



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 1182

DATE SCANNED 6/2/06

SCANNER NO. 2

SCAN OPERATOR S.E.G.

26092590297



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

October 25, 2004
2004 OCT 26 P 3:49

MEMORANDUM

SENSITIVE

TO: THE COMMISSION

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

ROBERT J. COSTA
DEPUTY STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REASON TO BELIEVE RECOMMENDATION -
12 DAY PRE-PRIMARY REPORT (NY) FOR THE
ADMINISTRATIVE FINES PROGRAM

Attached is a list of political committees and their treasurers who failed to timely file the 2004 12 Day Pre-Primary Report for New York in accordance with 2 U.S.C. 434(a). On August 10, 2004, Prior Notice was sent to the political committees and their treasurers, informing them that the report was due on September 2, 2004 and should cover the period from July 1, 2004 through August 25, 2004.

The committees appearing on the attached circulation report have failed to file their reports prior to four (4) days before the primary election (considered a non-filed report). In accordance with the schedule of civil money penalties located within 11 CFR §111.43, the committees should be assessed the civil money penalties included on the attached list.

Recommendation

- (1) Find reason to believe that the political committees and their treasurers listed on the RTB Circulation Report violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalties would be the amount indicated on the RTB Circulation Report.
- (2) Send the appropriate mailgrams.

26092590298

26092590299

FEDERAL ELECTION COMMISSION 2003-2004

DATE 10/08/2004

Reason to Believe Circulation Report

PAGE: 1

2004 12 DAY PRE-PRIMARY

AF #	COMMITTEE NAME	STATE	CANDIDATE NAME	THRESHOLD AMOUNT	SENSITIVE	PREVIOUS VIOLATIONS
COMMITTEE ID	TREASURER					CIVIL MONEY PENALTY
RECEIPT DATE	DAYS LATE	LEVEL OF ACTIVITY				
AF01179	BLAIR MATHIES FOR CONGRESS	NY	MATHIES, BLAIR		0	\$5,000
C00401000	EDWARD SCOTT	\$323,780	Yes			
	9/10/04	\$147,968				
AF01180	MEEKS FOR CONGRESS	NY	MEEKS, GREGORY W		2	\$4,500
C00329375	Joan E. Flowers Esq.	\$794,378	Yes			
	9/11/04	\$57,151				
AF01181	FRIENDS OF WEINER	NY	WEINER, ANTHONY D		0	\$3,000
C00327742	Ira Spodek	\$892,769	Yes			
	9/13/04	\$51,327				
AF01182	JACK DAVIS FOR CONGRESS	NY	DAVIS, JOHN R JR		0	\$9,000
C00397794	ROBERT R DAVIS	\$761,467	Yes			
	9/10/04	\$325,693				



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL: Wednesday, October 27, 2004 11:00

BALLOT DEADLINE: Monday, November 01, 2004 4:00

COMMISSIONER: MASON, McDONALD, SMITH, THOMAS, TONER, WEINTRAUB

SUBJECT: Reason to Believe Recommendation – 12 Day Pre-Primary Report (NY) for the Administrative Fines Program. Memorandum from the Assistant Staff Director Reports Analysis Division dated October 25, 2004.

- () I approve the recommendation(s)
- () I object to the recommendation(s)
- () I approve the recommendations except those following to which I object (please insert AF#)
- _____
- _____
- () I approve the recommendations except those following in which I abstain (please insert AF#)
- _____
- _____
- () I approve the recommendations except those following in which I am recused (please insert AF#)
- _____
- _____
- () I am not voting on this tally.

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

DATE: _____

SIGNATURE: _____

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

26092590300

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reason to Believe Recommendation - 12) AF #1182
Day Pre-Primary Report (NY) for the)
Administrative Fines Program: Jack)
Davis for Congress and Robert R. Davis,)
as treasurer.)

CERTIFICATION

, Mary W. Dove, Secretary of the Federal Election Commission, do hereby
certify that on November 01, 2004, the Commission decided by a vote of 6-0 to
take the following action in AF 1182:

1. Find reason to believe that Jack Davis For Congress and Robert R. Davis, as treasurer, violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount of \$9,000.00.
2. Send the appropriate mailgram.

Commissioners Mason, McDonald, Smith, Thomas, Toner, and Weintraub
vote affirmatively for the decision.

Attest:

November 1, 2004
Date

Mary W. Dove
Mary W. Dove
Secretary of the Commission

26092590301

**WESTERN
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CONFIRMATION OF CMGM

TO: ROBERT R DAVIS
JACK DAVIS FOR CONGRESS
PO BOX 2004
AKRON NY 14001-2004

FEDERAL ELECTION COMMISSION
DAYNA BROWN
999 E ST NW # 709
WASHINGTON DC 20463

NOVEMBER 2, 2004

ROBERT R DAVIS
JACK DAVIS FOR CONGRESS
POST OFFICE BOX 2004
AKRON NY 14001

C00397794
AF#: 1182

DEAR ROBERT R DAVIS:

THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("THE ACT"), REQUIRES THAT YOUR COMMITTEE FILE A 12 DAY PRE-PRIMARY REPORT OF RECEIPTS AND DISBURSEMENTS IN ANY CALENDAR YEAR DURING WHICH THERE IS A REGULARLY SCHEDULED ELECTION FOR WHICH THE CANDIDATE IS SEEKING ELECTION, OR NOMINATION FOR ELECTION. THIS REPORT, COVERING THE PERIOD THROUGH AUGUST 25, 2004, SHALL BE FILED NO LATER THAN SEPTEMBER 2, 2004. 2 U.S.C. 434(A). YOU WERE PREVIOUSLY NOTIFIED OF THE DUE DATE FOR THE REPORT. RECORDS AT THE COMMISSION INDICATE THAT THIS REPORT WAS NOT FILED PRIOR TO FOUR (4) DAYS BEFORE THE ELECTION. YOU SHOULD FILE THE REPORT IF YOU HAVE NOT ALREADY DONE SO.

THE ACT WAS FURTHER AMENDED IN 1999 TO PERMIT THE FEDERAL ELECTION COMMISSION ("FEC") TO IMPOSE CIVIL MONEY PENALTIES FOR VIOLATIONS OF THE REPORTING REQUIREMENTS OF 2 U.S.C. 434(A). 2 U.S.C. 437G(A)(4). ON 11/01/2004, THE FEC FOUND THAT THERE IS REASON TO BELIEVE ("RTB") THAT JACK DAVIS FOR CONGRESS AND YOU, AS TREASURER, VIOLATED 2 U.S.C. 434(A) BY FAILING TO FILE TIMELY THIS REPORT ON OR BEFORE SEPTEMBER 2, 2004. BASED ON THE FEC'S SCHEDULES OF CIVIL MONEY PENALTIES AT 11 C.F.R. 111.43, THE AMOUNT OF YOUR CIVIL MONEY PENALTY CALCULATED AT THE RTB STAGE IS \$9000. IT IS DUE BY 12/11/2004 AND IS BASED ON THESE FACTORS:

ELECTION SENSITIVITY OF REPORT: ELECTION SENSITIVE
LEVEL OF ACTIVITY: \$325693
NUMBER OF DAYS LATE: NOT FILED
NUMBER OF PREVIOUS CIVIL MONEY PENALTIES ASSESSED: 0

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TO PAY THE CALCULATED CIVIL MONEY PENALTY

TO PAY THE CALCULATED CIVIL MONEY PENALTY, SEND THE ENCLOSED REMITTANCE AND YOUR PAYMENT TO THE FEC AT THE ADDRESS ON PAGE 3. UPON RECEIPT OF YOUR PAYMENT, THE FEC WILL SEND YOU A FINAL DETERMINATION LETTER.

TO CHALLENGE THE RTB FINDING AND/OR CALCULATED CIVIL MONEY PENALTY

TO CHALLENGE THE RTB FINDING AND/OR CALCULATED CIVIL MONEY PENALTY, YOU MUST SUBMIT A WRITTEN RESPONSE, INCLUDING THE AF# FOUND ON PAGE ONE, TO THE FEC'S OFFICE OF ADMINISTRATIVE REVIEW, 999 E STREET, NW, WASHINGTON, DC 20463. YOUR RESPONSE MUST BE RECEIVED BY 12/11/2004. YOUR WRITTEN RESPONSE MUST INCLUDE THE REASON(S) WHY YOU ARE CHALLENGING THE RTB FINDING AND/OR CALCULATED CIVIL MONEY PENALTY. THE FEC WILL ONLY CONSIDER CHALLENGES THAT ARE BASED ON A FACTUAL ERROR, MISCALCULATION OF THE CALCULATED CIVIL MONEY PENALTY BY THE FEC, OR THE EXISTENCE OF EXTRAORDINARY CIRCUMSTANCES THAT PERSISTED FOR MORE THAN 48 HOURS THAT WERE BEYOND YOUR CONTROL AND PREVENTED YOU FROM FILING THE REPORT IN A TIMELY MANNER. YOUR RESPONSE MUST INCLUDE THE FACTUAL BASIS SUPPORTING THE REASON(S) AND SUPPORTING DOCUMENTATION. THE FEC STRONGLY ENCOURAGES THAT DOCUMENTS BE SUBMITTED IN THE FORM OF AFFIDAVITS OR DECLARATIONS. EXAMPLES OF CIRCUMSTANCES THAT WILL NOT BE CONSIDERED EXTRAORDINARY INCLUDE, BUT ARE NOT LIMITED TO, NEGLIGENCE, PROBLEMS WITH VENDORS OR CONTRACTORS, STAFF ILLNESS, COMPUTER FAILURES AND SIMILAR CIRCUMSTANCES. 11 C.F.R. 111.35(B)(1)(III) AND (4).

YOUR FAILURE TO RAISE AN ARGUMENT IN A TIMELY FASHION DURING THE ADMINISTRATIVE PROCESS SHALL BE DEEMED A WAIVER OF YOUR RIGHT TO PRESENT SUCH ARGUMENT IN A PETITION TO THE DISTRICT COURT UNDER 2 U.S.C. 437G. 11 C.F.R. 111.38.

IF YOU INTEND TO BE REPRESENTED BY COUNSEL, PLEASE ADVISE THE OFFICE OF ADMINISTRATIVE REVIEW. YOU SHOULD PROVIDE, IN WRITING, THE NAME, ADDRESS AND TELEPHONE NUMBER OF YOUR COUNSEL AND AUTHORIZE COUNSEL TO RECEIVE NOTIFICATIONS AND COMMUNICATIONS RELATING TO THIS CHALLENGE AND IMPOSITION OF THE CALCULATED CIVIL MONEY PENALTY.

IF YOU DO NOT PAY THE CALCULATED CIVIL MONEY PENALTY OR SUBMIT A CHALLENGE

IF YOU DO NOT PAY THE CALCULATED CIVIL MONEY PENALTY OR SUBMIT A WRITTEN RESPONSE, THE FEC WILL ASSUME THAT THE PRECEDING FACTUAL ALLEGATIONS ARE TRUE AND MAKE A FINAL DETERMINATION THAT JACK DAVIS FOR CONGRESS AND YOU, AS TREASURER, VIOLATED 2 U.S.C. 434(A) AND ASSESS A CIVIL MONEY PENALTY.

UNPAID CIVIL MONEY PENALTIES ASSESSED THROUGH THE ADMINISTRATIVE FINE REGULATIONS WILL BE SUBJECT TO THE DEBT COLLECTION ACT OF 1982("DCA")AS AMENDED BY THE DEBT COLLECTION IMPROVEMENT ACT OF 1996, 31 U.S.C. 3701 ET SEQ. THE FEC MAY TAKE ANY AND ALL APPROPRIATE ACTION AUTHORIZED AND REQUIRED BY THE DCA, AS AMENDED, INCLUDING TRANSFER TO THE U.S. DEPARTMENT OF THE TREASURY FOR COLLECTION. 11 C.F.R. 111.45.

THIS MATTER WAS GENERATED BASED ON INFORMATION ASCERTAINED BY THE FEC IN THE NORMAL COURSE OF CARRYING OUT ITS SUPERVISORY RESPONSIBILITIES. 2 U.S.C. 437G(A)(2). IT WILL REMAIN CONFIDENTIAL IN ACCORDANCE WITH 2 U.S.C. 437G(A)(4)(B) AND 437G(A)(12)(A) UNTIL IT IS PLACED ON THE PUBLIC RECORD IN ACCORDANCE WITH 11 C.F.R.

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111.42, UNLESS YOU NOTIFY THE FEC IN WRITING THAT YOU WISH THE MATTER TO BE MADE PUBLIC.

ADDITIONAL INFORMATION ON THE FEC'S ADMINISTRATIVE FINE PROGRAM, INCLUDING THE FINAL REGULATIONS, IS LOCATED AT THE FEC'S WEBSITE AT WWW.FEC.GOV. IF YOU HAVE QUESTIONS REGARDING THE PAYMENT OF THE CALCULATED CIVIL MONEY PENALTY, PLEASE CONTACT DAYNA C. BROWN IN THE REPORTS ANALYSIS DIVISION AT OUR TOLL FREE NUMBER (800)424-9530 (AT THE PROMPT PRESS 5) OR (202)694-1130. IF YOU HAVE QUESTIONS REGARDING THE SUBMISSION OF A CHALLENGE, PLEASE CONTACT THE OFFICE OF ADMINISTRATIVE REVIEW AT OUR TOLL FREE NUMBER (800)424-9530 (PRESS 0, THEN EXT. 1660) OR (202)694-1660.

SINCERELY,

BRADLEY A. SMITH
CHAIRMAN

* * * * *
ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

IN ACCORDANCE WITH THE SCHEDULE OF PENALTIES AT 11 C.F.R. 111.43, THE AMOUNT OF YOUR CIVIL MONEY PENALTY CALCULATED AT THE RTB STAGE IS \$9000 FOR THE 2004 12 DAY PRE-PRIMARY REPORT.

PLEASE MAIL THIS REMITTANCE WITH A CHECK OR MONEY ORDER MADE PAYABLE TO THE FEDERAL ELECTION COMMISSION TO THE FOLLOWING ADDRESS:
FEDERAL ELECTION COMMISSION
P.O. BOX 952182
ST. LOUIS, MO 63195-2182

IF YOU CHOOSE TO SEND YOUR REMITTANCE AND PAYMENT BY COURIER OR OVERNIGHT DELIVERY, PLEASE USE THIS ADDRESS:
U.S. BANK - GOVERNMENT LOCKBOX
FEC #952182
1005 CONVENTION PLAZA
ST. LOUIS, MO 63101

THE REMITTANCE AND YOUR PAYMENT ARE DUE BY 12/11/2004. UPON RECEIPT OF YOUR REMITTANCE AND PAYMENT, THE FEC WILL SEND YOU A FINAL DETERMINATION LETTER.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: JACK DAVIS FOR CONGRESS

FEC ID#: C00397794

AF#: 1182

PAYMENT DUE DATE: 12/11/2004

PAYMENT AMOUNT DUE: \$9000



Domachowski
Kempisty &
Salvatore, P.C.

FEC OFFICE OF
ADMIN REVIEW

Certified Public Accountants

2004 NOV 19 P 3:09

November 12, 2004

Federal Election Committee
Office of Administrative Review
999 E Street, N.W.
Washington DC 20463

Re: JACK DAVIS FOR CONGRESS
C00397794-AF#1182
Dear Sir or Madam:

We are responding to your mailgram dated November 2, 2004 relating to the late filing of the 12-day pre-primary report. We are requesting a review and abatement of the calculated penalty of \$9,000 based on the following:

On August 10, 2004, we received the Primary Election Report Notice, which stated the report and due dates for "*committees involved in the primary*": (copy enclosed). Upon review of the notice under "Who must File", we came to the conclusion that Jack Davis for Congress did not need to submit this report as he was not seeking nomination in the primary.

On September 4, 2004, we received the mailgram from the FEC stating that we failed to file the pre-primary report. Upon further discussions with FEC staff, it was explained that all candidates must file the report regardless of their primary status. At this time, we immediately gathered the required information and filed the report.

It is important to note that Jack Davis for Congress did not intentionally neglect his filing responsibilities. On the contrary, every effort was made to comply with the filing deadlines; however, the instructions were misleading enough to result in an incorrect interpretation of who was required to file. Once instructions were clarified, a report was submitted.

26092590305

Federal Election Committee
November 12, 2004
Page 2

Based on the above, we respectfully request your consideration in abating the assessed penalty. Please do not hesitate to contact me if you need additional information.

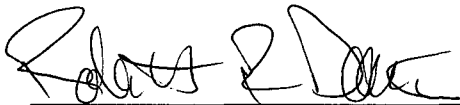
Very truly yours,



Carol G. Salvatore, CPA

CGS:sj
Enclosure

I hereby agree that the above information is accurate and complete.



Robert R. Davis, Treasurer
JACK DAVIS FOR CONGRESS

11-12-2004
Date

PRIMARY ELECTION REPORT NOTICE

FEDERAL ELECTION COMMISSION

NEW YORK
Congressional Committees

August 10, 2004

FOR COMMITTEES INVOLVED IN THE PRIMARY (09/14/04)

REPORT	REPORTING PERIOD ¹	REG./CERT.& OVERNIGHT MAILING DATE ²	FILING DATE
Pre-Primary	07/01/04 - 08/25/04	08/30/04	09/02/04
48-Hour Notices	08/26/04 - 09/11/04	----see reverse side----	
October Quarterly	08/26/04 - 09/30/04	10/15/04	10/15/04

WHO MUST FILE

Principal campaign committees of congressional candidates³ (including unopposed candidates and candidates whose names do not appear on the ballot) who seek nomination in the primary must file the above reports and notices.⁴ Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

NOTE: A recent legislative change allows committees to file reports using overnight mail on the same terms as registered/certified mail. (See footnote 2).

¹These dates indicate the beginning and the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered.

²Reports sent by registered or certified mail must be postmarked by the mailing date. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing date. "Overnight mail" means an overnight service with an on-line tracking system. Reports filed by any other means must be received by the Commission by the filing date.

³An individual becomes a candidate for Federal office (and thus triggers registration and reporting obligations) when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports.

⁴If the campaign has more than one authorized committee, in addition to the principal campaign committee, the principal campaign committee must also file a consolidated report on Form 3Z.

(over)

26092590307



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Via First Class Mail

November 17, 2004

Robert R. Davis, as Treasurer
Jack Davis for Congress
P.O. Box 2004
Akron, NY 14001

C00397794
AF# 1182

Dear Mr. Davis:

On November 12, 2004, the Commission received your written response ("challenge") which is being reviewed by the Office of Administrative Review. If you have any questions regarding your challenge, please contact this Office on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

Sincerely,

A handwritten signature in cursive script, reading "Mary E. Seiler".

Mary E. Seiler
Reviewing Analyst
Office of Administrative Review

26092590308

ALBANY, N.Y.

2004 NOV 21 7:44

Date: November 22, 2004

**REFERRAL TO OFFICE OF ADMINISTRATIVE REVIEW
CHALLENGE RECEIVED**

AF#: 1182

Committee Name: Jack Davis for Congress

Committee ID#: C00397794

Committee Address (if different than in RTB mailgram): N/A

Treasurer Name (if different than in RTB finding): N/A

Attachments:

**Copy of RTB Circulation Report Dated October 25, 2004 and RTB
Certification Dated November 1, 2004**

Copy of RTB Mailgram: See Declaration

**Certified Return Receipt (to be forwarded at later date if not yet received) -
Attachment #: 1**

**Original Correspondence Received by RAD in Response to
RTB Mailgram (Y/N): N
Attachment # : N/A**

RAD Staff Declaration - Attachment # : 3

26092590309

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ROBERT R. DAVIS
JACK DAVIS FOR CONGRESS
PO BOX 2004
AKRON NY 14001-2004

2. Article Number

(Transfer from service label)

7001 0360 0003 4467 2090

PS Form 3811, August 2001

Domestic Return Receipt

102595-01-M-0381

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

11-4-04

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

DECLARATION OF PATRICIA CARMONA

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the research conducted with regard to the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to the Jack Davis for Congress committee:
 - A) Prior Notice dated August 10, 2004 referencing the 2004 12 Day Pre-Primary Report;
 - B) Non-Filer Mailgram dated September 3, 2004 referencing the 2004 12 Day Pre-Primary Report;
 - C) Reason-to-Believe Mailgram dated November 2, 2004 referencing the 2004 12 Day Pre-Primary Report.
3. I hereby certify that I have searched the Commission's public records and find that the Jack Davis for Congress committee filed the 2004 12 Day Pre-Primary Report with the Commission on September 10, 2004.
4. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington, D.C. on the 22nd day of November, 2004.



Patricia Carmona
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission

PRIMARY ELECTION REPORT NOTICE

FEDERAL ELECTION COMMISSION

NEW YORK
Congressional Committees

August 10, 2004

FOR COMMITTEES INVOLVED IN THE PRIMARY (09/14/04)

REPORT	REPORTING PERIOD ¹	REG./CERT.& OVERNIGHT MAILING DATE ²	FILING DATE
Pre-Primary	07/01/04 - 08/25/04	08/30/04	09/02/04
48-Hour Notices	08/26/04 - 09/11/04	----see reverse side----	
October Quarterly	08/26/04 - 09/30/04	10/15/04	10/15/04

WHO MUST FILE

Principal campaign committees of congressional candidates³ (including unopposed candidates and candidates whose names do not appear on the ballot) who seek nomination in the primary must file the above reports and notices.⁴ Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

NOTE: A recent legislative change allows committees to file reports using overnight mail on the same terms as registered/certified mail. (See footnote 2).

¹These dates indicate the beginning and the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered.

²Reports sent by registered or certified mail must be postmarked by the mailing date. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing date. "Overnight mail" means an overnight service with an on-line tracking system. Reports filed by any other means must be received by the Commission by the filing date.

³An individual becomes a candidate for Federal office (and thus triggers registration and reporting obligations) when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports.

⁴If the campaign has more than one authorized committee, in addition to the principal campaign committee, the principal campaign committee must also file a consolidated report on Form 3Z.

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26092590312

48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives contributions **(including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee)** of \$1,000 or more, during the period of August 26 through September 11, 2004.

The notices must reach the appropriate federal filing office within 48 hours of the committee's receipt of the contribution(s). **Campaign committees that file electronically MUST submit their 48-hour notices electronically.** For more information, visit the FEC web site at <http://www.fec.gov/electfil/online.html>. U.S. House candidates faxing 48-hour notices should transmit them to the FEC at (202) 219-0174.

COMPLIANCE

- Treasurers of political committees are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time.
- Under the Administrative Fine Program, political committees and their treasurers who fail to file their reports (including 48-hour notices) on time may be subject to civil money penalties up to \$16,000 (or more for repeat late- and non-filers).⁵ For additional information, see the enclosed handout entitled, "Administrative Fine Program," and visit the FEC web site at <http://www.fec.gov/adminfines1.html>.
- In addition, political committees that file illegible reports or use non-FEC forms (except for FEC-approved, computer-generated forms) will be required to refile their reports.
- Electronic filers who instead file on paper or submit an electronic report (either by direct transmission or on 3.5" diskette) that does not pass the validation test will be considered non-filers and may be subject to enforcement actions (including administrative fines).

ELECTRONIC FILING

U.S. House committees that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or that expect to do so, must submit their reports electronically. For additional information, review the enclosed handout entitled "Electronic Filing," call the FEC's Electronic Filing office at (800) 424-9530 or (202) 694-1642, and visit our web site at <http://www.fec.gov/electfil/electron.html>.

⁵Penalties for late- and non-filing of 48-hour notices are based on the amount of contributions not timely disclosed. As a result, these penalties may exceed \$16,000, even for first-time violations.

24038512425

**WESTERN
UNION**

WESTERN UNION COMMERCIAL SERVICES
 CONFIRMATION OF MAILGRAM TO: ROBERT R DAVIS
 JACK DAVIS FOR CONGRESS
 PO BOX 2004
 AKRON NY 14001-2004

CHRIS RITCHIE
 FEDERAL ELECTION COMMISSION
 999 E ST NW
 WASHINGTON DC 20463

SEPTEMBER 3, 2004

IDENTIFICATION NUMBER: C00397794

REFERENCE: 12 DAY PRE-PRIMARY REPORT (07/01/2004 - 08/25/2004)

DEAR TREASURER:

IT HAS COME TO THE ATTENTION OF THE FEDERAL ELECTION COMMISSION THAT YOU MAY HAVE FAILED TO FILE THE ABOVE REFERENCED REPORT OF RECEIPTS AND EXPENDITURES AS REQUIRED BY THE FEDERAL ELECTION CAMPAIGN ACT, AS AMENDED. YOU WERE PREVIOUSLY NOTIFIED OF THE DUE DATE FOR THIS REPORT.

YOU WILL BE ALLOWED FOUR (4) BUSINESS DAYS FROM THE DATE OF THIS NOTICE TO FILE THIS REPORT TO AVOID PUBLICATION. THE REPORT MUST BE FILED WITH THE FEDERAL ELECTION COMMISSION, 999 E STREET, N.W., WASHINGTON, D.C. 20463 FOR HOUSE CANDIDATES, OR THE SECRETARY OF THE SENATE, 232 HART SENATE OFFICE BUILDING, WASHINGTON, D.C. 20510 FOR SENATE CANDIDATES. A COPY OF THE REPORT MUST ALSO BE FILED WITH THE SECRETARY OF STATE OR EQUIVALENT STATE OFFICER UNLESS THE STATE IS EXEMPT FROM THE FEDERAL REQUIREMENT TO RECEIVE AND MAINTAIN PAPER COPIES. IF YOU HAVE FILED THE REPORT TIMELY BY CERTIFIED OR REGISTERED MAIL, PLEASE NOTIFY US IMMEDIATELY, IN WRITING, OF THE CERTIFIED OR REGISTERED NUMBER AND THE DATE THAT THE REPORT WAS SENT.

IN ADDITION, THE FAILURE TO TIMELY FILE THIS REPORT MAY RESULT IN CIVIL MONEY PENALTIES, AN AUDIT OR OTHER LEGAL ENFORCEMENT ACTION. THE CIVIL MONEY PENALTY CALCULATION FOR LATE REPORTS DOES NOT INCLUDE A GRACE PERIOD AND BEGINS ON THE DAY FOLLOWING THE DUE DATE FOR THE REPORT.

IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT CHRIS RITCHIE IN THE REPORTS ANALYSIS DIVISION ON OUR TOLL FREE NUMBER (800)424-9530. OUR LOCAL NUMBER IS (202)694-1130.

SINCERELY,
 JOHN D. GIBSON
 ASSISTANT STAFF DIRECTOR
 REPORTS ANALYSIS DIVISION



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FILED
MAR 16 2006
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2006 MAR 16 AM 11:25

March 16, 2006

MEMORANDUM

SENSITIVE

TO: THE COMMISSION

THROUGH: ROBERT J. COSTA *RJC*
ACTING STAFF DIRECTOR

JOHN D. GIBSON *JDG*
ACTING DEPUTY STAFF DIRECTOR

FROM: SHAWN WOODHEAD WERTH *SWW*
REVIEWING OFFICER
OFFICE OF ADMINISTRATIVE REVIEW

SUBJECT: AF# 1182 – JACK DAVIS FOR CONGRESS AND ROBERT R.
DAVIS, AS TREASURER (C00397794)

The attached Reviewing Officer Recommendation is being circulated on an informational basis. A copy was also sent to respondents in accordance with 11 C.F.R. § 111.36(f). The respondents may file with the Commission Secretary a written response within 10 days of transmittal of the recommendation.

After the 10 day period, the Reviewing Officer Recommendation and the respondents' written response, if any, will be circulated to the Commission to make a final determination.

Attachment

26092590315



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 16, 2006

**REVIEWING OFFICER RECOMMENDATION
OFFICE OF ADMINISTRATIVE REVIEW ("OAR")**

AF# 1182 – Jack Davis for Congress and Robert R. Davis, as Treasurer (C00397794)

On November 1, 2004, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Jack Davis for Congress and Robert R. Davis, as Treasurer ("the respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2004 12 Day Pre-Primary Report, an election sensitive report. The Commission also made a preliminary determination that the civil money penalty was \$9,000 based on the schedule of penalties at 11 C.F.R. § 111.43. The respondents were notified by the Reports Analysis Division ("RAD") via mailgram on November 2, 2004 of the Commission's finding and civil money penalty calculated at RTB.

Respondents' Response

On November 19, 2004, the Commission received the written response and supporting documentation ("challenge") from Carol G. Salvatore, CPA, challenging the RTB finding. The challenge was also signed by the Treasurer, who "agree[d] that the [challenge] is accurate and complete."¹ The respondents request "a review and abatement of the calculated penalty of \$9,000 based on the following:

On August 10, 2004, we received the Primary Election Report Notice, which stated the report and due dates for "*committees involved in the primary*": (copy enclosed). Upon review of the notice under "Who must File", we came to the conclusion that [we] did not need to submit this report as he was not seeking nomination in the primary. [Emphasis in original.]

On September 4, 2004, we received the mailgram ... stating that we failed to file the pre-primary report. Upon further discussions with FEC staff, it was explained that all candidates must file the report regardless of their primary status. At this time, we immediately gathered the required information and filed the report.

Ms. Salvatore also states that the Committee "did not intentionally neglect [its] filing responsibilities" and that "the instructions were misleading enough to result in an incorrect interpretation of who was required to file."

¹ The designation of counsel statement for AF# 1182, AF# 1239, and ADR# 215 (MUR 5593) is signed by the candidate and lists him as the respondents' "representative." In response to OAR's request that the Treasurer sign the statement, OAR received a second statement which is signed by the Treasurer, and lists the candidate as "counsel" and "I Squared R Element Co., Inc." as the firm. OAR was subsequently contacted by three different counsel and advised them that a new statement would have to be filed for the challenges if they represent the respondents; however, a third statement received in January 2006 is signed by the Treasurer and still lists the candidate as "counsel."

Included with the challenge is a copy of the first page of the Prior Notice dated August 10, 2004. OAR has bracketed the information highlighted on the original submission. The "FILING DATE" of "09/02/04" for the 12 Day Pre-Primary Report and the "FILING DATE" of "10/15/04" for the October Quarterly Report were circled on the original submission.

Analysis of Challenge

The 12 Day Pre-Primary Report was filed on September 10, 2004, 8 days late.

The Federal Election Campaign Act ("Act") requires that 12 day pre-election reports must be filed by the treasurer of a principal campaign committee no later than the 12th day before any election in which the candidate is seeking election or nomination for election. 2 U.S.C. § 434(a)(2)(A)(i) and 11 C.F.R. § 104.5(a)(2)(i). In Advisory Opinion 1986-21 issued in 1986 (which superceded portions of Advisory Opinions 1978-41 and 1978-65), the Commission concluded that regardless of whether a candidate is unopposed for nomination, the committee "should file a pre-election report pursuant to 11 C.F.R. 104.5(a)(1)(i)...." (effective February 3, 2003, pre-election filing requirements are now at 11 C.F.R. § 104.5(a)(2)(i)). Reports electronically filed must be received and validated at or before 11:59 p.m., Eastern Standard/Daylight Time on the prescribed filing date to be timely filed. 11 C.F.R. § 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d). The 12 Day Pre-Primary Report is an election sensitive report, and for purposes of the schedules of penalties, an election sensitive report is considered to be not filed if it is not filed prior to four (4) days before the primary election. 11 C.F.R. § 111.43(d) and (e)(2).

According to the respondents, they received the notice regarding the 12 Day Pre-Primary Report, but "came to the conclusion" that they "did not need to submit this report" because the candidate "was not seeking nomination in the primary." The respondents believe that the filing "instructions were misleading."

On August 10, 2004, Prior Notice was sent to the respondents. The Prior Notice states that the filing date for the 12 Day Pre-Primary Report is September 2, 2004. In the "WHO MUST FILE" section, the Notice says that the 12 Day Pre-Primary filing requirement also applies to principal campaign committees of unopposed candidates and candidates whose names do not appear on the ballot. On the second page, the Notice says that treasurers are responsible for the timeliness of all reports and they may be subject to monetary penalties if reports are not filed on time. Thus, the respondents were notified before the report was due that they had to file it even if John R. Davis, the candidate, is unopposed or his name does not appear on the ballot.

On September 4, 2004, the respondents received the mailgram dated September 3, 2004, advising them of their failure to file the 12 Day Pre-Primary Report and "[u]pon further discussions with FEC staff ... immediately gathered the required information and filed the report." Commission records indicate that the report was filed on September 10, 2004.

The other issue raised in the challenge, that they did not "intentionally neglect" their filing requirements, does not fall within the list of defenses outlined in 11 C.F.R. § 111.35(b). As the Act clearly states, it is the Treasurer's responsibility to file reports in a timely manner.

The respondents' challenge presented no evidence that a factual error was made, that the civil money penalty was miscalculated at RTB or that extraordinary circumstances existed which prevented them from filing the 12 Day Pre-Primary Report in a timely manner. The Reviewing Officer, therefore, recommends that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$9,000.

OAR Recommendations

- (1) Make a final determination in AF# 1182 that Jack Davis for Congress and Robert R. Davis, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$9,000; and
- (2) Send the appropriate letters.

Attachments

- Attachment 1 - Challenge Received from Respondents
- Attachment 2 - Declaration from RAD
- Attachment 3 -
- Attachment 4 - Declaration from OAR

DECLARATION OF PATRICIA CARMONA

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the research conducted with regard to the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to the Jack Davis for Congress committee:
 - A) Prior Notice dated August 10, 2004 referencing the 2004 12 Day Pre-Primary Report;
 - B) Non-Filer Mailgram dated September 3, 2004 referencing the 2004 12 Day Pre-Primary Report;
 - C) Reason-to-Believe Mailgram dated November 2, 2004 referencing the 2004 12 Day Pre-Primary Report.
3. I hereby certify that I have searched the Commission's public records and find that the Jack Davis for Congress committee filed the 2004 12 Day Pre-Primary Report with the Commission on September 10, 2004.
4. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington, D.C. on the 22nd day of November, 2004.



Patricia Carmona
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission

26092590319

PRIMARY ELECTION REPORT NOTICE

FEDERAL ELECTION COMMISSION

NEW YORK
Congressional Committees

August 10, 2004

FOR COMMITTEES INVOLVED IN THE PRIMARY (09/14/04)

REPORT	REPORTING PERIOD ¹	REG./CERT.& OVERNIGHT MAILING DATE ²	FILING DATE
Pre-Primary	07/01/04 - 08/25/04	08/30/04	09/02/04
48-Hour Notices	08/26/04 - 09/11/04	----see reverse side----	
October Quarterly	08/26/04 - 09/30/04	10/15/04	10/15/04

WHO MUST FILE

Principal campaign committees of congressional candidates³ (including unopposed candidates and candidates whose names do not appear on the ballot) who seek nomination in the primary must file the above reports and notices.⁴ Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

NOTE: A recent legislative change allows committees to file reports using overnight mail on the same terms as registered/certified mail. (See footnote 2).

¹These dates indicate the beginning and the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered.

²Reports sent by registered or certified mail must be postmarked by the mailing date. Committees should keep the mailing receipt with its postmark as proof of filing. If using overnight mail, the delivery service must receive the report by the mailing date. "Overnight mail" means an overnight service with an on-line tracking system. Reports filed by any other means must be received by the Commission by the filing date.

³An individual becomes a candidate for Federal office (and thus triggers registration and reporting obligations) when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports.

⁴If the campaign has more than one authorized committee, in addition to the principal campaign committee, the principal campaign committee must also file a consolidated report on Form 3Z.

(over)

02506526092

48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives contributions **(including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee)** of \$1,000 or more, during the period of August 26 through September 11, 2004.

The notices must reach the appropriate federal filing office within 48 hours of the committee's receipt of the contribution(s). **Campaign committees that file electronically MUST submit their 48-hour notices electronically.** For more information, visit the FEC web site at <http://www.fec.gov/electfil/online.html>. U.S. House candidates faxing 48-hour notices should transmit them to the FEC at (202) 219-0174.

COMPLIANCE

- Treasurers of political committees are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time.
- Under the Administrative Fine Program, political committees and their treasurers who fail to file their reports (including 48-hour notices) on time may be subject to civil money penalties up to \$16,000 (or more for repeat late- and non-filers).⁵ For additional information, see the enclosed handout entitled, "Administrative Fine Program," and visit the FEC web site at <http://www.fec.gov/adminfines1.html>.
- In addition, political committees that file illegible reports or use non-FEC forms (except for FEC-approved, computer-generated forms) will be required to refile their reports.
- Electronic filers who instead file on paper or submit an electronic report (either by direct transmission or on 3.5" diskette) that does not pass the validation test will be considered non-filers and may be subject to enforcement actions (including administrative fines).

ELECTRONIC FILING

U.S. House committees that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or that expect to do so, must submit their reports electronically. For additional information, review the enclosed handout entitled "Electronic Filing," call the FEC's Electronic Filing office at (800) 424-9530 or (202) 694-1642, and visit our web site at <http://www.fec.gov/electfil/electron.html>.

⁵Penalties for late- and non-filing of 48-hour notices are based on the amount of contributions not timely disclosed. As a result, these penalties may exceed \$16,000, even for first-time violations.

24038512425


**WESTERN
UNION**

WESTERN UNION COMMERCIAL SERVICES
 CONFIRMATION OF MAILGRAM TO: ROBERT R DAVIS
 JACK DAVIS FOR CONGRESS
 PO BOX 2004
 AKRON NY 14001-2004

CHRIS RITCHIE
 FEDERAL ELECTION COMMISSION
 999 E ST NW
 WASHINGTON DC 20463

SEPTEMBER 3, 2004

IDENTIFICATION NUMBER: C00397794

REFERENCE: 12 DAY PRE-PRIMARY REPORT (07/01/2004 - 08/25/2004)

DEAR TREASURER:

IT HAS COME TO THE ATTENTION OF THE FEDERAL ELECTION COMMISSION THAT YOU MAY HAVE FAILED TO FILE THE ABOVE REFERENCED REPORT OF RECEIPTS AND EXPENDITURES AS REQUIRED BY THE FEDERAL ELECTION CAMPAIGN ACT, AS AMENDED. YOU WERE PREVIOUSLY NOTIFIED OF THE DUE DATE FOR THIS REPORT.

YOU WILL BE ALLOWED FOUR (4) BUSINESS DAYS FROM THE DATE OF THIS NOTICE TO FILE THIS REPORT TO AVOID PUBLICATION. THE REPORT MUST BE FILED WITH THE FEDERAL ELECTION COMMISSION, 999 E STREET, N.W., WASHINGTON, D.C. 20463 FOR HOUSE CANDIDATES, OR THE SECRETARY OF THE SENATE, 232 HART SENATE OFFICE BUILDING, WASHINGTON, D.C. 20510 FOR SENATE CANDIDATES. A COPY OF THE REPORT MUST ALSO BE FILED WITH THE SECRETARY OF STATE OR EQUIVALENT STATE OFFICER UNLESS THE STATE IS EXEMPT FROM THE FEDERAL REQUIREMENT TO RECEIVE AND MAINTAIN PAPER COPIES. IF YOU HAVE FILED THE REPORT TIMELY BY CERTIFIED OR REGISTERED MAIL, PLEASE NOTIFY US IMMEDIATELY, IN WRITING, OF THE CERTIFIED OR REGISTERED NUMBER AND THE DATE THAT THE REPORT WAS SENT.

IN ADDITION, THE FAILURE TO TIMELY FILE THIS REPORT MAY RESULT IN CIVIL MONEY PENALTIES, AN AUDIT OR OTHER LEGAL ENFORCEMENT ACTION. THE CIVIL MONEY PENALTY CALCULATION FOR LATE REPORTS DOES NOT INCLUDE A GRACE PERIOD AND BEGINS ON THE DAY FOLLOWING THE DUE DATE FOR THE REPORT.

IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER, PLEASE CONTACT CHRIS RITCHIE IN THE REPORTS ANALYSIS DIVISION ON OUR TOLL FREE NUMBER (800)424-9530. OUR LOCAL NUMBER IS (202)694-1130.

SINCERELY,
 JOHN D. GIBSON
 ASSISTANT STAFF DIRECTOR
 REPORTS ANALYSIS DIVISION

DECLARATION OF SHAWN WOODHEAD WERTH

1. I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Officer, I supervise research conducted with respect to all challenges submitted in accordance with the Administrative Fine program.
2. The 2004 12 Day Pre-Primary Report for the New York Primary, covering the period July 1 through August 25, is due September 2, 2004. If electronically filed, it must be received and validated by the Commission at or before 11:59 p.m., Eastern Standard/Daylight Time on September 2, 2004 to be timely filed.
3. I hereby certify that I have searched the Commission's public records and that the document identified herein is the true and accurate copy of Page 1 of the Summary Page for the 2004 12 Day Pre-Primary Report electronically filed by Jack Davis for Congress and Robert Davis, as Treasurer. According to the Commission's records, the report was received on September 10, 2004 and covers the period July 1 through August 25, 2004.
4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington on the 16th of March, 2006.



Shawn Woodhead Werth
Reviewing Officer
Office of Administrative Review
Federal Election Commission

26092590323

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**

For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (In full) **USE FEC MAILING LABEL OR TYPE OR PRINT** Example: If typing, type over the lines

JACK DAVIS FOR CONGRESS

ADDRESS (number and street)

POST OFFICE BOX 2004

Check if different
than previously
reported. (ACC)

AKRON

NY

14001

2. FEC IDENTIFICATION NUMBER

C00397794

CITY

STATE

ZIP CODE

STATE DISTRICT

3. IS THIS REPORT ☒ NEW OR ☐ AMENDED (A)

NY

28

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

April 15 Quarterly Report (Q1)

July 15 Quarterly Report (Q2)

October 15 Quarterly Report (Q3)

January 31 Year-End Report (YE)

Termination Report (TER)

(b) 12-Day PRE-Election Report for the:

☒ Primary (12P)

General (12G)

Runoff (12R)

Convention (12C)

Special (12S)

Election on 11 02 2004

In the State of NY

(c) 30-Day POST-Election Report for the:

General (30G)

Runoff (30R)

Special (30S)

Election on

in the State of

5. Covering Period 07 01 2004 through 08 25 2004

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer ROBERT DAVIS

Signature of Treasurer Electronically Filed by ROBERT DAVIS

Date 09 10 2004

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. 437g.

Office
Use
Only**FEC FORM 3**
(Revised 02/2003)

26092590324



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA OVERNIGHT DELIVERY

March 20, 2006

Robert R. Davis, as Treasurer
Jack Davis for Congress
Post Office Box 2004
Akron, NY 14001

C00397794
AF # 1182

Dear Mr. Davis:

On November 1, 2004, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Jack Davis for Congress and you, as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file in a timely manner the 2004 12 Day Pre-Primary Report, an election sensitive report. The Commission also made a preliminary determination that the civil money penalty was \$9,000 based on the schedule of penalties at 11 C.F.R. § 111.43.

After reviewing your written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination in this matter. A copy of the Reviewing Officer's recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Your written response should be sent to the Commission Secretary, 999 E Street, NW, Washington, DC 20463. As a result of the anthrax threat in the Washington, DC area, US Postal Service mail delivery to federal agencies, including the Commission, has been interrupted. Until regular mail delivery resumes, you may also file your written response with the Commission Secretary via facsimile (202-208-3333) or by courier at the same address (if you use an overnight delivery service, please use zip code 20004 instead of zip code 20463). Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1660 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Shawn Woodhead Werth".

Shawn Woodhead Werth
Reviewing Officer
Office of Administrative Review

Attachment

26092590325



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2006 APR 11 A 9:25

April 10, 2006

MEMORANDUM

SENSITIVE

TO: THE COMMISSION

THROUGH: ROBERT J. COSTA *AK*
ACTING STAFF DIRECTOR

JOHN D. GIBSON *JDG*
ACTING DEPUTY STAFF DIRECTOR

FROM: SHAWN WOODHEAD WERTH *SW*
REVIEWING OFFICER
OFFICE OF ADMINISTRATIVE REVIEW

SUBJECT: FINAL DETERMINATION RECOMMENDATION IN
AF# 1182 - JACK DAVIS FOR CONGRESS AND ROBERT R.
DAVIS, AS TREASURER (C00397794)

On November 1, 2004, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Jack Davis for Congress and Robert R. Davis, as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2004 12 Day Pre-Primary Report, an election sensitive report. The report was filed on September 10, 2004, 8 days late, and was considered not filed for purposes of the civil money penalty calculation. As a result, on November 1, 2004, the Commission also made a preliminary determination that the civil money penalty was \$9,000 based on the schedule of penalties at 11 C.F.R. § 111.43.

On November 19, 2004, the Commission received the respondents' written response and supporting documentation ("challenge"). After reviewing the challenge, the Reviewing Officer's recommendation dated March 16, 2006 was forwarded to the Commission. A copy was simultaneously forwarded to the respondents. The Reviewing Officer recommended that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$9,000 because the respondents submitted no evidence that a factual error was made, that the civil money penalty was miscalculated at RTB or that extraordinary circumstances existed which prevented them from filing the 12 Day Pre-Primary Report in a timely manner.

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not

raised in the respondents' challenge or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). As of this date, a written response has not been received from the respondents.

OAR Recommendations

- (1) Make a final determination in AF# 1182 that Jack Davis for Congress and Robert R. Davis, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$9,000; and
- (2) Send the appropriate letter.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL: **Tuesday, April 11, 2006 11:00**

BALLOT DEADLINE: **Friday, April 14, 2006 4:00**

COMMISSIONER: LENHARD, MASON, TONER, von SPAKOVSKY, WALTHER, WEINTRAUB

SUBJECT: **Final Determination Recommendation in AF #1182
Jack Davis for Congress and Robert R. Davis, as
Treasurer (C00397794). Memorandum from the
Reviewing Officer Office of Administrative Review
dated April 10, 2006.**

- () I approve the recommendation(s)
- () I object to the recommendation(s)
- () I am recused from voting.
- () No vote by ballot.

COMMENTS: _____

A definite vote is required. All ballots must be signed and dated. Please return
ONLY THE BALLOT to the Commission Secretary. Please return ballot no later
than date and time shown above.

DATE: _____

SIGNATURE: _____

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

25092590328

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Final Determination Recommendation in) AF 1182
Jack Davis for Congress and Robert R.)
Davis, as Treasurer (C00397794))

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby
certify that on April 14, 2006, the Commission decided by a vote of 6-0 to take the
following actions in AF 1182:

1. Make a final determination in AF 1182 that Jack Davis for Congress
and Robert R. Davis, as Treasurer, violated 2 U.S.C. § 434(a) and
assess a civil money penalty of \$9,000.
2. Send the appropriate letter.

Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and
Weintraub voted affirmatively for the decision.

Attest:

April 14, 2006
Date

Mary W. Dove
Mary W. Dove
Secretary of the Commission

26092590329



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 18, 2006

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert R. Davis, as Treasurer
Jack Davis for Congress
Post Office Box 2004
Akron, NY 14001

ID# C00397794
AF# 1182

Dear Mr. Davis:

On November 1, 2004, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Jack Davis for Congress and you, as Treasurer, violated 2 U.S.C. § 434(a) for failing to file the 12 Day Pre-Primary Report, an election sensitive report. By mailgram dated November 2, 2004, the Commission sent you notification of the RTB finding that included a civil money penalty calculated at RTB of \$9,000 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On November 19, 2004, the Office of Administrative Review received your written response and supporting documentation challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and your written response with its supporting documentation. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Jack Davis for Congress and you, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty in the amount of \$9,000 in accordance with 11 C.F.R. § 111.43. The basis for the Reviewing Officer's recommendation was included in the Final Determination Report, a copy of which was sent to you on March 20, 2006.

On April 14, 2006, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Jack Davis for Congress and you, as Treasurer, violated 2 U.S.C. § 434(a) and assessed a civil money penalty of \$9,000. It is based on the same factors used to calculate the civil money penalty at RTB.

To Pay the Civil Money Penalty

To pay the civil money penalty, send the enclosed form and your payment to the address on page 3 within 30 days of receipt of this letter.

05206526092

If You Do Not Pay the Civil Money Penalty

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 et seq. If you do not pay this debt within 30 days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within 5 days of the transfer to Treasury, Treasury will contact the debtor and request payment. Treasury currently charges a fee of 28% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the district court of the United States for the district in which the committee or you reside, or transact business, requesting that the final determination be modified or set aside. See 2 U.S.C. § 437g(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 2 U.S.C. § 437g. 11 C.F.R. § 111.38.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 C.F.R. § 111.42(b). Although the file must be placed on the public record within 30 days from the date of the Commission's notification, this could occur at any time following certification of the Commission's vote.

If you have any questions regarding the payment of the civil money penalty, please contact Shawn Woodhead Werth on our toll free number (800)424-9530 (press 0, then ext. 1660) or (202)694-1660.

Sincerely,



Michael E. Toner
Chairman

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the civil money penalty is \$9,000 for the 2004 12 Day Pre-Primary.

This penalty should be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
PO Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox
FEC # 979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

The form and payment are due within 30 days of receipt of this letter.

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTs). Your account will be electronically debited for the amount on the check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Jack Davis for Congress

FEC ID#: C00397794

AF#: 1182

PAYMENT AMOUNT DUE: \$9,000

26092590322

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Jack Davis for Congress

FEC ID#: C00397794

AF#: 1182

PAYMENT AMOUNT DUE: \$9,000

9,000

3

QUALITY IS OUR PRIORITY FOR LOCKBOX 2182
SEQ# 002 \$ 0000900000 BA# 1 05-02-06 20 4

us bancorp.
The Bancorp. Group

JOHN R DAVIS JR C/O 1 SQUARED ELEMENT 12800 CLARENCE CENTER RD AKRON, NY 14001-9749		JACKSON FOR CONGRESS IDC00.397794 AF 1182		6135	
Pay to the Order of		FEDERAL ELECTION COM.		Date 4-22-06 55-7285/212	
NINE THOUSAND		NO		Dollars	
SMITH BARNEY PRESTIGE CLIENT FMA ACCOUNT 866-483-2965 Citibank F.S.B. Englewood Clk, N.J.		100		A	
For		[Signature]		[Stamp]	

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 1182

26092590334



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 1182

DATE SCANNED 6/2/06

SCANNER NO. 2

SCAN OPERATOR S.E.G

26092590335