finished behind now President-elect Trump and Senator Ted Cruz by securing the third-most delegates. His efforts, therefore, allowed him to finish relatively closer to securing the nomination at the Convention than during the primary seasons.

It was certainly no secret there were many discussions and efforts to block the nomination of Donald Trump after the last primary ballots were cast. During this period, Governor Kasich's principal campaign committee, Kasich For America, continued to raise funds and make expenditures in excess of $5,000 in an effort to secure the Republican nomination for the Presidency. He appeared on national news programs, traveled across the United States, spread his message that division and hatred need to end, drafted numerous opinion pieces in newspapers around the country, and asked delegates to support his candidacy for President of the United States. He even traveled to the White House to conduct a press conference behind the seal of the President of the United States of America.

Importantly, Governor Kasich never endorsed any other candidate for President and, in fact, never told any person not to vote for him until December 6, 2016. At that time, Governor Kasich stated, "I am not a candidate for president," and he asked that electors not vote for him

when they gather later this month. "Our country had an election and Donald Trump won." *See* *http://thehill.com/homenews/campaign/309042-kasich-to-electors-dont-vote-for-me.*

On these facts, it is clear that Governor Kasich remained a candidate for President of the United States after May 4, 2016.

II. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act") is clear on its face that any candidate running for Federal office is required to file a Statement of Candidacy with the Federal Election Commission (the "Commission"), and that candidate is required to file a Statement of Organization for a designated principal campaign committee. These filings are not made at the will of the candidate. Instead, they are based on the Act and the Act's explanatory rules and regulations.

Pursuant to the Act, an election encompasses:

(A) a general, special, primary, or runoff elections;
(B) a convention or caucus of a political party, which has authority to nominate a candidate;
(C) a primary election for the selection of delegates to a national nominating convention of a political party;
(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

See 52 U.S.C. § 30101(1)(A)-(D). As is readily apparent from the Act, an election is something more than just running in the presidential primary. It can extend at least to election at a convention.

The Act continues to define a Candidate as "an individual who seeks nomination for election, or election, to Federal office." Again, when an individual becomes a candidate, it is not left to chance or guesswork. The Act provides that an individual "shall be deemed to seek nomination for election," whether that individual wants to be a candidate or not:

(A) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000; or

(B) if such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual, and if such person has received such contributions aggregating in excess of $5,000 or has made such expenditures aggregating in excess of $5,000.

See 52 U.S.C. § 30101(2). Under the statute, therefore, raising or expending $5,000 "deems" an individual to be a candidate under the Act. Once an individual is a candidate, that individual is required to register with the Commission and file reports in accordance with the Act and the Commission's rules and regulations.

An individual stops being a candidate at the end of the election cycle, at which point the aggregate contribution and expenditure amounts reset, or when the individual no longer seeks election or nomination for election to Federal office. *See* 11 C.F.R. § 100.3. In fact, it is clear under the Act that the Commission will not consider a principal campaign committee even eligible for termination if the committee intends to "receive any contributions or make any disbursements that would otherwise qualify it as a political committee." In that case, the Commission would determine that the Committee would not be able to terminate, and the Commission would require the Committee to file reports with the Commission under the Act. *See* 11 C.F.R. § 100.3. The Act, rightly so, does not base its determination on when an individual either becomes a candidate or terminates a campaign or committee on the Candidate's opinion – instead, that determination is based on the plain meaning of the Act.

Under the Act, therefore, Governor Kasich simply stating that he was suspending his campaign was not the end of the story. As explained above, Governor Kasich asked voters for their vote in nine states following his May 4 speech, required his delegates to vote for him at the Convention, improved his relative delegate position at the Convention, continued to raise funds in support of his election at the Convention, and never endorsed President-elect Donald Trump. Consequently, he remained a candidate after May 4, 2016.

Had the May 4, 2016 speech ended his candidacy in accordance with the Act, he would have been deemed a candidate under the Act the moment he passed the requisite contribution and expenditure thresholds. Consequently, it is clear that Governor Kasich remained a candidate after May 4, 2016. To hold otherwise would be to ignore the plain meaning of the Act.

III Conclusion

For the foregoing reasons, we ask that you reverse the determination of the Reports Analysis Division that Governor Kasich made a decision "not to seek the nomination" for President of the United States on May 4, 2016.

Sincerely,

E. Mark Braden