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Kathryn Ross

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DENVER
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September 20, 2018

VIA EMAIL AND FEDERAL EXPENSE

Kathryn Ross, Paralegal
Federal Election Commission
Office of Complaints Examination & Legal Administration
1050 First Street, NE
Washington, DC 20463

Re: 15-Day Response to MUR 7492

Dear Office of General Counsel:

We have been retained to represent John, Kristi, Cumming (collectively the "Cummings") in connection with the campaign finance complaint filed August 31, 2018 (MUR 7492, the "Complaint").¹ This letter represents the Cummings' 15-day response pursuant to 11 C.F.R. § 111.6(a) and explains why the Federal Election Commission (the "Commission") should take no action on the Complaint and this matter should be dismissed. The Complaint, this response, and any action taken thereon are confidential pursuant to 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A).

Factual Background

John and Kristi Cumming have three children: (age eighteen), (age fourteen), and (age fourteen). The extended Cumming family practices a longstanding tradition of supporting both Democratic and Republican political campaigns. John's father, who passed away earlier this year, was politically and philanthropically active. As a part of their family tradition, John and Kristi sincerely try to teach their children that it is important to be involved in their local political community and encourage their children to get involved with political causes that personally compel them. It is a natural development in a very political household to begin contributing to candidates at an early age.

¹ Attached are the individual statements of designation of counsel.

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Each child has bank accounts in his/her own name. Kristi is a custodian for the relevant accounts until each child turns twenty-one. However, the children routinely choose to spend their money on their own interests and regularly benefit from transactions from their accounts for a variety of reasons.

On April 25, 2018, the Cummings hosted a fundraiser for Ben McAdams for Congress at their family home. _____ attended the event and each chose to independently contribute to Ben McAdams for Congress. Neither the Ben McAdams campaign, nor John or Kristi directed them to do so.

Legal Argument

The actions taken by the Cummings did not violate federal campaign laws and the Commission should take no action from the Complaint. Minors "may make contributions to any candidate or political committee that in the aggregate do not exceed the limitations on contributions of 11 C.F.R. §110.1, if—

- (a) The decision to contribute is made knowingly and voluntarily by the Minor;
- (b) The funds, goods, or services contributed are owned or controlled by the Minor, such as income earned by the Minor, the proceeds of a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor's name; and
- (c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual."

11 C.F.R. §110.19. The contributions in question meet each element.

First, each child made the decision to contribute knowingly and voluntarily. Importantly, the Commission has offered some guidelines to determine whether a minor's contribution was made "knowingly and voluntarily." *See Contributions and Donations by Minors*, 70 Fed. Reg. 5565-01 (Feb. 3, 2005) (removing the minimum age for contribution to avoid "the risk of not being able to accommodate cases involving Minors below that age who desire to exercise their First Amendment rights").

The children's contributions were made knowingly and voluntarily. All three children are teenagers. Middle and high school students are old enough to understand the basics of civic duty and political engagement and form a desire to exercise their First Amendment rights. Moreover, these children are actively engaged in making routine financial decisions about their own accounts because they use these accounts for regular personal expenditures relating to their

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personal activities, interests, and well-being. Here, the children chose to donate at this unique political time, in light of their political awakening and multi-generational tradition, and to a local candidate with whom they identify and wish to support.

The children's decision to contribute was knowing and voluntary. John and Kristi did not ask their children to make maximum donations to the candidate's campaign, but rather encouraged their children to become generally politically active and involved them in the hosting of a political event. Then, the children individually decided to contribute from their personal accounts to support the candidate they hosted in their home to what they understood to be the maximum permissible amount.

Second, the contributions came directly from a bank account in each minor's name. Thus, the funds were owned by the minor, even though their mother Kristi is a custodian of the accounts. *See id.* (noting that there is no longer a requirement that the minor's ownership or control of the funds must be exclusive).

Third, the contribution was not made from the proceeds of a gift that was given for the purpose of contributing to Ben McAdams for Congress. Again, each contributed from their personal accounts that have been long established and well-funded. John and Kristi in no way tried to disguise the contributions nor did they make representations to their children that they would reimburse them or ask them to make a payment on their behalf. Albeit with appropriate oversight, the children have control over the spending of their accounts and simply determined to support a candidate of their choice.

Thus, the contributions made by the minor children were within the limitations set out by 11 C.F.R. § 110.19.

Conclusion

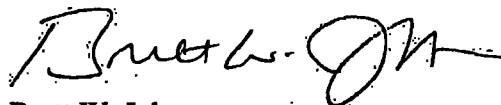
Accordingly, the contributions made by _____ were permissible contributions and the Cummings have not violated 52 U.S.C. §30122 by making a contribution in the name of another person. The Complaint itself acknowledges that the contributions may have been proper, and they are. John and Kristi were shocked by the allegations, and to the extent further review is necessary, the Cummings respectfully request to enter into conciliation discussions. The Cummings have at no point in time intended to circumvent or break any campaign finance laws and desire complete cooperation with the Commission.

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This response is intended to explain the reasons why the contributions of the minor Cummings children were lawful and appropriate, and if further facts are requested, please contact the undersigned.

Very truly yours,

Snell & Wilmer



Brett W. Johnson

Cc: John Cumming
Kristi Cumming

1004444-51000



FEDERAL ELECTION COMMISSION
 1050 First Street, NE
 Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

ARMUR/RRP-MUR# MUR 7492

Name of Counsel: Brett Johnson

Firm: Snell & Wilmer, LLP

Address: One Arizona Center

400 E. Van Buren, suite 1900, Phoenix, AZ 85004

Office#: 602-382-6312 Fax#: 602-382-6070

Mobile#: _____

E-mail: bwjohnson@snwlaw.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/17/2018 _____
 Date (Signature - Respondent/Agent/Treasurer) Title

Kristi Cumming
 (Name - Please Print)

RESPONDENT: Kristi Cumming
 (Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 1794 Olympic Parkway, Suite 210
 (Please Print) Park City, UT 84098-6391

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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FEDERAL ELECTION COMMISSION
 1050 First Street, NE
 Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

ARMUR/RRP-MUR# MUR 7492

Name of Counsel: Brett Johnson

Firm: Shelton & Wilmer, LLP

Address: One Arizona Center

400 E. Van Buren, suite 1900, Phoenix, AZ 85004

Office#: 602-382-6312 Fax#: 602-382-6070

Mobile#: _____

E-mail: bwjohnson@swlaw.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/17/2018 [Signature] agent
 Date (Signature - Respondent/Agent/Treasurer) Title
Kristi Cumming
 (Name - Please Print)

RESPONDENT: Cumming
 (Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: _____
 (Please Print)

Park City, UT 84098-6700

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

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FEDERAL ELECTION COMMISSION
 1050 First Street, NE
 Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness.

EMAIL: cela@sec.gov

FAX 202-219-3923

AR/MUR/RRP-MUR# MUR 7492

Name of Counsel: Brett Johnson

Firm: Shell & Wilmer, LLP

Address: One Arizona Center

400 E. Van Buren, Suite 1900, Phoenix, AZ 85004

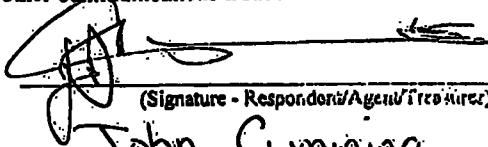
Office#: 602-382-6312 Fax#: 602-382-6070

Mobile#: _____

E-mail: bwjohnson@swlaw.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/18/2018
Date



(Signature - Respondent/Agent/Tree/Member)

Title

John Cumming
(Name - Please Print)

RESPONDENT: John Cumming
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: 1794 Olympic Parkway, Suite 210
(Please Print)

Park City, UT 84098-6393

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

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