



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 25 2012

Patrick J. Binning
LakeFront Strategies
1698 35th Street, NW
Washington, DC 20007

RE: MUR 6427
Patrick J. Binning and LakeFront Strategies

Dear Mr. Binning:

On November 15, 2010, the Federal Election Commission notified you and LakeFront Strategies of a complaint alleging violations of 2 U.S.C. § 441h(a). On July 19, 2011, the Commission found reason to believe that Unknown Respondents violated 2 U.S.C. § 441h(a) and commenced an investigation. On October 17, 2012, after completing its investigation, the Commission found that there is no reason to believe that you or LakeFront Strategies violated 2 U.S.C. § 441h(a). Accordingly, the Commission closed its 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 Analysis, which explains the Commission's findings, is enclosed for your information.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Patrick J. Binning
5 LakeFront Strategies
6
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MUR: 6427

8 **I. GENERATION OF MATTER**

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

11 **II. BACKGROUND**

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

21 The Commission found reason to believe that Unknown Respondents violated 2 U.S.C.
22 § 441h(a), but took no action with respect to Binning and LakeFront. *See* Commission
23 Certification (July 26, 2011). The Commission authorized an investigation to determine the
24 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

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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 no 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.