

BEFORE THE FEDERAL ELECTION COMMISSION

7 11 12 12 57

In the Matter of
Jack Davis
Jack Davis for Congress and Robert R. Davis,
in his official capacity as treasurer

MUR 5726

SENSITIVE

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED

(1) Find probable cause to believe that Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, violated 2 U S C § 441a-1(b)(1)(C), 2 U S C § 441a-1(b)(1)(D), 11 CFR § 400 21(b), and 11 CFR § 400 22(b), (2) find probable cause to believe that Jack Davis violated 2 U S C § 441a-1(b)(1)(C), and 2 U S C § 441a-1(b)(1)(D)

II. DISCUSSION

The Respondents, Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, and Jack Davis failed to file an initial FEC Form 10 disclosing the expenditure of personal funds in excess of \$350,000 and failed to file six additional Form 10s disclosing additional expenditures in excess of \$10,000. These failures violated the disclosure provisions of the so-called "Millionaire Amendment" to the Federal Election Campaign Act of 1971, as amended (the "Act") 2 U S C § 441a-1

Respondents do not dispute that these failures violate the Act. Instead, they sued the Commission, challenging the constitutionality of the Millionaire Amendment. See *Jack Davis v Federal Election Commission*, No. 1:06-cv-01185 (D.D.C.). The General Counsel's Briefs, incorporated herein by reference, contain the factual and legal bases upon which this Office is

1 prepared to recommend that the Commission find probable cause to believe that Respondents
2 violated the Act

3 Upon receiving the Briefs, Respondents initially requested that the Commission grant a
4 stay of the enforcement action pending resolution of the lawsuit. On October 17, 2006, the
5 Commission approved our recommendation to notify Respondents that the Act provided no basis
6 for the Commission to consider such a request. A week later, on October 25, 2006, Respondents
7 submitted a half-page letter in response to the Briefs, which simply renewed their request for a
8 stay based upon the constitutional challenge. Notably, the response neither provided any new
9 reasons to support their request for a stay nor contested the factual or legal conclusions set forth
10 in the Briefs.

11 Because the response does not provide any new reasons that might warrant a stay of the
12 Commission's enforcement action, we believe this matter should proceed for the reasons
13 explained in our Memorandum to the Commission dated October 5, 2006, and at the October 17,
14 2006 Executive Session.¹ Further, because the response does not challenge the factual or legal
15 analysis set forth in the Briefs, we recommend that the Commission find probable cause to
16 believe that Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer,
17 violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 421(b) by failing to file the initial
18 notification of expenditures of \$350,000 in personal funds and 2 U.S.C. § 441a-1(b)(1)(D) and
19 11 C.F.R. § 422(b) by failing to file six additional notifications of expenditures of personal
20 funds. We also recommend that the Commission find probable cause to believe that Jack Davis

¹ [REDACTED]

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1 violated 2 U S C § 441a-1(b)(1)(C) and 2 U S C § 441a-1(b)(1)(D) in connection with the above
2 mentioned failure to file notifications of expenditures of personal funds

3 **III.** [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

IV. RECOMMENDATIONS

- 1 Find probable cause to believe that Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, violated 2 U S C § 441a-1(b)(1)(C), 2 U S C § 441a-1(b)(1)(D), 11 CFR § 400 21(b), and 11 CFR § 400 22(b).
- 2 Find probable cause to believe that Jack Davis violated 2 U S C § 441a-1(b)(1)(C), and 2 U S C § 441a-1(b)(1)(D).
- 3 [REDACTED]
- 4 Approve the appropriate letters

11/11/07
Date

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Lawrence H. Norton
General Counsel

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Deputy Associate General Counsel for Enforcement

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Ann Marie Terzaken
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Attachments

- 1 Response to the General Counsel's Briefs, Jack Davis and Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer (October 25, 2006)
- 2 [REDACTED]

ATTACHMENT 1

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October 25, 2006

HAND DELIVERED

Zachary Mahshie, Esquire
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: **MUR 5726**

Dear Mr. Mahshie

As you know, we represent Jack Davis, the respondent in the above-captioned matter under review. In its October 18, 2006 letter to Mr. Davis, the FEC states that it has, in essence, denied Mr. Davis's Request to Stay General Counsel's Recommendation that the Commission Find Probable Cause Pending Resolution of Federal Litigation and requests that Mr. Davis file any additional response to the FEC General Counsel's decision to find probable cause in this matter by October 25, 2006. This letter serves as Mr. Davis's response.

As Mr. Davis has stated previously, the statutory provisions that the FEC accuses Mr. Davis of violating, 2 U.S.C. §§ 441a-1(b)(1)(C) and 441a-1(b)(1)(D) (the "Millionaires' Amendment"), are facially unconstitutional based on First and Fifth Amendment grounds. Consequently, any enforcement action by the FEC in this regard is misplaced. Mr. Davis continues to pursue his constitutional rights in federal court and again, requests that the FEC stay any enforcement action in this matter.

If you have any questions, please feel free to call me at (202) 662-9700.

Sincerely,

Stanley M. Brand
Stanley M. Brand

BMC:lls

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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