



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 25, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sarah Eskra

Miami, FL 33143

RE: MUR 7478
David Richardson for Congress and Brian
Foucart in his official capacity as
treasurer

Dear Ms. Eskra:

On June 22, 2021, the Federal Election Commission reviewed the allegations in your complaint dated August 15, 2018, and found that on the basis of the information provided in your complaint, and information provided by the respondent, there is no reason to believe David Richardson for Congress and Brian Foucart in his official capacity as treasurer, violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a). Accordingly, on June 22, 2021, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Factual and Legal Analysis, which more fully explains the Commission's finding is enclosed.

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* 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa Stevenson
Acting General Counsel

BY: Lynn Tran
Lynn Y. Tran
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: David Richardson for Congress and Brian Foucart in his official capacity as treasurer MUR 7478

I. INTRODUCTION

10 The Complaint in this matter alleges that David Richardson for Congress and Brian
11 Foucart in his official capacity as treasurer (the “Committee”), violated 52 U.S.C. § 30120(a) and
12 11 C.F.R. § 110.11(a) by failing to include a disclaimer on a text message sent by the
13 Committee. The Committee denies creating the text message.

14 Based on the available information, the Commission finds no reason to believe that David
15 Richardson for Congress and Brian Foucart in his official capacity as treasurer violated
16 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a) by failing to include a “paid for by” disclaimer
17 in the text message.

18 II. FACTUAL AND LEGAL ANALYSIS

A. Facts

20 David Richardson for Congress is the authorized committee of David Richardson, who
21 was a candidate in the primary election in Florida's 27th Congressional District on August 28,
22 2018. Donna Shalala was another candidate in that election.¹

23 The Complaint alleges that on or about August 10, 2018, at 11:20 a.m., the Committee
24 sent a text message containing 228 characters (the “Communication”). According to the
25 Complaint, the Communication appears as a single message:

¹ Shalala won the Democratic primary and the general election.

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

5
6 The Communication linked to two other webpages: a *New York Times* article² and a Facebook
7 page with the name “The Real Donna Shalala.” The Communication did not include any “paid
8 for by” disclaimer statement. According to the Complaint, the Facebook page had only one
9 follower, Sam Powers, whom the Complaint alleges was the manager of the Richardson
10 campaign at the time.³

11 A Facebook ad on “The Real Donna Shalala” Facebook page⁴ contained the same
12 language as the Communication and it also linked to the same *New York Times* article:

² Abby Goodnough and Steven Greenhouse, *Anger Rises on Both Sides of Strike at University of Miami*, N.Y. TIMES, Apr. 18, 2006, at A18.

³ See Compl. at Ex. 2. A screenshot of the Facebook page is attached as Exhibit 2 of the Complaint.

⁴ Although “The Real Donna Shalala” Facebook page is no longer available, a review of the Facebook political ad archive shows that the ad was sponsored and paid for by Defeat the Incumbent, an independent-expenditure- only political committee registered with the Commission. See Defeat the Incumbent Super PAC, Statement of Organization (May 26, 2018),

<http://docquery.fec.gov/pdf/241/201805269113618241/201805269113618241.pdf>.



The Real Donna Shalala
 Sponsored • Paid for by Defeat the Incumbent

Donna Shalala sided with big business over starving janitorial workers, who were making less than \$20k a year, while at UM. The UM Chaplain said, "(Shalala)'s clearly been an enemy of the working poor." Some called Shalala a union buster! Since Shalala refused to stand with workers why should we ever stand with her? We deserve better! <https://nyti.ms/2LV120k>



Anger Rises on Both Sides of Strike at University of Miami
 Six janitors and five students are on a hunger strike, with several asserting that the university's president, Donna Shalala, was a union-buster.

NYTIMES.COM

1

2 Defeat the Incumbent spent approximately \$800 to \$2,500 to run six versions of this ad from

3 August 12-27, 2018,⁵ and reported that it spent a total of \$42,500 in August 2018 for “online

4 advertising” to oppose Shalala.⁶

5 The Committee denies that it had any part in the creation or dissemination of the

6 Communication.⁷ The Committee provides a sworn affidavit from Powers, the campaign

⁵ Facebook Ad Library,
https://www.facebook.com/ads/library/?active_status=inactive&ad_type=political_and_issue_ads&country=US&q=defeat%20the%20incumbent%20shalala%20

⁶ Defeat the Incumbent 24-Hour Notice (Aug. 15, 2018).

⁷ Resp. at 2.

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1 manager, stating that neither the Committee nor anyone associated with the Committee had any
 2 part in the creation or dissemination of the Communication or knows who created or sent it.⁸
 3 Powers also attests that he was the only person empowered to authorize a message like the
 4 Communication.⁹ The available information does not contradict the Respondent's denials.

5 **B. Analysis**

6 Regardless of whether the Communication required a disclaimer, there is no information
 7 to support the Complaint's central allegation that the Committee or someone affiliated with it
 8 created or disseminated the Communication.¹⁰ The Complaint relies solely on the fact that
 9 Powers, Richardson's campaign manager, "liked" the Facebook page linked to the
 10 Communication. The Committee, however, specifically denies creating, disseminating, or
 11 authorizing the Communication, or knowing who did, and submits Powers's sworn statement to
 12 that effect.¹¹

13 Accordingly, the Commission finds no reason to believe that David Richardson for
 14 Congress and Brian Foucart in his official capacity as treasurer violated 52 U.S.C. § 30120(a)
 15 and 11 C.F.R. § 110.11(a) by failing to include a disclaimer in a text message communication.

⁸ Samuel Powers Affidavit ("Powers Aff.") at ¶ 5 (Aug. 24, 2018).

⁹ *Id.*

¹⁰ See Factual and Legal Analysis at 7, MUR 6659 (Murray Energy Corp.) (finding No RTB for disclaimer violation as to Murray Energy Corp. PAC where there was no information that it had paid for the public communications at issue).

¹¹ Powers Aff. at ¶5.