



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 1881

DATE SCANNED 1-23-09

SCANNER NO. 1

SCAN OPERATOR JMD

29092622456



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

September 30, 2008

MEMORANDUM

TO: THE COMMISSION

THROUGH: JOSEPH F. STOLTZ *JFS*
ACTING STAFF DIRECTOR

FROM: JOHN D. GIBSON *JM*
CHIEF COMPLIANCE OFFICER

PATRICIA CARMONA *PC*
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

BY: *nm* NATALIYA IOFFE/RHIANNON MAGRUDER/CHRIS RITCHIE *RM*
COMPLIANCE BRANCH

SUBJECT: REASON TO BELIEVE RECOMMENDATION - 2008 12 DAY
PRE-PRIMARY REPORT (NEW YORK) FOR THE
ADMINISTRATIVE FINE PROGRAM

SEP 30 2008
FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

Attached is a list of political committees and their treasurers who failed to file or failed to timely file the 2008 12 Day Pre-Primary Report for the New York Primary Election in accordance with 2 U.S.C. 434(a). The 12 Day Pre-Primary Report was due on August 28, 2008, and the Primary Election was held on September 9, 2008.

The committees listed on the attached RTB Circulation Report failed to file the election sensitive report by the required due date. Election sensitive reports filed more than four days prior to the election are considered late, and reports not filed more than four days prior to the election are considered not filed. In accordance with the schedule of civil money penalties for reports at 11 CFR 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

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 amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

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9/30/2008 11:15 AM

Federal Election Commission
Reason to Believe Circulation Report
2008 PRE-PRIMARY Election Sensitive 08/28/2008 AUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
1881	C00401034	HIGGINS FOR CONGRESS	HIGGINS, BRIAN	GARY M. KANALEY	\$1,486,438	1	9/10/2008	Not Filed	\$110,515	\$6,250

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reason To Believe Recommendation - 2008)
12 Day Pre-Primary Report (NY) for the)
Administrative Fine Program:)

HIGGINS FOR CONGRESS, and GARY) AF# 1881
M. KANALEY as treasurer;)

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on October 02, 2008 the Commission took the following actions on the Reason To Believe Recommendation - 2008 12 Day Pre-Primary Report (NY) for the Administrative Fine Program as recommended in the Reports Analysis Division's Memorandum dated September 30, 2008, on the following committees:

AF#1881 Decided by a vote of 6-0 to: (1) find reason to believe that HIGGINS FOR CONGRESS, and GARY M. KANALEY as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Baucly, Hunter, McGahn II, Petersen, Walther, and Weintrauh voted affirmatively for the decision.

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Federal Election Commission
Certification for Administrative Fines
October 02, 2008

Page 2

Attest:

October 2, 2008
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 2008

Gary M. Kanaley
Higgins for Congress
P.O. Box 28
Buffalo, NY 14220

C00401034
AF#: 1881

Dear Gary M. Kanaley:

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 a 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 20, 2008, shall be filed no later than August 28, 2008. 2 U.S.C. 434(a). Records at the Federal Election Commission ("FEC") indicate that this report was not filed prior to four (4) days before the Primary Election held on September 9, 2008. You should file the report if you have not already done so.

The Act was further amended in 1999 to permit the 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 10/2/2008, the FEC found that there is reason to believe ("RTB") that Higgins for Congress and you, as treasurer, violated 2 U.S.C. 434(a) by failing to file timely this report on or before August 28, 2008. 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 \$6,250. It is due by 11/11/2008 and is based on these factors:

Election Sensitivity of Report: Election Sensitive
Level of Activity: \$110,515
Number of Days Late: Not Filed
Number of Previous Civil Money Penalties Assessed: 1

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 4. 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 11/11/2008. Your written response must include the reason(s) why you are challenging the RTB

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finding and/or calculated civil money penalty. The FEC will only consider challenges that are based on a factual error in the RTB finding; miscalculation of the calculated civil money penalty by the FEC; or your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to, a failure of Commission computers or Commission-provided software despite you seeking technical assistance from Commission personnel and resources; a widespread disruption of information transmissions over the Internet that is not caused by the Commission's or your computer systems or Internet service provider; and severe weather or other disaster-related incident. **Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to, negligence; delays caused by vendors or contractors; treasurer and staff illness, inexperience or unavailability; committee computer, software, or internet service provider failures; failure to know filing dates; and failure to use filing software properly.** 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. 11 C.F.R. 111.35.

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 Higgins 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. 111.42, unless you notify the FEC in writing that you wish the matter to be made public.

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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 Rhiannon Magruder 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,

A handwritten signature in black ink, appearing to read "DFM II", with a circular stamp or seal partially visible to the right.

Donald F. McGahn II
Chairman

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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 RTB is \$6,250 for the 2008 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 979058
St. Louis, MO 63197-9000

If you choose to send your remittance and 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 remittance and your payment are due by 11/11/2008. Upon receipt of your remittance and payment, the FEC will send you a final determination 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 your 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: Higgins for Congress

FEC ID#: C00401034

AF#: 1881

PAYMENT DUE DATE: 11/11/2008

PAYMENT AMOUNT DUE: \$6,250

29092622464



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2008-12-03 A 10:55
December 2, 2008

MEMORANDUM

SENSITIVE

TO: THE COMMISSION

THROUGH: JOSEPH F. STOLTZ *JFS*
ACTING STAFF DIRECTOR

FROM: JOHN D. GIBSON *JDG*
CHIEF COMPLIANCE OFFICER

PATRICIA CARMONA *PC*
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

BY: NATALIYA IOFFE/RHIANNON MAGRUDER *RM*
COMPLIANCE BRANCH

SUBJECT: ADMINISTRATIVE FINE PROGRAM -
FINAL DETERMINATION RECOMMENDATION FOR THE
2008 12 DAY PRE-PRIMARY REPORT (NEW YORK)

Attached are two lists of political committees and their treasurers against which the Commission has found reason to believe (RTB) and assessed proposed civil money penalties calculated at RTB for failure to file or failure to timely file the 2008 12 Day Pre-Primary Report for New York. The first list represents the committee that has paid the civil money penalty and the second list represents the committee that has not paid the civil money penalty. The committee that has not paid has been given at least forty (40) days from the date of the Commission's RTB finding to remit payment.

In accordance with 11 CFR 111.34 and 11 CFR 111.40, the Commission shall send a final determination notice to those respondents that have either paid or not paid the civil money penalty.

RAD Recommendation

- (1) Make final determination that the political committees and their treasurers on the attached reports violated 2 U.S.C. 434(a) and assess the final civil money penalties so indicated.
- (2) Send the appropriate letters.

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1/2/2008 12:25 PM

Federal Election Commission
FD Circulation Report Fine Paid
2008 PRE-PRIMARY Election Sensitive 08/28/2008 AUTH

AF#	Committee Name	Candidate Name	Committee ID	Treasurer	Receipt Date	Days Late	LOA	PV	RTB Date	RTB Penalty	Final Money Penalty	Date Paid	Amount Paid
1881	HIGGINS FOR CONGRESS	HIGGINS, BRIAN	C00401034	GARY M. KANALEY	09/10/2008	Not Filed	\$110,515	1	10/02/2008	\$6,250	\$6,250	10/23/2008	\$6,250

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Administrative Fine Program - Final) AF 1881
 Determination Recommendation for the)
 2008 12 Day Pre-Primary Report (NY):)
 Higgins for Congress and Gary M.)
 Kanaley, as Treasurer)

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on December 05, 2008, the Commission decided by a vote of 6-0 to take the following actions in AF 1881:

1. Make a final determination that Higgins for Congress and Gary M. Kanaley, as Treasurer, violated 2 U.S.C. 434(a) and assess the final civil money penalty in the amount of \$6,250.
2. Send the appropriate letters.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther and Weintraub voted affirmatively for the decision.

Attest:

December 5, 2008
 Date

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

29092622467



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 2008

Gary M. Kanaley, Treasurer
Higgins for Congress
P.O. Box 28
Buffalo, NY 14220

C00401034
AF#: 1881

Dear Gary M. Kanaley,

On 10/2/2008, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Higgins for Congress and you, as treasurer, violated 2 U.S.C. 434(a) for filing late or failing to file the 2008 Pre-Primary Report. By letter dated 10/3/2008, the Commission sent you notification of the RTB finding that included a civil money penalty calculated at the RTB stage of **\$6,250** in accordance with the schedule of penalties at 11 C.F.R. 111.43.

On 10/23/2008, the FEC received payment of your civil money penalty calculated at the RTB stage. The FEC made a final determination on 12/5/2008 that you, as treasurer, and Higgins for Congress violated 2 U.S.C. 434(a), assessed a civil money penalty in the amount of **\$6,250** in accordance with 11 C.F.R. 111.43, and voted to close the file.

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 thirty (30) days from the date of the Commission's notification, this could occur at anytime following certification of the Commission's vote.

If you have any questions regarding this matter, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

Sincerely,

A handwritten signature in black ink, appearing to read "DM II", with a stylized flourish at the end.

Donald F. McGahn II
Chairman

29092622468

FOR: Higgins for Congress

FEC ID#: C00401034

AF#: 1881

PAYMENT DUE DATE: 11/11/2008

PAYMENT AMOUNT DUE: \$6,250

QUALITY IS OUR PRIORITY FOR LOCKBOX 9058
SEQ# 001 \$ 0000625000 BA# 1 10-22-08 20 4



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<p>Higgins for Congress P.O. Box 28 Buffalo, NY 14220</p>		<p>MANUFACTURERS AND TRADERS Clinton Bailey Office 10-4/220</p>		<p>2994</p>
<p>PAY TO THE ORDER OF <u>FEC</u></p>		<p><u>10/21/08</u></p>		<p>\$ <u>6,250.00</u></p>
<p><u>Six thousand two hundred fifty</u></p>		<p><u>00/100</u></p>		<p>DOLLARS</p>
<p>MEMO <u>penalty - 12 day pre primary</u></p>		<p>AMOUNT GUARANTEED TO BE \$ <u>6250.00</u> U.S. BANK, N.A. ST. LOUIS, MISSOURI <u>Carlton M. R.</u></p>		



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 1881

DATE SCANNED 1-23-09

SCANNER NO. 1

SCAN OPERATOR JMP

29092622470