



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BY FIRST CLASS MAIL**

**SEP 11 2013**

David Rivera  
10925 NW 43rd Lane  
Doral, FL 33178

Re: MUR 6655  
David Rivera

Dear Mr. Rivera:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission received information suggesting that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On April 26, 2013, you were notified that the information was being reviewed by the Commission's Office of the General Counsel for possible enforcement action under 2 U.S.C. § 437g. On September 10, 2013, the Commission found reason to believe that you violated three provisions of the Act — specifically, 2 U.S.C. §§ 441a(a)(1)(A), 441f, and 441g — by making contributions in the name of another, making excessive individual contributions, and making excessive currency contributions. The Commission also found reason to believe that these violations were knowing and willful. I have enclosed the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be granted routinely. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

David Rivera  
MUR 6655  
Page 2

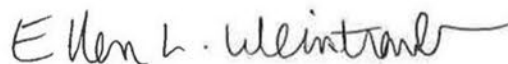
demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of your counsel and authorizing your counsel to receive any notifications and other communications from the Commission.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you have any questions, please contact Leonard Evans, the attorney assigned to this matter, at (202) 694-1650. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

On behalf of the Commission,



Ellen L. Weintraub  
Chair

Enclosures  
Factual and Legal Analysis  


1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of: )  
 3 )  
 4 David Rivera, ) MUR 6655  
 5 )  
 6 *Respondent.* )  
 7 \_\_\_\_\_ )

8 **FACTUAL AND LEGAL ANALYSIS**<sup>1</sup>

9 This matter concerns a scheme to fund a Congressional candidate's primary campaign  
 10 almost exclusively with contributions secretly funneled to him by co-conspirators. In 2012,  
 11 Justin Lamar Sternad ran in the Democratic primary to represent Florida's 26th district in the  
 12 U.S. House of Representatives. To pay for the campaign, Sternad received ten contributions —  
 13 mostly in cash and totaling \$81,486.20 — from one or more co-conspirators. To conceal these  
 14 contributions, Sternad falsely reported to the Commission that he was funding his campaign with  
 15 personal loans.

16 The available record — including the statement of facts supporting Sternad's guilty plea  
 17 in a criminal prosecution concerning this scheme as well as other information provided to the  
 18 Commission — provides substantial evidence of violations of the false-name contribution,  
 19 excessive-individual contribution, and excessive-currency contribution provisions of the Federal  
 20 Election Campaign Act of 1971, as amended (the "Act"). This evidence also tends to establish  
 21 that these violations were carried out with the knowing and willful involvement of David Rivera,  
 22 who has been identified as one of the co-conspirators. The Commission therefore finds reason to  
 23 believe that Rivera violated the Act.

---

<sup>1</sup> This matter was initiated based on a signed, sworn, and notarized complaint filed with the Commission by Roland Sanchez-Medina Jr. on October 3, 2012. *See* 2 U.S.C. § 437g(a)(1).

**I. FACTUAL SUMMARY**

On May 16, 2012, Sternad filed with the Commission a Statement of Candidacy, declaring his intention to seek office as a Democrat representing Florida's newly drawn 26th District in the U.S. House of Representatives.<sup>2</sup> He designated "Justin Sternad for Congress" as his principal campaign committee, but in July 2012 renamed his committee "Lamar Sternad for Congress" (collectively the "Sternad Committee").<sup>3</sup> Sternad was the treasurer of record for the Sternad Committee at all relevant times. The Democratic Party primary was held on August 14, 2012, and Sternad finished third, garnering approximately 11% of the vote.<sup>4</sup> The winner of that primary, Joe Garcia, went on to face Rivera, who was the incumbent Congressman, in the general election.<sup>5</sup>

The day after the primary, the *Miami Herald* reported that Sternad's campaign "may have violated federal campaign-finance laws after spending at least \$24,000 in cash on mailers without disclosing the source of the funds."<sup>6</sup> The article also reported that other candidates in the Democratic primary "claimed Sternad was a plant from the campaign of Republican Rep. David Rivera."<sup>7</sup> But Rivera and Sternad each reportedly "denied that he is a ringer."<sup>8</sup>

<sup>2</sup> See FEC Form 2, Statement of Candidacy (May 16, 2012), <http://query.nictusa.com/pdf/113/12030813113/12030813113.pdf#navpanes=0>. This was Sternad's second Statement of Candidacy. His first was filed November 8, 2011, before Florida completed its redistricting process, in which Sternad expressed his intention to seek office in the 25th Congressional District. See FEC Form 2, Statement of Candidacy (Nov. 8, 2011), <http://images.nictusa.com/pdf/610/11030684610/11030684610.pdf>.

<sup>3</sup> See FEC Form 2, Statement of Candidacy (July 14, 2012), <http://query.nictusa.com/pdf/121/12030851121/12030851121.pdf#navpanes=0>.

<sup>4</sup> See Compl., Ex. A, at 3 (Aug. 23, 2012).

<sup>5</sup> Garcia later defeated Rivera in the general election.

<sup>6</sup> Compl., Ex. A.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

1 A week later, on August 22, 2012, the *Miami Herald* reported that federal and local law  
2 enforcement agencies were investigating the Sternad campaign's finances: "Sternad spent about  
3 \$43,000 in unreported cash and checks on mail services, a witness told the *Herald* and  
4 authorities. Some of the money was stuffed in envelopes bulging with \$100 bills."<sup>9</sup> The article  
5 also reported that "Rivera, investigators suspect, was behind the sophisticated mail campaign run  
6 by Sternad, who was an unknown political newcomer and hotel night auditor."<sup>10</sup>

7 **A. Complaint**

8 On October 3, 2012, the Commission received a Complaint alleging that Sternad violated  
9 the Act by making at least \$24,000 in expenditures to a direct mail vendor using cash obtained  
10 from illegal campaign contributions and then failed to report either the contributions or the  
11 expenditures.<sup>11</sup> In support of the allegations, the Complainant enclosed as exhibits the August 15  
12 and August 22 *Miami Herald* articles described above.<sup>12</sup>

13 In April 2013, the Commission received information indicating that Sternad had entered a  
14 guilty plea on March 15, 2013, to criminal charges related to the misconduct outlined in the  
15 Complaint.<sup>13</sup> The Factual Basis supporting Sternad's guilty plea describes how Sternad and one

---

<sup>9</sup> Compl., Ex. B.

<sup>10</sup> *Id.*

<sup>11</sup> See Compl. at 1.

<sup>12</sup> *Id.*

<sup>13</sup> In *United States v. Justin Lamar Sternad*, Case No. 1:13-CR-20108 (S.D. Fla.), Sternad pleaded guilty to conspiracy in violation of 18 U.S.C. § 371, false statements in violation of 18 U.S.C. § 1001, and accepting excessive contributions in violation of 2 U.S.C. § 441a(f).

1 or more co-conspirators engaged in a conspiracy to provide prohibited contributions to Sternad's  
2 campaign and to conceal the true source of those funds.<sup>14</sup>

3 **B. Scheme to Secretly Finance Sternad's Campaign**

4 According to the Factual Basis, the scheme began when Sternad was approached by a co-  
5 conspirator.<sup>15</sup> He and the co-conspirator spoke on or about April 24, 2012, about "providing  
6 funding for Sternad's campaign."<sup>16</sup> During the discussion, the co-conspirator offered to secretly  
7 provide contributions to Sternad's campaign.<sup>17</sup> Sternad agreed.<sup>18</sup>

8 The Factual Basis details ten payments totaling \$81,486.20 made to Sternad, the Sternad  
9 Committee, or vendors providing services for the Sternad Committee.<sup>19</sup> As shown in the  
10 following chart, these transactions occurred between May and August 2012, and, of the ten, nine  
11 were in cash — in amounts greater than \$100 — while only one was in the form of a check:

---

<sup>14</sup> Factual Basis of the Plea of Guilty, *United States v. Justin Lamar Sternad*, No. 13-20108-CR (S.D. Fla. Mar. 15, 2013), ECF No. 13 (hereinafter "Factual Basis").

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 4-7.

Approximate Date (all in 2012)	Contribution Amount	Form of Payment	Contribution Type	Means and Purpose
May 25	\$500	Currency	Direct	Co-conspirator hand-delivered to Sternad and \$300 of the amount was later deposited into the Sternad Committee account
June 7	\$5,000	Currency	Direct	Deposited into Sternad Committee account
June 8	\$5,500	Currency	Direct	Co-conspirator deposited into Sternad Committee account; June 7 and 8 contributions, totaling \$10,500, apparently covered the cost of the filing fee, because on June 8, a check in the amount of \$10,440, drawn on the Sternad Committee account, was sent to the Florida Division of Elections with the notation "Qualifying Fee 2012"
July 2	\$1,060	Currency	Direct	Deposited into Sternad's personal account; Apparently covered the cost of a rental car, because on that same date, Sternad rented a car to use for campaigning.
July 14-15	\$2,600	Currency	In-Kind	Co-conspirator hand-delivered to graphic designer to develop Sternad campaign flyers
July 23	\$10,000	Currency	In-Kind	Co-conspirator hand-delivered to Inkpressions, Inc., d/b/a Expert Printing & Graphics ("Expert Printing"), for printing services related to Sternad campaign flyers
July 17-24	\$15,901.35	Currency	In-Kind	Delivered to Rapid Mail & Computer Service, Inc. ("Rapid Mail") for mailing services related to Sternad campaign flyers
August 2	\$5,000	Currency	In-Kind	Co-conspirator provided to Expert Printing for printing services related to Sternad campaign flyers
August 2-8	\$22,100	Currency	In-Kind	Delivered to Rapid Mail for mailing services related to Sternad campaign flyers
August 9	\$13,824.85	Check (payable to Expert Printing)	In-Kind	Co-conspirator hand-delivered to Expert Printing; On same date, at the request of a co-conspirator, Expert Printing issued a check for \$9,000 to Rapid Mail, and that check then was delivered to Rapid Mail; These payments apparently covered the vendors' performance of printing and mailing services related to Sternad campaign flyers
<b>Total</b>	<b>\$81,486.20</b>			

- 1 To conceal the scheme and the true sources of funds for the Sternad campaign, the  
2 Sternad Committee omitted all of the contributions listed above from its disclosure reports filed  
3 with the Commission.<sup>20</sup> Instead, the Sternad Committee falsely reported that Sternad made

<sup>20</sup> *Id.* at 5-7.



1 personal loans to his campaign totaling \$63,801.70.<sup>21</sup> Aside from these amounts reported as  
2 personal loans, Sternad reported receiving only \$505 in contributions during the 2011-2012  
3 cycle.<sup>22</sup>

#### 4 C. Sternad's Co-conspirators

5 While the Factual Basis does not identify Sternad's co-conspirators, Sternad named  
6 Rivera as one of the co-conspirators in his supplemental response.<sup>23</sup> This is consistent with the  
7 *Miami Herald* articles attached to the Complaint, which reported on claims that Sternad was a  
8 Rivera "plant" and that law enforcement officials suspected Rivera was the source of funds for  
9 Sternad's mailers.<sup>24</sup>

10 In light of the allegations in the court filings and Sternad's naming of Rivera as a co-  
11 conspirator, the Commission notified him of the allegations and provided a copy of the Factual  
12 Basis.<sup>25</sup> Despite the notification, Rivera did not submit a response.

## 13 II. LEGAL ANALYSIS

14 Sternad has admitted that he and his co-conspirators participated in a plan to conceal the  
15 sources of funds for Sternad's campaign, and by doing so, to circumvent contribution limits  
16 under the Act. Sternad and his co-conspirators hid the true sources of funds for Sternad's  
17 campaign by making contributions in the name of another and filing false disclosure reports with

---

<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> See FEC Form 3, Report of Receipts & Disbursements (Jan. 25, 2012), <http://images.nictusa.com/pdf/543/12030713543/12030713543.pdf> (showing a single \$500 contribution); See FEC Form 3, Report of Receipts & Disbursements (Apr. 17, 2012), <http://images.nictusa.com/pdf/557/12030782557/12030782557.pdf> (showing a single \$5 contribution).

<sup>23</sup> Sternad Supp. Resp. at 2.

<sup>24</sup> See Compl., Exs. A and B.

<sup>25</sup> See Letter from Leonard O. Evans III, Att'y, FEC, to David Rivera (Apr. 26, 2013).



the Commission. And under this cloak of secrecy, Sternad and his co-conspirators exceeded the Act's individual and currency contribution limits. The result of this scheme was a candidacy funded almost exclusively by hidden contributions.

#### A. Sternad's Co-conspirators Made False-name Contributions

The Act and Commission regulations prohibit a person from making a contribution in the name of another; knowingly permitting his or her name to be used by another to effect such a contribution; or knowingly assisting any person in making such a contribution.<sup>26</sup> This includes "those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another."<sup>27</sup> Thus, schemes to conceal the true source of campaign contributions by funneling funds through straw donors or using false names are prohibited.<sup>28</sup>

The scheme in this case presents a plain example of false-name contributions. Sternad's co-conspirators — one of whom has been identified as Rivera — made direct and in-kind

<sup>26</sup> 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(i)-(iii). A "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A). Since under the Act it is a contribution to give money to a committee so that it can in turn pay vendors to perform campaign-related services, such as mail services, it would be an in-kind contribution under the Act for a third party to pay those vendors directly for those same services. *See, e.g.*, MUR 5408 (Sharpton) (2009) (accepting conciliation agreement with candidate and committee after determining that third party's direct payments to campaign vendors and consultants were in-kind contributions); *see also generally* MUR 6718 (Ensign) (2013) (accepting conciliation agreement with candidate and committees after determining that third party's direct payment of severance to committees' employee was an in-kind contribution). Applying those principles here, all the payments at issue were contributions under the Act.

<sup>27</sup> Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 35,105 (Aug. 17, 1989) (explanation and justification).

<sup>28</sup> *See, e.g.*, *United States v. Boender*, 649 F.3d 650, 661 (7th Cir. 2011) (concluding § 441f "unambiguously criminalized both straw man and false name contributions"); *United States v. O'Donnell*, 608 F.3d 546 (9th Cir. 2010) (same); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (concluding "[p]roscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core of the [Buckley] Court's analysis" and therefore upholding § 441f); *see also United States v. Danielczyk*, 788 F. Supp. 2d 472, 478-85 (E.D. Va. 2011), *rev'd on other grounds*, 683 F.3d 611 (4th Cir. 2012) (Section 441f prohibits "pass-through contributions"); *United States v. Hsu*, 643 F. Supp. 2d 574, 576 (S.D.N.Y. 2009) (evidence sufficient to support conviction in "unlawful straw donor scheme").

contributions to the Sternad campaign totaling \$81,486.20. The Commission therefore finds reason to believe Rivera violated the Act by falsely making contributions in Sternad's name.<sup>29</sup>

**B. Sternad's Co-conspirators Made Excessive Individual Contributions**

Under the Act, no person may make a contribution to any candidate and his or her authorized political committee, such as the Sternad Committee, exceeding \$2,000 (adjusted for inflation).<sup>30</sup> During the 2011-2012 election cycle, the limit on these individual contributions to candidates was \$2,500 per person.<sup>31</sup> Just as a person may not make excessive contributions, the Act prohibits committees from knowingly accepting them.<sup>32</sup>

Here, as Sternad now has admitted, he and the Sternad Committee knowingly accepted excessive contributions from his co-conspirators.<sup>33</sup> Based on Sternad's admission and the identification of Rivera as one of the co-conspirators, the Commission finds reason to believe that Rivera made excessive contributions to Sternad and the Sternad Committee.

**C. Sternad's Co-conspirators Made Excessive Currency Contributions**

The Act and Commission regulations prohibit contributors from using currency to make contributions of more than \$100 to a candidate, or for the benefit of a candidate, campaigning for federal office.<sup>34</sup> Here, as part of their conspiracy to conceal the sources of funds for Sternad's

<sup>29</sup> See 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(2)(ii) ("Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source" is an example of a section 441f violation).

<sup>30</sup> 2 U.S.C. § 441a(a)(1)(A).

<sup>31</sup> See FEC News Release, *FEC Announces 2011-2012 Campaign Cycle Contribution Limits* (Feb. 3, 2011), <http://www.fec.gov/press/20110203newlimits.shtml>.

<sup>32</sup> 2 U.S.C. § 441a(f).

<sup>33</sup> See Factual Basis at 8.

<sup>34</sup> 2 U.S.C. § 441g; 11 C.F.R. § 110.4(c)(1).

1 campaign, Sternad's co-conspirators — one of whom is believed to be Rivera — made nine cash  
2 contributions, each of which exceeded the \$100 cash-contribution limit and totaled \$67,661.35.  
3 Four of these cash contributions were made directly to Sternad, while the other five were given  
4 to vendors for the benefit of Sternad's campaign. The Commission therefore finds reason to  
5 believe Rivera made excessive currency contributions.

#### 6 **D. The Misconduct Was Knowing and Willful**

7 A violation of the Act is knowing and willful if the "acts were committed with full  
8 knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>35</sup> But  
9 this does not require proving knowledge of the specific statute or regulation the respondent  
10 allegedly violated.<sup>36</sup> Instead, it is sufficient to demonstrate that a respondent "acted voluntarily  
11 and was aware that his conduct was unlawful."<sup>37</sup> This may be shown by circumstantial evidence  
12 from which the respondents' unlawful intent reasonably may be inferred.<sup>38</sup> For example, an  
13 awareness that an action is prohibited may be inferred "from the elaborate scheme for disguising  
14 . . . political contributions . . . ."<sup>39</sup>

<sup>35</sup> 122 Cong. Rec. H3778 (daily ed. May 3, 1976) (statement of Rep. Hays), *reprinted in* FEC, *Legis. History of Fed. Election Campaign Act Amends. of 1976*, at 1078 (1977).

<sup>36</sup> *United States v. Danielczyk*, \_\_\_ F. Supp. 2d \_\_\_, 2013 WL 124119, \*5 (E.D. Va. Jan. 9, 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>37</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

<sup>38</sup> *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (citing *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

<sup>39</sup> *Hopkins*, 916 F.2d at 214-15. As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1           Sternad has pled guilty in federal court to conspiracy, filing false statements, and  
2   accepting excessive contributions. The Factual Basis sets forth the agreement he made with the  
3   co-conspirators to conceal the sources of funds for his campaign. According to the Factual  
4   Basis, the co-conspirators concealed the source and amount of their contributions — specifically,  
5   using cash and third-party checks frequently hand-delivered by a go-between directly to third  
6   parties. Therefore, because Rivera has been identified as one of those co-conspirators, the  
7   Commission finds reason to believe that his misconduct was knowing and willful.

### 8   **III.   CONCLUSION**

9           Because there is substantial credible evidence supporting the Complainant's allegations  
10   of serious violations, the Commission finds reason to believe that Rivera committed knowing  
11   and willful violations of the excessive individual contribution, excessive currency contribution,  
12   and false-name contribution provisions of the Act and Commission regulations.