

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 17-22643 COOKE/GOODMAN

_____)	
FEDERAL ELECTION COMMISSION,)	
)	
Plaintiff,)	
)	
)	OPPOSITION TO DEFENDANT’S
)	MOTION FOR SUMMARY
v.)	JUDGMENT
)	
DAVID RIVERA,)	
)	
Defendant.)	
_____)	

**PLAINTIFF FEDERAL ELECTION COMMISSION’S
MEMORANDUM IN OPPOSITION TO DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

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Plaintiff Federal Election Commission (“FEC” or “Commission”) respectfully submits this Memorandum of Law in Opposition to Defendant David Rivera’s Motion for Summary Judgment (hereinafter, “Motion”), and in support thereof states as follows:

INTRODUCTION

Two themes pervade Defendant David Rivera’s Motion. First, he promotes a flawed legal theory on what constitutes a violation of the Federal Election Campaign Act’s (“FECA” or “Act”) prohibition on contributions made in the name of another. His argument, which cites no legal authorities, implies that there can be no violation of 52 U.S.C. § 30122 if Rivera was not directly involved in making the false disclosure filings that concealed his identity as the source of the in-kind contributions to the Justin Lamar Sternad campaign. Indeed, Rivera even goes as far as admitting that he may have been responsible for some of the payments made to the vendors that provided services for the Sternad campaign, suggesting that his conduct in this scheme did not create a violation. He is wrong. A violation of section 30122 occurred when Rivera made the in-kind contributions to the vendors while taking steps to hide his identity as the source, including using cash to cover his tracks, and directing others to conceal his identity. It is of no consequence that Rivera himself did not place the false name on Sternad’s disclosure reports. Rivera’s in-kind contributions were in the name of another because Rivera engaged in a course of conduct to erase his existence as the source of the contributions to the Sternad campaign, thereby falsifying the actual source of the contributions.

Second, Rivera makes only brief, passing references to any evidence in support of his Motion. His “record” consists of small snippets of deposition testimony from Sternad and one of the vendors, as well as references to the Court’s prior orders in this case, but all of these only reaffirm Rivera’s violations. This leaves Rivera with only bare arguments and theories, while by contrast the FEC has provided in its Motion for Summary Judgment (ECF No. 142), volumes of evidence and multiple witnesses that make clear Rivera’s direct involvement in what happened. As a result, Rivera’s arguments are routinely premised on factual assertions that lack any record support. In short, Rivera has not carried his burden of showing by properly supported record evidence that he is entitled to summary judgment. His Motion should be denied.

FACTUAL BACKGROUND

The factual record in this case has been set forth in detail in the FEC's previously filed Motion for Summary Judgment and Memorandum of Law, ECF No. 142.

ARGUMENT

A. Rivera's Motion is Insufficient to Meet the Summary Judgment Standard

Under Rule 56 of the Federal Rules of Civil Procedure, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the initial burden of demonstrating to the court, by reference to the record, that there are no genuine issues of material fact to be determined at trial. *See Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). Here, defendant purports to establish his entitlement to summary judgment on the FEC's claim of a violation of section 30122 in a scant four pages. The motion does so without citing the Rule 56 standard, by barely referencing the two witness depositions taken in this case, and without even mentioning the voluminous documentary record in this case. (ECF Nos. 139 and 140) (Def.'s Mot. for Sum. J. and Mem. of Law; Statement of Uncontroverted Material Facts).¹ Rivera cannot succeed on summary judgment by simply making barebones assertions unsupported by the facts or the law. *See, e.g., United States v.*

¹ Also attached to the Motion but curiously uncited is an affidavit signed by David Rivera on the date he submitted his Motion that denies involvement in the Sternad campaign and attempts to contravene the overwhelming evidence in this case showing that Rivera orchestrated the scheme to funnel the in-kind contributions to Sternad. This affidavit filed in nominal support of his Motion is contradicted by other substantial evidence and even statements in his own Motion (*infra* p. 9-10), and does not establish his entitlement to summary judgment. *See, e.g., Scott v. Harris*, 550 U.S. 372, 380 (2007) ("When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."); *Vicks v. Knight*, 380 Fed. Appx. 847, 852 (11th Cir. 2010) (per curiam) (affirming summary judgment where plaintiff's "version of events . . . was contradicted by all of the relevant evidence, with the exception of his own affidavit"). Moreover, the Court has no obligation to review this unreferenced submission in order to find support for Rivera's position. *Am. Res. Ins. Co. v. Evoleno Co., LLC*, No. 07-0035-WS-M, 2008 WL 4277823, at *1 (S.D. Ala. Sept. 16, 2008); Fed. R. Civ. P. 56(c)(3) ("The court need consider only the cited materials.").

Collins, No. 14-80409-CIV, 2015 WL 12556167, at *2 (S.D. Fla. Apr. 3, 2015) (denying defendant's motion for summary judgment "[b]ecause factually unsupported claims or defenses should be disposed of"); *Jones v. Coty Inc.*, 362 F. Supp. 3d 1182, 1195 (S.D. Ala. 2018) ("On summary judgment review, a court cannot simply accept counsel's *ipse dixit* for an unsupported factual statement in a brief.").

Rivera's Motion is insufficient to carry his burden at summary judgment, and as a result, he has failed to provide appropriate legal justification or factual basis for judgment in his favor as a matter of law. *See, e.g., Clark*, 929 F.2d at 608 ("it is never enough simply to state that the non-moving party cannot meet its burden at trial"); *see also United States v. Union Circulation Co.*, No. C81-997A, 1982 WL 1912, at *5 (N.D. Ga. Aug. 20, 1982) (denying defendants' motion for summary judgment where defendants "advanced legal arguments which are both incorrect on their face, and mistakenly characterized as genuine issues of material fact").

B. Rivera Misstates the Law on Contributions in the Name of Another

In an effort to address the FEC's allegations of Rivera's conduct and the record evidence establishing it, Rivera posits a theory about the prohibition at issue that misses the mark. FECA provides that "[n]o person shall make a contribution in the name of another person." 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f). Rivera's Motion appears to focus on the disclosure forms Sternad filed with the FEC in which Sternad falsely reported the contributions as loans from his personal funds to the Sternad Committee, principally arguing that Rivera could have violated section 30122 only if he was directly involved in the false filings. (Mot. at 4); *see also* FEC Exhs. 7-9; 39 (Justin Sternad for Congress Quarterly Reports).

However, section 30122 prohibits more conduct than simply the submission of false reports as Rivera's Motion suggests. Rivera appears to continue to conflate section 30122 with what is actually a violation of 18 U.S.C. § 1001, an argument that he proffered and that was rejected by this Court in his motion to dismiss the FEC's Amended Complaint. *See* Def. Exh. C at 13:3-7 (Rivera's counsel arguing that "[i]t's a 1001 violation" because "[t]he FEC is requiring the candidate to truthfully disclose"). In addition to violating provisions of FECA, submission of false information concerning contributions or expenditures to the FEC, knowing the information to be false, could indeed be a section 1001 violation. The scheme here, however, involved conduct that is at least as deleterious and extends beyond the submission of filing false

disclosure reports — falsifying one’s status as the source of the contributions in the first place. The Court made this exact distinction during the hearing on Rivera’s motion to dismiss. Def. Exh. C at 18:17-21 (“It’s not the giving of the money for the in-kind donation. It’s the orchestrating with the campaign not to reveal the true -- no, not just not to reveal, but to falsify the true nature of the donation by saying, it was a candidate donation and not from some sort of outside source.”).

The factual scenario under section 30122 presented here includes Rivera making the contributions to a candidate seeking the same office Rivera was seeking in a rival political party, falsely obscuring his name and involvement in providing the contributions by making them in cash, structuring them as in-kind contributions through vendors, using Alliegro as a front person, and directing others to hide his involvement. This entire scheme is the 30122 violation. *See, e.g., United States v. Danielczyk*, 788 F. Supp. 2d 472, 478-79 (E.D. Va. 2011) (describing a donor making a contribution to a campaign but representing himself to the campaign as someone else as a “false -name contribution” that is a § 30122 violation); *see also* 11 C.F.R. § 110.4(b)(2)(ii). (An example of a false-name contribution is a person “[m]aking 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.”). Indeed, the manner in which a person can contribute in the name of another in violation of section 30122 is not just by taking part in the filing of improper disclosure forms that Rivera focuses on. The onus was not only on Sternad to file proper disclosure reports. Rather, as the provider of the in-kind contributions, Rivera was responsible for making his identity known. The contributor, not just the candidate, thus helps to ensure that voters are informed. *See, e.g., Goland v. United States*, 903 F.2d 1247, 1261 (9th Cir. 1990) (concluding that a Congressional goal furthered by disclosure and reporting is to keep the electorate fully informed of the sources of campaign funding and “to gather the data necessary to detect violations of the contribution limits”).

Section 30122 is designed to help with the core of FECA. Disclosure provides the electorate with information “as to where political campaign money comes from and how it is spent by the candidate” in order to aid the voters in evaluating those who seek federal office. *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (per curiam). It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. *Id.* at 67. The sources of a candidate’s financial support also alert the

voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office. *Id.*; see also *United States v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010) (the prohibition on contributions in the name of another also prevents circumvention of FECA's contribution limits). Rivera's scheme subverted this interest in transparency.

C. Rivera Made Concealed In-Kind Contributions to the Sternad Campaign

In addition to misunderstanding the law, Rivera's limited factual assertions are wholly conclusory. Rivera argues that "there is no evidence present in this case establishing that David Rivera personally provided funds to vendors for services rendered to the Sternad campaign, or that he instructed Ana Alliegro to advise candidate Sternad to falsify his financial disclosure forms." Mot. at 3. However, this assertion flies in the face of the overwhelming evidence showing exactly the opposite. The evidence shows that Rivera conceived of the scheme, enlisted Alliegro to help carry out the scheme, and directed Alliegro to perform certain tasks in furtherance of the scheme to hide his identity, including directing Sternad to file the false disclosure reports with the FEC. See FEC Mot. (ECF No. 142) at 6-14. Rivera was responsible for the payments getting to vendors for services related to those campaign materials for the Sternad Committee, and Rivera may have even personally delivered some payments himself. See *id.* at 6-11. And when it came time to file the disclosure reports with the FEC, Rivera ensured that he was not disclosed. *Id.* at 14.

As set forth in great detail in the FEC's Motion for Summary Judgment, from July through August 2012, Rapid Mail received over \$37,000 in cash for through various delivery methods, as compensation for targeted mailing services for the Sternad Committee's flyers. *Id.* at 10; see also FEC Exh. 12 (ECF No. 142-15) (Borerro Decl. ¶¶ 5, 7 describing Rivera's payments in cash); Exh. 2 (ECF No. 142-5) (Alliegro GJT at 29, testifying that the cash to pay Rapid Mail came from "David Rivera"). Expert Printing received approximately \$35,430 in cash payments during the same time frame for design and printing services related to the Sternad mailers. *Id.* at 8, 10; see also FEC Exh. 10 (ECF No. 142-13) (Barrios Decl. ¶¶ 6-10, describing the cash payments from David Rivera); Exh. 2 (ECF No. 142-5) (Alliegro GJT at 29, describing the cash to pay Expert Printing came from "David Rivera"). A graphic designer received \$2,600

in cash for her work in designing the flyers. FEC Mot. (ECF No. 142) at 8. This cash came from Rivera. *Id.* For his part, Sternad was happy to accept the financial assistance. *Id.*²

Rivera not only provided this cash to the Sternad Committee but also participated in the design and production of its campaign materials. *Id.* at 8. *See also* FEC Exh. 25 (ECF No. 142-28) (Alliegro Plea Colloquy at 20). All of the vendors were ones that he had previously used for his own campaigns. The vendors described the steps Rivera took to hide his identity, despite directing the project and providing the cash. As John Borrero of Rapid Mail explained, “[b]ecause I had never heard of Mr. Sternad, I called Mr. Rivera and he confirmed that these were the flyers that he wanted my company to mail using the addresses in the mail files supplied by . . . Campaign Data Inc.” FEC Exh. 12 (ECF 142-15) (Borrero Decl. ¶ 46.). As both Borrero and Henry Barrios of Expert Printing stated, Rivera insisted that his name not be listed on the invoices for the flyers. *See* FEC Exh. 10 (ECF No. 142-13) (Henry Barrios Decl. ¶ 4); *see also* FEC Exh. 25 (ECF No. 142-28) (Alliegro Plea Colloquy at 17-18, describing Rivera’s request that his name not appear in invoices reflecting services that he arranged for Sternad’s campaign); FEC Exh. 29 (ECF No. 142-32) (Borrero Dep. Tr. at 149:24-150:9 (explaining how Rivera directed Borrero to remove his name from the invoices). Despite not wanting his name on the invoices, Borrero testified that “[w]hen there was an issue with payment, I talked to Rivera.” *Id.* “Rivera explained that I should follow his direction, not Ms. Alliegro’s.” FEC Exh. 12 (ECF No. 142-15) (Borrero Decl. ¶ 8.) Rivera personally commissioned the vendors to work for the Sternad Committee, helped with designing and planning the distribution of the Sternad Committee’s mailers, and directed how the funds were spent on the Sternad campaign materials. *Id.* ¶¶ 6-8. Additionally, pages of text messages between Alliegro and Rivera during the relevant time period detail the planning and direction by Rivera in the Sternad campaign. *See* FEC Mot.

² Rivera cites to an affirmative answer in Sternad’s testimony in response to a question as to whether Alliegro told him that “a number of democratic donors” were willing to provide funds for Sternad’s campaign. Alliegro never explicitly told him who exactly was financing his campaign, and Sternad never asked. *See* FEC Exh. 32 (ECF No. 142-35) (Sternad Decl. ¶ 4). Sternad testified further that when there were things that needed to be paid for in his campaign, it was taken care of by “David,” “DR,” or “the gangster,” a nickname Alliegro regularly used for Rivera. FEC Mot. (ECF No. 142) at 11; *see also* FEC Opp. SOF ¶¶ 2, 19. There is no evidence in the record supporting the notion that Alliegro actually did have any donors other than Rivera prepared to make contributions to the Sternad Campaign. Furthermore, it is of no consequence because regardless of what exactly Alliegro told Sternad, the evidence shows that the cash all came from Rivera.

(ECF No. 142) at 9, 13-14; *see also* FEC Exhs. 30 (ECF No. 142-33) and 35 (ECF No. 142-38) (text messages between Rivera and Alliegro describing scheme).

Furthermore, at David Rivera's direction, Alliegro directed Sternad to falsely report to the FEC that the funds he received for his campaign were a personal loan. FEC Exh. 2 (ECF No. 142-5) (Alliegro GJT at 32-34.) The Amended FEC Quarterly Report Sternad signed on August 17, 2012 indicated that \$52,973.10 in spending came from funds he loaned his campaign. FEC Exh. 5 (ECF No. 142-8) (Sternad Dep. 50-51); FEC Exh. 39 (ECF No. 142-42) (Sternad Dep. Exh 10.) Sternad did not in fact loan his campaign this money; he reported it as a loan because "[t]hat's what I was directed to do." FEC Exh. 5 (ECF No. 142-8) (Sternad Dep. at 51.) As Alliegro testified, she was familiar with the FEC's reporting requirements of disclosing the funds Rivera had contributed to the Sternad campaign. At first none of the contributions were reported. However, when the press began picking up on the irregularities involving the Sternad campaign, Rivera came up with the idea to report the amounts as loans from Sternad's personal funds:

"The Miami Herald picked up the information on the flyers, they actually went to the mail house, they spoke to Mr. Borerro . . . they started an investigation. It became a topic of great concern at that point and then it became a rush to do this first false report that we did saying it was a loan. Rivera thought if we did this and called it a loan the media would get off of it and it would go all away, that did not happen."

FEC Exh. 2 (ECF No. 142-5) (Alliegro GJT) at 33-33.³

³ Texts between Rivera and Alliegro confirm this discussion about the contributions after the story broke in the Miami Herald, and Sternad was subsequently fired from his job. On August 15, 2012, Alliegro texted Rivera "[a]rticle broke in el nuevo & herald...john [Rapid Mail's John Borrero] did give amounts." FEC Exh. 35 (ECF No. 142-38) at 26. August 15 was the date that the *Miami Herald* published the article describing the thousands of dollars of expenditures that Sternad had not disclosed, and the amounts John Borrero told the *Herald* he had received for mailing the Sternad flyers. The press scrutiny continued in the days after. *See, e.g.*, Manny Garcia & Marc Caputo, Campaign Vendors Say Republican Congressman David Rivera Funded Democrat's Failed Primary Bid, *Miami Herald* (Aug. 21, 2012, 5:00 am, updated Sept. 8, 2014, 10:02 pm) <https://www.miamiherald.com/news/politicsgovernment/article1942132.html>. Alliegro later discussed describing it as loan with Sternad, texting Sternad about the disclosure forms, "U pd rapid 46,973.10 plus 6k to expert..loaned yourself 52,973,10...that changes things.. Call me." FEC Exh. 35 (ECF No. 142-38) at 27-28. Around the time that the FEC received Sternad's August 21, 2012 letter and amended reports disclosing the contributions as a loan, FEC Exh. 39 (ECF No. 142-42), Alliegro texted Rivera, "[m]y friend is here going w him to post office @ 8am. With another original. He threw it in regular po box

Rivera directed Alliegro to help Sternad falsify the disclosure reports, which Alliegro did. *Id.* at 35. After Sternad's guilty plea, the Sternad Committee filed amended disclosure reports with the Commission disclosing that the contributions came from "Unknown Contributors" but included cover letters to those amendments stating that both Alliegro and Rivera were involved with providing funds to his campaign. FEC Exhs. 40, 41 (ECF Nos. 142-43, 142-44). Rivera's Motion makes no mention of any of this evidence.

D. Rivera's In-Kind Contributions to the Sternad Campaign Violated Section 30122

All of these payments to third-party vendors for the benefit of the Sternad Committee constitute in-kind contributions to the Sternad Committee that were made without revealing the true source of the funds and were falsely disclosed as personal loans from Sternad himself. In the face of this evidence, Rivera is left to concede in his Motion that there may be "some evidence that Mr. Rivera was the source of the cash paid to a vendor." Mot. at 3.⁴ He goes on to argue that anyone can make a payment to a vendor, but there "is no evidence that Rivera used a false name or that he participated in the falsification of Sternad's disclosure forms." *Id.* at 4. Rivera gets it only partially right. He is correct that he was perfectly entitled to donate the maximum contributions under the legal limit in funds to his Democratic adversary, either directly to Sternad, or to a vendor to pay some of his campaign bills. However, Rivera conveniently neglects to mention the remainder of his course of conduct that he orchestrated to hide his identity as the source of the payments. Even the amounts Rivera contributed made it impossible for the disclosure reports to be filed legally because Rivera's payments to the vendors were in amounts that if reported would have been obvious violations of the applicable limit. *See Goland*, 903 F.2d at 1261 (explaining the statutory purposes underlying FECA's disclosure system of informing voters and enabling enforcement of the contribution limits). Rivera had no intention of his name being tied to Sternad's campaign and tried to obscure his name through multiple shields: the use of cash (often delivered by others), making in-kind contributions to vendors, and sending instructions through Alliegro. As a result, the public was left in the dark before the

yesterday." Alliegro asked Rivera if he got the message, "[d]id you copy," and Rivera texted back "Yes. Will call u in a minute." FEC Exh. 35 (ECF No. 142-38) at 13, 28.

⁴ Rivera's affidavit appears to contradict this statement in his Motion by blankly stating that he did not serve as the "source" for any of the money.

election and the improper attribution still has not been fully rectified on the public disclosure reports. Considerable documentary evidence, contemporaneous statements, and sworn testimony establish Rivera's contributions in the name of another. Rivera's limited inclusion of facts and omission of other important facts to rebut this evidence, fail to meet the summary judgment standard, and his Motion should be denied.

CONCLUSION

For the foregoing reasons, defendant David Rivera's Motion for Summary Judgment should be denied.

Respectfully submitted,

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August 24, 2020

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CERTIFICATE OF SERVICE

I, Greg J. Mueller, certify that on August 24, 2020, I electronically filed plaintiff Federal Election Commission's Opposition to Defendant's Motion for Summary Judgment, and Opposing Statement of Material Facts, with the Clerk of the United States District Court for the Southern District of Florida by using the Court's CM/ECF system, which sent notification of such filing to the following:

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