

Miller & Chevalier

Andrew D. Herman
 Member
 (202) 626-5869
 aherman@milchev.com

September 7, 2018

BY HAND DELIVERY

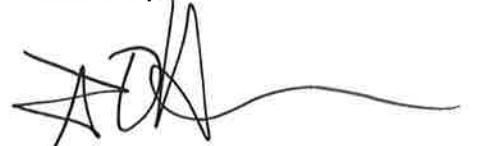
Federal Election Commission
 Office of Complaints Examination & Legal Administration
 Attn: Donna Rawls, Paralegal
 1050 First Street, N.E.
 Washington, D.C. 20463

Re: MUR 7478

Dear Ms. Rawls:

I represent David Richardson for Congress (the “Campaign”) in the above-referenced Matter Under Review. Enclosed please find the Campaign’s response to the Complaint filed on August 14, 2018. The Designation of Counsel form is not enclosed and will be forthcoming from the Campaign.

Sincerely,



Andrew D. Herman
Counsel to Susie Lee for Congress

Enclosure

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 OFFICE OF
 GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

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) MUR 7478

RESPONSE OF DAVID RICHARDSON FOR CONGRESS TO THE COMPLAINT

By and through the undersigned counsel, David Richardson for Congress (the “Campaign” or “Respondent”) responds to the Complaint in the above-captioned Matter Under Review (“MUR”). Respondent respectfully requests that the Commission find it has no reason to believe a violation has occurred, dismiss the Complaint, and close the file.

I. BACKGROUND

David Richardson was a congressional candidate in the Democratic primary election for Florida's 27th District. On August 14, 2018, the instant Complaint was filed alleging with no factual basis that the Campaign sent a text message about Donna Shalala, another Democratic candidate in Florida's 27th, without including a disclaimer. Without any information other than who followed the Facebook page linked in the text message, the Complaint alleged that the Campaign created and sent the text referenced in the Complaint. In fact, the Campaign did not create or send the text message at issue.

Further, according to the Complainant’s public profile she is a former intern for Donna Shalala for Congress (the “Shalala Campaign”). *See Exhibit A* (LinkedIn Profile, last accessed August 18, 2018). The Complainant failed to disclose her employment by the Shalala Campaign in her Complaint. Beyond the Complaint’s factual deficiencies, this undisclosed connection to the Shalala Campaign demonstrates that the Complaint is a transparent political attack by one candidate on another, with which the Federal Election Commission should not concern itself.

II. ANALYSIS

The Complaint is legally deficient and must be dismissed because it fails to recite any facts that constitute a violation of the Act or Commission regulations. Under longstanding Commission precedent, speculation by a complainant is insufficient to establish reason to believe a violation occurred. MUR 4960 (Hillary Rodham Clinton for Senate), Statement of Reasons at 3 (“Purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the FECA has occurred.”). And filing a Complaint based on speculation cannot shift the burden to a respondent. MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (finding that “[a] mere conclusory accusation without any supporting evidence does not shift the burden of proof to the respondents.”).

Here, the Complaint makes a conclusory allegation that the Campaign sent the text message, yet fails to assert any facts to support the statement. The Complaint instead bases its allegations on the text message’s link to a Facebook page followed by a member of the Campaign; this is nothing more than an attempt to shift the burden to the Respondents through conjecture. Thus, the Complaint’s factual deficiencies show that the former intern for the Shalala Campaign has improperly filed the Complaint based on a politically convenient hunch, which cannot serve as the basis for an investigation by the Commission. *See FEC v. Machinists Non-partisan Political Action League*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations”). The Commission should dismiss the Complaint on this ground alone.

And contrary to the Complaint’s allegations, the Campaign has no connection to the text message at issue. S. Powers Aff. ¶ 5. As explained by the Mr. Powers, the Campaign Manager of

David Richardson for Congress, no one at the Campaign created or sent the text message, nor does the Campaign know who created or sent the text message. S. Powers Aff. ¶ 5. Because the Richardson Campaign was not involved in the text message at issue, the Commission should dismiss the Complaint.

What's more, the Commission has made clear that text messages are "small items" that do not require a disclaimer under 11 C.F.R. 110(f)(1)(i). *See* Advisory Opinion 2002-09 (Target Wireless) at 4 (applying the small items exception to text messages); *cf.* Advisory Opinion 2010-19 (Google) at 2 (finding, "under the circumstances," the lack of disclaimer on a limited-character text advertisements did not violate the regulations). As the Commission is well aware, it is currently undergoing rulemaking to address internet communication disclaimers such as the one at issue, and has not issued advisory opinions in the two most recent requests regarding small internet advertisements. *See* Advisory Opinion Request 2011-09 (Facebook) (zero-to-160 text character ads with thumbnail size images); Advisory Opinion Request 2013-18 (Revolution Messaging) (mobile banner advertisements). Given the current regulatory framework and rulemaking status, the Commission has no basis to find a violation for a text message sent without a disclaimer.

III. CONCLUSION

The facts and law stated in the Complaint are erroneous. The Richardson Campaign respectfully requests that the Commission find it has no reason to believe a violation occurred, dismiss the Complaint and close the file.

Respectfully,



Andrew D. Herman
Sarah Dowd
Miller & Chevalier
900 Sixteenth Street Northwest
Washington, D.C. 20006

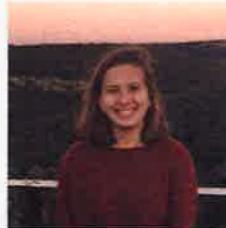
Counsel for David Richardson for Congress

Exhibit A

Secure | <https://www.linkedin.com/in/sarah-eskra-6aa697135>

Apps MRM Mail WaPo WL Hein FEC Casepoint 360 B BL Cal FPPC IRS 527s Cal Access

LinkedIn Sign in Join now



Sarah Eskra
Student at Davidson College
Miami, Florida | Public Policy

160 connections

Previous: Donna Shalala for Congress, Office of the Deputy Mayor for Health and Human Services, Davidson College French & Francophone Studies Department

Education: Davidson College

Experience

Political & Finance Intern
Donna Shalala for Congress
May 2018 – August 2018 (4 months) | Miami/Fort Lauderdale Area

- Acted as a liaison between the campaign and third-party vendors, organizations, and officials to help oversee events from planning, set up, and execution, and finding community events for the Secretary to attend
- Assisted in the campaign finance process by performing donor research using online databases (such as NGP and RevUp), attending and planning fundraisers, and tracking donations
- Helped in other departments as needed to include policy research, phone banking, canvassing, and social media

Age-Friendly Intern
Office of the Deputy Mayor for Health and Human Services
May 2017 – August 2017 (4 months) | Washington D.C. Metro Area

- Researched, wrote, and produced the first draft of Age-Friendly DC's report to the World Health Organization, in collaboration with other team members
- Analyzed survey data to determine where Age-Friendly DC might best focus its resources to address the city's inequities
- Promoted Age-Friendly DC by presenting information to and interacting with older residents at citywide events

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CEO and founder of Eulerpe Corp



Samantha Score
Associate Account Executive at Frankel Media Group



Logan Valentina Smith
CEO, Owner at Render Humble Cleaning Services



Mariana De La Garza
Outreach Recruitment Counselor at Santa Monica College



Divyansh Agarwal
MD-PhD Student, University of Pennsylvania



Lemzel Johnson, MA, CC
Author / Motivational Speaker & Trainer / Goal Coach / Survivor

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BEFORE THE FEDERAL ELECTION COMMISSION

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)
MUR ____

AFFIDAVIT OF SAMUEL POWERS

I, Samuel Powers, declare under penalty of perjury, as follows:

1. I am over eighteen years old, and I am competent to make this affidavit. Unless otherwise stated herein, the facts set forth below are based on my personal knowledge.

2. I am submitting this affidavit in support of the Response of David Richardson for Congress to the Complaint in the above-captioned Matter Under Review, filed on August 21, 2018.

3. I serve as the Campaign Manager for David Richardson for Congress (the “Richardson Campaign”), the Principal Campaign Committee for David Richardson, a congressional candidate in the Democratic primary election for Florida’s 27th District.

4. The Complaint alleges that the Richardson Campaign sent a text message on August 10, 2018, at 11:20 a.m. stating “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/2KHvkll>”

5. In my role as Campaign Manager, I oversee digital communications made by the Richardson Campaign. I am responsible for authorizing these types of communications and no other individual may make such a communication without my authorization. The Richardson

Campaign did not create or send this text message; the Richardson Campaign did not have foreknowledge about the communication; and the Richardson Campaign does not know the identity of the entity or individual responsible for the communication.

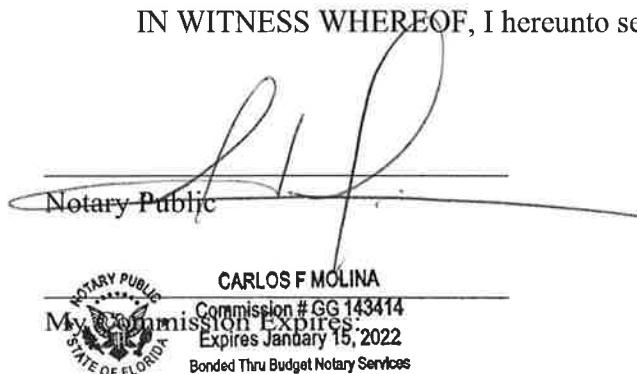
I hereby swear and attest, under the penalty of perjury, that the foregoing is true and correct based on my personal knowledge. I understand that false statements herein are subject to the penalties of 18 U.S.C. § 1621 (relating to falsification to authorities under penalty of perjury).



Samuel Powers

On this, the 24 day of August, 2018, before me, a notary public, the undersigned officer, personally appeared Samuel Powers, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

CARLOS F MOLINA
Commission # GG 143414
My Commission Expires:
Expires January 15, 2022
Bonded Thru Budget Notary Services

