

March 2, 2016

Christopher O. Murray
Attorney at Law
303.223.1203 tel
303.223.8003 fax
cmurray@bhfs.com

VIA EMAIL (to: Donna Rawls, Paralegal – drawls@fec.gov)

Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Jeff S. Jordan, Assistant General Counsel
999 E Street NW
Washington, D.C. 20463

RE: MUR 7008 – Response to the American Democracy Legal Fund Complaint

Dear Mr. Jordan:

This firm represents Jon Keyser and his principal campaign committee, Jon Keyser for Senate, Inc. (the "Respondents"). Designation of counsel forms to this effect are attached to this letter. We hereby respond on behalf of Respondents to the complaint filed by Brad Woodhouse of the American Democracy Legal Fund ("ADLF") (the "Complainant") with the Federal Election Commission, assigned MUR 7008 (the "ADLF Complaint").

We request that this matter remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) at this time; however, we reserve the right to request that the resolution of this matter and related correspondence be made public in the future.

Jon Keyser is an individual and a candidate for United States Senate in Colorado. Jon Keyser for Senate, Inc. (the "Campaign") is Mr. Keyser's principal campaign committee. The Campaign is registered with the Federal Election Commission as a federal political committee (FEC Committee ID: S6CO00283), and its federal election activities and federal accounts are subject to the jurisdiction and reporting requirements of the Federal Election Campaign Act of 1971 (the "Act"), as amended.

The Complaint

The ADLF Complaint alleges that Mr. Keyser impermissibly solicited funds outside the source restrictions and amount limitations of the Act while a candidate for federal office. The ADLF Complaint bases this allegation on news media accounts of the alleged effort to recruit Mr. Keyser into the Colorado Senate race in December, 2015.

Respondents dispute this allegation and assert that no violations of the Act or applicable federal regulations occurred.

410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
main 303.223.1100

The Facts

Mr. Keyser declared his candidacy for U.S. Senate on January 11, 2016.¹ He filed his FEC Form 1 and Form 2 on the same day.² Mr. Keyser made this announcement after coming to a private decision to become a candidate on January 7, 2016.³ Mr. Keyser considered becoming a candidate for approximately two months before coming to his private decision to enter the race for U.S. Senate. During this time, he tested the waters, meeting with various potential supporters in Colorado and other parts of the country.⁴ He did not solicit or accept any contributions during his time testing the waters.⁵ He did receive offers of support for his candidacy from many of these potential supporters.⁶ Indeed, it was these offers of support which helped to convince him to enter the race in early January.⁷

The Law and Discussion

The ADLF Complaint alleges incorrectly that Mr. Keyser impermissibly solicited funds outside the source restrictions and amount limitations of the Act while a candidate for federal office. Mr. Keyser was not a candidate for federal office in December, 2015 when is alleged to have made these solicitations; hence, even though he did not make the solicitations alleged, it would have been permissible for him to make such solicitations.

52 U.S.C. § 30101(2) and 11 CFR § 103.3 provide that a person becomes a candidate for federal office when he receives campaign contributions in excess of \$5,000.00 or makes campaign expenditures in excess of \$5,000.00 or gives his consent to another to do so on his behalf. Funds raised and expended by or on behalf of a person who is still considering whether to become a candidate do not trigger this threshold. 11 CFR § 100.72(a). Activities that are permissible during a period of a potential candidate's testing the waters include travel and telephone calls to potential supporters. *Id.* The ADLF Complaint's allegation that Mr. Keyser traveled to a meeting in Washington, D.C. is entirely consistent with core "testing the waters" activity.

Mr. Keyser did not solicit funds "to support his campaign" at this meeting.⁸ Even if Mr. Keyser had solicited funds outside the source restrictions and amount limitations of the Act at this meeting, such solicitation would have been permissible, as he had not yet decided to run for office and had not yet engaged in any campaigning activity.⁹ Hence, the Complaint fails to state any cognizable violation of the Act or Commission regulations.

¹ Mark K. Matthews, *Jon Keyser Announces 2016 Senate Bid amid Crowded Colorado Field*, Denver Post (Jan. 11, 2016, 12:02pm), available at: http://www.denverpost.com/election/ci_29370305/jon-keyser-announces-2016-senate-bid-amid-crowded

² See Keyser for Senate Form 1 (attached as Exhibit 1); Keyser for Senate Form 2 (attached as Exhibit 2)

³ See Affidavit of Jon Keyser (attached as Exhibit 3)

⁴ See *id.*

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ See Affidavit of Jon Keyser (attached as Exhibit 3)

⁹ The ADLF Complaint cites to Draft A of FEC Advisory Opinion 2015-9 for the proposition that solicitation of funds outside the source restrictions and amount limitations of the Act by one testing the waters violates the law. See ADLF Complaint at 3. Draft A was not adopted by the Commission, which did not issue a recommendation on the question of whether the solicitation of funds outside the source restrictions and amount limitations of the Act triggers candidacy. See FEC Adv. Op. 2015-9. Importantly, the Commission did confirm that a candidate's private decision to become a candidate triggers registration and reporting

Conclusion

Because the ADLF Complaint fails to allege a cognizable violation of the Act or Commission regulations, it should be dismissed in its entirety and no further action should be taken by the Commission against Respondents.

Regards,

Christopher O. Murray /CB

Christopher O. Murray

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requirements: *See id.* As noted above, Mr. Keyser privately decided to become a candidate four days before his official announcement.

AFFIDAVIT

STATE OF COLORADO)

COUNTY OF Arapahoe)

) ss.

Jonathan M. Keyser, being first duly sworn on oath, deposes and states as follows:

1. I am a candidate for United States Senate in Colorado. I am running to be the Republican nominee for the November, 2016 general election.
2. I made a private decision to become a candidate on January 7th. I announced my candidacy on January 11, 2016. I filed my FEC Form 1 and FEC Form 2 on the same day.
3. Prior to deciding to become a candidate, I tested the waters to determine whether I should enter the race. As part of this process I travelled to meet with potential supporters both inside and outside Colorado.
4. Although I received offers of support during my time testing the waters, I did not solicit or accept any contributions during this time. These offers of support did, along with several other factors, eventually help convince me that I should become a candidate.

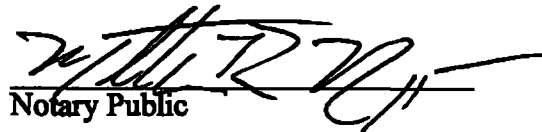
FURTHER THE AFFIANT SAITH NAUGHT.


JONATHAN M. KEYSER

I hereby certify that the forgoing was subscribed and sworn to before me this 1 day of March, 2016.

Witness my hand and official seal.

My Commission expires: 12-27-2019


Notary Public

