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CELA

October 12, 2018

**BY ELECTRONIC MAIL**

Federal Election Commission  
 General Counsel's Office  
 1050 First Street, NE  
 Washington, DC 20463  
 Attn: Christal Dennis, Paralegal

**Re: MUR 7495**

To Whom It May Concern:

I represent Common Defense/Beyond the Choir Action Fund ("Common Defense" or the "Committee"), an independent expenditure-only unauthorized committee registered with the Federal Election Commission. I write in response to MUR 7495, a complaint (the "Complaint") filed against my clients and Lancaster Stands Up by Michael Stoll, Executive Director of the Pennsylvania Republican Party. While the Complaint does not actually request that any action be taken against either Lancaster Stands Up or Common Defense, it does accuse the organizations of several allegedly intentional omissions related to reporting and the inclusion of disclaimers on its materials. As discussed below, while Common Defense has made some errors in reporting, none have been intentional, and the Committee has taken steps – initiated before it even learned of the Complaint – to rectify those errors. Moreover, many of the allegations of the Complaint are incorrect or baseless. For these reasons, the Committee respectfully requests that the Complaint be dismissed.

Common Defense was established as an independent expenditure-only committee in May 2016. Although it initially contemplated activity in the 2016 presidential and congressional elections, the Committee's activities throughout 2016 and 2017 consisted primarily of fundraising and list-building using issue-based advertising and volunteer organizing. Those activities continue to the present and are reflected on Schedule B supporting Line 21(b) of the Committee's quarterly FEC disclosures, as are its general administrative expenses.

In or about December 2017, Common Defense partnered with Lancaster Stands Up to conduct campaign activity related to the 2018 congressional election in Pennsylvania's 11<sup>th</sup>

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Congressional District. Lancaster Stands Up is an unincorporated association made up largely of residents of Lancaster, Pennsylvania and the surrounding county. Since before its association with Common Defense, Lancaster Stands Up was critical of Lloyd Smucker, the incumbent Congressional representative in PA-11, for failing or refusing to meet with his constituents in public town hall meetings. The group's public critique often involved the use of signs and other communications with the slogan "Where's Lloyd."

In December 2017, Lancaster Stands Up members voted to endorse candidate Jess King for congress in PA-11, and partnered with Common Defense to conduct activities in support of her candidacy. Beginning the following month, Common Defense, in conjunction with Lancaster Stands Up, produced internet advertisements and printed materials supporting Jess King and/or opposing Lloyd Smucker. Common Defense also produced and staffed public events such as rallies and town hall meetings related to, but not exclusively about, the election. Common Defense has paid for all costs associated with these communications, including ad placement on Facebook, costs of design, printing and distribution of all printed materials, and the compensation of any paid staff associated with its campaign activities; the Committee has also taken care to disclose all of its spending on its quarterly reports to the FEC. Additionally, Common Defense included a disclaimer consistent with 11 CFR 110.11 on all communications for which it understood that such disclaimers were required.

Common Defense is also allied with Beyond the Choir ("BTC"), a 501(c)(4) organization that conducts community organizing and issue advocacy activities in and around Lancaster. Common Defense and BTC share resources, including staff, office space, and website costs, pursuant to an agreement by which Common Defense reimburses BTC for the fair market value of its use of all such resources. Moreover, because BTC has a more established infrastructure and greater capacity, payments for various of Common Defense's operating expenses and independent expenditures were originally made by BTC and reimbursed by Common Defense.

As a result of this arrangement between Common Defense and BTC, BTC committed some unintentional errors in reporting. Specifically, Common Defense at first reported several payments for both operating expenses and independent expenditures only as payments to BTC without itemizing the purpose, date, or payee of the initial expenses they were reimbursing. In the summer of 2018 the Committee's compliance consultant became aware that the Committee's reports might be missing detail, and asked Committee staff for a more specific breakdown of its payments to BTC. She also made contact with Nicole Miller, the Committee's assigned analyst in the Reports Analysis Division, regarding potential amendments to past reports. Common Defense staff was in the process of gathering information for these amendments when it learned of the Complaint from a reporter in Lancaster. On October 9, 2018, the Committee voluntarily filed amendments to its April and July 2018 quarterly reports. Additionally, on October 4, 2018, the Committee for the first time exceeded the \$10,000 threshold in disbursed or obligated costs related to the 2018 general election in PA-11. On October 5, 2018, the Committee filed its first 48-hour report. It has since filed an additional 48-hour report, on October 8, 2018.

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Regarding the specific communications described or included as exhibits in the Complaint, Common Defense responds as follows:

Exhibit A – The “Let’s Replace Lloyd” flyer was printed at the UPS store for a cost of \$111.83. While the Committee inadvertently neglected to itemize this expenditure in its initial April 2018 quarterly report, it has since amended the report to include the expenditure on Schedule E supporting Line 24.

As visible in the exhibit itself, the flyer includes a clear and conspicuous disclaimer consistent with the requirements of 11 CFR 110.11 in a box at the bottom. A copy of the flier is appended to this report as Exhibit 1.

Exhibits B through E, G, I, and K – Common Defense paid for these sponsored Facebook advertisements in February, March and April 2018. While the Committee initially neglected to itemize these advertisements on its April and July 2018 quarterly reports, it has since amended those reports to include the expenditures on Schedule E supporting Line 24. The Committee has since disclosed further Facebook advertisements on its October 5, 2018 48-hour report.

Common Defense’s Facebook advertisements have been so small in size that a disclaimer could not conveniently fit within them. The Committee therefore understood them to fall within the exceptions of 11 CFR 110.11(f)(1)(i) and similar to the advertisements at issue in Advisory Opinion 2010-19. Consistent with the facts of AO 2010-19, all of Common Defense’s Facebook ads link to a website ([www.lancasterstandsup.org](http://www.lancasterstandsup.org)) that includes a disclaimer meeting the requirements of 11 CFR 110.11 on every page. More recently, Facebook has begun to require, and to facilitate, the placement of a disclaimer on every political advertisement, including those paid for by Common Defense.

Exhibit F –The [lancasterstandsup.org](http://lancasterstandsup.org) website includes both express advocacy content and more content about Lancaster Stands Up and its activities unrelated to any election. Lancaster Stands Up has not charged Common Defense a fee for any express advocacy communications appearing on the website, and therefore Common Defense has not disclosed the website as an independent expenditure on its FEC reports. Rather, Common Defense has consistently paid for a portion of the maintenance of the site itself, and those payments appear on Schedule B supporting Line 21(b) of its amended April and July 2018 quarterly reports as payments to NationBuilder.

Every page on the website, including the “Let’s Replace Lloyd” page included in the Complaint, features a disclaimer identifying Common Defense as having paid in part for the website and noting accurately that the site is not authorized by any candidate or candidate’s committee.

The page featured in Exhibit F of the Complaint includes a photo of a van owned by BTC which, like Lancaster Stands Up, has been critical of Congressman Smucker for not holding public town hall meetings with his constituents. On March 26, 2018, the Committee paid

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\$5273.40 to decorate the van with graphics including an image of Congressman Smucker and the “Where’s Lloyd” slogan. As the graphics do not include an express advocacy message, the Committee disclosed this expense on Schedule B supporting Line 21(b) of its April 2018 quarterly report.

Exhibit H – The Committee purchased its “We Like Jess” door hangers from HotCards on three occasions between January and June 2018. While it inadvertently neglected to itemize those hangers in its April and July 2018 quarterly reports, it has since filed amendments disclosing those transactions on Schedule E supporting Line 24 of those report, and has subsequently reported further door hanger expenses on its October 5 and 8, 2018 48-hour reports. Although not visible in the exhibit, all door hangers include a disclaimer consistent with the requirements of 11 CFR 110.11. Images if the Committee’s door hangers are attached as Exhibit 2.

Exhibit J – On May 2, 2017, the magazine the Nation published an article about Lancaster Stands Up and its members’ desire to see Congressman Smucker defeated in the 2018 election. The excerpt included in the Complaint describes Lancaster Stands Up’s 2017 all-volunteer activities to “develop more leaders and recruit more supporters” by “sending canvassers out in both the city and the surrounding county to register voters and tell people about the movement.” It is unclear why this article is included in the Complaint, as it describes no expenditures by Common Defense and no express advocacy communications by Lancaster Stands Up.

Staff – The Complaint mentions “numerous staff positions.” All payments by Common Defense to compensate staff for activities related to the election are disclosed on Schedule B supporting Line 21(b) of the Committee’s April and July 2018 quarterly reports as payments to BTC and further itemized in the amendments to these reports.

Events – the Complaint refers to “phone banking to encourage the public to elect Jess King,” and several of the advertisements depicted in the Complaint’s exhibits publicize events related to Lancaster Stands Up’s campaign activities. These were volunteer events held in free community spaces or in office space Common Defense rents from BTC (itemized on Schedule B supporting Line 21B of the Committee’s amended July 2018 quarterly report as payments to Catsbyco LLC). For phone banks volunteers used their own telephones. The only independent expenditures associated with any such volunteer event were payments to TOSKR, Inc. for use of a peer-to-peer text messaging platform, initially disclosed only as a payment to BTC but now itemized on Schedule E supporting line 24 of the Committee’s amended July 2018 report.

While Common Defense inadvertently failed to itemize various independent expenditure payments in its original April and July quarterly reports, it began taking steps to amend those reports voluntarily even before learning of the Complaint. It recently completed those amendments, and has since filed two 48-hour reports after crossing the \$10,000 per-election independent expenditure threshold. The Committee is deeply committed to transparency, compliance with reporting requirements, and proudly declaring all of its activities, and its

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previous omissions were due to inadvertent error rather than a desire to mislead the public. Although the Complaint requests no actual action to be taken against the Committee, the Committee nevertheless requests that the Complaint be dismissed.

Very truly yours,



Alexander Rabb

ACR:acr

# Exhibit 1

# LETS REPLACE LLOYD!

JAN 27 • 10AM



KNOCK DOORS WITH  
LANCASTER STANDS UP  
FARM & HOME CENTER 1383 ARCADIA RD.

# Exhibit 2



## JESS KING BELIEVES THAT AMERICA IS FOR ALL OF US

Jess is a working mother who has spent her career fighting for working families and small business.

She is committed to getting big money out of politics and reining in Wall Street. She is fighting for universal health care, quality public education, and a fair wage for every American.

We see Jess as the candidate who can win. With an army of enthusiastic volunteers, we can elect a Congresswoman who will stand up for all of us.

Find out why Lancaster Stands Up members voted to endorse Jess King:

[LANCASTERSTANDSUP.ORG/WE LIKE JESS](http://LANCASTERSTANDSUP.ORG/WE LIKE JESS)

Vote Jess King for PA-16  
**MAY 15, 2018**



Paid for by Common Defense / Beyond the Choir Action Fund.  
Not authorized by any candidate or candidate's committee



## JESS KING CREE FIRMEMENTE QUE ESTADOS UNIDO ES PARA TODOS NOSOTROS.

Jess es una madre trabajadora que ha dedicado toda su carrera luchando por las familias trabajadoras y las pequeñas empresas.

Está comprometida a sacar el dinero de la política y controlar a Wall Street. Ella lucha por un sistema médica universal, educación pública de calidad y un salario justo para todos los estadounidenses.

Vemos a Jess como el candidato que puede ganar. Con un ejército de voluntarios entusiastas, podemos elegir a una congresista que nos defienda a todos.



Descubra por qué los miembros de **Lancaster Stands Up** votaron para respaldar a Jess King:

**LANCASTERSTANDSUP.ORG/WE LIKE JESS**



**Vote por Jess King para congresista PA-11  
15 de mayo de 2018**

Pagado por Common Defense / Beyond the Choir Action Funds. No autorizado por ningun candidato o comité.

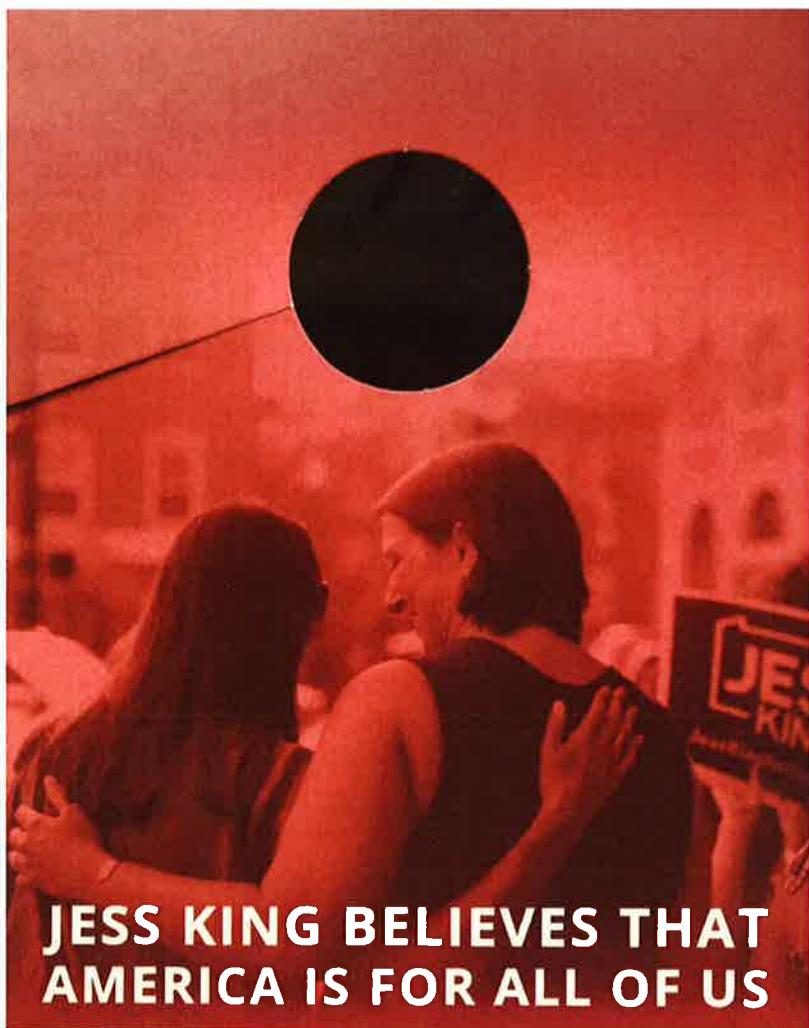


**WE  
LIKE  
JESS**



LANCASTER STANDS UP PROUDLY ENDORSES  
**JESS KING FOR CONGRESS**

TAKING BACK OUR DEMOCRACY  
**FOR WE THE PEOPLE**



## JESS KING BELIEVES THAT AMERICA IS FOR ALL OF US

Jess King is a working mother who has spent her career fighting for working families and small business.

Jess is committed to getting big money out of politics and reining in Wall Street. She's fighting for healthcare for all, quality public education, and a fair wage for every American.

It's up to all of us to break with a status quo that has left so many of us behind. Together we can elect a Congresswoman who will stand up for working people across our district.

**WILL YOU JOIN US?  
VOTE JESS KING FOR PA-11  
 NOVEMBER 6, 2018**

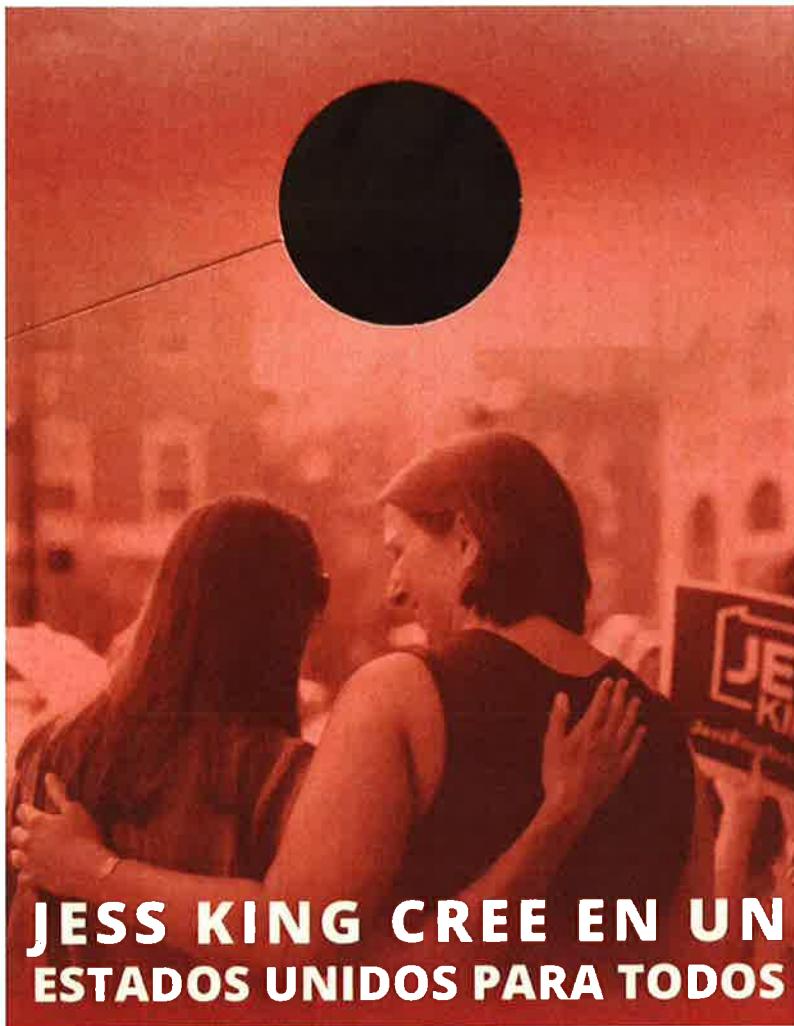
Find out why our members voted to endorse Jess:  
**LANCASTERSTANDSUP.ORG/WELIKEJESS**

NOS  
GUSTA  
JESS



LANCASTER STANDS UP ORGULLOSAMENTE APOYA A  
JESS KING PARA EL CONGRESO

RECUPERAR NUESTRA DEMOCRACIA  
POR NOSOTROS LA GENTE



## JESS KING CREE EN UN ESTADOS UNIDOS PARA TODOS

Jess King es una madre trabajadora que pasó su carrera peleando por familias trabajadoras y pequeñas empresas.

Jess se comprometido en sacar a las empresas de gran dineros fuera de la influencias políticas y que conquistan a Wall Street. Ella esta luchando por cuidado de salud para todos, calidad en educación publica y un salario justo para todo el país.

Dependemos de nosotros a romper las cadenas de el Status Quo que nos a dejado a todos en el olvido. Juntos podemos elegir una congresista que si luchara por nosotros y por todo el distrito.



**¿NOS ACOMPAÑARAS?**  
**VOTE POR JESS KING PARA CONGRESISTA PA-11**  
 **NOVIEMBRE 6, 2018**

Descubra por qué nuestros miembros votaron para respaldar a Jess:

[LANCASTERSTANDSUP.ORG/WELIKEJESS](http://LANCASTERSTANDSUP.ORG/WELIKEJESS)

