

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Andy Sandler  
Chairman, Third Congressional District  
Kansas Democratic Party  
P.O. Box 1914  
Topeka, KS 66601

Complainant,

v.

The Congressional Leadership Fund and Caleb Crosby, Treasurer  
1747 Pennsylvania Avenue, NW  
5th Floor  
Washington, D.C. 20006

Kansas Republican Party and Richard L. Todd, Treasurer  
P.O. Box 4157  
Topeka, KS 66604

Alana Zimmer-Roethle, Secretary, Kansas Republican Party  
P.O. Box 4157  
Topeka, KS 66604

Respondents.

**COMPLAINT**

Under 52 U.S.C. § 30109(a)(1), this complaint alleges violations of the Federal Election Campaign Act of 1971, as amended (“FECA”), and Federal Election Commission (“FEC”) regulations against the Congressional Leadership Fund and its treasurer Caleb Crosby in his official capacity; the Kansas Republican Party and its treasurer Richard L. Todd in his official capacity; and Alana Zimmer-Roethle, Secretary of the Kansas Republican Party (collectively, “Respondents”). The Respondents appear to have violated federal law and regulations when the Congressional Leadership Fund made an illegal in-kind contribution to the Kansas Republican

Party in the form of a coordinated communication—a television advertisement created, produced, and distributed in cooperation, consultation, and concert with the Kansas Republican Party and Zimmer-Roethle. The Respondents’ apparent violation of federal laws and regulations undermine not only the integrity of our nation’s campaign finance system but also our democracy. Consequently, the FEC should immediately investigate this violation and levy appropriate sanctions against the Respondents.

## I. FACTS

The Congressional Leadership Fund (“CLF”) is a Super PAC registered with the FEC, and its treasurer is Caleb Crosby.<sup>1</sup> The Kansas Republican Party is a state political party committee registered with the FEC; its treasurer is Richard L. Todd.<sup>2</sup> Alana Zimmer-Roethle is currently the Secretary of the Kansas Republican Party.<sup>3</sup>

On August 31, 2018, CLF made an expenditure of \$265,615.00 for airtime to disseminate two television advertisements starting on September 7, 2018 opposing Sharice Davids, a candidate for the U.S. House of Representatives in Kansas’s third congressional district.<sup>4</sup> On September 7, 2018, CLF made four expenditures totaling over \$65,000.00 to an Arlington, Virginia-based public affairs firm to produce the advertisements opposing Davids.<sup>5</sup> On the same

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<sup>1</sup> Congressional Leadership Fund, FEC Form 1, Statement of Organization (May 17, 2017), *available at* <http://docquery.fec.gov/cgi-bin/forms/C00504530/1162865/>.

<sup>2</sup> Kan. Republican Party, FEC Form 1, Statement of Organization (Aug. 7, 2018), *available at* <http://docquery.fec.gov/cgi-bin/forms/C00004606/1255056/>.

<sup>3</sup> Kan. Republican Party, *Party Officers* (hereinafter “Kan. Republican Party Officers”), <https://www.kansas.gov/party-officers> (last visited Sept. 14, 2018).

<sup>4</sup> Congressional Leadership Fund, FEC Form 24/48, 24/48 Hour Report of Independent Expenditures (Sept. 9, 2018), *available at* <http://docquery.fec.gov/cgi-bin/fecimg/?201809099121659185>.

<sup>5</sup> *Id.*; Congressional Leadership Fund, FEC Form 24/48, 24/48 Hour Report of Independent Expenditures (Sept. 9, 2018), *available at* <http://docquery.fec.gov/cgi-bin/fecimg/?201809099121659187>; Congressional Leadership Fund, FEC Form 24/48, 24/48 Hour Report of Independent Expenditures (Sept. 9, 2018), *available at* <http://docquery.fec.gov/cgi-bin/fecimg/?201809099121659186>.

day, CLF announced that the advertisements would begin airing on television, including a 30 second advertisement titled “Risky.”<sup>6</sup>

During that advertisement, a person described as “a local Kansas mom” directly faces the camera and states, “As a mom of four, I care about keeping our community safe. That’s why I oppose Sharice Davids.”<sup>7</sup> At the end of the advertisement, a narrator states, “Congressional Leadership Fund is responsible for the content of this advertising.”<sup>8</sup> A written disclaimer appears at the bottom of the advertisement and states, “Congressional Leadership Fund is responsible for the content of this advertising. Paid for by Congressional Leadership Fund. Not authorized by any candidate or candidate’s committee. [www.congressionalleadership.org](http://www.congressionalleadership.org).”

Although the advertisement identifies the “local Kansas mom” as Alana Roethle, it does not state that Zimmer-Roethle is actually Secretary of the Kansas Republican Party.<sup>9</sup> Zimmer-Roethle is also a commissioner on the Kansas Lottery Commission, appointed to the position in 2015 by Republican Governor Sam Brownback.<sup>10</sup>

## II. LEGAL ARGUMENT

Under FECA, an expenditure made by any person in cooperation, consultation, or concert, with or at the request or suggestion of a political party committee or its agent is considered an in-kind contribution to the committee if it is (1) *paid for* by an entity other than the committee; (2) meets certain *content* standards, including by expressly advocating for the election or defeat of a clearly-identified Federal candidate; and (3) meets certain *conduct*

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<sup>6</sup> Press Release, Congressional Leadership Fund, *New Ads in KS-03: Sharice Davids is Too Risky for Kansas Families* (Sept. 7, 2018) (hereinafter “CLF Press Release”), <https://www.congressionalleadershipfund.org/new-ads-in-ks-03-sharice-davids-is-too-risky-for-kansas-families/>.

<sup>7</sup> Congressional Leadership Fund Super PAC, *(KS-03) Risky*, YouTube (Sept. 7, 2018), [https://www.youtube.com/watch?v=ZP\\_vdjWgoUs&feature=youtu.be](https://www.youtube.com/watch?v=ZP_vdjWgoUs&feature=youtu.be).

<sup>8</sup> *Id.*

<sup>9</sup> See Kan. Republican Party Officers, *supra* note 3.

<sup>10</sup> Kan. Lottery Comm’n, *About Us – Commission*, <http://www.kslottery.com/aboutus/commission.aspx> (last visited Sept. 14, 2018).

standards regarding the coordination between the entity that paid for the advertisement and the committee or a committee's agent. CLF's advertisement meets all three of these requirements.

First, the television advertisement satisfies the *paid-for* prong of the coordinated communications standard described above. In late-August and early-September 2018, CLF made over \$320,000 in expenditures to create, produce, and distribute "Risky," the television advertisement at issue. On September 7, 2018, CLF announced via press release that it had released the advertisements to "run on television in the Kansas City media market . . . ." <sup>11</sup> Moreover, at the end of the advertisement, CLF affirmed both orally and in writing that it paid for the advertisement and is responsible for its content.

Second, the advertisement satisfies the *content* prong of the coordinated communications standard, as it is a public communication broadcast within 90 days of the general election that advocates for the election or defeat of a clearly-identified candidate for the U.S. House of Representatives. A public communication includes "a communication by means of any broadcast, cable, or satellite communication . . . or any other form of general public political advertising." <sup>12</sup> And a public communication satisfies the content prong if, *inter alia*, it "refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's general . . . election . . . ." <sup>13</sup>

Here, CLF's television advertisement constitutes a public communication. CLF publicly distributed the advertisement as part of a television ad buy in the Kansas City media market. The advertisement expressly advocates for the defeat of Sharice Davids, a candidate for the U.S.

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<sup>11</sup> CLF Press Release, *supra* note 6.

<sup>12</sup> 11 C.F.R. § 100.26.

<sup>13</sup> *Id.* § 109.21(c)(4)(i).

House of Representatives in Kansas's third congressional district. Moreover, the advertisement has aired well within 90 days of the November 6, 2018 general election, beginning on September 7, 2018.

Third, the television advertisement satisfies the *conduct* prong of the coordinated communications standard. A public communication satisfies the conduct prong if, *inter alia*, “[a] candidate, authorized committee, or *political party committee* is materially involved in decisions regarding: (i) [t]he content of the communication; (ii) [t]he intended audience of the communication; (iii) [t]he means and mode of the communication; (iv) [t]he specific media outlet used for the communication; (v) [t]he timing or frequency of the communication; or (vi) [t]he size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.” In the context of a candidate appearance in an ad in explaining the material involvement standard, the Commission has stated that “[g]iven the importance of and potential campaign implications for each appearance by a Federal candidate, it is highly implausible that a Federal candidate would appear in a communication without being materially involved in one or more of the listed decisions regarding the communication.”<sup>14</sup>

Here, it is highly plausible that the Kansas Republican Party was materially involved in key decisions regarding the advertisement's creation, production, and distribution. Alana Roethle, Secretary of the Kansas Republican Party, starred in the advertisement and expressly advocated for the defeat of a candidate for Federal office. The appearance of an officer of a political party committee's in a television advertisement—looking directly into the camera and appearing to read from scripted lines—strongly evinces material involvement by the party in the

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<sup>14</sup> Fed. Election Comm'n Adv. Op. 2004-1 (Bush/Kerr) at 4 (quoting Fed. Election Comm'n Adv. Op. 2003-25 (Weinzapfel) at 6).

advertisement. Therefore, the television advertisement appears to satisfy the conduct prong of the coordinated communications standard.

Therefore, evidence strongly suggests that CLF's television advertisement constitutes a coordinated communication,<sup>15</sup> and should be treated as an in-kind contribution to the Kansas Republican Party.<sup>16</sup> Consequently, as a committee that makes independent expenditures and accepts corporate money, CLF has violated federal law by making an illegal in-kind contribution to the Kansas Republican Party. In turn, the Kansas Republican Party has violated federal law by receiving and accepting such an illegal contribution.<sup>17</sup>

### **III. REQUESTED ACTION**

As explained above, the Respondents appear to have violated both FECA and FEC regulations. CLF made hundreds of thousands of dollars in expenditures to buy airtime to air a television advertisement it created, produced, and distributed in cooperation, consultation, and concert with the Kansas Republican Party and its secretary Alana Zimmer-Roethle. CLF thus made an illegal in-kind contribution to the Kansas Republican Party, and the Kansas Republican Party received an illegal, excess contribution.

Both FECA and FEC regulations are clear in expressly prohibiting coordination between political party committees and outside groups. Here, CLF and the Kansas Republican Party's violation of Federal laws undermines not only the integrity of our campaign finance system but also our democracy. As such, we respectfully request that the FEC immediately investigate this violation and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

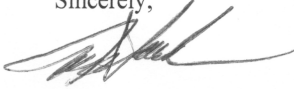
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<sup>15</sup> 11 C.F.R. § 109.21(a).

<sup>16</sup> *See id.* § 109.21(b).

<sup>17</sup> *See* 52 U.S.C. § 30125(e)(1)(B)(ii).

Sincerely,



**Andy Sandler**

SUBSCRIBED AND SWORN to before me this 24 day of September, 2018.



Notary Public

My Commission Expires:

1-19-2020

