



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

**MAR 21 2011**

Floyd D. Ferrell

Rolla, MO 65401

RE: MUR 6322

Dear Mr. Ferrell:

On March 15, 2011, the Federal Election Commission reviewed the allegations in your complaint dated July 7, 2010, and on the basis of the information provided in your complaint and information provided by the respondents, the Commission dismissed this matter in an exercise of prosecutorial discretion and closed the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and *Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record*, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Christopher Hinghey  
Acting General Counsel

  
BY: Roy Q. Lockett  
Acting Assistant General Counsel

Enclosures  
Factual and Legal Analyses

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**Respondents:** Tommy Sowers for Congress and  
John P. Heisserer, in his official capacity as Treasurer  
Tommy Sowers

**MUR: 6322**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Floyd D. Ferrell, alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission's regulations, by Tommy Sowers and Tommy Sowers for Congress and John P. Heisserer, in his official capacity as treasurer. *See* 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

Tommy Sowers was a Democratic candidate for Congress from Missouri's 8th District.<sup>1</sup> On June 8, 2010, the Sowers campaign committee hosted a fundraiser in Washington, D.C. Several notable Democratic politicians attended the event, along with Jack Dorsey, the CEO of Square. Square is a software company founded in February 2009 by Jack Dorsey. *See* <https://squareup.com/about>. The company manufactures small, cube-shaped credit card readers that plug into the headphone ports in cell phones. *Id.* The devices allow merchants to accept payment for goods or services instantly over a cell phone network. *See* <https://squareup.com/-about>.<sup>2</sup>

The Committee's announcement publicizing the June 8 fundraiser contains the date, time, and location of the fundraiser, and lists Jack Dorsey as attending the event and

<sup>1</sup> Mr. Sowers lost the general election.

<sup>2</sup> For a visual demonstration of the Square device, *see* <http://goo.gl/TgTp>.

1 as the founder of Twitter. *See* Complaint at Ex. 2, 3; *see also*  
2 <http://www.sowersforcongress.com/page/s/-square>. Further, in the bottom right-hand  
3 corner of the announcement, there is a picture of the Square payment processing device  
4 with Square's name, along with the statement: "We're also launching Square in DC! The  
5 new application by the founder of Twitter that allows credit card transactions from your  
6 mobile phone." *See* Complaint at Ex. 2. Additionally, the invitation states that attendees  
7 should "RSVP now & pay at the door w/ SQUARE." *Id.* Near the bottom, the invitation  
8 gives attendees the ability to choose a cell phone operating system (Android or iPhone) if  
9 the attendee would like a Square card reading device. *Id.*

10 The complaint also includes a news article that features promotional material,  
11 allegedly distributed by the Committee, which contains a photo of the candidate, the  
12 campaign logo, and the statement "The Tommy Sowers campaign is using Square and  
13 launching it in DC. What better way to unveil the future of grassroots fundraising than  
14 through a fundraiser for a true grassroots candidate. Square is the new application by the  
15 founder of Twitter that allows credit card transactions from your mobile phone. Tuesday,  
16 June 8 6:30 - 7:30 PM @ Local 16 1602 U St. NW. RSVP & for more details:  
17 [www.sowersforcongress.com/square2](http://www.sowersforcongress.com/square2)." *See* Complaint at 2; Complaint Ex. 3.  
18 Additionally, Jack Dorsey wrote about the fundraiser on his Twitter account. *See*  
19 <http://goo.gl/AlkHu> (posted June 8, 2010, 4:53 PM) (last visited December 7, 2010)  
20 ("At #sqdc with @crazybob for @Sowers and @Square. Come by and say hi! Local  
21 16.").

22 Square provided its mobile credit services to the Committee during the 2010  
23 election cycle. *See* Response at 2. To use the Square service, the merchant must first

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1 download Square's free application to a cell phone or iPad. *See* [https://squareup.com/get-](https://squareup.com/get-started)  
2 started. The merchant then attaches Square's credit card reader to a cell phone, and the  
3 buyer swipes a credit card through the reader. After swiping the card, the buyer signs the  
4 transaction receipt on the phone using his or her finger. *See* <https://squareup.com/about>.  
5 Square distributes the readers for free and does not charge a monthly fee or require a  
6 merchant account. *See* <https://squareup.com/features>. Instead, the merchant pays Square  
7 a percentage of each transaction amount. *Id.* Merchants are not required to have the card  
8 reader to use Square's payment processing service because the merchant can manually  
9 run the credit card information through Square's cell phone application, but Square  
10 charges more for non-swiped transactions. *Id.* Although Square distributes the device for  
11 free, at the time of the fundraiser, Square admittedly confronted a "big hardware  
12 shortage" and struggled to meet the demand for its readers. *See* Letter from Jack Dorsey,  
13 *The Home Stretch*, SQUARE, INC. (June 18, 2010), <http://goo.gl/eNkZM>. *Id.*

14 The Committee maintains that it paid for all of the fundraiser's expenses. *See*  
15 Response at 2. Respondents also assert that Square's only involvement was as a  
16 commercial vendor to the Committee, and that Square did not "approve or comment on"  
17 any Committee promotional material. *Id.* Further, even though Jack Dorsey was listed as  
18 attending the event, the response insists that he was involved in the event as a personal  
19 supporter, and he appeared in his personal capacity. *Id.*

20 The response also asserts that the Committee referenced Square's name with  
21 respect to Square's status as a commercial vendor to the Committee and to draw attention  
22 to an innovative technology that the Committee uses for fundraising operations, and not  
23 to encourage contributions. *See* Response at 2-3. According to the Committee, using

1 Square's name in an advertisement is akin to the Committee revealing that it accepts  
2 contributions via MasterCard, Visa, or ActBlue, because Square is merely a "conduit" for  
3 contributions. *Id.* Finally, the response argues that even if the use of Square was a  
4 violation of the Act, it was a *de minimis* violation because the event raised only \$5,574 in  
5 contributions. *See* Response at 4. Respondents also state the Committee paid Square the  
6 full market value for use of its services. *Id.* at 3. The Committee reported contributions  
7 totaling \$2,950 on June 8, 2010, the day of the fundraiser, and \$10,000 on June 9, 2010,  
8 the day after the fundraiser. It is possible that the Committee received contributions from  
9 sources other than the June 8 fundraiser on those days.

10 **B. Analysis**

11 **1. Corporate Activity**

12 The complaint alleges that: (1) the references to Square and the Square payment  
13 processing device in the Committee's fundraiser announcement; (2) a speech made by  
14 Dorsey at the fundraiser in which Dorsey allegedly endorsed Tommy Sowers and the  
15 Committee's use of Square; (3) and the provision of Square card readers to the  
16 Committee to distribute at the fundraiser, constitute impermissible uses of corporate  
17 resources to engage in fundraising activities. The Complaint also alleges that Square  
18 gave, and the Committee accepted, prohibited contributions when Square furnished the  
19 Committee with the card reader devices.

20 Under the Act and Commission regulations, corporations are prohibited from  
21 making a contribution to a candidate's committee in connection with a Federal election,  
22 and candidates are prohibited from accepting or receiving corporate contributions. *See*

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1 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1). A "contribution" includes "any gift,  
2 subscription, loan, advance, or deposit of money or anything of value made by any  
3 person for the purpose of influencing any election for Federal office." 2 U.S.C.  
4 § 431(8)(A)(i) and 11 C.F.R. § 100.52(a); *see also* 2 U.S.C. § 441b(b)(2) and 11 C.F.R.  
5 § 114.2(b)(1). "Anything of value" includes all in-kind contributions, including the  
6 provision of goods or services without charge or at a charge that is less than the usual and  
7 normal charge. *See* 11 C.F.R. § 100.52(d)(1). Because the Act and Commission  
8 regulations prohibit corporations from contributing anything of value to committees, or  
9 using their resources to facilitate contributions to committees, a donation by a corporation  
10 of its trademark to a committee (for example, to indicate the corporation's support for a  
11 candidate) would constitute an impermissible corporate contribution. 2 U.S.C. § 441b(a)  
12 and 11 C.F.R. 114.2(f). The Commission has previously considered corporate names and  
13 trademarks to be things of value. *See* MUR 6110 (Obama Victory Fund) Senate Realty  
14 Corporation Factual and Legal Analysis; MUR 5578 (Wetterling for Congress) First  
15 General Counsel's Report.

16 Here, the available information indicates that the fundraiser announcement  
17 featured a picture and description of the Square card reader, and it notified viewers that  
18 the fundraiser was serving as the "lunch" of Square in Washington, D.C. The  
19 announcement also promised contributors their own Square device, even though the  
20 Square reader was difficult to obtain at the time of the fundraiser. Further, Square's role  
21 at the event appears to have been more than a mere portal for contributions, like  
22 MasterCard or Visa, given that the devices were distributed to the fundraiser attendees to  
23 keep and use apart from contributing to the Committee, the event appears to have been a

1 "launch" event for Square, and Dorsey's Twitter post can be read to suggest he was  
2 appearing both as an individual and as a corporate representative. However, the  
3 fundraiser apparently raised only \$5,574, and Square offers the devices free to the public,  
4 thus making it difficult to assess their value. Under these circumstances, further use of  
5 the Commission's resources for an investigation is not warranted. Accordingly, the  
6 Commission has determined to exercise its prosecutorial discretion and dismiss the  
7 allegations that Tommy Sowers for Congress and John P. Heisserer, in his official  
8 capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) in connection  
9 with the acceptance of corporately-facilitated contributions, and violated 2 U.S.C. §  
10 441b(a) in connection with the acceptance of the Square card reader devices. *See*  
11 *Heckler v. Chaney* 470 U.S. 821, 831 (1985).

## 12 2. Personal Use

13 Finally, the complaint alleges that if the Committee paid for the costs of the  
14 fundraiser, then it is "certain that at least part of the funds were put to personal use." *See*  
15 Complaint at 4. According to the complaint, the fundraiser benefited Square, which  
16 ultimately benefits Jack Dorsey and the other owners and investors of Square, and  
17 therefore is an impermissible use of Committee contributions because the costs of this  
18 "launch party" would exist irrespective of the candidate's campaign. *Id.* In response, the  
19 Committee states that it paid for all expenses related to the fundraiser, and the costs of the  
20 fundraiser do not constitute personal use because neither Tommy Sowers nor any  
21 member of his family own stock in or are in any way financially connected to Square.  
22 *See Response at 2.*

1 Campaign contributions accepted by a candidate may not be converted to personal  
2 use by any person. 2 U.S.C. § 439a(b)(1); 11 C.F.R. § 113.2(e); *see also* 2 U.S.C.  
3 § 439a(a). "Personal use" is defined as "any use of funds in a campaign account of a  
4 present or former candidate to fulfill a commitment, obligation or expense of any person  
5 that would exist irrespective of the candidate's campaign or duties as a Federal  
6 officeholder." *See* 11 C.F.R. § 113.1(g); *see also* 2 U.S.C. § 439a(b)(2); 2 U.S.C.  
7 § 431(11) (defining "person" under the Act); Explanation and Justification, *Expenditures;*  
8 *Reports by Political Committees; Personal Use of Campaign Funds*, 60 *Fed. Reg.* 7862  
9 (February 9, 1995) ("If campaign funds are used for a financial obligation that is caused  
10 by campaign activity or the activities of an officeholder, that use is not personal use.")  
11 Commission regulations list a number of purposes that would constitute personal use *per*  
12 *se.* 11 C.F.R. § 113.1(g)(1)(i). Where a specific use is not listed as personal use, the  
13 Commission makes a determination, on a case-by-case basis, whether an expense would  
14 fall within the definition for personal use. 11 C.F.R. § 113.1(g)(1)(ii). The Commission  
15 has long recognized that if a candidate "can reasonably show that the expenses at issue  
16 resulted from campaign or officeholder activities, the Commission will not consider the  
17 use to be personal use." *See* 60 *Fed. Reg.* at 7867. In previous matters, funds were  
18 considered converted by individuals to personal use when they were used to pay for  
19 personal expenses, such as Broadway show and football tickets, haircuts, credit card bills,  
20 and personal trainer payments. *See, e.g.,* MUR 5962 (Istook for Congress) Conciliation  
21 Agreement; MUR 5895 (Meeks for Congress) Conciliation Agreement.

22 Here, there is no information indicating that campaign funds were put to personal  
23 use. The complaint argues that because the fundraiser was also styled as a launch for



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1 Square, the Committee used campaign contributions to pay for launch expenses that  
2 would have existed irrespective of the campaign. However, the Commission gives  
3 candidates wide discretion over the use of campaign funds. *See 60 Fed. Reg. at 7867.*  
4 The Committee hosted a fundraiser for Tommy Sowers' campaign, and has reasonably  
5 shown that the expenses for this fundraiser would not have existed irrespective of the  
6 campaign. Therefore, because no campaign contributions appear to have been converted  
7 to personal use, the Commission has determined to find no reason to believe that Tommy  
8 Sowers for Congress and John P. Heisserer, in his official capacity as treasurer, violated  
9 2 U.S.C. § 439a(b). The Commission has also determined to find no reason to believe  
10 that Tommy Sowers violated the Act.

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**Respondent: Square, Inc.**

**MUR: 6322**

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Floyd D. Ferrell, alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission's regulations, by Square, Inc. See 2 U.S.C. § 437g(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

Tommy Sowers was a Democratic candidate for Congress from Missouri's 8th District.<sup>1</sup> On June 8, 2010, the Sowers campaign committee hosted a fundraiser in Washington, D.C. Several notable Democratic politicians attended the event, along with Jack Dorsey, the CEO of Square. Square is a software company founded in February 2009 by Jack Dorsey. See <https://squareup.com/about>. The company manufactures small, cube-shaped credit card readers that plug into the headphone ports in cell phones. *Id.* The devices allow merchants to accept payment for goods or services instantly over a cell phone network. See <https://squareup.com/-about>.

The Committee's announcement publicizing the June 8 fundraiser contains the date, time, and location of the fundraiser, and lists Jack Dorsey as attending the event and as the founder of Twitter. See Complaint at Ex. 2, 3; see also <http://www.sowersforcongress.com/page/s/-square>. Further, in the bottom right-hand corner of the announcement, there is a picture of the Square payment processing device

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<sup>1</sup> Mr. Sowers lost the general election.

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1 with Square's name, along with the statement: "We're also launching Square in DC! The  
2 new application by the founder of Twitter that allows credit card transactions from your  
3 mobile phone." See Complaint at Ex. 2. Additionally, the invitation states that attendees  
4 should "RSVP now & pay at the door w/ SQUARE." *Id.* Near the bottom, the invitation  
5 gives attendees the ability to choose a cell phone operating system (Android or iPhone) if  
6 the attendee would like a Square card reading device. *Id.*

7 The complaint also includes a news article that features promotional material,  
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10 launching it in DC. What better way to unveil the future of grassroots fundraising than  
11 through a fundraiser for a true grassroots candidate. Square is the new application by the  
12 founder of Twitter that allows credit card transactions from your mobile phone. Tuesday,  
13 June 8 5:30 - 7:30 PM @ Local 16 1602 U St. NW. RSVP & for more details:  
14 [www.sowersforcongress.com/square2](http://www.sowersforcongress.com/square2)." See Complaint at 2; Complaint Ex. 3.  
15 Additionally, Jack Dorsey wrote about the fundraiser on his Twitter account. See  
16 <http://goo.gl/AlkHu> (posted June 8, 2010, 4:53 PM) (last visited December 7, 2010)  
17 ("At #sqdc with @crazybeb for @Sowers and @Square. Come by and say hi! Local  
18 16.").

19 Square provided its mobile credit services to the Committee during the 2010  
20 election cycle. See Response at 2. To use the Square service, the merchant must first  
21 download Square's free application to a cell phone or iPad. See [https://squareup.com/get-](https://squareup.com/get-started)  
22 started. The merchant then attaches Square's credit card reader to a cell phone, and the  
23 buyer swipes a credit card through the reader. After swiping the card, the buyer signs the

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1 transaction receipt on the phone using his or her finger. *See* <https://squareup.com/about>.  
2 Square distributes the readers for free and does not charge a monthly fee or require a  
3 merchant account. *See* <https://squareup.com/features>. Instead, the merchant pays Square  
4 a percentage of each transaction amount. *Id.* Merchants are not required to have the card  
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8 free, at the time of the fundraiser Square admittedly confronted a "big hardware shortage"  
9 and struggled to meet the demand for its readers. *See* Letter from Jack Dorsey, *The*  
10 *Home Stretch*, SQUARE, INC. (June 18, 2010), <http://goo.gl/eNkZM>. *Id.*

11 In response, Square maintains that the Committee paid for all of the fundraiser's  
12 expenses. *See* Response at 2. Respondent also asserts that its only involvement was as a  
13 commercial vendor to the Committee, and that Square did not "approve or comment on"  
14 any Committee promotional material. *Id.* Further, even though Jack Dorsey was listed as  
15 attending the event, the response insists that he was involved in the event as a personal  
16 supporter, and he appeared in his personal capacity. *Id.*

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18 respect to Square's status as a commercial vendor to the Committee and to draw attention  
19 to an innovative technology that the Committee uses for fundraising operations, and not  
20 to encourage contributions. *See* Response at 2-3. Respondent argues that using its name  
21 in an advertisement is akin to the Committee revealing that it accepts contributions via  
22 MasterCard, Visa, or ActBlue, because Square is merely a "conduit" for contributions.  
23 *Id.* Finally, the response argues that even if the use of Square was a violation of the Act,

1 it was a *de minimis* violation because the event raised only \$5,574 in contributions. *See*  
2 Response at 4. Respondent also states the Committee paid Square the full market value  
3 for use of its services. *Id.* at 3. The Committee reported contributions totaling \$2,950 on  
4 June 8, 2010, the day of the fundraiser, and \$10,000 on June 9, 2010, the day after the  
5 fundraiser. It is possible that the Committee received contributions from sources other  
6 than the June 8 fundraiser on those days.

7 **B. Analysis**

8 The complaint alleges that: (1) the references to Square and the Square payment  
9 processing device in the Committee's fundraiser announcement; (2) a speech made by  
10 Dorsey at the fundraiser in which Dorsey allegedly endorsed Tommy Sowers and the  
11 Committee's use of Square; (3) and the provision of Square card readers to the  
12 Committee to distribute at the fundraiser, constitute impermissible uses of corporate  
13 resources to engage in fundraising activities. The Complaint also alleges that Square  
14 gave, and the Committee accepted, prohibited contributions when Square furnished the  
15 Committee with the card reader devices.

16 Under the Act and Commission regulations, corporations are prohibited from  
17 making a contribution to a candidate's committee in connection with a Federal election,  
18 and candidates are prohibited from accepting or receiving corporate contributions. *See*  
19 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1). A "contribution" includes "any gift,  
20 subscription, loan, advance, or deposit of money or anything of value made by any  
21 person for the purpose of influencing any election for Federal office." 2 U.S.C.  
22 § 431(8)(A)(i) and 11 C.F.R. § 100.52(a); *see also* 2 U.S.C. § 441b(b)(2) and 11 C.F.R.

1 § 114.2(b)(1). "Anything of value" includes all in-kind contributions, including the  
2 provision of goods or services without charge or at a charge that is less than the usual and  
3 normal charge. See 11 C.F.R. § 100.52(d)(1). Because the Act and Commission  
4 regulations prohibit corporations from contributing anything of value to committees, or  
5 using their resources to facilitate contributions to committees, a donation by a corporation  
6 of its trademark to a committee (for example, to indicate the corporation's support for a  
7 candidate) would constitute an impermissible corporate contribution. 2 U.S.C. § 441b(a)  
8 and 11 C.F.R. 114.2(f). The Commission has previously considered corporate names and  
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12 Here, the available information indicates that the fundraiser announcement  
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14 the fundraiser was serving as the "launch" of Square in Washington, D.C. The  
15 announcement also promised contributors their own Square device, even though the  
16 Square reader was difficult to obtain at the time of the fundraiser. Further, Square's role  
17 at the event appears to have been more than a mere portal for contributions, like  
18 MasterCard or Visa, given that the devices were distributed to the fundraiser attendees to  
19 keep and use apart from contributing to the Committee, the event appears to have been a  
20 "launch" event for Square, and Dorsey's Twitter post can be read to suggest he was  
21 appearing both as an individual and as a corporate representative. However, the  
22 fundraiser apparently raised only \$5,574, and Square offers the devices free to the public,  
23 thus making it difficult to assess their value. Under these circumstances, further use of

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Square, Inc.**

1 the Commission's resources for an investigation is not warranted. Accordingly, the  
2 Commission has determined to exercise its prosecutorial discretion and dismiss the  
3 allegations that Square, Inc. violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by  
4 facilitating the making of contributions, and violated 2 U.S.C. § 441b(a) in connection  
5 with the provision of Square card reader devices to Tommy Sowers for Congress. See  
6 *Heckler v. Chaney* 470 U.S. 821, 831 (1985).

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