



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAR - 2 2004

Thomas R. Nienaber
The Horowitz Law Firm, P.S.C.
541 Buttermilk Pike, Suite 305
Crescent Springs, KY 41017-1689

RE: MUR 5335R
Bill Shehan, Jr.

Dear Mr. Nienaber:

On November 26, 2002, the Federal Election Commission notified your client, Bill Shehan, Jr., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on February 12, 2004, found that there is reason to believe your client knowingly and willfully violated 2 U.S.C. § § 441a(a)(1)(A) and 441f, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions and document requests within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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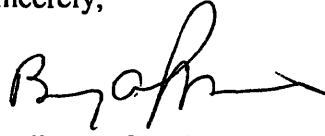
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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Smith', with a long horizontal stroke extending to the right.

Bradley A. Smith
Chairman

Enclosures
Questions
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Bill Shehan, Jr.

MUR 5335R

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Dennis Repenning. *See* 2 U.S.C. § 437g(a)(1).¹

The complaint in this matter alleges that Bill Shehan, Jr. made excessive contributions to the Geoff Davis for Congress Committee² ("the Committee") in the form of contributions from his minor children that allegedly should have been attributed to Mr. Shehan. For the reasons set out below, the Commission finds reason to believe that Bill Shehan, Jr. knowingly and willfully violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by making excessive contributions through his minor children. Mr. Shehan did not respond to the complaint.

¹ All of the relevant facts in these matters occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act, codified at 2 U.S.C. §§ 431 *et seq.*, or statements of law regarding provisions of the Act contained herein refer to the Act as it existed prior to the effective date of BCRA. Further, unless specifically noted to the contrary, any reference to Title 11 of the Code of Federal Regulations refers to the regulation as it existed prior to the implementation of BCRA, and as it appears in the 2002 edition of the Code of Federal Regulations.

² In its original Statement of Organization, the Committee was named "Geoff Davis 2002." The Committee originally designated its treasurer as Jody L. Green. On January 25, 2003, the Committee filed an amended Statement of Organization changing its name to "Geoff Davis for Congress" and its treasurer to Joe Green. However, the Committee's disclosure reports provide that the Committee's name is "Davis, Geoffrey C." For purposes of clarity, hereinafter the Committee is referred to as "the Geoff Davis for Congress Committee" or "the Committee."

II. FACTUAL AND LEGAL ANALYSIS

A. *Applicable Law*

1. Individual Contribution Limits and Contributions in the Name of Another

The Act provides that no person shall make contributions to any candidate and his or her authorized political committees with respect to an election, which, in the aggregate, exceed \$1,000. *See* 2 U.S.C. § 441a(a)(1)(A). In addition, the Act provides that no person shall make a contribution in the name of another. *See* 2 U.S.C. § 441f.

2. Minor Contributions

Under the Commission's regulations, contributions from a minor child (under 18) are attributed to the child if (i) he or she makes a knowing and voluntary decision to contribute, (ii) the funds are owned or controlled exclusively by the child, and (iii) the contribution is not made from the proceeds of a gift given to the child for the purpose of providing funds to be contributed to a candidate for federal office. *See* 11 C.F.R. § 110.1(i)(2).

The Supreme Court recently struck down an amendment to the Act that would have prohibited minors from making any contributions to a federal candidate. *McConnell v. Fed. Election Comm'n*, 124 S.Ct. 619, 711 (2003). In affirming the District Court decision, the Court held that 2 U.S.C. § 441k violated the First Amendment rights of minors and was overinclusive. *Id.* In discussing the provision, the Court noted the Government provided little evidence to demonstrate that a ban on contributions by minors was necessary to prevent individuals from circumventing the Act's contribution limits. *Id.* The Court suggested that section 441f of the Act may be "sufficient deterrence" of any such circumvention by prohibiting "any person from 'making a contribution' in the name of another person." *See Id; see also McConnell v. Fed. Election Comm'n*, 251 F. Supp. 2d 176, 809 (D.D.C. May 1, 2003) (stating that "[a] complete

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ban on donations . . . prevents even a symbolic expression of support for a candidate or a party's agenda").

3. Knowing and Willful Violations

The Act prohibits "knowing and willful" violations of its provisions. 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); *see also Fed. Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn "from the defendants' elaborate scheme for disguising their . . . political contributions" *Id.* at 214–15. The court also found that the evidence did not have to show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

B. Facts and Analysis

According to the Committee's disclosure reports, the Committee received a total of \$3,000 in contributions from members of the Shehan family on July 8, 2002 for the 2002 general election: \$1,000 from Bill Shehan, Jr.; \$1,000 from Georgia Shehan; and \$1,000 from Susan

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1 Shehan.³ The complaint alleged that Georgia Shehan, who is “5 or 6 years” old, and Susan
2 Shehan, who is “age 4,” are both daughters of Bill Shehan. The complaint also referenced the
3 Committee’s apparent initial misreporting of Georgia Shehan’s occupation. In its October
4 Quarterly Report, filed October 14, 2002 and its first amendment, filed on October 15, 2002, the
5 Committee reported that Georgia Shehan’s occupation was “Homemaker” and that Susan
6 Shehan’s occupation was “Unavailable.” In the Committee’s second amendment to its October
7 Quarterly Report, filed on October 17, 2002, it reported each child’s occupation as
8 “Unemployed.”

9 Although Mr. Shehan did not provide any additional information about his children’s
10 ages, press reports support the complaint’s allegation that Georgia Shehan was five (5) or six (6)
11 years old and Susan Shehan was four (4) years old.⁴ Thus, there was no information submitted to
12 contradict that the children were both under seven years of age.⁵

13 The Commission has previously examined whether an exceedingly young minor child’s
14 contribution to a federal candidate can be “knowing and voluntary.” In MUR 4484 (*In re*
15 *Bainum, et al.*), the Commission found reason to believe that a father made excessive
16 contributions where he made four \$1,000 contributions to four different candidates in the name
17 of his infant son. The contributions were made using the father’s checks, which contained his

³ The disclosure reports show the same address for the Shehan daughters, which is different from the address shown for the father.

⁴ See Patrick Crowley, *Davis money draws fire: Campaigns spar over donations*, The Cincinnati Enquirer, Oct. 18, 2002, available at http://www.enquirer.com/editions/2002/10/18/loc_kydavis18.html (referring to Georgia and Susan Shehan as Bill Shehan’s “5- and 4- year old daughters”), Courtney Kinney, *Complaint: Donation from kids, Davis campaign returned money*, The Kentucky Post, Oct. 23, 2002, available at <http://www.kypost.com/2002/10/23/compl102302.html> (reporting the girls’ “ages [are] 4 and 5”), Joseph Gerth, *Election 2002; Lawyer says Davis took illegal funds, 4th District GOP candidate reports money refunded*, The Courier-Journal, Oct. 24, 2002, at 1B (stating Davis campaign confirmed Georgia was 5 and Susan was 4).

⁵ A public record search revealed no information about Georgia and Susan Shehan.

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1 name imprinted on them and his son's name manually typed on the top of the check. Likewise,
2 in MUR 4254 (*Hershey*), the Commission found reason to believe that parents had make
3 excessive contributions where an eight-year-old child contributed to a candidate to whom the
4 minor child's parents had already given the maximum contributions. *See also* MUR 4255
5 (*Hitchcock*) (the Commission found reason to believe that parents made excessive contributions
6 where the children, whose names appeared on the checks, were one and three years old).

7 Even though the Commission's regulations contain no set age below which minors are
8 conclusively presumed to be unable to knowingly and voluntarily contribute to a candidate, it
9 seems highly unlikely that children as young as four to six years of age could form the intent to
10 knowingly and voluntarily contribute to a federal candidate. In this matter, the evidence suggests
11 that Georgia and Susan Shehan were indeed five and four years old. These facts, if proven true,
12 provide reason to believe that Mr. Shehan violated the Act. *See* Statement of Reasons in MUR
13 4960 (*In re Hillary Clinton for U.S. Senate Exploratory Comm.*), at 1 (stating that "[t]he
14 Commission may find 'reason to believe' if a complaint sets forth sufficient specific facts, which,
15 if proven true would constitute a violation of the FECA"). All of the information currently
16 available to the Commission demonstrates Mr. Shehan may have violated the Act.

17 Ordinarily, a complaint can be dismissed if it is "refuted with sufficiently compelling
18 evidence." *Id.* However, Bill Shehan, Jr., has not provided any information that his daughters'
19 contributions met the regulatory criteria that would permit the children's contributions to be
20 attributed to them. There is also no publicly available information to contradict the allegations in
21 the complaint with regard to Mr. Shehan. Absent any information to refute the complaint, there
22 is reason to believe that Bill Shehan, Jr. violated the Act.

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1 Since the contributions of Georgia and Susan Shehan apparently do not satisfy 11 C.F.R.
2 § 110.1(i)(2), they are properly attributed to Bill Shehan, Jr. *See* MUR 4255 (*Hitchcock*).
3 Because Bill Shehan, Jr. concurrently contributed the maximum amount to the Committee, both
4 of the contributions attributed to his minor children (totaling \$2,000), if attributed to him, were
5 excessive. *See* 2 U.S.C. § 441a(a)(1). If the children's trusts funded the contributions, it appears
6 that Bill Shehan, Jr. may have exercised control over such trusts, and caused funds from them to
7 be contributed to the Committee, in violation of 2 U.S.C. § 441a(a)(1). If the children's
8 contributions came from funds owned by their father, however, Mr. Shehan may have violated
9 2 U.S.C. § 441f by making contributions in the name of another. Since either scenario is
10 possible at this point, the Commission finds reason to believe that Bill Shehan, Jr. violated 2
11 U.S.C. §§ 441a(a)(1)(A) and 441f.

12 Moreover, the multiple similarities among the Shehan contributions — same candidate,
13 same date, same amount, and same election — suggest that Bill Shehan, Jr. may have engaged in
14 a deliberate effort to circumvent the Act's contribution limits.⁶ In addition, the vehicle used to
15 make the children's contributions, cashier's checks, is consistent with the intention to disguise
16 the children's exceedingly young ages. Because the contributions were by cashier's checks, the
17 ages of the minor children almost remained undetected. Moreover, if Bill Shehan, Jr. furnished
18 the information to the Committee that his daughter Georgia was employed as a "homemaker,"
19 this fact would also tilt in favor of a knowing and willful violation. As noted, Bill Shehan, Jr.
20 chose not to provide any information to clarify the use of cashier's checks for contributions
21 reported as coming from his very young children or to explain who may have supplied the

⁶ Although Bill Shehan, Jr. previously made a number of contributions, there is no indication that any committees have designated Georgia and Susan Shehan as contributors.

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employment information reported for his daughter, Georgia. Thus, based on the indicia set forth above, it appears that Bill Shehan, Jr. may have knowingly and willfully violated the Act.

III. CONCLUSION

Accordingly, there is reason to believe that Bill Shehan, Jr. knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f.

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