



FEDERAL ELECTION COMMISSION

Washington, DC 20463

June 25, 2021

Via Electronic Mail to aherman@milchev.com

Andrew D. Herman, Esq.
Miller and Chevalier
900 16th Street, NW
Washington, DC 20006

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

Dear Mr. Herman:

On August 21, 2018, the Federal Election Commission notified your clients, David Richardson for Congress and Brian Foucart in his official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On June 22, 2021, the Commission found, on the basis of the information in the complaint, and information provided by the Committee, that 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, the Commission closed its 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). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1507 or cjacksonjones@fec.gov.

Sincerely,

A handwritten signature in cursive script that reads "Lynn Y. 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 MUR 7478
Brian Foucart in his official capacity
as treasurer

I. INTRODUCTION

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

Based on the available information, the Commission finds no reason to believe that 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) by failing to include a “paid for by” disclaimer in the text message.

II. FACTUAL AND LEGAL ANALYSIS**A. Facts**

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

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

¹ Shalala won the Democratic primary and the general election.

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.

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.