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FEDERAL ELECTION
COMMISSION

2010 JUN -7 PM 1:17

OFFICE OF THE CLERK

June 10, 2010

Thomasenia Duncan, Esquire
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Tommy Sowers, Tommy Sowers for Congress and Square, Inc.

MUR # 6322

Dear Ms. Duncan:

Pursuant to 2 USC § 437g(a)(1) and 11 CFR § 111.4, please accept this letter as a Complaint against Tommy Sowers and Tommy Sowers for Congress for operating in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("FEC" or "Commission") regulations, and more specifically, for knowingly accepting illegal corporate contributions and corporate-facilitated contributions in violation of 11 C.F.R. § 114.2.

I. Facts

Tommy Sowers ("Sowers") is a candidate for the U.S. House of Representatives, running to represent Missouri's 8th Congressional District. Sowers filed his FEC Form 2 Statement of Candidacy on November 2, 2009. Tommy Sowers for Congress ("the Committee") is the principal campaign committee for Tommy Sowers. The Committee filed its FEC Form 1, Statement of Organization on September 8, 2009.

According to the Delaware Division of Corporations' website and the California Secretary of State's website, Square, Inc. ("Square") is a Delaware corporation with its principle place of business in San Francisco, California. See *Exhibit 1*. Square's website, <https://squareup.com>, indicates that the corporation also maintains offices in St. Louis, Missouri and New York City, New York. Jack Dorsey ("Dorsey"), CEO of Square, describes Square's business as the manufacture and marketing of payment processing devices and software applications that are compatible with popular mobile phones, including the iPhone, iPod touch, iPad, and Android. Square's product allows customers to process credit cards via their mobile phones, obviating the need to maintain a merchant account. Square markets its device as a technology that enables mobile, person-to-person payments. The corporation also markets its device to political campaigns and advocacy groups as powerful grassroots fundraising tool.

In addition to being the CEO of Square, Inc., Dorsey is also a well-known figure in the social networking industry for his role in founding the popular website Twitter.

On June 8, 2010, the Committee hosted a political fundraising event ("the Fundraiser") that doubled as a product launch party for Square, Inc. The invitation for the Fundraiser stated, "Gen. Wesley Clark, Rep. Patrick Murphy, Karen Finney & Jonathan Powers Invite You To Have A

Beer With Tommy [Sowers, along] with Gov. Howard Dean, Paul Begala and Jack Dorsey (Founder of Twitter)." *See Exhibit 2.*

The invitation continued, "[w]e're also launching Square in DC! The new application by the founder of Twitter that allows credit card transactions from your mobile phone." This text accompanied a photo of Square, Inc.'s payment processor device.

The invitation listed Dorsey as a co-host of the Fundraiser. The invitation's RSVP prompted attendees to "Tell Tommy [Sowers] & Jack [Dorsey] I'll be there."

Other promotional material for the Fundraiser included a photo of Sowers, his campaign's logo, and the following text:

"The Tommy Sowers campaign is using Square and launching it in DC. What better way to unveil the future of grassroots fundraising than through a fundraiser for a true grassroots candidate. Square is the new application by the founder of Twitter that allows credit card transactions from your mobile phone. Tuesday, June 8 5:30 - 7:30 PM @ Local 16 1602 U St. NW. RSVP & for more details: www.sowersforcongress.com/square2." *See Exhibit 3.*

Organizers for the Fundraiser distributed Square devices to individuals attending the Fundraiser. One blogger covering the Fundraiser wrote that "folks can also pick up their own Square device."¹ *See Exhibit 4.* One of the Fundraiser's attendee posted a photo of the devices that were distributed at the Fundraiser under the caption: "We just got our Squares at the @sowers @jack #sqdc event!" *See Exhibit 5.*

At the Fundraiser, Dorsey spoke on behalf Square, describing his company, its payment processing device, and its applications in the political fundraising context. In his speech, Dorsey endorsed Sower's candidacy. This speech is documented by one attendee who posted a photo of the occasion on his Twitter account, along with the caption: "Great to see @jack endorsing @sowers! Politics + tech = <3." *See Exhibit 6.*

II. Relevant Law

A contribution is defined as is anything of value given to influence a federal election. 11 C.F.R. § 100.52(a). Corporations are prohibited from making contributions to federal political committees, and federal political committees are prohibited from knowingly accepting or receiving contributions made from the general treasury funds of corporations. 11 CFR § 114.2 (a), (d). In-kind contributions include goods and services offered free of charge. 11. C.F.R. §§100.52(d)(1) and 100.54.

Additionally, corporations are prohibited from using corporate resources to facilitate the making of contributions to candidates or political committees. Facilitation includes any use of corporate

¹ See Nancy Scola, "Square DC's Launch Doubles as MO-8 Fundraiser (Updated)," (Jun. 8, 2010). Available at: <http://techpresident.com/blog-entry/square-dcs-launch-doubles-mo-8-fundraiser-updated> (last accessed Jun. 9, 2010).

resources to engage in fundraising activities in connection with a federal election. 11 C.F.R. § 114.2(f)(1). Because corporate names and trademarks are considered to be corporate resources, a corporation is prohibited from lending its name or trademark to a political committee for fundraising efforts. See 11 CFR § 114.2(f)(4)(ii); A.O. 2007-10 at 2 (stating that a candidate's committee could not display corporate names and trademarks at a fundraising event).

Similarly, candidates and federal political committees are prohibited from knowingly receiving corporate-facilitated contributions. 11 C.F.R. § 114.2(d).

Contributions to a federal candidate may not be converted by any person to personal use. 11 CFR § 113.2(e). Personal use is defined, in part, as any use of funds in a campaign account for an expense of any person that would exist irrespective of the candidate's campaign. 11 CFR § 113.1(g).

III. Legal Analysis

Sowers and the Committee violated the Act and FEC regulations by knowingly receiving contributions facilitated by corporate resources. Square violated the Act and FEC regulations by lending corporate resources to engage in fundraising activities in connection with a federal election.

Sowers and the Committee used, and Square allowed the use of, the corporate name "Square" in the Committee's fundraising efforts. The Committee hosted a fundraiser which was dually-purposed as a political fundraiser for Sowers and a corporate product launch party for Square's new product. The invitation for the Fundraiser contains: (1) the corporate name "Square"; (2) a photograph of the corporation's product, which includes the Square's corporate logo; and (3), a written description of the product consistent with commercial advertisement copy.

The invitation stated, "[w]e're also launching Square in DC! The new application by the founder of Twitter that allows credit card transactions from your mobile phone", and goes so far as to encourage attendees to sign up for Square and receive their Square payment processing device at the Fundraiser.

At the Fundraiser, and in the invitation for the Fundraiser, the Committee recognized Dorsey's corporate employer, Twitter and Square, Inc. At the Fundraiser, Dorsey spoke on behalf Square, celebrated the launch of Square's product, and endorsed Sowers' candidacy and the Committee's use of the product. Square even utilized the Fundraiser to sign up new subscribers and to provide the Square payment processing device to attendees.

These activities constitute the impermissible use of corporate resources to engage in fundraising activities in connection with a federal election.

Equally concerning, regardless of who paid for the expenses of the Fundraiser, is the dual corporate and campaign nature of the event, which likely results in either impermissible personal use of campaign funds, or an illegal corporate contribution. If the Committee paid for the costs of

the Fundraiser, then it is certain that at least part of the funds were put to personal use, making the expenditure a prohibited use of campaign funds. The Fundraiser, at least in part, benefited Square, which ultimately benefits Jack Dorsey and the other owners and investors of Square. Because the expense of this promotion and the launch party for Square would exist regardless of Sowers' candidacy, the personal use ban applies to prohibit the use of campaign funds in this instance.

Alternatively, if Square paid for the costs of the Fundraiser and the Committee failed to reimburse Square within the appropriate time period required by law or in the full amount of its share of the costs, Square made an illegal corporate in-kind contribution to the Committee. Whether paid by Square or the Committee, the costs of the Fundraiser are very likely to result in an illegal corporate in-kind contribution or personal use of campaign funds, respectively.

IV. Conclusion

Upon information and belief, and based upon the facts relayed herein, Tommy Sowers and Tommy Sowers for Congress have violated the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission Regulations. Accordingly, we respectfully request that the Commission conduct an immediate investigation into the violations outlined above and impose the maximum penalty under law.

The foregoing is correct and accurate to the best of my knowledge, information and belief.

Respectfully submitted,

Theresa A. Ferrell

RD/1A, MD. 65401

Sworn to and subscribed before me this 18 day of June, 2010.

Cecelia R. Replew
Notary Public

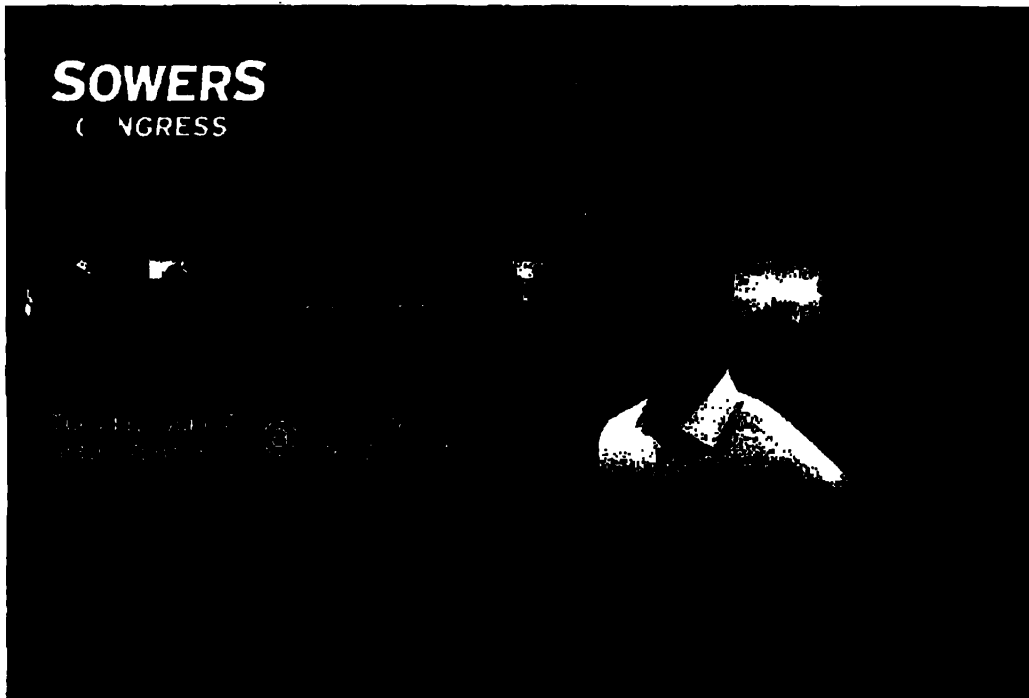
My Commission Expires: *July 26, 2011*

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[illegible]

Exhibit 2:

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Email Address: *

First Name: *

Last Name: *

Zip/Postal Code: *

RSVP now & pay at the door w/ SQUARE: \$36 (25 & under) | \$50: *

☐ Yes - Tell Tommy & Jack I'll be there!

☐ No - I'm sorry to miss Tommy.

Will you be a host for the event and sell 5 tickets?:

☐ YES!

Please let us know who encouraged you to RSVP:

Someone else

I'll be signing up for Square, so save me one! I have an....

☐ Android

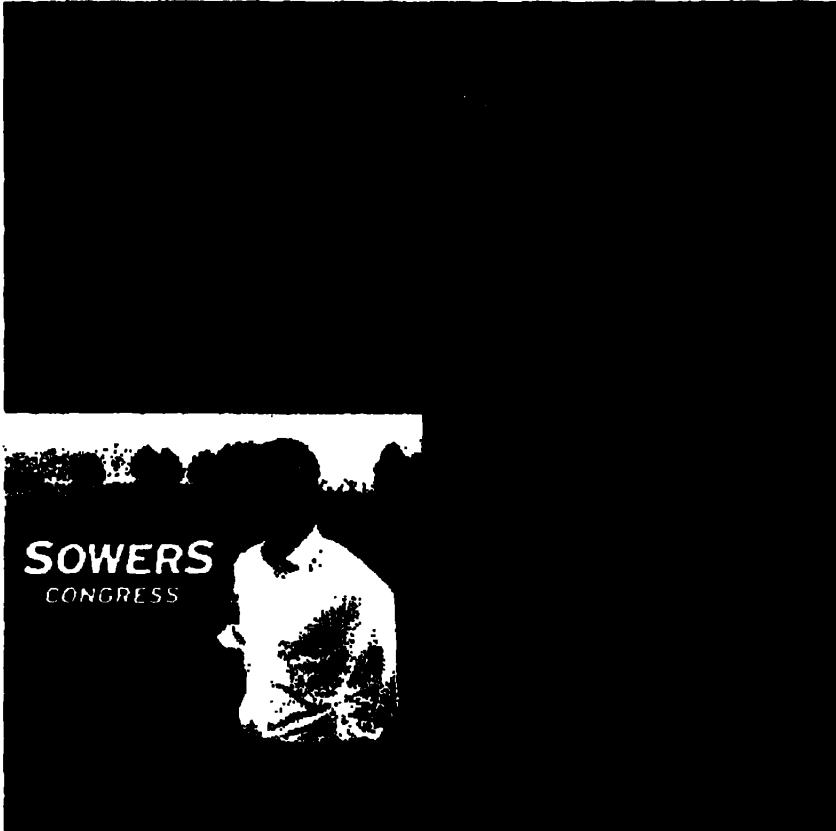
☐ iPhone

☐ Smart Phone

* denotes required field

SOWERS
CONGRESS

Exhibit 3



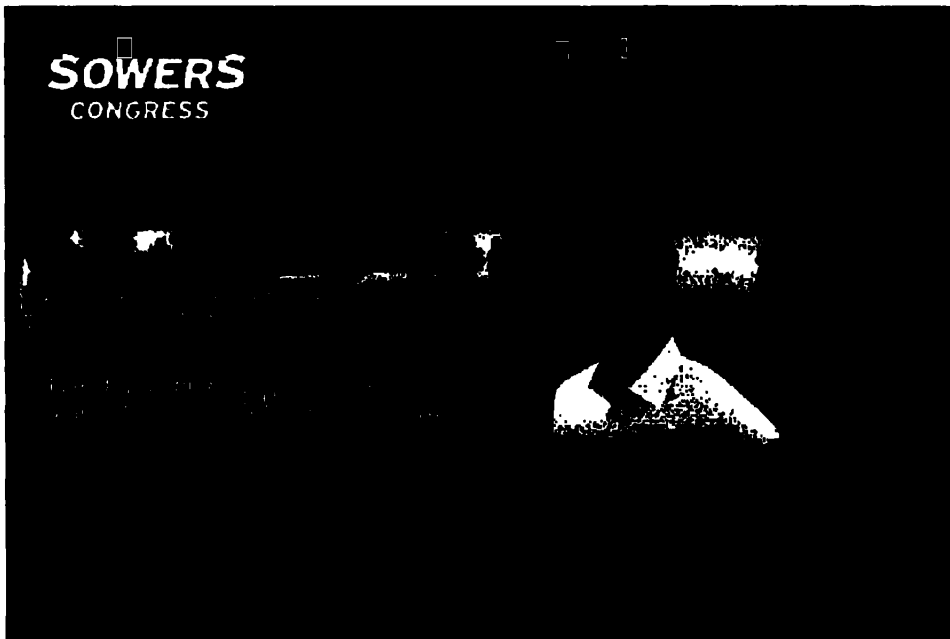
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Exhibit 4:

Nancy Scola, "Square DC's Launch Doubles as MO-8 Fundraiser (Updated)," (Jun. 8, 2010). Available at: <http://techpresident.com/blog-entry/square-dcs-launch-doubles-mo-8-fundraiser-updated> (last accessed Jun. 9, 2010).

Square DC's Launch Doubles as MO-8 Fundraiser (Updated)

Nancy Scola | June 8, 2010 - 2:13pm | Email This!



Tonight at DC's Local

16: a joint product launch for Square founder Jack Dorsey and fundraiser for Missouri congressional candidate Tommy Sowers.

DC schmancy spot Local 16 will play host to a, well, rather strange hybrid event this evening. The evening is one part political fundraiser and one part product launch. This is going into the ol' "trend story" file about how the tech world is infiltrating Washington.

"Tell Tommy & Jack I'll be there!," reads the RSVP for the event, taking place tonight from 5:30 to 7:30. "Tommy" is Tommy Sowers, a Democrat and Iraq War vet running to replace Rep. Jo Ann Emerson in Missouri's 8th congressional district. And "Jack" is Jack Dorsey, Twitter's founder whose now startup is a company called Square. Square is, more or less, a plastic widget that plugs into mobile phones and allows anyone to process credit cards without the need of a merchant

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account. The vision is to open up the possibility of mobile, person-to-person payments, something that has obvious potential for political campaigns and advocacy groups. Attendees to tonight's event will have a chance to both hang out with Sowers and check out Dorsey's gadget. (Added bonus: Howard Dean and Democratic strategist Paul Begala will also be on hand to "have a beer.")

Contributions (\$25 or \$50) to Sowers can be made at the door via Square. And folks can also pick up their own Square device; the RSVP form for the event asks attendees for their mobile phone operating system, either iPhone or Android.

Also going into the Silicon Valley-comes-to-Washington file: Twitter is in the market for its very first DC-based employee. Twitter's new government liaison will help the company "understand what [it] can do to better serve candidates and policymakers across party and geographical lines."

Update: On this being both Square's DC launch and a Democratic fundraiser, there's a sense among some on Twitter that it's "weird that this is partisan."
Exhibit 4:

Exhibit 5:



Exhibit 6:

Internet Explorer address bar: http://www.flickr.com/photos/26394012

Navigation bar: Home, My Photos, Favorites, Public, Friends, Groups, Tags, Photos, Blog, Settings

Photos by deconceige

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