

BEFORE THE  
FEDERAL ELECTION COMMISSION

In the Matter of:

**David Richardson for Congress**

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2019 AUG 15 PM 1:56

OFFICE OF  
GENERAL COUNSEL

**COMPLAINT**

David Richardson for Congress (the “Richardson Campaign”) violated the Federal Election Campaign Act by failing to include a disclaimer statement identifying that it paid for a negative communication attacking his opponent in a text message targeted at Democratic primary voters in Florida’s 27<sup>th</sup> Congressional District shortly before the election.

**Legal Standard**

1. This complaint is filed with the Federal Election Commission ("FEC") in accordance with the provisions of 52 U.S.C. §30109(a)(1) in the belief that the Richardson Campaign violated the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. §§ 30101-45 (the "Act"), and Federal Election Commission regulations, 11 CFR. §§113 *et. seq.*
2. Under Federal law, a disclaimer statement is required on public communications to identify the committee that paid for the communication.<sup>1</sup>
3. If a candidate, an authorized committee of a candidate, or an agent of either pays for and authorizes the communication, then the disclaimer must state that the communication “has been paid for by the authorized political committee.”<sup>2</sup>
4. The U.S. Supreme Court held that disclaimers “provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking,” and stated that identifying the sources of advertising enables people “to evaluate the arguments to which they are being subjected.”<sup>3</sup>
5. Every disclaimer “must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity” of the communication’s sponsor.<sup>4</sup>
6. FEC regulations provide an exemption from the disclaimer requirement for a very limited universe of communications under the impracticable or small items exception.<sup>5</sup>

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<sup>1</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)

<sup>2</sup> 11 CFR § 110.11(b)(1); *see also* 5 U.S.C. 0120(a)(1)

<sup>3</sup> *Citizens United v. FEC*, 558 U.S. 310, at 368.

<sup>4</sup> 11 CFR § 110.11(c)(1)

<sup>5</sup> 11 CFR § 110.11(f)(1)

7. In 2002, the FEC issued an advisory opinion applying the small items disclaimer exception to a new technology - character limited “short message service,” or SMS, communications distributed through a non-internet-based wireless telecommunications network.<sup>6</sup>
8. At the time the FEC issued the Target Wireless advisory opinion, technology limited SMS content to 160 characters per message.<sup>7</sup>
9. The FEC has not exempted any disclaimers under the small items exception in the 15 years since it issued the Target Wireless advisory opinion.
10. In 2018, the SMS technology has changed significantly. Twilio, a San Francisco based company that provides text messaging services for campaign clients and others, explains on its website: “The character limit for a single SMS message is 160 characters, however most modern phones and networks support concatenation and segment and rebuild messages up to 1600 characters.”<sup>8</sup>

### **Statement of Facts**

11. The Richardson Campaign is the authorized committee of David Richardson, a candidate in the August 2018 primary election in Florida’s 27<sup>th</sup> Congressional District.
12. On or about August 10, 2018 at 11:20 a.m., the Richardson Campaign sent a text message communication 228 characters in length (the “Richardson Communication”).<sup>9</sup> The 228-character text appears as a single message. *See* Exhibit 1.
13. The Richardson Communication negatively attacked Donna Shalala, one of his opponents in the Democratic primary election. It also included a link to a newspaper article and a Facebook page.
14. The Richardson Communication, however, did not include the required “paid for by” disclaimer statement denying voters adequate notice of the identity of who sent them a negative, attack communication on their personal phones shortly before the election.
15. The Facebook page linked to in the Richardson Communication has one follower – Sam Powers, the campaign manager of the Richardson Campaign.<sup>10</sup>

### **Legal Analysis**

16. The Richardson Campaign failed to include the “paid for by” disclaimer on its negative, attack communication as required under the Act and FEC regulations at 2 U.S.C. § 30120(a) and 11 CFR. § 110.11(a).

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<sup>6</sup> FEC Advisory Opinion 2002-09 (Target Wireless)

<sup>7</sup> AO 2002-09

<sup>8</sup> <https://www.twilio.com/docs/glossary/what-sms-character-limit>

<sup>9</sup> Exhibit 1, Text Message

<sup>10</sup> Exhibit 2

- 17. The small items exception at 11 CFR § 110.11(f)(1) used by the FEC in its 2002 advisory opinion for text message technology limited to 160 characters does not apply in this matter.
- 18. First, the Richardson Communication is 228 characters in length and appears as a single message. It is significantly larger than the 160 character limit that was approved by the FEC for the small item exception fifteen years ago.
- 19. Second, the SMS technology in 2018 rebuilds text messages up to 1,600 characters in length to appear as a single message when received.
- 20. The required "Paid for by David Richardson for Congress" disclaimer statement would include only 41 additional characters making the negative message plus the disclaimer just 269 characters in length -- well within the 1,600 limit for a rebuilt message.

**Conclusion**

The Richardson Campaign used an anonymous text to attack his opponent, denying voters adequate notice that David Richardson's campaign was responsible for the negative message that appeared on their phones, in violation of Federal law and FEC regulations shortly before the election.

I respectfully request that the Commission find reason to believe that David Richardson for Congress violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) when it failed to include the required paid-for-by disclaimer on its negative communication.

Respectfully submitted:

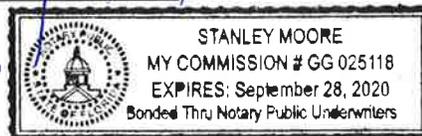
/s/ Sarah Eskra  
 By: Sarah f. skra  
 Address:  
Miami, FL 33143

State of Florida )  
 County of MIAMI DADE )

Signed and sworn to before me this 14<sup>th</sup> day of AUGUST 2018.

Stanley Moore  
 Notary Public

My commission expires: 9/28/2020



# Exhibit 2



Text Message  
Today 11:20 AM

Donna Shalala sided with big business over starving janitorial workers while at UM. Since Shalala refused to stand with workers why should we ever stand with her? We deserve better! <https://nyti.ms/2LV120k>  
<https://bit.ly/2KHvk1l>



Text Message



# Exhibit 2

The Real Donna Shalala

Secure https://www.facebook.com/The-Real-Donna-Shalala-1018487688322218/

The Real Donna Shalala

Like Follow Share

Send Message

No Rating Yet

Community See All

- Invite your friends to like this Page
- 1 person likes this
- 1 person follows this
- Sam Powers likes this

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Chat (49)

The Real Donna Shalala updated their profile picture. 20 hrs

The Real Donna Shalala

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