



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Michael A. DeHaven, Treasurer
Jim Gerlach for Congress Committee
Post Office Box 87
Uwchland, Pennsylvania 19480-0087

SEP 22 2006

RE: MUR5690
Jim Gerlach for Congress Committee
and Michael DeHaven, in his
official capacity as treasurer

Dear Mr. DeHaven:

On December 6, 2005, the Federal Election Commission (the "Commission") notified the Jim Gerlach for Congress Committee (the "Committee") and you, in your official capacity as treasurer, of a complaint alleging that the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you with a copy of the complaint.

After reviewing the allegations contained in the complaint, the Committee's response, and publicly available information, the Commission, on September 12, 2006, found reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(b)(2), 434(b)(2)(A) and 434(b)(3)(A), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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The Commission also found reason to believe the Committee violated 2 U.S.C. § 434(b)(2)(A) by failing to correctly report contributions received from persons other than a political committee and by incorrectly reporting the total election cycle-to-date contributions for an individual, and violated 2 U.S.C. § 434(b)(1) by incorrectly reporting cash on hand. The Commission reminds you that failing to correctly report contributions received from persons other than a political committee and incorrectly reporting the total election cycle-to-date contributions for an individual is a violation of 2 U.S.C. § 434(b)(2)(A), and incorrectly reporting cash on hand is a violation of 2 U.S.C. § 434(b)(1). You should take steps to ensure that this activity does not occur in the future.

Furthermore, the Commission voted to dismiss the allegations that the Committee violated 2 U.S.C. § 432(c)(2) by failing to maintain an account of small contributions, violated 2 U.S.C. § 441a(f) by knowingly receiving an excessive contribution, and violated 2 U.S.C. § 434(b)(6)(A) by failing to accurately report disbursements to the Internal Revenue Service or taxes withheld from contractors. Finally, the Commission found no reason to believe the Committee accepted a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Statement of Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Designation of Counsel Form
Factual and Legal Analysis

cc: The Honorable Jim Gerlach

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4
5 **RESPONDENT:** Jim Gerlach for Congress Committee and Michael **MUR: 5690**
6 DeHaven, in his official capacity as treasurer
7

8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission
10 (“Commission”) by Lois Murphy. *See* 2 U.S.C. § 437g(a)(1). For the reasons set forth below,
11 the Commission finds reason to believe that the Jim Gerlach for Congress Committee and
12 Michael DeHaven, in his official capacity as treasurer (the “Committee”): violated 2 U.S.C.
13 § 434(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B) by failing to itemize on a Memorandum
14 Schedule A information concerning contributors after receiving a disbursement from a joint
15 fundraising committee; violated 2 U.S.C. § 434(b)(2) by incorrectly reporting the total
16 contributions for the election cycle-to-date in the amended 2004 Year-End Report, and in the
17 amended 2005 April and July and original 2005 October Quarterly Reports; and violated
18 2 U.S.C. § 434(b)(2)(A) by misreporting contributions refunded as unitemized contributions
19 received in the 2005 October Quarterly Report.

20 **II. DISCUSSION**

21 **A. Failure to Disclose Names of Contributors Who Made Donations through a**
22 **Joint Fundraising Committee**

23
24 **1. Facts**

25 The complaint alleges that on December 20, 2004, a joint fundraising committee, the
26 2004 Joint Candidate Committee II (“JCC II”), transferred \$8,832.21 to the Committee.
27 Complainant attaches the cover memorandum to the Committee from the JCC II that specifically
28 advised the Committee “to include on your year-end FEC report, as memo entries on Line 12, a

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1 list of the donors and amounts for the contributions allocated to your committee represented by
2 this transfer.” Exhibit A to the complaint. However, the Committee’s 2004 Year-End Report,
3 filed on January 26, 2005, failed to disclose an itemized list of those who contributed more than
4 \$200 as a memo entry on Line 12 of the Detailed Summary Page. The six subsequent amended
5 2004 Year-End Reports also failed to list the contributors.

6 On April 8, 2005, the Reports Analysis Division (“RAD”) sent the Committee a Request
7 for Additional Information (“RAFI”) concerning the Committee’s obligation to file a
8 Memorandum Schedule A itemizing the name, address, employer, occupation and date,
9 campaign designation and amount of contribution for each person who contributed over \$200.
10 The Committee responded to RAD on May 4, 2005 with a letter stating it would be amending the
11 Year-End Report. Despite this representation, the Committee’s final two amended 2004 Year-
12 End Reports, filed on July 13 and September 13, 2005, did not include the required information.

13 Alan Randzin, the Committee’s former treasurer, in his separate response, states that
14 Complete Campaigns.com (“Complete Campaigns”) was “[t]he campaign software company
15 utilized as the depository of contribution and disbursement data and was also used for filing
16 reports to the Commission.” Randzin said the Committee notified Complete Campaigns of the
17 need to list the contributors’ names after receiving the letter from RAD, and Complete
18 Campaigns advised the Committee that the absence of the names was due to a computer error
19 and would be fixed. However, according to Randzin, the “error was not corrected” when the
20 amended reports were filed.¹

¹ In its response, the Committee claims that “the names of each contributor who made a contribution through JCC II were accurately and completely disclosed during the 2004 election cycle,” based on an attached memorandum to the Committee from the JCC II (Exhibit A). The memorandum states that “[a]ll donors were previously . . . itemized on earlier FEC reports.” However, although the names, addresses, occupations and employers, election (footnote continued on next page)

1 2. Analysis

2 The Committee was required to file a Memorandum Schedule A listing the original
3 contributors after receiving each disbursement from the joint fundraising committee. 11 C.F.R.
4 § 102.17(c)(8)(i)(B); *see* 2 U.S.C. §§ 434(b)(2)(F), (3)(A). The JCC II informed the Committee
5 of this obligation in a cover memorandum enclosing the transferred funds and RAD also sent the
6 Committee an RFAI concerning this obligation. Still, the Committee has never properly
7 amended its 2004 Year-End Report to disclose this information. Therefore, there is reason to
8 believe the Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 102.17(c)(8)(i)(B).

9 **B. Overreporting of Contributions**

10 1. Facts

11 The Detailed Summary Page of the 2004 Post-General Election Report filed April 14, 2005
12 shows total contributions received from the period November 3 through November 22, 2004 in the
13 amount of \$17,339. As November 3, 2004 began a new election cycle, this amount reflected the
14 total amount of contributions received to date for the 2005-2006 election cycle. As alleged in the
15 complaint, the Committee's fourth amended 2004 Year-End Report, filed on July 13, 2005, shows an
16 additional \$7,800 in contributions received by the Committee between November 23 and December
17 31, 2004. Therefore, the election cycle-to-date contributions received column on the Summary Page
18 of the fourth amended 2004 Year-End Report should have shown a total of \$25,139 (\$17,339 plus
19 \$7,800). Instead, this Report lists the total contributions received for the cycle in the amount of
20 \$2,180,307, or \$2,155,168 more than what should have been reported in this column. The amended
21 2005 April and July and original 2005 October Quarterly Reports all reflect this error. Separately

designations and total election cycle-to-date contributions received for each of the contributors were previously reported by the JCC II, this does not relieve the Committee of its separate duty to report and itemize this information.

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1 calculating the contributions received in each of these periods, combined with the \$17,339 shown in
2 the 2004 Post-General Election Report and the \$7,800 shown in the fourth amended 2004 Year-End
3 Report, as of the period ending September 30, 2005, the Committee actually received \$1,153,683 in
4 contributions for the election cycle. However, due to the continuing inclusion of the inflated
5 amounts, the Committee reported receiving contributions in the amount of \$3,310,453, a difference
6 of \$2,156,770.

7 On December 20, 2005, after the complaint was filed, RAD sent the Committee an RFAI
8 regarding the amended 2004 Year-End Report (filed on September 13, 2005), the amended 2005
9 April Quarterly Report (filed September 23, 2005), and amended 2005 July Quarterly Report (filed
10 September 23, 2005); a separate RFAI was sent regarding the 2005 October Quarterly Report. These
11 RFAIs concerned, *inter alia*, the incorrect amounts listed for election cycle-to-date contributions.

12 In its response to the complaint, the Committee admits the reporting error, and claims it
13 was due to Complete Campaigns' software causing the previous election cycle's total amount of
14 contributions to be carried over into the new election cycle on the reports in question. On
15 January 19, 2004, the Committee corrected the errors by amending the affected reports.

16 2. Analysis

17 The Act requires all candidate committees to disclose to the public, through reports filed
18 with the Commission, the total amount of contributions received for each election cycle-to-date.
19 2 U.S.C. § 434(b)(2); *see* 11 C.F.R. § 104.3(a). The Committee admits failing properly to report
20 this information, which it did not correct until after receipt of the complaint and RFAIs.

21 Therefore, there is reason to believe the Committee violated 2 U.S.C. § 434(b)(2) by incorrectly
22 reporting the total contributions for the election cycle-to-date in its amended 2004 Year-End
23 Report, and in its amended 2005 April and July and original 2005 October Quarterly Reports.

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C. Failure to Accurately Disclose the Total Amount of Contributions and Maintain an Accurate Account of Small Contributions

1. Facts

The Committee's 2005 October Quarterly Report, filed on October 15, 2005, shows -\$8,911.21 in unitemized contributions on line 11(a)(ii) of the Detailed Summary Page of Receipts. The complaint alleges the error affected other calculations on the Detailed Summary Page and was compounded when the -\$8,911.21 was added to the amount of itemized contributions, \$221,550.54, to show an incorrect total amount of individual contributions of \$212,749.35. After the complaint was filed, on December 20, 2005, RAD sent an RFAI to the Committee concerning these errors.

2. Analysis

Each report filed by an authorized committee of a candidate for Federal office is required to disclose for the reporting period the total amount of contributions received from individuals whose contributions have an aggregate amount or value of \$200 or more within an election cycle. 2 U.S.C. § 434(b)(2)(A). In its response to the complaint, the Committee admits to the violation of section 434(b)(2)(A), and states that lines 11(a)(i), 11(a)(ii) and 20(c) of the 2005 October Quarterly Report were incorrect due to misclassifying refunded contributions as received contributions. The Committee also admits that the total amount of contributions listed on line 11(e) was incorrect. Following the receipt of the complaint and an RFAI, the Committee corrected the errors in an amended report filed on January 18, 2006. Therefore, there is reason to believe the Committee violated 2 U.S.C. § 434(b)(2)(A).

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