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May 25, 2012

Jeff S. Jordan  
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Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463  
VIA FACSIMILE: 202-219-3923

OFFICE OF GENERAL  
COUNSEL

2012 MAY 29 PM 6:52

RECEIVED  
FEDERAL ELECTION  
COMMISSION

Re: MUR.6534; Complaint against Citizens for Josh Mandel

Dear Mr. Jordan:

We are writing this letter on behalf of Citizens for Josh Mandel (State Committee) (the "State Committee"), the principal campaign committee for Josh Mandel's State Treasurer campaign in Ohio, in response to the Complaint filed in the above-referenced matter by the Ohio Democratic Party ("ODP") and Chris Redfern, ODP's Chairman. This response is made solely on behalf of the State Committee and primarily takes issue with the propriety of the State Committee's status as a respondent. We previously submitted a response on April 16, 2012 on behalf of the named respondents (the "Respondents") in this matter: Josh Mandel, Citizens for Josh Mandel, and Kathryn D. Kessler, in her official capacity as Treasurer.

The State Committee is not named as a respondent in the Complaint, and there is no allegation of wrongdoing by the State Committee, but apparently an over-eager intake clerk in the FEC's Office of General Counsel took it upon him or herself to attempt to include the State Committee as a respondent also. The Complaint fails on its face to present a legal theory under which the State Committee could have possibly violated the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), and consequently should be immediately dismissed as regards the State Committee as a respondent.

In the unlikely event that the Commission finds the State Committee to be a valid respondent, which it should not, we reiterate the same arguments on behalf of the State Committee as we did in our previous response on behalf of the named Respondents. As stated in that response, ODP's Complaint was clearly filed for publicity and political gain, and is based solely on speculation and innuendo. The asserted facts on their face do not support a reason to believe finding in this matter, and the Complaint should be immediately dismissed.

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The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). See 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from ascertained facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.*

While the Complaint is somewhat incoherent, and riddled with unsubstantiated and accusatory language such as "appears," "apparently," "may have," and "reported," it appears to argue that Respondents violated the Act by using resources of Josh Mandel's state campaign to support his campaign for the U.S. Senate. These accusations are baseless and unsupported by the facts. Each spurious allegation is addressed in turn below.

**1. ODP has a pattern of filing meritless complaints for political purposes that result in swift dismissals.**

It is well-documented that ODP has a history of abusing the FEC complaint process by attempting to smear its political opponents through filing unsubstantiated complaints with the Commission over the last several election cycles which consistently have been summarily dismissed by the Commission. See, e.g. MUR 5775R (Pryce for Congress); MUR 6033 (Ohio Bankers League).

In typical fashion, since Josh Mandel filed his Statement of Candidacy for the U.S. Senate in 2011, ODP has continued the habit of filing frivolous complaints with the Commission in hopes of scoring cheap political points and distracting from the failed record of their favored candidate, Sherrod Brown. See ODP Complaint against Respondents in MUR 6474 (filed June 6, 2012). The current Complaint is no different, as it once again relies on unsupported allegations and innuendo, this time from a single newspaper article and ODP's own politically motivated conclusions about Josh Mandel's state campaign disclosure reports. Not surprisingly, the assertions presented in the article are based entirely on an interview of an ODP official, spokesman Justin Barasky, who evidently spoon fed the author a barrage of fabricated conclusory information. Additionally, shortly after Barasky made these statements as a representative of the ODP, he changed positions to become the spokesman for the Senate campaign of Senator Sherrod Brown, Mandel's opponent.

**2. Respondents have not accepted an in-kind contribution from Mandel's state campaign and have not transferred resources from Mandel's state account to his federal campaign.**

ODP hyperbolically claims that "all available information indicated that Mandel's out-of-state trips, made immediately before he filed his Statement of Candidacy, and described as being made for 'political meetings,' were for testing the waters and drumming up support for his Senate campaign." As support for these spurious allegations, ODP offers only its own politically-charged and theoretical conclusions concerning the timing and the purpose of these meetings, as

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reflected in Mandel's state campaign's campaign finance disclosures. Citing Mandel's state filings, ODP states that "Mandel's state campaign has spent over \$8,000 on airfare, hotels, and other travel to visit Utah, New York, and Washington, D.C. including for 'political meetings,'" and that "the trips were clearly on behalf of his Senate campaign" because "contributions started flooding in from these same locations."

The Complaint fails to present even a shred of factual support for the proposition that the foregoing trips or meetings had anything to do with Mandel's campaign for U.S. Senate. The mere description "political meeting" in Mandel's state campaign finance reports do not at all validate ODP's claims that such meetings were related to Mandel's campaign for U.S. Senate. Moreover, there is nothing in the Act or the Commission's regulations that precludes state officeholders from engaging in political discussions in conjunction with official state-related business, which is precisely what occurred on several occasions during Mandel's travel for official Treasurer-related meeting. Such official state-related activities do not fall within the Commission's jurisdiction and should not subject Respondents or the State Committee to potential federal scrutiny.

In actuality, Mandel's official travel as State Treasurer involved meetings with other treasurers and financial experts throughout the country in order to learn how to better manage Ohio's Treasurer operations. These trips included a meeting with a representative of the National Association of State Treasurers (NAST) in Washington D.C. to discuss Treasurer-related issues, a meeting with a pension policy expert in New York at the non-profit organization The Manhattan Institute to discuss state pension policy, a meeting with financial experts who invest Ohio pension dollars to discuss pension policy, investment policy and Ohio's economic outlook, and a non-partisan leadership retreat in Utah to participate in multiple sessions on a variety of public policy issues.

Even though these meetings regarded official business, portions of them included discussions about state politics and could therefore be viewed as political, so in an abundance of caution, and because Mandel did not want to use any official state resources on trips that included state-related political components, Mandel chose to pay for these trips using his state campaign's account. This simply continued the practice that Mr. Mandel employed for his four years as a state legislator, where he used state campaign dollars rather than tax dollars for anything that could ever be construed or perceived as political in nature. This use of state campaign dollars is allowed by state law in Ohio, has been affirmed by the Ohio Secretary of State's office and the Ohio Elections Commission, and is widely used by Democratic and Republican state elected officials throughout Ohio.

The use of a state officeholder's campaign account to fund activities or travel that occurs in connection with his or her official duties is a common practice in Ohio that has been explicitly approved by the Ohio Elections Commission ("OEC") in a series of Advisory Opinions stemming back to the late 1980s. In reviewing matters involving the use of campaign funds, the OEC consistently analyzes such situations by reviewing the statutory terms regarding the use of such funds. Specifically, Ohio Revised Code 3517.13(O)(2) states, in pertinent part:

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No beneficiary of a campaign fund shall convert or accept for personal or business use...anything of value from the beneficiary's campaign fund...except as reimbursements for...legitimate and verifiable, ordinary and necessary prior expenses incurred by the beneficiary in connection with duties as the holder of public office...[i]t is not out of the ordinary for the activities of a public office holder to coincide with the campaign activities...<sup>1</sup>

Although Mandel's political and policy discussions with financial experts, NAST and others did not nearly rise to the level of state "campaign activities," as defined under Ohio law, Mandel, in an abundance of caution, chose to use his state campaign's funds to pay for these meetings that were unquestionably "in connection with" his duties as State Treasurer. Because Mandel's state campaign's payment for such travel was entirely permissible under state law, and because ODP has failed to present any credible evidence that such trips were related to Mandel's federal campaign, a campaign that did not even exist at the time of these trips, the Complaint fails on its face to allege any legitimate or substantiated violation of the Act.

In presenting such a hollow and reckless argument, the Complaint identifies "no source of information that reasonably gives rise to a belief in the truth of the allegations presented," and should be immediately dismissed. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001).

**3. ODP has presented no evidence that Josh Mandel's travel expenses listed on his state campaign's reports were at all related to his federal campaign.**

The Complaint maintains that "Mandel's state campaign committee has been making a number of expenditures for travel for the purpose of 'political meetings,' apparently in support of Mandel's senate campaign." As purported evidence for this charged contention, ODP points to contributions to Mandel's U.S. Senate campaign, stating that "the trips were clearly on behalf of his Senate campaign" because "contributions started flooding in from these same locations...Mandel started receiving contributions from the New York area for his Senate campaign...Mandel received a check from the Washington, D.C. area..."

It is, of course, absurd on its face to argue that contributions from the New York and Washington areas are a direct result of certain meetings months earlier, or even circumstantial evidence that so-called "political meetings" took place in those areas. ODP is grasping at straws by alleging this connection despite the well-known fact that the New York and Washington, D.C. areas are numbers two and three in total donations to federal candidates, behind only California.

It is equally absurd that the Complaint cites the receipt of "a check from the Washington, D.C. area" to infer that Mandel was engaging in fundraising for a then non-existent federal campaign during an official State Treasurer trip to Washington, D.C. If the receipt of a single check is

<sup>1</sup> Ohio Elections Commission, Advisory Opinion 2000ELC-05 (Oct. 12, 2000), at 2, available at <http://elc.ohio.gov/AdvisoryOpinion/2000ELC-05.pdf>.

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ODP's standard for demonstrating that a federal candidate physically participated in fundraising in a particular area, then ODP's preferred candidate, Sherrod Brown, must have actively fundraised and held events in Alaska and Hawaii this election cycle due to the contributions he received from individuals in those states. To the contrary, ODP's logic that a federal candidate's receipt of contributions from a particular area correlates directly with that candidate travelling, physically appearing or holding "political meetings" in that area is illogical and inherently flawed.

Once again, in making this contention, ODP presents "no source of information that reasonably gives rise to a belief in the truth of the allegations presented." See MUR 4960, Statement of Reasons, *supra*.

### Conclusion

The Ohio Democratic Party in this matter has yet again invoked an administrative process designed to protect the integrity of our elections for cynical political advantage. The Complaint fails to name the State Committee as a respondent, or present any legitimate legal theory under which the State Committee could have violated the Act. The Commission should therefore immediately dismiss the Complaint as regards the State Committee as a respondent.

In the alternative, even if the Commission were to deem the State Committee a respondent, the Complaint is undercut by a lack of credibility and substantiation, and is based entirely on politically motivated and malicious speculation. In the off chance this were to be the case, the State Committee respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and quickly dismiss it. A quick resolution may not completely deny ODP the imagined political benefits that it seeks, but it will serve to protect the integrity of the Commission's enforcement process.

Respectfully submitted,



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Charles R. Spies

*Counsel to Citizens for Josh Mandel  
(State Committee)*

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