



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 25 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Neil P. Reiff, Esq.
Counsel to Scott Eckersley for Congress
Suite 1102
300 M Street, SE
Washington, DC 20003

RE: MUR 6427
Unknown Respondents, Billy
Long, Billy Long for Congress
and Ron Neville in his official
capacity as treasurer, James
Harris, Patrick J. Binning,
LakeFront Strategies

Dear Mr. Reiff:

On July 19, 2011, the Federal Election Commission reviewed the allegations in your complaint dated November 5, 2010, and found that on the basis of the information provided in your complaint, that there is reason to believe that Unknown Respondents violated 2 U.S.C. § 441h(a). Following an investigation, the Commission found on October 17, 2012, no reason to believe that Billy Long, Billy Long for Congress and Ron Neville in his official capacity as treasurer, James Harris, Patrick J. Binning, nor LakeFront Strategies violated 2 U.S.C. § 441h(a). Accordingly, on October 17, 2012, the Commission closed the file in this matter.

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.

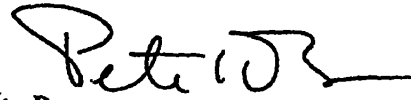
12044322145

Neil P. Reiff, Esq.
Page 2

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,

Anthony Herman
General Counsel



BY: Peter G. Blumberg
Assistant General Counsel

Enclosures
Factual and Legal Analyses

12044322146

12044322147

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Billy Long MUR: 6427
Billy Long for Congress and
Ron Neville in his capacity as treasurer
James Harris

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Neil P. Reiff, Counsel to Scott Eckersley for Congress. See 2 U.S.C. § 437g(a)(1).

II. BACKGROUND

This matter involves alleged fraudulent misrepresentation of campaign authority through the distribution of fake e-mails and postings from social media accounts fraudulently created in the name of congressional candidate Scott Eckersley. The perpetrator of the fraud, whose identity was unknown at the time the Complaint was filed, sent a fictitious press release from a fraudulent Yahoo! e-mail account stating, less than a week before the 2010 general election, that Eckersley was suspending his campaign. The Complaint alleged that Eckersley's opponent, Billy Long, and Long's political consultant James Harris were involved in the activity, in part because Harris reacted positively to the false press release and re-circulated it via Twitter almost as soon as it was first disseminated, and further because Long was a "follower" of the fake Eckersley Twitter account.

The Commission found reason to believe that Unknown Respondents violated 2 U.S.C. § 441h(a), but took no action with respect to Long, Harris, and Long's authorized committee Billy Long for Congress and Ron Neville in his official capacity as treasurer (the "Committee"). See Commission Certification (July 26, 2011). The Commission authorized an investigation to

1 determine the identity of the Unknown Respondents who created and communicated from the
2 fraudulent e-mail address and Twitter account and to determine whether the Unknown
3 Respondents were agents or employees of Long or any other federal candidate.

4 The investigation has revealed that Binning was solely responsible for creating the
5 Yahoo! and Twitter accounts and sending the fraudulent press release, and that he was not an
6 agent or employee of Long or any federal candidate. Accordingly, there is no violation of
7 2 U.S.C. § 441h, which applies to fraudulent misrepresentation by a federal candidate or his
8 employee or agent. Therefore, we recommend the Commission find no reason to believe Long,
9 Harris, or the Committee, violated the Federal Election Campaign Act of 1971, as amended
10 (the "Act").

11 **III. FACTS**

12 The alleged fraudulent press release e-mail was sent from the address
13 Scott.Eckersley@yahoo.com on October 29, 2010, and was labeled a "PRESS ADVISORY"
14 intended "FOR IMMEDIATE RELEASE." The release announced that "Eckersley Suspends
15 Campaign for Congress and Withdraws Until Further Notice . . . [d]ue to personal matters."
16 See Compl., Ex. A. The release further included a purported quote from Eckersley stating that he
17 was "saddened" about his "decision," and thanking his supporters. *Id.* Based on the fraudulent
18 press release, at least one television station reported incorrectly that Eckersley was suspending
19 his campaign. See *id.*, Ex. B. Further, the fraudulent Twitter account @SeckersleyMO7 was
20 used to send "tweets misrepresenting Eckersley's positions on the issues." *Id.*, Ex. E.

21 The Complaint outlined the possible relationship between Binning and the Committee.
22 See *id.*, Ex. E. According to the complainant, it appeared that Binning was connected to Long

1 because Binning went to a small private high school with Long's eldest daughter and posted a
2 message on Long's Facebook page offering assistance for the general election. *Id.* at 2.
3 In addition, Long's consultant Harris allegedly tweeted about the fake press release on Twitter at
4 around the same time the media began reporting about it, although he later attempted to delete
5 the post, from which the Complainant inferred that the Committee may have had advance notice
6 or was otherwise complicit. *Id.* at 1-2. Further, Long himself was apparently a "follower" of
7 both the fake Eckersley and the LF Strategies Twitter accounts, further evidencing a possible
8 connection between the perpetrator and the Committee, according to the Complaint. *See id.* at 2,
9 Ex. E.

10 The investigation determined that Respondent Binning created the fraudulent accounts.
11 He also acknowledged that he sent both the fake press release e-mail via Yahoo! and wrote the
12 tweets critical of Eckersley on the fake Eckersley Twitter account. Binning claimed that his
13 actions were conducted independently and were based on his personal interest in the Long
14 campaign. Binning claimed that he had no contact with the Committee and has never worked for
15 Long or the Committee in any capacity. The Committee's disclosure reports indicate that the
16 Committee did not make any payments to either Binning or his company, LakeFront.

17 Binning said that he had gone to school with both of Long's daughters and is acquainted
18 with Long. He claimed that he let his emotions get the better of him because of this relationship
19 with the Long family and felt compelled to send the false communications because he was angry
20 about Eckersley's campaign attacks on Long. Binning stated that the last time he had any
21 contact with Long was at a wedding on Memorial Day weekend in 2010.

1 The Committee, in its initial response to the Complaint, included affidavits from Long
2 and Harris in which they stated under oath that they “had no involvement with the distribution of
3 the Press Release to the media and had no knowledge of the Press Release prior to its distribution
4 to the media.” *See* Comm. Resp. (Dec. 2, 2010). In supplemental affidavits, Long, Harris,
5 Committee Treasurer Neville, and others connected to the campaign submitted sworn affidavits
6 stating that, to the best of their personal knowledge, Binning did not “serve as an employee or
7 agent of the Committee or have any involvement with or authority to act on behalf of
8 Billy Long’s campaign for Congress.”¹ Supp. Resp., Attach. 1-4 (Aug. 20, 2012).

9 **IV. LEGAL ANALYSIS**

10 The Act prohibits federal candidates and their employees or agents from fraudulently
11 misrepresenting themselves, or any organization under their control, “as speaking or writing or
12 otherwise acting for or on behalf of any other candidate or political party . . . on a matter which
13 is damaging to such other candidate or political party.” 2 U.S.C. § 441h(a)(1); *see also*
14 11 C.F.R. § 110.16(a)(1). Under 2 U.S.C. § 441h(a)(2), it is also unlawful to “willfully and
15

¹ In addition to Billy Long, Ron Neville and James Harris, Respondents provided affidavits of Gordon Kinne and Jim Hutcheson. Kinne identifies himself as a “key advisor to Billy Long” and Hutcheson states that he has known Long “personally and professionally for a very long time” and that he “was involved from the beginning by participating in numerous conference calls and campaign meetings.” Both affiants state that, to the best of their knowledge, Patrick Binning did not “serve as an employee or agent of the Committee or have any involvement with or authority to act on behalf of Billy Long’s campaign for Congress.” *See* Supp. Resp., Attach. 1-4 (Aug. 20, 2012).

1 knowingly” participate in or conspire to participate in a plan or scheme to violate
2 subsection (a)(1). *See also* 11 C.F.R. § 110.16(a)(2).²

3 The investigation established that Binning sent the fake press release Yahoo! e-mail and
4 the tweets from the fake Twitter account. Those communications involved “a matter that is
5 damaging” to the Eckersley campaign because, among other things, at least one press
6 organization reported on the content of the release.

7 But a violation of Section 441h(a) is limited to fraudulent communications of *candidates*
8 *or their employees or agents*. 2 U.S.C. § 441h(a); 11 C.F.R. § 110.16(a)(1). There is no
9 evidence that Binning acted as an employee or agent of any candidate. Further, there is no
10 evidence that Long or the Committee had knowledge of Binning’s actions or communicated with
11 him in any way such that one could conclude there was a conspiracy to violate section 441h(a),
12 and the relevant members of Long and the Committee’s staff with personal knowledge have
13 provided sworn affidavits asserting the contrary. Therefore, the Commission finds no reason to
14 believe that Long, Harris, or the Committee violated the Act.

² Section 441h(a) encompasses, for example, a candidate who distributes letters containing statements damaging to an opponent and who fraudulently attributes them to the opponent. *Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 Fed. Reg. 76,962, 76,968 (Dec. 13, 2002). The Commission has determined that “a matter that is damaging” includes actions or spoken or written communications that are intended to suppress votes for the candidate or party who has been fraudulently misrepresented. *Id.* at 76,968–69. A violation of 2 U.S.C. § 441h(a) does not depend on whether the candidate or party who is fraudulently represented is elected and does not require proof of justifiable reliance or damages. *Id.* at 76,969.

12044322152

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Patrick J. Binning
LakeFront Strategies

MUR: 6427

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Neil P. Reiff, Counsel to Scott Eckersley for Congress. *See* 2 U.S.C. § 437g(a)(1).

II. BACKGROUND

This matter involves alleged fraudulent misrepresentation of campaign authority through the distribution of fake e-mails and postings from social media accounts fraudulently created in the name of congressional candidate Scott Eckersley. The perpetrator of the fraud, whose identity was unknown at the time the Complaint was filed, sent a fictitious press release from a fraudulent Yahoo! e-mail account stating, less than a week before the 2010 general election, that Eckersley was suspending his campaign. The Complaint included information indicating that political consultant Patrick Binning, along with Binning's firm, LakeFront Strategies ("LakeFront"), may have been involved in the activity because the IP address of some of the material could be traced to near where Binning lived and worked.

The Commission found reason to believe that Unknown Respondents violated 2 U.S.C. § 441h(a), but took no action with respect to Binning and LakeFront. *See* Commission Certification (July 26, 2011). The Commission authorized an investigation to determine the identity of the Unknown Respondents who created and communicated from the fraudulent e-mail

1 address and Twitter account and to determine whether the Unknown Respondents were agents or
2 employees of Long or any other federal candidate.

3 The investigation has revealed that Binning was solely responsible for creating the
4 Yahoo! and Twitter accounts and sending the fraudulent press release, and that he was not an
5 agent or employee of Long or any federal candidate. Accordingly, there is no violation of
6 2 U.S.C. § 441h, which applies to fraudulent misrepresentation by a federal candidate or his
7 employee or agent. Therefore, the Commission finds no reason to believe Binning or LakeFront
8 violated the Federal Election Campaign Act of 1971, as amended (the "Act").

9 **III. FACTS**

10 The alleged fraudulent press release e-mail was sent from the address
11 Scott.Eckersley@yahoo.com on October 29, 2010, and was labeled a "PRESS ADVISORY"
12 intended "FOR IMMEDIATE RELEASE." The release announced that "Eckersley Suspends
13 Campaign for Congress and Withdraws Until Further Notice . . . [d]ue to personal matters."
14 See Compl., Ex. A. The release further included a purported quote from Eckersley stating that he
15 was "saddened" about his "decision," and thanking his supporters. *Id.* Based on the fraudulent
16 press release, at least one television station reported incorrectly that Eckersley was suspending
17 his campaign. See *id.*, Ex. B. Further, the fraudulent Twitter account @SeckersleyMO7 was
18 used to send "tweets misrepresenting Eckersley's positions on the issues." *Id.*, Ex. E.

19 The Complaint outlined possible connections between Binning and LakeFront, and the
20 fake press release and Twitter account, as well as the possible relationship between Binning and
21 the Committee. See *id.*, Ex. E. First, Binning apparently worked or resided in an area near
22 where the complainant traced the IP address of the fake e-mail. See *id.*, Ex. C. Second, one of
23 the "followers" of the fake Twitter account was "@LFStrategies," which allegedly was the

1 Twitter account of LakeFront Strategies, and this “follower” posted at least one negative
2 comment about Eckersley. *See id.*, Ex. E. Third, Binning and LakeFront seemed to make efforts
3 soon after the incident was publicized to distance themselves from the activity — the LakeFront
4 website was disabled, as was the “LF Strategies” Twitter account. *See id.* at 2, Ex. E.
5 Fourth, according to the complainant, it appeared that Binning was connected to Long because
6 Binning went to a small private high school with Long’s eldest daughter and posted a message
7 on Long’s Facebook page offering assistance for the general election. *Id.* at 2. Fifth, Long’s
8 consultant Harris allegedly tweeted about the fake press release on Twitter at around the same
9 time the media began reporting about it, although he later attempted to delete the post, from
10 which the Complainant inferred that the Committee may have had advance notice or was
11 otherwise complicit. *Id.* at 1-2. Sixth, Long himself was apparently a “follower” of both the
12 fake Eckersley and the LF Strategies Twitter accounts, further evidencing a possible connection
13 between the perpetrator and the Committee, according to the Complaint. *See id.* at 2, Ex. E.

14 The investigation determined that Respondent Binning created the fraudulent Yahoo!
15 e-mail and Twitter accounts. Binning admitted that he created both accounts in a telephone
16 interview the Commission conducted in April 2012. He also acknowledged that he sent both the
17 fake press release e-mail via Yahoo! and wrote the tweets critical of Eckersley on the fake
18 Eckersley Twitter account.

19 Binning claimed that his actions were conducted independently and were based on his
20 personal interest in the Long campaign. Binning claimed that he had no contact with the
21 Committee and has never worked for Long or the Committee in any capacity. The Committee’s
22 disclosure reports indicate that the Committee did not make any payments to either Binning or
23 his company, LakeFront.

1 Binning said that he had gone to school with both of Long's daughters and is acquainted
2 with Long. He claimed that he let his emotions get the better of him because of this relationship
3 with the Long family and felt compelled to send the false communications because he was angry
4 about Eckersley's campaign attacks on Long. Binning stated that the last time he had any
5 contact with Long was at a wedding on Memorial Day weekend in 2010.

6 According to Binning, he initially sent approximately three to ten tweets, but then
7 escalated his actions by sending the fake press release e-mail. He said he decided to send the
8 press release because he became aware of negative advertisements that Eckersley was
9 broadcasting about Long, and he thought the fake press release would be more effective.

10 **IV. LEGAL ANALYSIS**

11 The Act prohibits federal candidates and their employees or agents from fraudulently
12 misrepresenting themselves, or any organization under their control, "as speaking or writing or
13 otherwise acting for or on behalf of any other candidate or political party . . . on a matter which
14 is damaging to such other candidate or political party." 2 U.S.C. § 441h(a)(1);
15 *see also* 11 C.F.R. § 110.16(a)(1). Under 2 U.S.C. § 441h(a)(2), it is also unlawful to "willfully
16 and knowingly" participate in or conspire to participate in a plan or scheme to violate
17 subsection (a)(1). *See also* 11 C.F.R. § 110.16(a)(2).¹

18 The investigation established that Binning sent the fake press release Yahoo! e-mail and
19 the tweets from the fake Twitter account. Those communications involved "a matter that is

¹ The Commission has determined that "a matter that is damaging" includes actions or spoken or written communications that are intended to suppress votes for the candidate or party who has been fraudulently misrepresented. Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,968-69 (Dec. 13, 2002). A violation of 2 U.S.C. § 441h(a) does not depend on whether the candidate or party who is fraudulently represented is elected and does not require proof of justifiable reliance or damages. *Id.* at 76,969.

1 damaging” to the Eckersley campaign because, among other things, at least one press
2 organization reported on the content of the release.

3 But a violation of Section 441h(a) is limited to fraudulent communications of *candidates*
4 *or their employees or agents*. 2 U.S.C. § 441h(a); 11 C.F.R. § 110.16(a)(1). Binning was not a
5 candidate and there is no evidence that Binning acted as an employee or agent of any candidate.
6 Further, there is ne evidence that Long or the Committee had knowledge of Binning’s actions or
7 communicated with him in any way such that one could conclude there was a conspiracy to
8 violate section 441h(a), and the relevant members of Long and the Committee’s staff with
9 personal knowledge have provided sworn affidavits asserting the contrary.

10 Accordingly, Binning’s activities did not violate the Act.² Therefore, the Commission
11 finds no reason to believe that Patrick Binning or LakeFront Strategies violated the Act.

² The Commission unanimously approved a legislative recommendation concerning fraudulent misrepresentation as set forth in 2 U.S.C. § 441h. The recommendation proposes that Congress should revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, the recommendation proposes that Congress remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party. *See 2012 Legislative Recommendations of the Federal Election Commission*, approved May 10, 2012.