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September 20, 2004

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2004 SEP 24 A 10:09
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Office of General Counsel
Federal Election Commission
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Washington, D.C. 20463

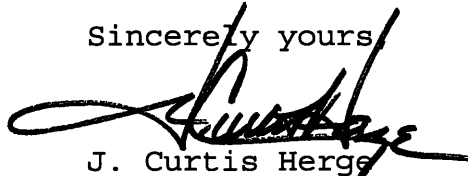
Re: MUR 5333
John Swallow for Congress and
Stanley R. deWaal, as
Treasurer

Dear Mr. Allen:

This responds to the letter from Chairman Smith to me, dated August 16, 2004, in which he reported the Federal Election Commission found reason to believe John Swallow for Congress and Stanley R. deWaal, as treasurer, may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended. By letter dated September 3, 2004, the Office of General Counsel granted our request to extend until September 23, 2004 the deadline for this reply.

Enclosed, for consideration by the Office of General Counsel, is the Affidavit of Stanley R. deWaal dated September 17, 2004. We believe that Affidavit addresses the issues raised in the Factual and Legal Analysis which formed the basis for the Commission's findings as to these respondents. Do not hesitate to write or telephone me if you have any questions or if you have any questions or if you require any additional information.

Sincerely yours



J. Curtis Herge

:sbl

Enclosure

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AFFIDAVIT OF STANLEY R. deWAAL

2004 SEP 24 A 10:09

STATE OF UTAH)
COUNTY OF SALT LAKE) to-wit:

MUR 5333

I, the undersigned, Stanley R. deWaal, being duly sworn, state as follows:

1. In the 2002 election cycle, I served as the treasurer of John Swallow for Congress (the "Committee"), the principal campaign committee of John Swallow, a candidate for the U.S. House of Representatives from the Second District of Utah. I presently serve as the treasurer of the Committee.

2. I have personal knowledge of, and about the facts and circumstances related to, the \$5,000 check to the Committee dated March 28, 2002 and the \$5,000 check to the Committee dated June 28, 2002, which checks were drawn on an account in the name of Winter Fox, LLC.

3. I have personal knowledge of, and about the facts and circumstances related to, the \$4,000 check to the Committee dated March 29, 2002 and the \$5,000 check to the Committee dated June 21, 2002, which checks were drawn on an account in the name of Winterhawk Enterprises.

4. At the time the checks of Winter Fox, LLC and Winterhawk Enterprises were received by the Committee I knew, upon information and belief, that those two entities were limited liability companies which had elected with the Internal Revenue Service to be taxed as partnerships.

5. It was in 2002, and it presently is, standard operating procedure at the Committee to scrutinize each contribution to determine whether it appears to be lawful as to source and amount under the Federal Election Campaign Act of 1971, as amended, and whether the Committee has the contributor's full name, mailing address, occupation, and name of employer. If the Committee cannot make a determination as to source and/or amount at the time a contribution is received, or if the identification of the contributor is deficient, I or my staff promptly use our best efforts to obtain and maintain the needed information and facts. Those efforts consist of writing the contributor. Written requests are made using one of several pre-written, computer-generated forms or form letters (as opposed to individually drafted, customized letters) onto which the staff inserts the date and the contributor's name and address. The demands of time and the constraints on resources necessitated the use of forms. An example of the form letter used by the Committee for this purpose is the letter sent by the Committee to

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Winter Fox, LLC and to Winterhawk Enterprises. The Committee did not have one form for what appeared to be a contribution from a corporation, a different form for a partnership, a different form for a limited liability company, etc.

6. In the 2002 election cycle, I did not know of, and was not acquainted with, 11 C.F.R. §110.1(g) which relates to contributions by limited liability companies. My understanding at the time was that a contribution check drawn on a partnership account, or drawn on an account of a limited liability company which is taxed as a partnership, is not considered an expense of the entity, but is instead charged directly to the relevant partner's (member's) drawing account as an amount given directly by the partner (member). My understanding in that regard was based on the following:

- (a.) Under partnership law, the partnership itself does not own the assets.
- (b.) The assets of the partnership belong to the individual partners.
- (c.) These personal assets can be attached by creditors and governmental agencies.
- (d.) The Committee sent out notices to each contributor verifying the fact that these were personal allocations and that the individual agreed to getting charged for this amount of the contribution.
- (e.) All of the contributors were individually capable of making the decision that the contributions were made by them.

Based on the foregoing understanding and the letter responses signed by the members of Winter Fox, LLC and by the members of Winterhawk Enterprises, I believed the contributions in question were personal contributions from the individual members (not from the entities) and were thus lawful as to source and amount.


7. We have carefully reviewed and examined the files of the Committee to determine whether, after the Committee received the \$5,000 check dated June 28, 2002 which was drawn on an account in the name of Winter Fox, LLC, the Committee sent Winter Fox, LLC its standard form letter requesting attributions of that contribution among its members. No such letter could be found; but it was determined that that was the single instance, among a hundred or so which were routinely sent, when such a letter was not sent. It is probable that that single oversight was due to the fact that the June 28, 2002 check arrived shortly after the June 25, 2002 primary election and we were overwhelmed at the time with work related to handling the primary election

accounts and opening the general election accounts. The reported attributions were obtained by telephonic inquiry.

8. "Winter Fox, LLC," "Winterhawk Enterprises" and "BMF#1, Ltd." were not identified as contributors in the reports of the Committee for the reasons I recited in paragraph 6 of this Affidavit. In the event the Federal Election Commission were to determine my reasoning was wrong, I would promptly prepare and file amendments to the relevant reports.

9. I have been proud of my conscientiousness and diligence in discharging my duties and responsibilities as the treasurer of the Committee and in using my best efforts to comply with all the requirements of the Federal Election Campaign Act. We have taken pride in preparing accurate reports; in filing those reports in a timely manner; in promptly returning/refunding contributions which appeared to be unlawful as to source or amount; in securing written attributions of contributions among contributors or for particular elections; and in otherwise conducting the affairs of the Committee in conformity with the law. If we fell short in any respect, we apologize; but we ask for understanding that the Act is complex and that its application to particular facts and circumstances can at times be daunting. We try our best.

IN WITNESS WHEREOF, I have executed this Affidavit before a notary public this 17th day of September, 2004.


STANLEY R. deWAAL,
Treasurer of John Swallow for
Congress

SUBSCRIBED and SWORN TO before me
in my jurisdiction aforesaid, by
STANLEY R. deWAAL, this 17th day
of September 2004.


Notary Public

My Commission Expires: Oct 25, 2004.

