

COPY

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Unknown Respondents)
Billy Long)
Billy Long for Congress and Ron Neville) MUR 6427
in his official capacity as treasurer)
James Harris)
Patrick J. Binning)
LakeFront Strategies)

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SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

- (1) Find no reason to believe Patrick Binning, LakeFront Strategies, Billy Long, James Harris, and Billy Long for Congress and Ron Neville in his official capacity as treasurer violated 2 U.S.C. § 441h(a).
- (2) Take no further action with respect to Unknown Respondents.
- (3) Approve the attached Factual and Legal Analyses.
- (4) Close the file.

II. INTRODUCTION

This matter involves alleged fraudulent misrepresentation of campaign authority through the distribution of fake e-mails and postings from social media accounts fraudulently created in the name of congressional candidate Scott Eckersley. The perpetrator of the fraud, whose identity was unknown at the time the Complaint was filed, sent a fictitious press release from a fraudulent Yahoo! e-mail account stating, less than a week before the 2010 general election, that Eckersley was suspending his campaign. The Complaint included information indicating that political consultant Patrick Binning, along with Binning's firm, LakeFront Strategies ("LakeFront"), may have been involved in the activity because the IP address of some of the

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1 material could be traced to near where Binning lived and worked. The Complaint further alleged
2 that Eckersley's opponent, Billy Long, and Long's political consultant James Harris were
3 involved in the activity, in part because Harris reacted positively to the false press release and
4 re-circulated it via Twitter almost as soon as it was first disseminated, and further because Long
5 was a "follower" of the fake Eckersley Twitter account.

6 The Commission found reason to believe that Unknown Respondents violated 2 U.S.C.
7 § 441h(a), but took no action with respect to Binning, LakeFront, Long, Harris, and Long's
8 authorized committee Billy Long for Congress and Ron Neville in his official capacity as
9 treasurer (the "Committee"). See Commission Certification (July 26, 2011). The Commission
10 authorized an investigation to determine the identity of the Unknown Respondents who created
11 and communicated from the fraudulent e-mail address and Twitter account and to determine
12 whether the Unknown Respondents were agents or employees of Long or any other federal
13 candidate.

14 The investigation has revealed that Binning was solely responsible for creating the
15 Yahoo! and Twitter accounts and sending the fraudulent press release, and that he was not an
16 agent or employee of Long or any federal candidate. Accordingly, there is no violation of
17 2 U.S.C. § 441h, which applies to fraudulent misrepresentation by a federal candidate or his
18 employee or agent. Therefore, we recommend the Commission find no reason to believe
19 Binning, LakeFront, Long, Harris, or the Committee, violated the Act, and close the file.

20 III. DISCUSSION

21 A. Facts

22 The alleged fraudulent press release e-mail was sent from the address

23 on October 29, 2010, and was labeled a "PRESS ADVISORY"

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1 intended "FOR IMMEDIATE RELEASE." The release announced that "Eckersley Suspends
2 Campaign for Congress and Withdraws Until Further Notice . . . [d]ue to personal matters."
3 *See* Compl., Ex. A. The release further included a purported quote from Eckersley stating that he
4 was "saddened" about his "decision," and thanking his supporters. *Id.* Based on the fraudulent
5 press release, at least one television station reported incorrectly that Eckersley was suspending
6 his campaign. *See id.*, Ex. B. Further, the fraudulent Twitter account @SeckersleyMO7 was
7 used to send "tweets misrepresenting Eckersley's positions on the issues." *Id.*, Ex. E.

8 The Complaint outlined possible connections between Binning and LakeFront, and the
9 fake press release and Twitter account, as well as the possible relationship between Binning and
10 the Committee. *See id.*, Ex. E. First, Binning apparently worked or resided in an area near
11 where the complainant traced the IP address of the fake e-mail. *See id.*, Ex. C. Second, one of
12 the "followers" of the fake Twitter account was "@LFStrategies," which allegedly was the
13 Twitter account of LakeFront Strategies, and this "follower" posted at least one negative
14 comment about Eckersley. *See id.*, Ex. E. Third, Binning and LakeFront seemed to make efforts
15 soon after the incident was publicized to distance themselves from the activity — the LakeFront
16 website was disabled, as was the "LF Strategies" Twitter account. *See id.* at 2, Ex. E. Fourth,
17 according to the complainant, it appeared that Binning was connected to Long because Binning
18 went to a small private high school with Long's eldest daughter and posted a message on Long's
19 Facebook page offering assistance for the general election. *Id.* at 2. Fifth, Long's consultant
20 Harris allegedly tweeted about the fake press release on Twitter at around the same time the
21 media began reporting about it, although he later attempted to delete the post, from which the
22 Complainant inferred that the Committee may have had advance notice or was otherwise
23 complicit. *Id.* at 1-2. Sixth, Long himself was apparently a "follower" of both the fake

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1 Eckersley and the LF Strategies Twitter accounts, further evidencing a possible connection
2 between the perpetrator and the Committee, according to the Complaint.

3 *See id.* at 2, Ex. E.

4 The investigation sought to determine the identity of the person who created the Yahoo!
5 e-mail and Twitter accounts. Our efforts to obtain that information through the social media
6 service providers were unsuccessful. In response to a subpoena, Yahoo! did not provide any
7 contact information that was useful in determining the identity of the person who created the
8 e-mail account. *See* Yahoo! Subpoena Resp. at 1 (Dec. 6, 2011).

9 And in response to a subpoena seeking the identity of the person who created the fake Eckersley
10 and LF Strategies accounts on Twitter — that is, @SeckersleyMO7 and @LFStrategies —
11 Twitter responded that both accounts had been “deactivated and the account data is no longer
12 available.” *See* Twitter Subpoena Resp. at 1 (Nov. 18, 2011).

13 Through other means, however, the investigation determined that Respondent Binning
14 created the fraudulent accounts. Binning admitted that he created both accounts in a telephone
15 interview we conducted in April 2012. Report of Investigation of Patrick Binning at 1
16 (Apr. 9, 2012) (“Binning ROI”). He also acknowledged that he sent both the fake press release
17 e-mail via Yahoo! and wrote the tweets critical of Eckersley on the fake Eckersley Twitter
18 account.

19 Binning claimed that his actions were conducted independently and were based on his
20 personal interest in the Long campaign. Binning claimed that he had no contact with the
21 Committee and has never worked for Long or the Committee in any capacity. *Id.*

22 The Committee’s disclosure reports indicate that the Committee did not make any payments to
23 either Binning or his company, LakeFront.

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1 Binning said that he had gone to school with both of Long's daughters and is acquainted
2 with Long. *Id.* He claimed that he let his emotions get the better of him because of this
3 relationship with the Long family and felt compelled to send the false communications because
4 he was angry about Eckersley's campaign attacks on Long. *Id.* Binning stated that the last time
5 he had any contact with Long was at a wedding on Memorial Day weekend in 2010.

6 According to Binning, he initially sent approximately three to ten tweets, but then
7 escalated his actions by sending the fake press release e-mail. He said he decided to send the
8 press release because he became aware of negative advertisements that Eckersley was
9 broadcasting about Long, and he thought the fake press release would be more effective.
10 Binning ROI at 2.

11 The Committee, in its initial response to the Complaint, included affidavits from Long
12 and Harris in which they stated under oath that they "had no involvement with the distribution of
13 the Press Release to the media and had no knowledge of the Press Release prior to its distribution
14 to the media." *See* Comm. Resp. (Dec. 2, 2010). In supplemental affidavits, Long, Harris,
15 Committee Treasurer Neville, and others connected to the campaign submitted sworn affidavits
16 stating that, to the best of their personal knowledge, Binning did not "serve as an employee or
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1 agent of the Committee or have any involvement with or authority to act on behalf of Billy
2 Long's campaign for Congress."¹ Supp. Resp., Attach. 1-4 (Aug. 20, 2012).²

3 **B. Legal Analysis**

4 The Act prohibits federal candidates and their employees or agents from fraudulently
5 misrepresenting themselves, or any organization under their control, "as speaking or writing or
6 otherwise acting for or on behalf of any other candidate or political party . . . on a matter which
7 is damaging to such other candidate or political party." 2 U.S.C. § 441h(a)(1); *see also*
8 11 C.F.R. § 110.16(a)(1). Under 2 U.S.C. § 441h(a)(2), it is also unlawful to "willfully and
9 knowingly" participate in or conspire to participate in a plan or scheme to violate
10 subsection (a)(1). *See also* 11 C.F.R. § 110.16(a)(2).³

11 The investigation established that Binning sent the fake press release Yahoo! e-mail and
12 the tweets from the fake Twitter account. Those communications involved "a matter that is

¹ In addition to Billy Long, Ron Neville and James Harris, Respondents provided affidavits of Gordon Kinne and Jim Hutcheson. Kinne identifies himself as a "key advisor to Billy Long" and Hutcheson states that he has known Long "personally and professionally for a very long time" and that he "was involved from the beginning by participating in numerous conference calls and campaign meetings." Both affiants state that, to the best of their knowledge, Patrick Binning did not "serve as an employee or agent of the Committee or have any involvement with or authority to act on behalf of Billy Long's campaign for Congress." *See* Supp. Resp., Attach. 1-4 (Aug. 20, 2012).

² The Complainant stated that he filed a complaint with DOJ regarding this matter contemporaneously with the Complaint filed with the Commission. DOJ opened a file on this matter and conducted interviews.

DOJ closed the criminal case without prosecution.

³ Section 441h(a) encompasses, for example, a candidate who distributes letters containing statements damaging to an opponent and who fraudulently attributes them to the opponent. Explanation and Justification for Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,968 (Dec. 13, 2002). The Commission has determined that "a matter that is damaging" includes actions or spoken or written communications that are intended to suppress votes for the candidate or party who has been fraudulently misrepresented. *Id.* at 76,968-69. A violation of 2 U.S.C. § 441h(a) does not depend on whether the candidate or party who is fraudulently represented is elected and does not require proof of justifiable reliance or damages. *Id.* at 76,969.

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1 damaging" to the Eckersley campaign because, among other things, at least one press
2 organization reported on the content of the release.

3 But a violation of Section 441h(a) is limited to fraudulent communications of *candidates*
4 *or their employees or agents*. 2 U.S.C. § 441h(a); 11 C.F.R. § 110.16(a)(1). Binning was not a
5 candidate and there is no evidence that Binning acted as an employee or agent of any candidate.
6 Further, there is no evidence that Long or the Committee had knowledge of Binning's actions or
7 communicated with him in any way such that one could conclude there was a conspiracy to
8 violate section 441h(a), and the relevant members of Long and the Committee's staff with
9 personal knowledge have provided sworn affidavits asserting the contrary.

10 Accordingly, Binning's activities did not violate the Act.⁴ Therefore, we recommend the
11 Commission find no reason to believe that Binning, LakeFront Strategies, Long, Harris, or the
12 Committee violated the Act and take no further action with respect to Unknown Respondents.

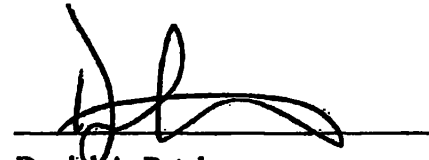
13 **IV. RECOMMENDATIONS**

- 14 1. Take no further action with respect to Unknown Respondents.
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16 2. Find no reason to believe that Patrick Binning or LakeFront Strategies violated
17 2 U.S.C. § 441h.
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19 3. Find no reason to believe that Billy Long violated 2 U.S.C. § 441h.
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21 4. Find no reason to believe that James Harris violated 2 U.S.C. § 441h.
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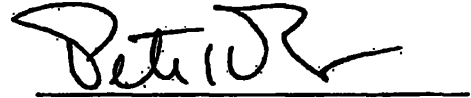
⁴ The Commission unanimously approved a legislative recommendation concerning fraudulent misrepresentation as set forth in 2 U.S.C. § 441h. The recommendation proposes that Congress should revise the prohibitions on fraudulent misrepresentation of campaign authority to encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations. In addition, the recommendation proposes that Congress remove the requirement that the fraudulent misrepresentation must pertain to a matter that is "damaging" to another candidate or political party. *See 2012 Legislative Recommendations of the Federal Election Commission*, approved May 10, 2012.

5. Find no reason to believe that Billy Long for Congress and Ron Neville in his official capacity as treasurer violated 2 U.S.C. § 441h.
6. Approve the attached Factual and Legal Analyses.
7. Approve the appropriate letters.
8. Close the file.

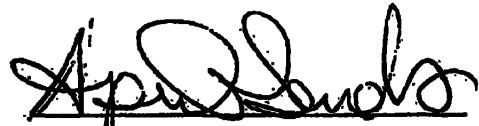
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