



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 15 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Grant Stinchfield

Irving, TX 75062

RE: MUR 6541

Dear Mr. Stinchfield:

The Federal Election Commission reviewed the allegations in your complaint received on March 27, 2012, alleging violations of the Federal Election Campaign Act of 1971, as amended. On July 9, 2013, based on the information provided in the complaint and information provided by Respondents Kenny Marchant for Congress and Joe Moore in his official capacity as treasurer (collectively the "Committee"), and Respondent David Jordan Schirman, the Commission decided to dismiss this matter and close its file. Accordingly, the Commission closed its file in this matter on July 9, 2013.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel

Jeff S. Jordan / JH

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosures:

Factual and Legal Analysis for the Committee
Factual and Legal Analysis for Schirman

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Kenny Marchant for Congress and
 Joe Moore, as Treasurer

MUR: 6541

I. GENERATION OF MATTER

 This matter was generated by a complaint filed with the Federal Election Commission by Grant Stinchfield (the "Complainant"), a candidate for Congress in Texas' 24th Congressional District. *See* 2 U.S.C. § 437g(a)(1).

II. FACTS AND LEGAL ANALYSIS

 The Complainant alleges that two contributions were made in the names of others in violation of the Act. Specifically, Mr. Stinchfield states that Stinchfield for Congress ("Stinchfield Committee") held a golf tournament fundraiser on February 27, 2012, for which it received two \$40 online contributions from two gentlemen who, on the day of the tournament, also filled out volunteer forms. Compl. at 1. The two names submitted with the contributions and volunteer forms were "Jordan Sherman" and "Carter Kendall." *Id.* Thank-you notes sent after the tournament to these two individuals by the Stinchfield Committee were returned as having incorrect addresses. *Id.*; Compl. Ex. at 4. Using publicly available information and the Facebook social media site, the Stinchfield Committee determined that "Jordan Sherman" was actually David Jordan Schirman. Compl. at 1. The Stinchfield Committee was unable to determine the true identity of "Carter Kendall." *Id.*

 The Complaint states that the Stinchfield Committee contacted Schirman who "confirmed he made illegal contributions under false names and a false person." *Id.* The Complaint also states that the "credit card records confirmed his report of making a credit card contribution in another name other than his own." *Id.* Schirman also volunteered that his "'best friend' . . . is

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1 employed by Mr. Marchant," who was also a candidate in the Texas 24th Congressional District.
2 *Id.* Thus, the Stinchfield Committee alleges that Schirman and Kenny Marchant for Congress
3 ("Marchant Committee") knowingly and willfully violated 2 U.S.C. § 441f "to gain access to
4 what was a fundraiser for supporters of my campaign but in lieu tried to spy on my campaign and
5 obtain information about my supporters." Compl. at 2.

6 The Marchant Committee argues that "the complaint rests solely on the circumstantial
7 evidence that Mr. Schirman has a friend employed by the Committee" and is insufficient "to
8 justify an investigation." Marchant Resp. The Marchant Committee also points to 11 C.F.R.
9 § 110.4(c)(3) and argues that the contribution here could be viewed "through the lens of an
10 anonymous contribution." *Id.* In his emailed response, Schirman admits that he made a \$40
11 payment for a round of golf, lunch, and a beverage but that "it was never [his] intent to provide a
12 donation." His response makes no mention of using any fictitious names nor does it mention a
13 relationship between himself and any employee of the Marchant Committee.¹

14 Under the Act, "no person shall make a contribution in the name of another person...."
15 2 U.S.C. § 441f. The Act requires that contributions be made in one's own name, rather than the
16 name of another, in order to promote full disclosure of the actual source of political
17 contributions. *United States v. O'Donnell*, 608 F.3d 546, 553-54 (9th Cir. 2010). A fictitious or
18 "false name contribution is a *direct* contribution from *A* to a campaign, where *A* represents that
19 the contribution is from another person who may be real or fictional." *O'Donnell*, 608 F.3d at
20 549 (emphasis in original); *see also* 11 C.F.R. § 110.4(b)(1)(i), (b)(2)(ii).

¹ The Commission notes that the Schirman response was received from the same email listed on the online contribution receipt for "Carter Kendall" and listed on the handwritten volunteer form for "Jordan Sherman" on the day of the golf tournament fundraiser.

1 The Complaint alleges that Kenny Marchant for Congress "force[d] David Jordan
2 Schirman to make a contribution in the name of another" in order to "gain access to what was a
3 fundraiser for supporters of [Stinchfield's] campaign but in lieu tried to spy on [the Stinchfield]
4 campaign and obtain information about [its] supporters," but offers no factual allegations to
5 support this charge. Compl. at 1-2. The only link the Complaint identifies between Schirman
6 and Kenny Marchant for Congress is the assertion that Schirman referred to an employee of
7 Marchant as his "best friend." Compl. at 1. Under all the circumstances presented, including the
8 extremely small amount involved and the fact that no further contribution activity appears to be
9 associated with the fictitious names or Schirman, the Commission exercises its prosecutorial
10 discretion and dismisses this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: David Jordan Schirman

MUR: 6541

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Grant Stinchfield (the 'Complainant'), a candidate for Congress in Texas' 24th Congressional District. *See* 2 U.S.C. § 437g(a)(1).

II. FACTS AND LEGAL ANALYSIS

The Complainant alleges that two contributions were made in the names of others in violation of the Act. Specifically, Mr. Stinchfield states that Stinchfield for Congress ("Stinchfield Committee") held a golf tournament fundraiser on February 27, 2012, for which it received two \$40 online contributions from two gentlemen who, on the day of the tournament, filled out volunteer forms. Compl. at 1. The two names submitted with the contributions and volunteer forms were "Jordan Sherman" and "Carter Kendall." *Id.* Thank-you notes sent after the tournament to these two individuals by the Stinchfield Committee were returned as having incorrect addresses. *Id.*; Compl. Ex. at 4. Using publicly available information and the Facebook social media site, the Stinchfield Committee determined that "Jordan Sherman" was actually David Jordan Schirman. Compl. at 1. The Stinchfield Committee was unable to determine the true identity of "Carter Kendall." *Id.*

The Complaint states that the Stinchfield Committee contacted Schirman who "confirmed he made illegal contributions under false names and a false person." *Id.* The Complaint also states that the "credit card records confirmed his report of making a credit card contribution in another name other than his own." *Id.* Schirman also volunteered that his "'best friend' . . . is

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1 employed by Mr. Marchant," who was also a candidate in the Texas 24th Congressional District.
2 *Id.* Thus, the Stinchfield Committee alleges that Schirman and Kenny Marchant for Congress
3 ("Marchant Committee") knowingly and willfully violated 2 U.S.C. § 441f "to gain access to
4 what was a fundraiser for supporters of my campaign but in lieu tried to spy on my campaign and
5 obtain information about my supporters." Compl. at 2.

6 In his emailed response, Schirman acknowledges that he made a \$40 payment for a round
7 of golf, lunch, stating "[he] payed the 40 dollars under the understanding that it was going to
8 cover [his] round of golf at a private course, lunch, and a beverage" but that "it was never [his]
9 intent to provide a donation too [*sic*], nor support the Stinchfield for Congress campaign." His
10 response makes no mention of using any fictitious names nor does it mention a relationship
11 between himself and any employee of the Marchant Committee.¹

12 Under the Act, "no person shall make a contribution in the name of another person...."
13 2 U.S.C. § 441f. The Act requires that contributions be made in one's own name, rather than the
14 name of another, in order to promote full disclosure of the actual source of political
15 contributions. *United States v. O'Donnell*, 608 F.3d 546, 553-54 (9th Cir. 2010). A fictitious or
16 "false name contribution is a *direct* contribution from *A* to a campaign, where *A* represents that
17 the contribution is from another person who may be real or fictional." *O'Donnell*, 608 F.3d at
18 549 (emphasis in original); *see also* 11 C.F.R. § 110.4(b)(1)(i), (b)(2)(ii).

19 Based on the facts presented, the responses, and publicly available information, it appears
20 that Schirman made at least one \$40 payment under a fictitious name.

¹ The Commission notes that the Schirman response was received from the same email listed on the online contribution receipt for "Carter Kendall" and listed on the handwritten volunteer form for "Jordan Sherman" on the day of the golf tournament fundraiser.

1 However, due to the extremely small amount involved and the fact that no further
2 contribution activity appears to be associated with the fictitious names or Schirman, the
3 Commission exercises its prosecutorial discretion and dismisses this matter pursuant to *Heckler*
4 *v. Chaney*, 470 U.S. 821 (1985).

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