

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

FIRST GENERAL COUNSEL'S REPORT

MUR: 6250

DATE COMPLAINT FILED: February 16, 2010

**DATES OF NOTIFICATION: February 23, 2010,
April 16, 2010, and April 20, 2010**

LAST RESPONSE RECEIVED: May 4, 2010

DATE ACTIVATED: May 26, 2010

**EXPIRATION OF SOL: June 19, 2014 (earliest) –
February 2, 2015 (latest)**

COMPLAINANT:

Jon A. Zahm

RESPONDENTS:

**Ethan Hastert for Congress Committee and Larry Nelson,
in his official capacity as treasurer**

Ethan Hastert

Burnham Strategies Group, LLC

Brad Hahn

J. Dennis Hastert

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441a(a)(1)

2 U.S.C. § 441a(f)

2 U.S.C. § 441b(a)

2 U.S.C. § 434(b)(2)

11 C.F.R. § 100.52(a), (d)(1) and (d)(2)

11 C.F.R. § 100.74

11 C.F.R. § 114.9(a)(1) and (2)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

**This matter concerns allegations that respondents made excessive in-kind contributions,
and possibly prohibited corporate contributions, in connection with campaign consulting and
media services provided either without charge or at less than the usual and normal charge for**

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1 such services to Ethan Hastert's 2010 campaign for the U.S. House of Representatives in Illinois'
2 14th Congressional District.¹ See 2 U.S.C. §§ 441a(a)(1) and 441b(a). Based on our review of
3 the available information, it does not appear that Burnham Strategies Group, LLC provided any
4 campaign consulting or media services to Ethan Hastert or to Ethan Hastert for Congress
5 Committee and Larry Nelson, in his official capacity as treasurer, ("the Committee"). The
6 consulting and media services provided by the company's partner, Brad Hahn, to Ethan Hastert
7 and the Committee appear to have been made on an individual volunteer basis and were minimal
8 and incidental. Lastly, there appears to be no connection between the alleged disbursements
9 made by J. Dennis Hastert to Burnham Strategies and any services Brad Hahn may have provided
10 to the Committee. Therefore, we recommend that the Commission find no reason to believe any
11 of the respondents violated the Federal Election Campaign Act of 1971, as amended, ("the Act")
12 and close the file in this matter.

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 **A. Complaint and Response**

15 Complainant alleges that Burnham Strategies and Brad Hahn provided campaign
16 consulting and media services exceeding \$2,400 in value, without charge to the Committee and
17 Ethan Hastert, thereby resulting in an excessive in-kind contribution in violation 2 U.S.C.
18 § 441a(a)(1). These allegations are based on information derived from two newspaper articles

¹ Complainant has requested that his complaint be withdrawn. See Letter from Mr. Zahn to CELA, dated April 27, 2010. However, the Commission is empowered to review a complaint properly filed with it and to take action which it deems appropriate under the Act. 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4. A request for withdrawal of a complaint will not prevent the Commission from taking appropriate action under the Act. See Letter from CELA to Mr. Zahn, dated May 7, 2010.

1 mentioned in the complaint.² Complaint, at 1 - 2. The first article in the DAILY HERALD reported
2 that Burnham Strategies was overseeing the campaign: "[t]hat firepower has netted Ethan Hastert
3 about \$87,000 in campaign contributions." According to the news article, Ethan Hastert "said
4 he's pleased with raising a little less than \$87,000 in about two weeks. The next step is getting
5 out and talking to voters and local leaders," *Hastert Gets Congressional Campaign in Full
6 Swing Friday*, DAILY HERALD by James Fuller, 7/21/09 (the "July 21 article").

7 The second article, also in the DAILY HERALD, reported that Mr. Hahn said Burnham
8 Strategies "initially thought they might help Ethan Hastert run his Congressional campaign," but
9 "the relationship ended with one news release and fielding a couple media calls." *Hastert
10 Campaign Won't Report Controversial Contribution*, DAILY HERALD by James Fuller, with Daily
11 Herald Politics and Projects Editor Joseph Ryan contributing, 1/21/10 (the "January 21 article").
12 According to the article, Mr. Hahn wrote a news release for the initial announcement of the
13 campaign and did not charge anything for it: "[s]o when Hahn wrote the news release, [Hahn]
14 said he did it because he knew Ethan and supported him. It wasn't to get paid." *Id.* "It was a
15 one-page news release," Hahn said. "I wouldn't even know what to charge." *Id.* The news article
16 reported that Mr. Hahn typically charges a fee to write a news release and field media calls in his
17 everyday profession, though the article did not mention the amount of his usual charge. *Id.*
18 Andrew Nelson, the Committee's spokesman, reportedly said that the Committee did not see the
19 need to report Mr. Hahn's work in contribution disclosure reports: "Brad just did that one news

² According to Dun & Bradstreet ("D&B") reports, Burnham Strategies Group, LLC is a limited liability company with two principals: Brad Hahn and David W. From. The company's Web site states that it is a professional election campaign, advocacy, and communications consulting firm, and its partners, Mr. Hahn and Mr. From, were staffers of former U.S. House Speaker J. Dennis Hastert. See <http://burnhamstrategies.com> accessed June 23, 2010. Former-speaker Hastert is the father of candidate, Ethan Hastert. See Response, dated May 4, 2010, at footnote 1.

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1 release in the very first days of the campaign,' Nelms said. 'There's never been any work done
2 since. It took him probably 10 minutes. He's never done any other work for us.'" *Id.*

3 Complainant alleges that the services provided by Brad Hahn to the Committee did not
4 constitute volunteer services, rather, his services were "made in contemplation of Burnham
5 Strategies being retained by Hastert to manage the campaign." Complaint, at 3. Based on this
6 allegation, complainant concludes that the Committee and Ethan Hastert received an excessive
7 in-kind contribution from Burnham Strategies and Brad Hahn and the Committee failed to
8 disclose its receipt on its reports filed with the Commission, in violation of 2 U.S.C. §§ 441a(f)
9 and 434(b)(2). Complaint, at 3-4.

10 Complainant alternatively alleges that if Burnham Strategies, a limited liability company,
11 elects to be treated by the Internal Revenue Service as a corporation, then any contribution from
12 it to the Committee should be treated as a contribution from a corporation. 11 C.F.R.
13 § 110.1(g)(3). If so, the complaint alleges, Burnham Strategies made, and the Committee and
14 Ethan Hastert received, a prohibited corporate contribution by providing campaign services
15 without charge to the Committee, in violation of the Act. 2 U.S.C. § 441b(a).

16 Complainant further alleges that former-Speaker Hastert may have made an excessive in-
17 kind contribution to the Committee and Ethan Hastert by making approximately \$30,000 in
18 disbursements to Burnham Strategies for providing services to his sec's campaign. This
19 allegation is also based on a news article mentioned in the complaint. POLITICO reported that the
20 former Speaker receives \$40,000 a month in taxpayer dollars to maintain an office and cover his
21 expenses (per a law that provides five years of benefits for former speakers). *Former Speaker*
22 *Gets Pricey Perks*, POLITICO, Jake Sherman and John Bresnahan, 12/21/09. According to the
23 news article, "House disbursement records show that the office is spending an additional \$2,000

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1 per month in taxpayer money on a consulting firm, Burnham Strategies, that is run by several of
2 Hastert's former staffers, including Hahn. Altogether, the firm was paid \$30,000 through Sept.
3 30 of this year, records show." *Id.* The complainant alleges that if former-Speaker Hastert
4 retained Burnham Strategies to perform the services for his son's campaign, then he may have
5 made an excessive in-kind contribution to the Committee and Ethan Hastert in violation of
6 2 U.S.C. § 441a(a)(1), and the Committee and Ethan Hastert may have received an excessive in-
7 kind contribution in violation of 2 U.S.C. § 441a(f), and also failed to disclose that in-kind
8 contribution in violation of 2 U.S.C. § 434(b)(2). Complaint, at 2 and 4.

9 The joint response filed by counsel on behalf of all named respondents denies that
10 Burnham Strategies oversaw the campaign or that Burnham Strategies provided any in-kind
11 benefits to the Committee.³ Response, dated May 4, 2010, at 2. The response contends that the
12 factual references in the complaint are drawn from "hearsay accounts of newspaper articles," and
13 "have absolutely no basis in fact." *Id.*, at 1. Specifically, respondents maintain that the
14 Commission should not investigate this matter because the complainant "seeks to extrapolate
15 from the potential that *if* certain facts as may be inferred from a newspaper article are true, there is
16 a *possibility* that a campaign finance violation *may* have occurred." *Id.* (Emphasis in original).
17 The response states that "even if" Rod Hahn assisted with the creation of a single press release
18 and responded to a couple of media calls, then that work constituted "incidental volunteer
19 activity" as defined by 11 C.F.R. § 100.74. *Id.*, at 2. Further, "even if" these volunteer activities
20 were performed at Mr. Hahn's place of work, the use of corporate facilities does not constitute an

³ We received two responses from respondents in this matter. The first response is filed on behalf of the Committee, its treasurer and Ethan Hastert dated April 1, 2010. The second is a combined response filed on behalf of all respondents dated May 4, 2010. Both responses are substantially the same. For purposes of convenience, in this Report we cite to the later response.

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1 in-kind contribution unless they are more than "incidental" (greater than one hour per week or
2 four hours per month). *Id*; see also 11 C.F.R. § 114.9(a). In response to the allegations that
3 former-Speaker Hastert may have made an excessive in-kind contribution to the Committee, the
4 response contends that the congressionally-authorized expenditures by the former Speaker are
5 irrelevant, not based on any factual support, and should be "disregarded." Response, dated May 4,
6 2010, at 2, fn. 1.

7 **B. Legal Analysis**

8
9 **1. Burnham Strategies**

10 Based on the available information, it does not appear that Burnham Strategies made any
11 contribution, let alone an excessive or prohibited contribution, to the Committee or Ethan
12 Hastert. The Act defines the term "contribution" as including "any gift, subscription, loan,
13 advance, or deposit of money or anything of value made by any person for the purpose of
14 influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). "Anything of value"
15 includes all in-kind contributions, and the provision of any goods and services without charge or
16 at a charge less than the usual and normal charge for such goods and services is considered a
17 contribution. 11 C.F.R. § 100.52(d)(1). "Usual and normal charge for services" means the
18 commercially reasonable rate prevailing at the time. 11 C.F.R. § 100.52(d)(2). The contribution
19 limit during the 2009-2010 election cycle for the amount an individual may give to each
20 candidate or candidate committee per federal election is \$2,400. See 2 U.S.C. § 441a(a)(1) and
21 11 CFR. § 110.1. The Act prohibits corporations from using general treasury funds to make a
22 contribution in connection with federal elections. 2 U.S.C. § 441b(a).

23 There is no information suggesting that Burnham Strategies, as a business entity, provided
24 any services to the Committee or Ethan Hastert. The complaint's allegations are based entirely on

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1 two news articles, and those articles ultimately reported that Burnham Strategies did not provide
2 the services as alleged. The first news article mentioned in the complaint reporting that Burnham
3 Strategies is "overseeing the campaign" is clarified in the second article mentioned in the
4 complaint, which reports that the company ultimately decided not to oversee the campaign. See
5 the January 21 article. Moreover, the response expressly denies the factual allegations that
6 Burnham Strategies was overseeing Ethan Hastert's campaign. See Response, dated May 4, 2010,
7 at 1 and 2; see also MUR 6023 (John McCain 2008, et al.) (no reason to believe finding when the
8 allegations in the complaint lacked sufficient facts to contradict the representations made in the
9 response). Since it does not appear that Burnham Strategies, as a business entity, performed
10 services for the Committee, it did not make an excessive in-kind contribution or a prohibited
11 corporate contribution, even if the company elected to be treated by the Internal Revenue Service
12 as a corporation. See 11 C.F.R. § 110.1(g)(3). Accordingly, we recommend that the Commission
13 find no reason to believe Burnham Strategies Group, LLC made an excessive in-kind contribution
14 or a prohibited corporate contribution in violation of 2 U.S.C. §§ 441a(a)(1) or 441b(a) in this
15 matter.

16 **2. Brad Hahn**

17 It appears that any work Mr. Hahn did for the committee was volunteer work and would
18 not be considered a contribution under the Act. Excluded from the definition of contribution is
19 "the value of services provided without compensation by any individual who volunteers on
20 behalf of a candidate or political committee." 2 U.S.C. § 431(8)(B)(i) and 11 C.F.R. § 100.74.
21 The complaint alleges that the work done by Mr. Hahn individually did not constitute volunteer
22 services because the work was performed in contemplation of Burnham Strategies being retained
23 to manage the campaign. See Complaint, at 3. There is no basis in the complaint for this

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1 allegation other than the news articles mentioned in the complaint. However, based on our
2 review of these news articles and the response, it appears that any work Mr. Hahn individually
3 performed on behalf of the Committee was volunteer work. According to one of the news
4 articles, Mr. Hahn performed the work because "he knew Ethan and supported him. It wasn't to
5 get paid." See the January 21 article. Moreover, it appears from the article that Mr. Hahn
6 performed minimal services, (e.g., writing one press release that "took him probably 10 minutes"
7 and fielding "a couple" of media calls). *Id.* There is no information confirming whether Mr.
8 Hahn used corporate facilities to perform these services. However, even if he did, it appears that
9 his services were occasional, isolated, or incidental (e.g., not exceeding one hour a week or four
10 hours per month), and therefore would have met the safe harbor for use of corporate facilities by
11 an individual volunteering for a federal election. See 11 C.F.R. § 114.9(a)(1) and (2). Thus, it
12 appears that the services rendered by Mr. Hahn to the Committee constituted volunteer services
13 and would not be considered a contribution under the Act. See 2 U.S.C. § 431(8)(B)(i) and 11
14 C.F.R. § 100.74. Therefore, we recommend that the Commission find no reason to believe Brad
15 Hahn made an excessive in-kind contribution in violation of 2 U.S.C. § 441a(a)(1).

16 **3. J. Dennis Hastert**

17 There is no information contesting the former-Speaker's alleged payments to Burnham
18 Strategies to any work that the company or Mr. Hahn may have done for his son's campaign.
19 Complainant merely speculates that the former Speaker's House disbursements reports disclosing
20 payments to Burnham Strategies may have been for work done on the Ethan Hastert campaign.
21 The complaint states that "If the former-Speaker paid Burnham Strategies to perform
22 communications services for his son's campaign as part of this arrangement, these payments are
23 an in-kind contribution from father to son." Complaint, at 4 (emphasis added). However, the

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1 complaint alleges no specific facts, other than the payments the former Speaker made to Burnham
2 Strategies, and these facts, standing alone, do not imply that any of those payments were for work
3 done for Ethan Hastert's campaign. Therefore, the complaint did not allege "sufficient specific
4 facts" that, if proven would constitute an excessive in-kind contribution. See MUR 5342 (U.S.
5 Chamber of Commerce, *et al.*) (no reason to believe finding when the complaint did not allege
6 sufficient specific facts that, if proven, would constitute prohibited corporate expenditures). In
7 addition, the newspaper maintains that the complaint's allegations that the expenditures by former-
8 Speaker Hastert constitute in-kind contributions to his son's campaign are not based on any
9 factual support and should be "disregarded." Response, dated May 4, 2010, at 2, fn. 1. Based on
10 the foregoing, we recommend that the Commission find no reason to believe the former Speaker
11 J. Dennis Hastert made an excessive in-kind contribution in violation of 2 U.S.C. § 441a(a)(1).

12 **4. The Committee and Ethan Hastert**

13 Candidates and political committees are prohibited from knowingly accepting a
14 contribution made in excess of the contribution limitations set forth in the Act. 2 U.S.C.
15 § 441a(f). The Act also prohibits candidates and political committees from knowingly accepting
16 contributions from corporations made with their general treasury funds. 2 U.S.C. § 441b(a).
17 Each treasurer of a political committee is required to file reports of receipts and disbursements in
18 accordance with the provisions of the Act and shall disclose, among other things, the total
19 amount of all receipts including contributions received from persons other than political
20 committees. 2 U.S.C. §§ 434(a) and 434(b)(2).

21 Given that it does not appear that Burnham Strategies, Brad Hahn, or J. Dennis Hastert
22 made any "contribution" as defined by the Act in this matter to the Committee or Ethan Hastert,
23 it follows that the Committee and Ethan Hastert did not receive any excessive in-kind or

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1 prohibited corporate contributions from the respondents, and the Committee did not violate the
2 Act's disclosure requirements by failing to report such contributions. Therefore, we recommend
3 that the Commission find no reason to believe that Ethan Hastert for Congress Committee and
4 Larry Nelson, in his official capacity as treasurer, and Ethan Hastert violated 2 U.S.C. §§ 441a(f)
5 and 441b(a) and no reason to believe Ethan Hastert for Congress Committee and Larry Nelson, in
6 his official capacity as treasurer, violated 2 U.S.C. § 434(b)(2).

7 **III. RECOMMENDATIONS**

- 8 1. Find no reason to believe that Ethan Hastert for Congress Committee and Larry
9 Nelson, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a) and
10 434(b)(2).
11
12 2. Find no reason to believe Ethan Hastert violated 2 U.S.C. §§ 441a(f) and 441b(a).
13
14 3. Find no reason to believe Burnham Strategies Group, LLC violated 2 U.S.C.
15 §§ 441a(a)(1) and 441b(a).
16
17 4. Find no reason to believe Brad Hahn violated 2 U.S.C. § 441a(a)(1).
18
19 5. Find no reason to believe J. Dennis Hastert violated 2 U.S.C. § 441a(a)(1).
20
21 6. Approve the attached Factual and Legal Analyses.
22
23 7. Approve the appropriate letters.


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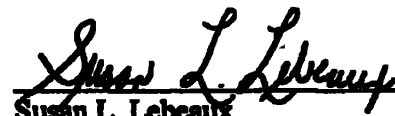
8. Close the file.

Thomasenia P. Duncan
General Counsel

8/18/10
Date

BY:


Stephen Gura
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Enforcement


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