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January 13, 2006

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5333

Dear Sir or Madam:

This letter responds to the letter, dated December 16, 2005, from the Commission concerning John Swallow for Congress (the Committee) and Stanley R. deWaal (deWaal), in his official capacity as treasurer, and the Commission's December 21, 2005 letter concerning John Swallow. By letter, dated December 21, 2005, the Commission granted the request of the foregoing parties, by counsel, for an extension to and including January 13, 2006 to respond to the Commission's letters.

Apparently based on Mr. Lichfield's recollection of events surrounding the creation and delivery of certain checks to Mr. Swallow for his Committee, the Commission has found reason to believe that the Lichfields' checks constitute violations of 2 U.S.C. § 441a(f) by the Committee, deWaal, and Mr. Swallow, as well as a violation of 2 U.S.C. § 434(b)(3)(a) by the Committee and deWaal. We contend that the Commission should not have found reason to believe that violations of law occurred in connection with the Lichfield contributions. In support of that assertion, we set out below the facts recalled by Mr. Swallow.

There is no dispute that in January 2002, Mr. Lichfield delivered to the Committee a series of checks of

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the kind described in the Factual and Legal Analysis attached to the Commission's December 2005 letters. Indeed, copies of those checks were produced by counsel for the Committee and deWaal under cover of a December 20, 2002 letter to the Commission in this matter. There is nothing on the face of those checks that suggests anything improper about them.

Counsel for the Committee and deWaal also produced to the Commission from each member of the Lichfield family in whose name a contribution was made a March 2002 certification that his or her contribution was made from personal funds. Those checks and the associated contributor certifications are found at Tabs 30-39 of the December 20, 2002 letter from counsel for the Committee and deWaal to the Commission.

Mr. Swallow's memory of the events surrounding the Lichfields' contributions to the Committee is materially different from Mr. Lichfield's apparent recollection, as set forth in the Commission's Factual and Legal Analysis. Mr. Swallow recalls that he went to Mr. Lichfield's home in Utah to discuss Mr. Lichfield's contributing to the Committee. Mr. Lichfield said that he and his family wanted to give the Committee the maximum amount permitted by law. Aware that Mr. Lichfield was considering a number of donations from his family members, including his children, Mr. Swallow explained to Mr. Lichfield that contributions to the Committee in the name of a family member must in fact be from the funds of that family member.¹

Mr. Lichfield went to his bank, and Mr. Swallow and two of his children who were with him at the time remained on the Lichfield property while Mr. Lichfield was

¹ Mr. Swallow's appreciation of the need for contributions to be made knowingly from funds actually belonging to the contributor is borne out by Mr. Lichfield's recollection that Mr. Swallow told him that the Committee would not accept a contribution from the Lichfields' 6-year old daughter. See FEC Factual and Legal Analysis n.2.

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gone. Mr. Swallow did not accompany Mr. Lichfield to his bank. Several hours later, Mr. Lichfield returned with the 10 checks at issue, on each of which he wrote the name of an individual donor member of his family, and then delivered the checks to Mr. Swallow. Mr. Swallow did not suggest that Mr. Lichfield use funds from the Lichfield Family Limited Partnership to make the contributions that were made to the Committee.

Nothing on the face of any of the checks at issue suggests that it came from a partnership account, and when Mr. Lichfield delivered the checks to Mr. Swallow, he did not tell him the source of the funds at issue. Mr. Swallow had no reason to believe that the checks given to him by Mr. Lichfield were anything other than funds of the contributors in whose names they were given to his Committee.²

Mr. Lichfield correctly recalls that after he delivered the checks to Mr. Swallow, Mr. Swallow held the checks for several days before depositing them. The delay was not the result of a concern on the part of Mr. Swallow about the source of the Lichfield checks, however. Instead, he was concerned about an issue under Utah law.³ In addition, Mr. Swallow may have told Mr. Lichfield that he wanted to double check with Mr. deWaal in order to ensure that the Committee could lawfully accept contributions in the amount tendered.

² Even so, the Committee went to the trouble of getting a certification from each of the Lichfields that the contributions in their name came from their own funds. See Tabs 30-39 to the December 20, 2002 letter to the Commission.

³ At the time of the contributions at issue, Mr. Swallow was a member of the Utah legislature, which was to convene before the checks could be deposited. Under Utah law, legislators may not accept contributions during a legislative session. Utah Code Ann. § 36-11-305. Mr. Swallow sought counsel on the question whether the Lichfield contributions violated that proscription because the Utah legislature was due to convene a few days after the date of the Lichfield contributions.

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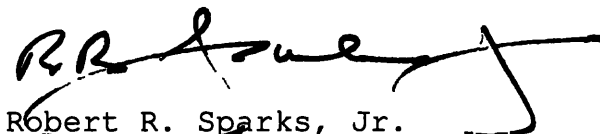
Having received advice on Utah law, and after checking with Mr. deWaal on the allowable amount of the individual contributions, Mr. Swallow notified Mr. Lichfield that he could accept the proffered contributions, and he did so. Mr. Swallow's delay in accepting the contributions had nothing to do with whether they came from a partnership account, a fact of which he was unaware.

Nothing in this response to the Commission's latest actions in this matter is intended to concede the correctness of the Commission's earlier reason to believe findings with regard to the contributions by Winterfox, LLC; Winterhawk Enterprises; or BMF #1, Ltd.

Recognizing the apparent conflict in the recollections of those involved concerning the events surrounding the Lichfield contributions, we would be happy to make Mr. Swallow and/or Mr. deWaal available to the Commission to answer any questions it may have on this matter.

Feel free to contact the undersigned if you have any further questions on this matter.

Sincerely,


Robert R. Sparks, Jr.

cc: Mr. John Swallow
John Swallow for Congress, Inc.

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