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August 29, 2016

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 7101 – Warren Stephens

Dear Mr. Jordan:

We are writing on behalf of Warren Stephens in response to a complaint filed by Representatives Ted Lieu and Walter Jones, Senator Jeff Merkley, State Senator John Howe, Zephyr Teachout, Michael Wager, Free Speech for People, and Campaign for Accountability (the "Complaint") alleging that Mr. Stephens violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("FEC" or the "Commission") regulations.

The Complaint alleges that Mr. Stephens's August 27, 2015 contribution of \$1,000,000 (the "Contribution") to the Senate Leadership Fund (the "Committee"), a federal independent expenditure-only committee, violated contribution limits under the Act and FEC regulations. The Complaint, however, merely requests the Commission to deem such contributions subject to limits going forward and does not suggest that any penalties be assessed against Mr. Stephens for the supposedly violative Contribution that he has already made. The Complaint makes such a tortured request because its claim is legally unfounded in that the courts as well as Commission guidance have made it abundantly clear that contributions to an independent expenditure-only committee are unlimited. Moreover, bringing this request through an enforcement action, as opposed to a request for an advisory opinion, a petition for a rule change, or a court challenge, is improper given that it effectively requests that the Commission prospectively change its standard regarding contributions to such committees, as opposed to claiming that Mr. Stephens violated an existing FEC standard.

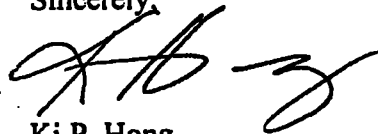
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The Complainants' allegation that the Contribution is subject to limits is erroneous. A well-publicized line of cases has established the right of individuals, political committees, labor organizations, and corporations to make unlimited contributions to entities such as the Committee that make only independent expenditures. See *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (*en banc*). Based on these cases, the Commission issued an Advisory Opinion confirming that such contributions are unlimited. See Advisory Opinion 2010-11 (Commonsense Ten). As noted by the Circuit Court for the District of Columbia in 2001, "advisory opinions have binding legal effect on the Commission." *FEC v. Nat'l Rifle Ass'n of Am.*, 254 F.3d 173, 185 (D.C. Cir. 2001). Accordingly, it is settled law that Mr. Stephens was and is entitled to make contributions to the Committee in any amount.

Indeed, by relying on the Commission's *Commonsense Ten* Advisory Opinion when making the Contribution, Mr. Stephens is statutorily immune to any sanction under FECA. 52 U.S.C. § 30108(c)(2). The Complainants concede this point and request no "civil penalties or other sanctions for past conduct." Compl. ¶ 7. Rather, the Complainants ask the Commission to abandon its *Commonsense Ten* opinion, defy the D.C. Circuit Court's opinion in *SpeechNow*, and find that Mr. Stephens and the Committee violated the law. In so doing, the Complainants are simply attempting to achieve through enforcement action what they have been unable to accomplish through legislation or other more appropriate means. To create a new legal standard that reverses one that has been clearly enunciated and repeatedly confirmed, agencies, including the FEC, should adhere to an open and deliberative process, such as notice and comment rulemaking or advisory opinion requests which are open to public comment. Alternatively, Complainants could bring a court action challenging the existing standard. Attempting to change such a standard through a confidential enforcement action would jeopardize the FEC's credibility and the ability of federal campaigns, parties, political committees, and citizens to rely on FEC precedent, and could constitute a violation of the Administrative Procedure Act.

Accordingly, we respectfully request that the Commission take no further action in this matter. Please do not hesitate to contact us with any questions.

Sincerely,



Ki P. Hong



Charles M. Ricciardelli