

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
ROBINSON COMMITTEE, LLC and)	
JACK E. ROBINSON,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. _____
)	
FEDERAL ELECTION COMMISSION,)	
)	
Respondent.)	
_____)	

**PETITION PURSUANT TO 2 U.S.C. § 437g TO SET ASIDE
FINAL DETERMINATION OF VIOLATION**

Introduction

Petitioners seek to set aside Respondent’s final determination that they violated federal campaign finance law by filing a report 81 days late and thereby owe a \$6,050 civil money penalty. Alternatively, Petitioners request that this Court vacate and remand for a full and fair consideration by Respondent under the “best efforts” statute.

Parties

1. Petitioner Jack E. Robinson (“Robinson”) was a candidate within the meaning of 2 U.S.C. § 431(2) in the December 8, 2009 Republican primary for the U.S. Senate special election in Massachusetts to fill the seat formerly held by Sen. Edward M. Kennedy. Robinson lost the Republican primary to the eventual winner of the January 19, 2010 special general election – Sen. Scott P. Brown. Robinson’s address is P.O. Box 2587, Duxbury, Massachusetts 02331.

2. Petitioner Robinson Committee, LLC (“Robinson Committee”) is a Massachusetts limited liability company and is a political committee within the meaning of 2 U.S.C. § 431(4). Robinson Committee serves as the principal federal campaign committee for Robinson. The address of Robinson Committee is P.O. Box 2587, Duxbury, Massachusetts 02331. Robinson is the treasurer of Robinson Committee. (Robinson and Robinson Committee are collectively hereinafter referred to as “Robinson.”)

3. Respondent Federal Election Commission (“FEC”) is an independent administrative agency of the United States government empowered with exclusive jurisdiction to administer, interpret, and enforce the Federal Election Campaign Act of 1971, as amended (2 U.S.C. §§ 431-55) (the “Act”). The FEC’s address is 999 E Street, N.W., Washington, DC 20463.

Jurisdiction and Venue

4. This action arises under the Act. This Court has exclusive subject matter jurisdiction pursuant to 2 U.S.C. § 437g(a)(4)(C)(iii).

5. Venue of this action is proper in this Court pursuant to 2 U.S.C. § 437g(a)(4)(C)(iii) and 28 U.S.C. §§ 1391(b) and (e).

Administrative Background

6. Robinson’s 2009 Year-End Report (“Report”), covering campaign finance activity from November 19, 2009 through December 31, 2009, was required by 2 U.S.C. § 434(a) to be filed no later than January 31, 2010.

7. Robinson mailed the Report to the Secretary of the Senate on April 15, 2010.

The Report was received by the Secretary of the Senate (and deemed filed) on April 22, 2010.

Thus, the Report was filed 81 days late.¹

8. By letter dated March 29, 2010, the FEC notified Robinson that on March 25, 2010 the FEC found that it had reason to believe (“RTB”) that Robinson violated 2 U.S.C. § 434(a) by failing to file timely the Report on or before January 31, 2010. Based on the FEC’s schedule of civil money penalties at 11 C.F.R. § 111.43, the amount of the civil money penalty calculated was \$6,050.

9. By letter dated April 16, 2010, Robinson submitted a timely written response challenging the RTB pursuant to 11 C.F.R. § 111.35(a).

10. By letter dated June 8, 2010, the FEC notified Robinson that on June 4, 2010 an FEC reviewing officer had reviewed the RTB and Robinson’s written response thereto, and recommended to the FEC that the RTB determination should be upheld.

11. By letter dated June 18, 2010, Robinson submitted a timely written response to the reviewing officer’s recommendation challenging the recommendation pursuant to 11 C.F.R. § 111.36(f).

12. By letter dated July 23, 2010, the FEC notified Robinson that on July 22, 2010 the FEC adopted the reviewing officer’s recommendation and made a final determination that Robinson had violated 2 U.S.C. § 434(a) and owed a civil money penalty of \$6,050.

¹ Unlike House committees, Senate committees do not electronically file their FEC reports directly with the FEC. Rather, they must *manually* file the reports with the Secretary of the Senate, who then forwards the reports to the FEC. Thereafter, the reports become publicly available on the internet at www.fec.gov.

13. Because this petition is being filed within 30 days of receipt by Robinson of the FEC's final determination as described in paragraph 12 above, this action is timely pursuant to 2 U.S.C. § 437g(a)(4)(C)(iii) and 11 C.F.R. § 111.38.

Factual Background

14. As described in Robinson's several letters to the FEC, the Report was filed 81 days late because Robinson's senate campaign was funded entirely by personal funds within the meaning of 2 U.S.C. § 431(26) and, as a result, Robinson could not accurately complete the Report until he had tallied up all of the personal funds expended (exceeding \$500,000) – which in turn could not be accurately accomplished until Robinson completed and filed his 2009 tax returns (which occurred on April 15, 2010).

15. Robinson could not accurately complete the Report until he filed his 2009 taxes for another reason – the FEC had sent him several Requests for Additional Information and various Notices ("Requests") regarding the Report and other campaign finance reports due in 2009 and 2010 regarding the special senate election, such as:

<u>Request</u>	<u>Date Filed by FEC</u>
Request for Additional Information	January 7, 2010
Notice of Failure to File	February 17, 2010
Request for Additional Information	February 23, 2010
Request for Additional Information	March 23, 2010

16. In light of these additional Requests, Robinson could not in good conscience file the Report knowing that it possibly contained incomplete and inaccurate information.

Robinson was required to wait until he had all of the relevant financial data available, which occurred only when he completed and filed his 2009 taxes on April 15, 2010.

17. Because Robinson mailed the Report *the same day* that he mailed his 2009 taxes, Robinson qualified to receive the benefit of the “best efforts” provision found in 2 U.S.C. § 432(i) and 11 C.F.R. § 111.35(b)(3)(ii) (24-hour window).

18. Even though the Report was filed 81 days late, the harm to the public interest was nonexistent because (1) Robinson’s campaign was entirely self-funded, and (2) Robinson lost the special Republican primary to the ultimate general election winner – Sen. Scott Brown. Once the primary was over in early December 2009, the public’s interest in Robinson’s campaign finances was nonexistent because the public’s focus turned entirely to the campaign finances of the two general election candidates – Sen. Brown and his Democratic opponent Massachusetts Attorney General Martha Coakley.

19. No harm to the public interest occurred by virtue of the late filing of the Report (even if filed 81 days late) under the unique circumstances created by the special senate election in Massachusetts that occurred in December 2009 (primary) and January 2010 (general).

20. Robinson has been a federal candidate for public office since 2000 and has been required to file numerous FEC reports as a result thereof. Prior to this matter, in his 10-year FEC reporting history Robinson has never received an RTB or been assessed a civil money penalty. Robinson’s lack of negative FEC compliance history also weighs in favor of receiving a “best efforts” determination.

Issue Presented

21. Robinson is entitled to a “best efforts” determination with respect to the late filing of the Report, and the FEC’s failure to make such a determination was arbitrary, capricious, an abuse of discretion, and contrary to law.

Summary

22. The FEC’s final determination in this case, under the unique circumstances present, amounts to no more than “nit-picking.” Although the Report was filed 81 days late, Robinson used his best efforts to file the Report as soon as he came into possession of all the financial information necessary to accurately complete the Report by virtue of completing and mailing his 2009 tax returns on the same day that he mailed the Report. Apparently, only a low-level FEC compliance clerk was interested in the Report because the public had no interest in Robinson’s campaign finances once he lost the Republican primary to Sen. Brown on December 8, 2009. These facts, combined with Robinson having no prior FEC enforcement history, warrant that the FEC’s decision be set aside or, in the alternative, vacated and remanded for a full and fair consideration by the FEC under the “best efforts” statute.

Prayer for Relief

WHEREFORE, Petitioners respectfully request that this Court:

A. Declare that the FEC’s final determination that Petitioners violated 2 U.S.C. § 434(a) for failing to file the 2009 Year-End Report and the FEC’s assessment of a civil money penalty of \$6,050 were arbitrary, capricious, an abuse of discretion, and contrary to law;

B. Declare that Petitioners did not violate 2 U.S.C. § 434(a) and do not owe any civil money penalty; or, in the alternative,

C. Vacate the FEC's final determination and remand to the FEC for a full and fair "best efforts" consideration.

Respectfully submitted,
**ROBINSON COMMITTEE, LLC and
JACK E. ROBINSON,**

By their attorney,

/s/ Jack E. Robinson

Jack E. Robinson (BBO #559683)

ROBINSON LAW OFFICES

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Robinsonesq@aol.com

Dated: August 9, 2010

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ROBINSON COMMITTEE, LLC and JACK E. ROBINSON

DEFENDANTS

FEDERAL ELECTION COMMISSION

(b) County of Residence of First Listed Plaintiff Plymouth
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jack E. Robinson, Robinson Law Offices, 300 First Stamford Place, Stamford, CT 06902 (203) 425-4500

Attorneys (If Known)

Office of General Counsel, FEC, 999 E St., NW, Washington, DC 20463 (202) 694-1650

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

2 USC 437g

Brief description of cause:

challenge to FEC assessment of civil money penalty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
08/09/2010

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) ROBINSON COMMITTEE, LLC V. FEDERAL ELECTION COMM.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 462, 463, 465, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME JACK E. ROBINSON

ADDRESS Robinson Law Offices, 300 First Stamford Place, Stamford, CT 06902

TELEPHONE NO. 203-425-4500