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SENT VIA EMAIL AND U.S. MAIL

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Office of the General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
cela@fec.gov

Re: MUR 7622 (Joint Response of Judson Sapp, Judson Sapp for Congress and Nancy Watkins, Treasurer)

Dear Mr. Jordan:

This Response is being submitted by the undersigned counsel on behalf of the named Respondents, Judson Sapp, Judson Sapp for Congress, and Nancy Watkins in her official capacity as treasurer of the campaign committee, in the complaint designated as Matter Under Review 7622 (“Complaint”).¹

On July 22, 2019, the Federal Election Commission (Commission) received this Complaint filed by Nicole McConnell (“Complainant”) against Judson Sapp (H8FL03046), Judson Sapp for Congress (C00665885) (“Campaign”) and its treasurer, Nancy Watkins in her official capacity, along with the independent-expenditure only Super PAC, Citizens for Common Sense USA (C00682807) (“Super PAC”). Respondents first became aware of the Complaint through media reports on July 25, 2019, as the false allegations contained within the Complaint were leaked, prior to Respondents receiving any correspondence from your office.²

The Commission is required to investigate a complaint only if it determines that it has “reason to believe” that a person has committed, or is about to commit a violation of the Act.³ The Commission may find “reason to believe” only if a complaint sets forth sufficient specific

¹ This Response is filed timely pursuant to an extension granted by Commission Staff (August 7, 2019).

² A.G. Gancarski, *Judson Sapp Draws Election Complaint for Coordinating with Super PAC*, Florida Politics (July 25, 2019), <https://floridapolitics.com/archives/301767-judson-sapp-fec-complaint>.

³ See 2 USC §437g(a)(2).

facts, which, if proven true, would constitute a violation of the Act.⁴ Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true by the Commission, and a complaint may be dismissed if it consists of factual allegations that are refuted in the response with sufficiently compelling evidence.⁵ For the following reasons, it should be found that Respondent did not violate the Act or Commission regulations and dismiss this matter.

I. Factual Background

Judson Sapp was a federal candidate for Florida House District 3, who challenged incumbent Congressman Ted Yoho in the Republican primary during the 2018 election. Judson Sapp for Congress, the Campaign, is the principal campaign committee authorized by candidate Judson Sapp. The Campaign's treasurer is Nancy Watkins.⁶

The Complaint falsely alleges that Judson Sapp and his Campaign violated the Act by coordinating with the Super PAC, Citizens for Common Sense USA. The allegations are based on the Super PAC incorrectly reporting three contributions received from the contributor "Judson Sapp" who was reported as having the occupation of "CEO", the employer "W.J. Sapp & Son, Inc.", and the address "700 Blanding Blvd., Suite 13-391, Orange Park, FL 32065."⁷

The three contributions the Super PAC reported receiving from "Judson Sapp" totaled \$50,000 and were made between July 20, 2018 and August 21, 2018.⁸ The Super PAC incorrectly reported the source of these contributions as coming from the candidate "Judson Sapp" as opposed to the actual contributor, the candidate's father who bears the same name as the candidate. The candidate's full name is "Willard Judson Sapp, III" and he is the CEO of W.J. Sapp & Son, Inc. The candidate's father's full name is "Willard Judson Sapp, Jr.", and he is retired. The candidate is commonly known by the name "Judson" and his father is commonly known by the name "Jud."

On July 16, 2019, presumably when this reporting error became known to the Super PAC, it amended Schedule A of its October 2018 Quarterly Report to correct the identifying

⁴ See MUR 4960, Commissioners Mason, Sandstrom, Smith, and Thomas, Statement of Reasons (Dec. 21, 2001).

⁵ *Id.*

⁶ FEC Form 1, Judson Sapp for Congress, *Statement of Organization* at <https://docquery.fec.gov/cgi-bin/forms/C00665885/1197180/> (filed January 12, 2018).

⁷ See Exhibit A, Super PAC October Quarterly Report, pp. 7-8 (filed October 15, 2018); see also *Report of Receipts and Disbursements*, at <https://docquery.fec.gov/cgi-bin/forms/C00682807/1270895/> (filed October 15, 2018).

⁸ As mentioned in the Complaint, the Super PAC made and timely reported three independent expenditures during the 2018 primary election cycle totaling \$20,750 for radio buys in support of the candidate Judson Sapp and direct mail and telephone calls against Sapp's primary opponent, Congressman Ted Yoho. See also *24/48 Hour Report of Independent Expenditures (Schedule E)*, at <https://docquery.fec.gov/cgi-bin/forms/C00682807/1259160/> (filed August 24, 2018) and <https://docquery.fec.gov/cgi-bin/forms/C00682807/1264581/> (filed October 10, 2018).

information of the contributor to that of the candidate's father, "Jud Sapp."⁹ The contributor's address was amended to "Orange Florida, FL 32073"; the employer to "None"; and the occupation to "Retired." The amounts of the contributions were accurately reported on the original report and so they remained the same.

The only evidence that the Complaint provides to support its allegations of "coordination" between Respondents and the Super PAC is the incorrect October Quarterly Report that has been amended by the Super PAC. The Complaint presents no further evidence to support its coordination claims. Respondents have not and do not coordinate with the Super PAC. Despite this, Respondents have no control over the accuracy of reports filed by the Super PAC.

The motivations behind this Complaint are clear. Complainant chose to file the Complaint *after* the Super PAC amended its report to correct the reporting error. The false allegations were then immediately leaked to the media prior to Commission staff even notifying Respondents of the existence of the Complaint. And the false allegations continue to be used in an effort to defame and politically damage Respondents.

II. Legal Discussion

A. Super PAC Expenditures Must Be Independent and Not Coordinated

The Commission consistent with the U.S. Supreme Court opinion in *Citizens United v. FEC*, 558 U.S. 310 (2010) and the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) has concluded that corporations, labor organizations, political committees, and individuals may each make unlimited contributions to independent expenditure-only political committees (Super PACs) and Super PACs may accept unlimited contributions from these sources. Super PACs are also permitted to make unlimited expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.

However, these expenditures by Super PACs must be independent expenditures, and cannot be made in consultation or cooperation with, or at the request or suggestion of a candidate, candidate's committee, party committee or their agents.¹¹ A communication is considered made in cooperation, consultation, or concert with, or at the request or suggestion of,

⁹ See Exhibit B, Super PAC, October Quarterly Report, Amendment 1, pp. 7-8, (filed July 16, 2019); *see also Report of Receipts and Disbursements*, Amendment 1, at <https://docquery.fec.gov/cgi-bin/forms/C00682807/1341497/> (filed July 16, 2019).

¹⁰ *Id.*

¹¹ 11 CFR 100.16.

a candidate, a candidates' authorized committee, or their agents, if it is a coordinated communication under 11 CFR 109.21.¹²

“Coordinated” under the Commission’s regulations is defined as “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee or their agents, or a political party or its agents.”¹³ The regulations provide a three-prong test to determine whether a communication is considered to be a “coordinated communication”: 1) the source of the payment (payment prong); 2) the subject matter of the communication (content prong); and 3) the interaction between the person paying for the communication and the candidate or political party committee (conduct prong).¹⁴

Although the Complaint does not allege this, Respondents note that Jud Sapp, the candidate’s father who contributed to the Super PAC, was not an “agent” of the candidate or the Campaign either, and therefore, his contribution cannot be deemed as coordination either. Jud Sapp had no actual authorization, either express or implied to engage in activities on behalf of the candidate or the campaign.¹⁵

B. The Complaint’s only Evidence to Support its Claims of Coordination is an Incorrect Report Filed by the Super PAC that Has since Been Amended

The Complaint fails to provide any evidence that the Super PAC’s expenditures supporting candidate Judson Sapp or opposing his opponent, Ted Yoho were coordinated with the candidate, the Campaign, or any agents of either. The Complaint relies solely on the Super PAC’s October Quarterly Report identifying “Judson Sapp” as a contributor to the Super PAC. This Report has been amended by the Super PAC, and the Complaint offers no further evidence to support its coordination allegations that would give the Commission reason to believe that the Act has been violated by the Respondents.

Even if the Complaint’s allegations are taken as true, which they are not, the allegations defy logic. A candidate is not subject to contribution limits when using personal funds for his campaign. So, why would Judson Sapp attempt to exceed contribution limits by personally donating to a Super PAC, when as a candidate for federal office, he was allowed to make unlimited expenditures from his personal funds and make loans from his personal funds to his campaign?¹⁶

¹² *Id.*

¹³ 11 CFR 109.20.

¹⁴ 11 CFR 109.21.

¹⁵ *See* 11 CFR 109.3, defining “agent” of a candidate for purposes of coordination as someone who is authorized to engage in specific activities on behalf of the candidate.

¹⁶ *See* 11 CFR 110.10.

It should also be noted that none of the Respondents had any control over the accuracy of the reports filed by the Super PAC. The Super PAC is an independent entity not authorized or controlled by Respondents in any way. Committees are required to file amended reports with the Commission if it is discovered that an earlier report contained erroneous information or did not obtain all of the required information concerning a particular transaction in time to include in the original report.

That is exactly what the Super PAC did. Although the contribution *amounts* on the Super PAC's October 2018 Quarterly Report were accurate, the PAC's Report incorrectly listed "Judson Sapp" as a contributor. This Report was amended to list "Jud Sapp", the candidate's father who bears the same name, as the contributor along with the correct address, occupation, and employer descriptions, thereby removing any suggestion that Judson Sapp or his campaign was engaged in coordination with the Super PAC.

III. Conclusion

This Complaint is entirely based on an erroneous and outdated October 2018 Quarterly Report filed by the Super PAC, Citizens for Common Sense USA. This incorrect Report has been amended by the independent Super PAC to remove the evidence that the Complaint relies on to support the Complaint's allegations that Respondents, Judson Sapp, Judson Sapp for Congress and its treasurer, Nancy Watkins violated the Act. The Complaint's false allegations are clearly refuted based on the amended report filed by the Super PAC. There is no reason for the Commission to believe that a violation of the Act has been committed by Respondents and this matter should be dismissed.

Sincerely,



Benjamin J. Gibson
*Counsel for Respondents,
Judson Sapp, Judson Sapp for Congress
and its Treasurer Nancy Watkins*