

C A M P A I G N F O R ACCOUNTABILITY

April 19, 2017

Tom Larson
Acting U.S. Attorney
Western District of Missouri
Charles Evans Whittaker courthouse
U.S. Attorney's Office
Room 5510
400 East 9th Street
Kansas City, MO 64106

BY Fax: 816-426-4210

Re: Complaint against State Sen. Ron Richard

Dear Mr. Larson:

Campaign for Accountability, a nonprofit focused on government accountability, respectfully requests that your office investigate whether Missouri State Senate President Ron Richard violated federal criminal law by accepting a \$100,000 campaign contribution in direct exchange for legislative assistance.

Factual Background

TAMKO Building Products is a Joplin, Missouri company that sells roofing. In 2014, two plaintiffs, an individual, Lee Hobbs, and the Jonesburg United Methodist Church, filed a class action lawsuit against TAMKO alleging the company had negligently sold defective products after the company's shingles wore out long before their 30-year warranty. TAMKO filed a motion to compel arbitration, alleging that the plaintiffs had no legal right to sue because the outside packaging of the shingle bundles required warranty disputes to be settled by arbitration. The Circuit Court in Jasper County denied the motion, allowing the class-action case to move forward, and, in October 2015, the Missouri Court of Appeals affirmed that decision.¹ The Missouri Supreme Court declined to hear the case, and the company filed a petition for a writ of *certiorari* to the United States Supreme Court, which remains pending.²

In early 2017, Missouri State Senate President Pro Tem Ron Richard introduced SB5, which would dramatically cut back on the consumer protections in the Missouri Merchandising Practices Act (MPA), which prohibits unfair and deceptive marketing.

¹ *Hobbs v. Tamko Bldg. Prods., Inc.*, No. SD33529 (MO. Ct. App. Oct 26, 2015), available at <https://casetext.com/case/hobbs-v-tamko-bldg-prods-inc>.

² See <http://www.scotusblog.com/case-files/cases/tamko-building-products-inc-v-hobbs/>.

The legislation provides that the MPA would: 1) not apply to any business regulated by the Federal Trade Commission or any other state or federal regulatory authority; 2) require each plaintiff seeking to join a class action suit to prove their injuries, rather than allowing one victim to represent the class of plaintiffs; and 3) eliminate a provision allowing courts to award attorneys' fees in successful MPA actions. Sen. Richard previously introduced versions of this bill in 2015 and 2016 – all after the lawsuit against TAMKO had been filed.

If enacted, this legislation might serve to undercut the lawsuit against TAMKO, likely saving the company millions of dollars. Notably, only six days after Sen. Richard introduced SB 5 in December, he received a \$100,000 contribution from TAMKO Chief Executive Officer and President, David Humphreys.³ Sen. Richard had previously received a \$100,000 contribution in June.⁴ This \$200,000 in contributions is particularly suspicious given that Sen. Richard is term-limited and is not running for office.⁵

Violations

The timing of Sen. Richard's official acts, directly following a significant campaign contribution from a party with a direct financial interest in the legislation, suggests the campaign contribution was made in exchange for legislative assistance in violation of federal law and House rules.

Travel Act

Federal law prohibits the use of the mail or any facility in interstate or foreign commerce with intent to distribute the proceeds of any unlawful activity or promote any unlawful activity.⁶ Among other things, "unlawful activity" includes bribery in violation of state law.⁷ Missouri state law provides that bribery is knowingly conferring or agreeing to confer upon any public servant either a direct or indirect benefit in return for any official action or exercise of discretion.⁸ Similarly, a public servant commits the offense of acceding to corruption if he "knowingly solicits, accepts or agrees to accept" any direct or indirect benefit in return for an official action or exercise of discretion.⁹

³ Jason Hancock, Pay to Play? Missouri Senate Leader Faces Questions About Consumer Protection Bill, *Kansas City Star*, April 11, 2017, available at <http://www.kansascity.com/news/politics-government/article143921979.html>.

⁴ *Id.*; Missouri Ethics Commission, Campaign Finance Database, Donations on June 2, 2016 and December 7, 2016, available at http://mec.mo.gov/mec/Campaign_Finance/CF_SearchLrgContr.aspx.

⁵ Hancock, *Kansas City Star*, Apr. 11, 2017.

⁶ 18 U.S.C. § 1952(a).

⁷ 18 U.S.C. § 1952(b).

⁸ MO. Rev. Stat. § 576.010.

⁹ MO. Rev. Stat. § 576.020.

It is well-settled that accepting a contribution to a political campaign can constitute a bribe if a *quid pro quo* can be demonstrated.¹⁰ United States Senator Robert Menendez (D-NJ) is awaiting trial on bribery charges for allegedly performing official acts in exchange for a contribution to a super PAC that was earmarked for his Senate race and benefitted him.¹¹

If, as it appears, Sen. Richard accepted a campaign donation from Mr. Humphreys in direct exchange for introducing legislation, both Sen. Richard and Mr. Humphreys may have violated the Travel Act.

Honest Services Fraud

Federal law prohibits elected officials from depriving their constituents and the government the right of honest service, including conscientious, loyal, faithful, disinterested, unbiased service, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud and corruption.¹² Sen. Menendez, for example, was charged with honest services fraud based on a contribution to a super PAC that benefited him.¹³

If, as it appears, Sen. Richard used his positions to financially benefit TAMKO in exchange for campaign contributions, he may have deprived his constituents, the Missouri State Senate and the State of Missouri of his honest services in violation of 18 U.S.C. §§ 1341, 1346.

Conclusion

The circumstances surrounding Sen. Richard's introduction of this legislation that is severely deleterious to Missouri consumers has been highly controversial. Other members of the Missouri General Assembly, including Republican State Sen. Ryan Silvey and Democratic Rep. Mark Ellebracht, have questioned Sen. Richard's actions and suggested a law enforcement investigation would be appropriate.

Given the extremely generous campaign donations Mr. Humphreys has made to Sen. Richard in close temporal proximity to Sen. Richard's introduction of legislation directly benefiting Mr. Humphreys' company, Campaign for Accountability respectfully

¹⁰ *McCormick v. U.S.*, 500 U.S. 257, 273 (1991); *United States v. Biaggi*, 909 F.2d 662, 605 (2d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991).

¹¹ Indictment, *United States v. Robert Menendez and Salomon Melgen*, 2:15-CR-00155 (D. N.J. Apr. 1, 2015), ¶¶ 255, 259.

¹² See Information, *United States v. Jack A. Abramoff*, 1:06-cr-00001(D.D.C. Jan. 3, 2006), ¶ 26.

¹³ Menendez Indictment, ¶¶ 263-65.

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requests that the United States Attorney's Office open a grand jury investigation to discover whether Sen. Richard and Mr. Humphrey violated federal criminal law.

Thank you for your attention.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director