

BEFORE THE FEDERAL ELECTION COMMISSION

SEP 19 1 04 PM '01

IN THE MATTER OF

MUR 4818

CHARLENE SPEARS,
RESPONDENT

REPLY BRIEF OF RESPONDENT

Comes now the Respondent, CHARLENE SPEARS, and for her answer brief to general counsel's brief submits to the Honorable Federal Election Commission the following;

BACKGROUND

Respondent, hereinafter called Charlene, is an employee of State Senator Gene Stipe and the Stipe Law Firm in McAlester, Oklahoma. Charlene has been employed by Senator Stipe since 1978 in some capacity. Stipe, in addition to being an Oklahoma State Senator, is a trial lawyer, an investor in oil and gas properties, and an owner of many businesses. Charlene, having a background in oil and gas properties, was hired by Stipe to oversee his oil and gas investments. His investments consisted of keeping track of payments to Stipe and keeping track of and making payments by Stipe of bills owed as a result of participating in oil and gas wells. When Stipe or anyone else participates in a well, Stipe or that person is responsible for his pro rata share of all costs of that well, which may include, but are not limited to land acquisition costs, mineral costs, drilling costs, production costs, costs of reworking of the wells and such other costs that may be

due and payable during the life of the well. Charlene started doing this in 1978 and has continued doing this to this very date. Since some bills are always ongoing and payments and ownership rights in the wells are time and money driven (no timely pay, no ownership), Charlene has had the responsibility to appropriate needed money from Stipe and spend it without conferring with Stipe. Stipe deposition, page 26. Spears deposition, page 18 and 85.

Charlene's job expanded into full time work on the oil and gas business; administrative assistant/secretary to Stipe, and handling other business investments of Stipe, and even some work with the law firm. Stipe, with the exception of two years in the 1950's, has been continuously in the Oklahoma legislature since 1947. Stipe is a successful trial lawyer who may be in trials for weeks at a time. These two endeavors are obviously more time consuming than any one full time job, leaving his business investments to being handled as best as possible. Charlene is the one who must stay abreast of developments and pay the vast monetary obligations, including bank notes, that are present in Stipe's businesses, some of which are or have been newspapers, radio stations, abstract companies, real estate developments, apartments, health care companies and the ever present oil and gas business. Deposition of Spears, page 94. As Stipe stated in his deposition, "My administrative assistant, Charlene, has -- she writes checks and -- she writes most of checks.... And she's (Charlene) pretty -- she knows oil and gas, and she knows my finances.... There may be weeks I'm in court all week long..... I -- I keep up with it as well as I can every day, but I don't -- some -- some days I don't do very much." Stipe deposition, page 26 and 27. Against this background, as counsel for the FEC has characterized it in questions, Charlene has become the gatekeeper for Stipe. See question of FEC counsel, Spears deposition, lines 21 and 22, page 191. With Stipe's absences from his McAlester office due to legal and political reasons

and Stipe's long time presence in Oklahoma politics, Charlene has become somewhat of a message station for political people in Southeastern Oklahoma. Spears deposition, page 138.

Charlene is a life long friend of Walt Roberts. Spears deposition, page 129. Roberts was and is a close friend of Stipe's. Stipe had helped Roberts go to college by paying his tuition in the 1980's. Stipe had been a legislative colleague of Roberts. Roberts had helped with Stipe's reelection campaign in 1996 as a quasi manager with paid status. Stipe ultimately supported Roberts after another candidate said he would not run for Congress. Charlene would be as always a message center for politicians and aspiring politicians in Southeastern Oklahoma, including Roberts during his campaign. Spears Deposition, page 138. Charlene's husband had even helped Roberts learn how to play a fiddle. Roberts deposition, page 81. Charlene knew Roberts' parents and even ate dinner with them. Roberts consulted with Stipe because of his friendship and Stipe's political knowledge. Roberts deposition, page 101. Against this backdrop, Roberts conducted his campaign in 1998, and the FEC has mistakenly accused Charlene of many misdeeds with the exception one which Charlene has remorsefully and regrettably admitted from the first.

CAMPAIGN VIOLATIONS

In her response to the initial notification of the FEC, Charlene said on December 9, 1999, "Spears then used some money of Gene Stipe specifically for the Roberts campaign, not clearing this idea with anyone or doing the same at the specific request of anyone. Spears proposed to give some cash to Gloria Ervin, Deborah Turner (sic) Jamie Benson, and Cynthia Montgomery. Spears used some of Gene Stipe's money for a contribution in name of Charlene Spears.; Spears knew that this procedure she was doing was not proper, but Spears did not know that it violated a specific statute. Charlene Spears is truly sorry for doing this and wishes to pursue pre-probable

cause conciliation as per your letter of October 13, 1999." Charlene admitted it to general counsel in deposition. Spears deposition, page 480. Charlene did not attempt to deny or spin the facts in some kind of excuse or elaborate cover up. The girls with the exception of Turner were doing work for Charlene and Charlene was going to pay them for it. Spears deposition, pages 417 et seq. But without any attempt to cover it up, Charlene admitted she gave them money for Roberts campaign donations. These girls are friends and relatives of Charlene's and it seems possible that they would have at least tried to help their friend and relative if called upon. This did not happen and there was no attempt to do anything except admit wrongdoing and try to do what the FEC wanted.

It may seem strange since Stipe has been in politics so long, but Charlene has never been informed about any campaign laws. Spears deposition, page 492-494. Stipe generally had limited fund raising and usually spent his own money. Spears deposition, page 128. Her being Stipe's alleged campaign manager (see note 6 to FEC counsel's brief) would have limited relevance for this Federal campaign where fund raising was an integral part. The Roberts campaign was a leaderless one. Deposition of Prather, page 94. Roberts was not told by the FEC of any financing laws. Deposition of Roberts, page 154. The Delahunt matter was requested by another staffer in the campaign and Charlene did what the staffer told her to do. Clearly a wrong thing to do, but not something a campaign leader or organizer would do, i.e. follow a blind request from a staff member as to contributions.

Accordingly Charlene admits that she permitted her name to be used to make contributions to Walt Roberts for Congress and Delahunt for Congress. Charlene also assisted others in making contributions using other people's funds. These acts do violate the campaign

financing laws. 2 U.S.C. 441f, 11 C.F.R. 110.4(b)(iii). There must be knowledge that one is violating the law for a willful violation. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F.Supp 985 (D.N.J. 1986). Charlene must have knowledge of willfulness which under *Dramesi* is knowledge that one is violating the law. Charlene did not do campaign reports for Roberts. Spears deposition, page 477. Charlene testified that she did not know that she was violating a specific statute and she wouldn't have done it if she had known. Deposition of Spears, 1.9-14, page 493. There is no evidence to the contrary unless some former staffer has said something. If that has happened, Charlene does not know about it since the Counsel for FEC would not disclose it to her. This would be a due process violation, failure to inform of the charges, and Charlene is sure that the FEC counsel would not indulge in unconstitutional and improper matters. *Taylor v. Illinois*, 484 U.S. 400, 108 S. Ct. 646, 98 L. Ed. 2d 798. In the unlikely event of it happening, one only need look at the animosity Charlene probably initiated with some of the campaign staff by referring to them as a "den of gay men". Spears deposition, page 158. Thus there has been no attempt to evade the acts committed and only admit her wrongdoing timely and without reservation. Counsel for FEC writes of evasion when only openness prevails. Even their quote from *Ingram v. United States*, 360 U.S. 672, 79 S.Ct. 1314, does not fully explain Counsel's position. First *Ingram* states that this is not a case where efforts at concealment would be reasonably explainable only in terms of motivation to evade. *Ingram* states that one must have knowledge of willfulness, i.e., knowledge of the statute one is violating. This is not present herein. There has been no evasion, and the FEC can not prove that even Roberts the candidate was apprised of the FEC campaign finance laws! Without this clear proof, the position of the FEC counsel to prove knowing and willful violation is nothing

more than an inference on an inference to fashion a dragnet to prove violations. This is improper under their own cases. *Ingram v. United States*, supra; *Anderson v. United States*, 417 U.S. 211, 94 S.Ct. 2253, 41 L. Ed. 2d 20 (1974). Yes, Charlene has violated the law, but it is not a knowing and willful violation.

RESPONSE TO OTHER ALLEGATIONS

Counsel for FEC in their brief attempt to involve Charlene in other matters. FEC counsel is disingenuous at best in the attempted characterization of the role in the \$67,500 check. Charlene never altered her testimony in any way. Counsel for FEC was conducting the interrogation. The cattle deal is confusing as to what was known and when it was known. Charlene as secretary for Stipe wrote a check for \$67,500 because Stipe wanted cattle and Roberts was going to buy them. Spears deposition, page 220, line 11-13. At page 222, line 16, counsel asked Charlene if she had heard anything else about the check or the cattle. Charlene replied that yes she had, and Stipe did not want longhorn cattle. Counsel quit the line of questioning and started trying to pin down times of this conversation. Charlene repeatedly told counsel that she was not involved in any of the conversations between Stipe and Roberts. Spears deposition, page 223. Charlene stated that Roberts at that point told Stipe that he would pay him back.. Spears deposition, 226, line 24. Counsel then asked how Stipe learned that the cattle were longhorns. Spears deposition, page 230. Charlene truthfully told counsel that the cattle were not unloaded at Stipe's ranch and that Stipe paid shipping costs. Spears deposition, page 235. Counsel then asked about newspaper stories concerning the cattle, not anymore questions about the actual cattle transaction. Spears deposition, pages 239-249. The answer was not as complete as it should have been. Charlene's instructions by her counsel were to only answer the questions

that were asked and not volunteer information. After partially answering the question, counsel started questioning Charlene more on the longhorn cattle. Nowhere did counsel ask if Roberts had misappropriated the \$67,500, and bought cattle when Roberts had no money to pay for them. This is understandable that counsel would not ask those questions since counsel did not know the facts. By letter of January 9, 2001, Charlene did not alter her testimony as characterized by counsel, but in fact elaborated on her answer more than necessary so as not to mislead counsel inadvertently. As the letter of January 9, 2001, states, Charlene was instructed "to only answer the question asked". Counsel's allegation of a "new" story is not borne out by the facts. Charlene was candid and forthright in her dealings with counsel and did not change her "story" at all but just gave counsel additional facts that counsel was not aware of or had asked about by her letter of January 9, 2001. This comports with the confusion counsel encountered with Charlene's testimony about paying back Stipe. Charlene testified on December 6, 2000, That "he (Stipe) didn't - - he didn't loan him any money. and he (Stipe) expected it to be paid back." Further inquiry into this confusing at first but easily understood with all the known facts would have discovered this defalcation earlier. There is not any falsehood testified by Charlene in her deposition. Counsel seeks to generally urge this charge without any basis. A close and complete reading of the deposition would cast this allegation as baseless.

The balance of the allegations against Charlene, the payment of Stipe to Roberts pursuant to an art contract, payment of personal expenses of Roberts, the art auction, and the loan from Layden, are again baseless and without any facts or inferences in which to base their accuracy. Charlene is Stipe's secretary. As shown infra and without any question, Charlene pays Stipe's bills. Counsel even understands her role in Stipe's activities, gatekeeper and treasurer. Whether or

not the art agreement is a part of a series of fabricated transactions is not an issue for Charlene and she will leave that discussion to the parties with which it is important. The fact is as borne out by the evidence that whatever the nature of the art contract is or was, if Stipe wants something paid, Charlene is the person to pay it. This does not make her "involved" as counsel would have this commission believe. If Stipe had used a credit card for payment, would the credit card company been involved? The answer is a resounding no as it should be here. To have her involved with any alleged series of fabrications would elevate this secretary to a co-equal. This is not Charlene's money. It is Stipe's. What he does with his money is his concern. Charlene has duties and may spend his money without prior approval, but it is in the context of business enterprise that she is aware of, not as a part of any enterprise, as counsel would like this commission to believe. Charlene is not Svengali or a master puppeteer, but an employee of Stipe, a prominent and successful attorney, businessman, and politician. The payment of Roberts personal expenses is a perfect example of inference on inference to attempt to show wrongdoing. *Ingram v. United States*, supra. Stipe and Roberts both freely admit that Stipe pays his personal expenses. Roberts deposition, page 211; Stipe deposition, page 340. Stipe is not going to write the check. His secretary/administrative assistant (Charlene) is. Whether Charlene is aware of the purpose of the expenses, even if she thought the expenses might be improper in some context, it is her job to issue the checks, not to advise her boss. The vast majority of employers understand this concept, i.e. it is my money and you will follow my instructions.

It is a confusing allegation that Charlene had anything to do with the McAlester Industrial credit loan to Roberts. Charlene has nothing to do with Bill Layden other than being his friend, which she is to no small number of people. Any bank involvement is unclear as to what is being

accused of Charlene. Layden, Roberts and Francis Stipe have testified about this loan and nowhere is Charlene involved, another puzzling inference upon inference.

The only allegation concerning the art auction is that Charlene wrote Louise Crosslin a check, which she has done numerous times. Spears Deposition, page 367. Charlene is to do what Stipe has told her to do and in this case, if Louise wants a check, give it to her. Charlene being a good secretary/administrative assistant does what her boss tells her to do. If the purpose of the statements of FEC counsel as to Charlene's involvement with the payment of money and writing of checks did not have to do with violations of the campaign laws, counsel's characterizations would be flattering, but still wrong.

The allegation that Charlene ran the Roberts campaign is again both flattering and wrong. Annie Prather, an employee of the campaign, testified that nobody was in charge of the Roberts' campaign. Her deposition reveals the following: "I don't think anybody was in charge of anybody. Who kept the campaign organized? Nobody did. Who was supposed to? You want the real truth? Nobody did, I don't think. We just did our deal, you know. Who was supposed to keep it organized? I--- I don't know. I didn't answer to anybody..... You didn't have any kind of a feel of who was kind of in charge? No." This may explain why Roberts lost the campaign, but it is real clear that the only employee of the campaign to testify under oath (that Charlene knows of) found no one to be in charge, quite contrary to any allegations that Charlene ran the campaign. Ms. Prather explains how Charlene recommended her to Jason McIntosh. Prather deposition, page 43. It was an off hand remark that resulted in a job. This is not anything sinister. If these disgruntled staffers are to be believed and if they said that Charlene ran the campaign which information Charlene has not seen and would be some due process violation, if true, why

would Charlene "run" a campaign while they were there and not run it after they left. This does not make sense. Charlene is the gatekeeper and message center as shown infra. Any instructions that were relayed if any, may appear to have her take on a more important role than she had.

Annie Prather made her own donation out of her own funds. Prather deposition, page 67. No inference may take away the fact that Prather said that was my money and my donation. Charlene can not be held accountable for Prather's donation. This is another example of counsel twisting the facts in at best a disingenuous manner to attempt to paint Charlene in a sinister manner.

CONCLUSION

As stated earlier, Charlene improperly funded contributions to the Roberts campaign with Stipe's money. Charlene obeyed a Roberts campaign staffer and improperly contributed to a Delahunt campaign. The money involved (\$8,790 reimbursements and \$2,000 in the Delahunt matter) in light of recent events seems minuscule, but nonetheless is subject to sanctions by the FEC. Charlene has admitted this from day one and is ready to face the sanctions of the FEC. As shown infra, Charlene did not knowingly and willfully violate the FEC rules and statutes, but nonetheless she is wrong and admits it. The Commission has the discretionary ability to find or not find a willful and knowing violation. 2 U.S.C. 437(g). Charlene would request that the violations that she has admitted to are found to be not willfully and knowingly. Charlene did not engage in an elaborate scheme to hide the source of the money. From day one, she said she used Stipe's funds to have friends and fellow employees make contribution to the Roberts' campaign. Counsel's desires to have different facts maybe understandable, but not borne out by the record.

Charlene is an employee of Stipe's and pays his bills as directed whether specifically or by general instructions. To ascribe her a greater role in any of Stipe's dealings is to give her far

greater credit than she is entitled to as shown by the testimony of Stipe and others and by the lifelong accomplishments of Stipe. Charlene is ready, as she has been since December 9, 1999, to enter into a conciliation agreement.

CHARLENE SPEARS, RESPONDENT

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By: 

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CERTIFICATE OF SERVICE

I, Warren Gotcher, herewith certify that on the 18TH day of September, 2001, I caused to be mailed to Counsel for the Federal Election Commission, Washington, D.C. 20463.