



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2006 AUG 28 P 5:19

MEMORANDUM

August 28, 2006

SENSITIVE

TO: The Commission

THROUGH: Patrina M. Clark
Staff Director *pnc*

FROM: Lynn M. Fraser, Acting Director
Alternative Dispute Resolution Office *LMF*

SUBJECT: ADR 335 Francine Busby for Congress and Xavier Martinez, Treasurer, *et al.*,
Recommendation to Dismiss

On June 9, 2006, the ADR Office received MUR 5719 from the Office of General Counsel ("OGC") to review and determine its appropriateness for ADR processing. Based on that review, we recommend that it be closed. Following the procedures approved by the Commission on March 3, 2003, this matter will be closed by the ADR Office if the Commission approves the recommendation in this Memorandum. OGC concurs in the description of this matter, and that it will not be returned to OGC for further action.

Respondents:

- 1. Francine Busby for Congress
- 1. Xavier Martinez, Treasurer
- 2. California State University,
San Marcos
- 3. California State University,
San Marcos Foundation

Respondents' Reps.:

- 1. Xavier Martinez
- 2. Marc D. Mootchnik, Esq.
- 3. John Jay, Esq.

Complainant: Republican Party of San Diego and the California Republican Party

Committee Name:
Francine Busby for Congress

OGC Case Open Date: 3/17/06

Committee Type: Authorized

Date Forwarded to ADRO: 6/9/06

District #/or State: CA 50th C.D.

Election - Won/Lost: Won Primary

Election Cycle: 2006

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Summary of Complaint: Complainants allege that Francine Busby for Congress and Xavier Martinez, Treasurer, (the "Committee") accepted prohibited corporate contributions from California State University, San Marcos ("CSUSM") and the California State University, San Marcos Foundation (the "Foundation") in violation of 2 U.S.C. § 441b. The candidate's biography appears in "virtually identical" form on both her campaign website, and on the website of California State University San Marcos, where she is apparently employed as an adjunct professor. Complainants contend that the University is a corporation because it "operates with an affiliated private, non-profit tax exempt foundation" that is organized as a corporation under California law. The complaint asserts that the biographies on both websites describe the candidate's accomplishments and qualifications, "while endorsing her candidacy" and serving as "advertisements for [her] campaign." Complainant notes also, that the Committee has not reported any in-kind contributions, receipts or disbursements associated with the CSUSM or the Foundation.

Respondents' Replies: The Committee contends that, in response to a request for background information for potential students, the posting of the biography was done by a volunteer, as the candidate is an adjunct professor at CSUSM. The Committee further contends that there was no expenditure made by the Committee to post the biography on the University's website, nor did the biographical statement solicit funds or support.

Respondent CSUSM contends it had not been aware of the political content of the biographical statement. CSUSM goes on to assert that as soon as the administration became aware of it, the materials were removed from the University website, and faculty and staff reminded of the prohibitions on campaign related communications. CSUSM explained that it is a part of the California State University system of higher education, and maintains the website to provide information from professors, which typically includes course information, as well as a professor's biographical information. CSUSM contends that it takes the prohibition on the use of public funds for campaign purposes very seriously, and thus investigated how the material got onto the website. As a result of that investigation, CSUSM determined that having received a statement in response to a request from the Women's Studies program, a student assistant uploaded the biographical information without faculty review.

The Foundation contends that it had absolutely no involvement with the activities that were alleged in the complaint. The Foundation goes on to assert that it is a California non-profit public benefit corporation established to support the educational mission of the University, and while it works closely with CSUSM, it has no control over, or responsibility for, CSUSM.

Issues:

- Prohibited corporate contributions 2 U.S.C. § 441b, 11 C.F.R. § 114.2
- Educational institutions 11 C.F.R. § 110.12(b)
- Public communications 11 C.F.R. § 100.26

Recommendation:

Dismiss ADR 335 (MUR 5719), approve the appropriate letters, and close the file.

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