



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 2637

DATE SCANNED 9-16-13

SCANNER NO. 2

SCAN OPERATOR Jm 12

13092693046



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2013 FEB 12 PM 3: 57

February 12, 2013

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: Jodi Winship *JW*
Compliance Branch

SUBJECT: Reason to Believe Recommendation -
Failure to File 48-Hour Notices under the Administrative Fine Program

Attached is the name of a principal campaign committee that has failed to file 48-hour notices with the Commission for contributions of \$1,000.00 or more received from the close of books for the New York 12 Day Pre-General Report up to 48 hours before the November 6, 2012 General Election in accordance with 2 U.S.C. § 434(a) and 11 CFR. § 104.5(f). The committee, Doheny for Congress, represents a candidate who lost the General Election. The committee is being referred for failing to file 48-hour notices for contributions totaling \$203,000.00.

A 48-hour notice is required to report all contributions of a \$1,000.00 or more, to any authorized committee of a candidate, including contributions from the candidate, loans from the candidate and other non-bank sources and endorsements or guarantees of loans from banks, as per, 11 CFR § 104.5(f).

We have attached an information sheet which includes the contributor name, date of receipt and amount of the contributions for which a 48-hour notice was not filed.

In accordance with the schedule of civil money penalties outlined within 11 CFR § 111.44, this committee should be assessed the civil money penalty so indicated.

13092693047

Recommendation

1. Find reason to believe that Doheny for Congress and Jeffrey Kirkby, Treasurer, violated 2 U.S.C. § 434(a) and make a preliminary determination that a civil money penalty of \$20,520.00 be assessed.
2. Send the appropriate letter.

Attachment

13092693048

Contributions for Which a 48-Hour Notice Was Not Received

AF 2637

Committee ID: C00462853

Committee Name: Doheny for Congress

Report Type: 30 Day Post-General Report (10/18/2012 – 11/26/2012)

48-Hour Reporting Period: 10/18/2012 – 11/03/2012

CONTRIBUTOR	DATE	AMOUNT
DOHENY, MATTHEW	10/26/2012	\$200,000.00
GLENS FALLS CITY REPUBLICAN COMMITTEE	10/29/2012	\$3,000.00
	TOTAL	\$203,000.00

Proposed Civil Money Penalty: \$20,520.00 ((2 Notices Not Filed at \$110 each) + (10% of the Overall Contribution Not Filed))

13092693049

13092693050

Federal Election Commission
Reason to Believe Circulation Report
48-Hour Notification Report

2/12/2013 1:43 PM

AF#	Committee ID	Committee Name	State	Election	Candidate Name	Treasurer	Prev Violations	Notices Not Filed	LOA	Penalty
2637	C00462853	DOHENY FOR CONGRESS	NY	2012	DOHENY, MATTHEW	KIRKBY, JEFFREY	0	2	\$203,000	\$20,520

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reason To Believe – Failure to File 48-) AF 2637
Hour Notices under the Administrative)
Fine Program: Doheny for Congress and)
Jeffrey Kirkby, Treasurer)

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election
Commission, do hereby certify that on February 14, 2013, the Commission
decided by a vote of 5-0 to take the following actions in AF 2637:

1. Find reason to believe that Doheny for Congress and Jeffrey Kirkby,
Treasurer, violated 2 U.S.C. § 434(a) and make a preliminary
determination that a civil money penalty of \$20,520.00 be assessed.
2. Send the appropriate letter.

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

Attest:

February 15, 2013
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

13092693051



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 2013

Jeffrey Kirkby, in official capacity as Treasurer
Doheny for Congress
65 High Street
Alexandria Bay, NY 13607

C00462853
AF#: 2637

Dear Mr. Kirkby:

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate or the Federal Election Commission ("FEC"), and the Secretary of State, as appropriate, of any contribution of \$1,000 or more, received by any authorized committee of the candidate after the 20th day, but more than 48 hours before, any election. 2 U.S.C. § 434(n)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. *Id.* These notification requirements are in addition to all other reporting requirements. 2 U.S.C. § 434(a). Our records indicate that Doheny for Congress did not submit 48-Hour Notices for contributions of \$1,000 or more, received between October 26, 2012 and October 29, 2012, totaling \$203,000, as required by 2 U.S.C. § 434(a)(6)(A). Attachment 1.

The Act permits 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 February 14, 2013, the FEC found that there is Reason to Believe ("RTB") that Doheny for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) by failing to file the 48-Hour Notices. Based on the FEC's schedule of civil money penalties at 11 CFR § 111.44, the amount of your civil money penalty calculated at the RTB stage is \$20,520. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 2. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. The amount of the civil money penalty is \$110 for each non-filed notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each prior violation. Send your payment of \$20,520 within forty (40) days of the finding, or by March 26, 2013.

At this juncture, the following courses of action are available to you:

13092693052

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response, including the AF# found at the top of page 1 under your committee's identification number, to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must be received within forty (40) days of the Commission's RTB finding, or March 26, 2013. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and 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 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) 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. 11 CFR § 111.35(b). 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. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "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 U.S. district court under 2 U.S.C. § 437g. 11 CFR § 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.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Doheny for Congress and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty.

13092693053

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 CFR § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, send the enclosed remittance form, along with 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.

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

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact David Garr 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.

On behalf of the Commission,

Ellen L. Weintraub

Ellen L. Weintraub
Chair

13092693054

ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.44, the amount of your civil money penalty calculated at RTE is \$20,520 for the 2012 General Election 48-Hour Notification 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 March 26, 2013. 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: Doheny for Congress

FEC ID#: C00462853

AF#: 2637

PAYMENT DUE DATE: March 26, 2013

PAYMENT AMOUNT DUE: \$20,520

13092693055

Contributions for Which a 48-Hour Notice Was Not Received

AF 2637

Committee ID: C00462853

Committee Name: Dohany for Congress

Report Type: 30 Day Post-General Report (10/18/2012 – 11/26/2012)

48-Hour Reporting Period: 10/18/2012 – 11/03/2012

CONTRIBUTOR	DATE	AMOUNT
DOHENY, MATTHEW	10/26/2012	\$200,000.00
GLENS FALLS CITY REPUBLICAN COMMITTEE	10/29/2012	\$3,000.00
	TOTAL	\$203,000.00

Proposed Civil Money Penalty: \$20,520.00 ((2 Notices Not Filed at \$110 each) + (10% of the Overall Contribution Not Filed))

13092693056

PATTON BOGGS LLP

RECEIVED

2013 MAR 13 PM 1:14

FEC MAIL CENTER

2550 M Street, NW
Washington, DC 20037
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

March 13, 2013

William J. McGinley
202-457-6561
wmcginley@pattonboggs.com

VIA HAND DELIVERY

Office of Administrative Review
Federal Election Commission
999 E Street, NW
Washington, DC 20463

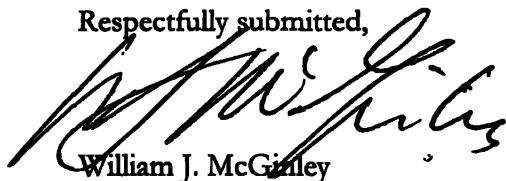
Re: Doheny for Congress
C00462853
AF#2637

To Whom It May Concern:

Please find attached the response of our client, Doheny for Congress, to the notification in the above-referenced matter. Also attached is an executed Statement of Designation of Counsel.

Please do not hesitate to contact us with any questions.

Respectfully submitted,



William J. McGinley

Attachments

13092693057

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
)
Doheny for Congress) **AF #2637**
and Jeffrey Kirby, as Treasurer) **C00462853**

**RESPONSE OF DOHENY FOR CONGRESS
TO THE REASON TO BELIEVE NOTIFICATION IN AF #2637**

13092693058

This responds on behalf of our client to the reason to believe ("RTB") notification from the Federal Election Commission ("Commission") alleging that Doheny for Congress ("DFC") failed to file the 48-Hour Notices for contributions of \$1,000 or more, received between October 26, 2012 and October 29, 2012, in the above referenced matter. The notification indicates that the proposed civil penalty at the RTB stage is \$20,520. For the reasons set forth below, DHC respectfully seeks modification of the proposed civil penalty because there are material factual errors in the RTB finding.

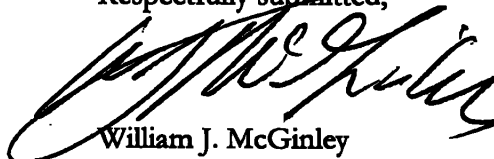
Specifically, the unique facts in this matter warrant at a minimum a significant reduction in – if not an outright elimination of – the proposed penalty. First, the \$3,000 contribution from the Glens Falls City Republican Committee ("GFCRC") was received on November 5, 2012, two days after the 2012 general election 48-Hour Reporting period expired, and not October 29, 2012 as originally reported and alleged in the RTB notification. The 2012 general election 48-Hour Reporting period expired on November 3, 2012. An amended report will be filed correctly disclosing November 5, 2012 as the date the GFCRC contribution was received by DHC. A copy of the GFCRC contribution check is attached as Exhibit B for your review and convenience. There is simply was no reporting violation here with respect to the GFCRC contribution and it should not be considered in calculating any proposed civil penalty.

13092693059

In addition, the only other receipt identified in the RTB Notification is a \$200,000 loan from the candidate, Matthew Doheny. As the Commission well knows, the 48-Hour Notice requirements for campaign committees during the period immediately prior to the general election are intended to provide voters with information about the individuals and organizations providing financial support to a federal candidate. A campaign inadvertently missing a 48-Hour Notice disclosing financial support from the candidate himself does not implicate the appearance of corruption, *Davis v. FEC*, 128 S. Ct. 2759 (2008), and certainly does not warrant a \$20,520 penalty. This is particularly true in this instance where the candidate provided – and fully disclosed – significant personal financial support to his 2012 congressional campaign throughout the course of the cycle.

Accordingly, we respectfully request that the Commission eliminate the civil penalty in its entirety for the reasons explained above. Alternatively, and at a minimum, the Commission should reduce the civil penalty to an appropriate amount.

Respectfully submitted,



William J. McGinley

PATTON BOGGS LLP
2550 M Street, NW
Washington, DC 20037
P: (202) 457-6000
F: (202) 457-6315

March 13, 2013

Attachment: A: Statement of Designation of Counsel
B: Glens Falls City Republican Committee Contribution Check

13092693060

Exhibit A



FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

Statement of Designation of Counsel

AF# 2637/C00462853

Doheny for Congress, and Jeffrey Kirkby, as Treasurer.

Name of Counsel: William J. McGinley
Benjamin Wood
Glenn Willard

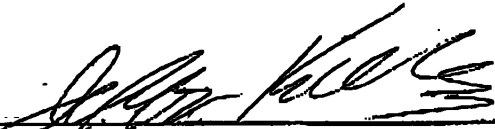
Firm: Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037

Telephone: (202) 457-6000

Fax: (202) 457-6315

The above named individuals are hereby designated as counsel and are authorized to receive any notifications and other communications from the Commission and to act on behalf of Doheny for Congress, and Jeffrey Kirkby, as Treasurer, before the Commission.

3-11-13
Date


Jeffrey Kirkby, as Treasurer
Signature

Name (Print):
Jeffrey Kirkby
Address:

Doheny for Congress
And Jeffrey Kirkby, as Treasurer

65 High Street
Alexandria Bay, NY 13607

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

13092693061

13092693062

Exhibit B

13092693063

112
10-25213

GLENS FALLS CITY REPUBLICAN COMMITTEE
P.O. BOX 403
GLENS FALLS, NY 12601

Date: 11/5/2012

Pay to the Order of: Doherty for Congress \$ 3,000.00

Three thousand + 00/100 Dollars

Glens Falls National

For 10-0002059

MAN OFFICE
250 BLEN STREET
GLENS FALLS, NY 12601

11/5/12

✓
memo



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via First Class Mail

March 13, 2013

Mr. William J. McGinley
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037

C00462853
AF# 2637

Dear Mr. McGinley:

On March 13, 2013, the Commission's Office of Administrative Review ("OAR") received your written response ("challenge") for Doheny for Congress and Jeffrey Kirkby, in official capacity as Treasurer, which is being reviewed by OAR. 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 that reads "Rhiannon Magruder".

Rhiannon Magruder
Acting Reviewing Officer
Office of Administrative Review

13092693064

Date: March 14, 2013

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

AF#: 2637

Committee Name: Doheny for Congress

Committee ID#: C00462853

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

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

Attachments:

- **Copy of RTB Circulation Report, dated February 12, 2013 and RTB Certification, dated February 15, 2013 (Y/N): Y**
- **Proof of Delivery (to be forwarded at later date if not yet received) (Y/N): Y**
-
- **Other Relevant Telecoms (Y/N): N**
- **Original Correspondence Received by RAD in Response to RTB Letter (Y/N): N**
- **RAD Staff Declaration (Y/N): Y**
 - 2012 30 Day Post-General Report Notice, dated October 1, 2012.**
 - RAI Letter, dated December 27, 2012.**
 - RTB Letter, dated February 15, 2013.**
- **Other RAD Information: (Y/N): N**

13092693065

2/19/13

UPS: Tracking Information



Proof of Delivery

[Close Window](#)

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number:	1ZWF5860A290163335
Service:	UPS Next Day Air®
Special Instructions:	ADULT SIGNATURE REQUIRED
Shipped/Billed On:	02/14/2013
Delivered On:	02/18/2013 11:50 A.M.
Delivered To:	ALEXANDRIA BAY, NY, US
Signed By:	DOHENY
Left At:	Residential

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 02/19/2013 1:46 P.M. ET

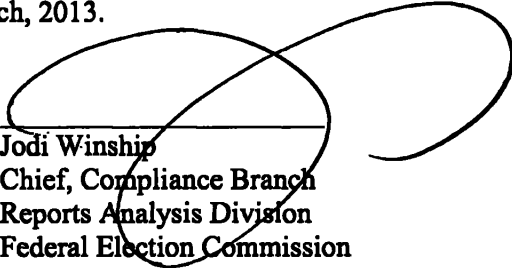
[Print This Page](#)

[Close Window](#)

13092693066

DECLARATION OF JODI WINSHIP

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 initial processing of 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 to Doheny for Congress:
 - A) Report Notice, dated October 1, 2012, referencing the reporting requirements of 48-Hour Notices (sent via electronic mail to: ryan@doheny4congress.com);
 - B) Request for Additional Information Letter, dated December 27, 2012, referencing the missing 48-Hour Notices;
 - C) Reason-to-Believe Letter, dated February 15, 2013 referencing the 2012 July Quarterly Report.
3. I hereby certify that I have searched the Commission's public records and find that Doheny for Congress has not filed the 48-Hour Notices with the Commission.
4. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed at Washington, D.C. on the 18th day of March, 2013.


Jodi Winship
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission

13092693067



GENERAL ELECTION REPORT NOTICE

FEDERAL ELECTION COMMISSION

CONGRESSIONAL COMMITTEES

October 1, 2012

CURRENT REPORT DUE FOR 2012 GENERAL ELECTION CANDIDATE COMMITTEES

REPORT	REPORTING PERIOD ¹	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
Pre-General	10/01/12 - 10/17/12	10/22/12	10/25/12
48-Hour Notices	10/18/12 - 11/03/12	-- general candidates only -- see filing info --	
Post-General	10/18/12 - 11/26/12	12/06/12	12/06/12

REPORTING SCHEDULE FOR REMAINDER OF 2012

2012 GENERAL ELECTION CANDIDATES

REPORT	REPORTING PERIOD	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
Year-End	11/27/12 - 12/31/12	01/31/13	01/31/13

UNSUCCESSFUL 2012 PRIMARY ELECTION CAMPAIGN COMMITTEES AND CANDIDATES NOT ACTIVE IN 2012 ELECTIONS

REPORT	REPORTING PERIOD	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
Year-End	10/01/12 - 12/31/12	01/31/13	01/31/13

[Click here for Supplemental Filing Information](#)

¹A 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 up through the close of books for the first report due.

2012 SUPPLEMENTAL FILING INFORMATION CONGRESSIONAL COMMITTEES

PLEASE NOTE: The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

WHO MUST FILE

Principal campaign committees of congressional candidates ¹ (including unopposed candidates and candidates whose names do not appear on the ballot) must file Quarterly Reports in 2012. ²

Campaigns that raise or spend more than \$5,000 for the 2012 election cycle (and thus trigger registration and reporting requirements) must file quarterly reports throughout 2012, even if the candidate plans to retire, withdraws from the race prior to the primary election, loses the primary or drops out of the race prior to the general election. See 11 CFR 104.5(a)(2).

Before a committee can stop filing with the FEC, it must file a termination report with the Commission. See 11 CFR 102.3. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

METHODS OF FILING REPORTS

Electronic Filing

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing deadline. See 11 CFR 104.5(e). See also 11 CFR 104.18 and 100.19.

- Web Page: Electronic Filing Page
- Campaign Guide for Congressional Candidates and Committees (Candidate Guide), pp. 83-86 [PDF]

Paper Filing - Meeting the Filing Deadline

Paper Report filing options -- Registered, Certified or Overnight or First Class Mail.

See 11 CFR 104.5(e). See also 11 CFR 100.19.

- Web Page: Link to Paper Forms (for downloading and printing)
- Candidate Guide, p. 82 [PDF]

¹ Generally, an 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 or expenditures. If the campaign has not crossed the \$5,000 threshold, it is not required to file reports. See 11 CFR 100.3(a). See also 11 CFR 104.5(a).

² If a candidate has more than one authorized committee, the principal campaign committee files a consolidated report on Form 3Z [PDF]. See 11 CFR 104.3(f).

PRE- AND POST-ELECTION REPORTS

The principal campaign committee of any candidate participating in a 2012 state primary, nominating convention or runoff election -- even if unopposed -- must also file a pre-election report 12 days prior to the primary, nominating convention or runoff. The principal campaign committee of a candidate who participates in the general election must file pre- and post-general election reports. See 11 CFR 104.5(a)(2).

- Web Page: 2012 Congressional Pre-Primary Reporting Dates
- The Record:
 - FEC Record Blog: Reporting
 - January 2012 issue [PDF]
- Candidate Guide, pp. 81-82 [PDF]

48 HOUR NOTICES OF CONTRIBUTIONS

The principal campaign committee must file notices if any authorized committees receive any contribution (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 per source, during the period less than 20 days but more than 48 hours before any election in which the candidate is running. See 11 CFR 104.5(f).

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.** See 11 CFR 104.5(f).

- Web Page: Electronic Filing Page
- Web Page: Link to Paper Forms (for downloading and printing)
- Web Page: Link to Web Form 6 (for online submission)
- Form 6 Fax numbers
 - Senate campaigns (Secretary of the Senate): (202) 224-1851
 - House Campaigns (FEC): (202) 219-0174
- Campaign Guide: Candidate Guide, p. 81 [PDF]

2012 REPORTING SCHEDULE

- Web Page: 2012 Reporting Dates Page
- The Record:
 - FEC Record Blog: Reporting
 - January 2012 issue [PDF]
- Candidate Guide, p. 83 [PDF]

13092693070

COMPLIANCE

Treasurer Responsibility

Committee Treasurers 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. See 11 CFR 104.14(d).

- Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings [PDF]
- Candidate Guide, p. 7-9 [PDF]

Administrative Fine Program

Political committees and their treasurers who fail to file their reports on time may be subject to civil money penalties up to \$17,600 (or more for repeat late- and non-filers).³ See generally, 11 CFR Part 111 Subpart B. See also 11 CFR 111.43.

- Web Page: Administrative Fine Program
- Candidate Guide, pp. 82-83 [PDF]

DISCLOSURE OF LOBBYIST BUNDLING ACTIVITY

Campaign committees must file FEC Form 3L [PDF] if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of \$16,700 during the applicable reporting period (see page 1 of this notice). See 11 CFR 104.22 and 11 CFR 110.17(f).

- The Record: March 2009 issue [PDF]
- Candidate Guide, Appendix F, pp. 155-161 [PDF]

IMPORTANT FILING INFORMATION - PAPER FILERS

In response to the 2001 anthrax threat, the U.S. Postal Service is irradiating mail directed to many federal agencies, including the FEC and the Secretary of the Senate.⁴ This process has not only delayed mail delivery, it has also damaged and in some cases destroyed pieces of mail. As a result, committees that file reports with the FEC may want to consider submitting their reports by some means other than U.S. mail. Alternative methods include electronic filing, overnight mail or delivery service, and hand delivery.

³ Penalties for late- or non-filing of 48-hour notices are based on the amount of contributions not timely disclosed. As a result, these penalties may exceed \$17,600, even for first-time violations.

⁴ Senate committees should contact the Secretary of the Senate at (202) 224-0322 for more information on filing reports via US mail.

FOR INFORMATION, CALL: (800) 424-9530 or (202) 694-1100



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

December 27, 2012

JEEFREY KIRKBY, TREASURER
DOHENY FOR CONGRESS
65 HIGH STREET
ALEXANDRIA BAY, NY 13607

Response Due Date

01/31/2013

IDENTIFICATION NUMBER: C00462853

REFERENCE: 30 DAY POST-GENERAL REPORT (10/18/2012 - 11/26/2012)

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 2 item(s):

1. Your committee failed to file a Post-Election Detailed Summary Page. The Post-Election Detailed Summary Page must be used in lieu of the Detailed Summary Page and Lines 6-7 of the Summary Page for the first report filed after completion of the election cycle. The Post-Election Detailed Summary Page can be downloaded from the FEC web site (www.fec.gov). Please amend your report to include a Post-Election Detailed Summary Page. (11 CFR §§ 104.2(a) and 104.3)

2. Schedule A of your report indicates that your committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions received by your committee after the close of books for the 12 Day Pre-General Report (see attached). A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. The failure to file 48-hour notices may result in civil money penalties or legal enforcement action. If any contribution of \$1,000 or more was incorrectly reported, you must amend your original report with the clarifying information. (11 CFR § 104.5(f))

13092693072

DOHENY FOR CONGRESS

Page 2 of 2

Please note, you will not receive an additional notice from the Commission on this matter. Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. Requests for extensions of time in which to respond will not be considered.

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended.

If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1154.

Sincerely,



Jill Sugarman
Sr. Campaign Finance & Reviewing Analyst
Reports Analysis Division

13092693073

Missing 48-Hour Notices
Doheny for Congress (C00462853)

Contributor Name	Date	Amount	Election
Doheny, Matthew	10/26/12	\$200,000.00	G2012
Glens Falls City Republican Committee	10/29/12	\$3,000.00	G2012

1309269307A



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2013 MAR 20 AM 10:34

SENSITIVE

March 20, 2013

MEMORANDUM

To: The Commission

Through: Alec Palmer *PCB/AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Rhiannon Magruder *RM*
Acting Reviewing Officer
Office of Administrative Review

Subject: Reviewing Officer Recommendation in AF# 2637 – Doheny for
Congress and Jeffrey Kirkby, in his official capacity as Treasurer
(C00462853)

The attached Reviewing Officer Recommendation is being circulated on an informational basis. A copy was also sent to the 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

13092693075



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 2013

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

AF# 2637 – Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer
(C00462853)

Summary of Recommendation

Make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a \$20,110 civil money penalty.

Reason-to-Believe Background

On February 14, 2013, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer ("the respondents"), violated 2 U.S.C. § 434(a) for failing to file 48-Hour Notices for two contributions totaling \$203,000 for the 2012 General Election and made a preliminary determination that the civil money penalty was \$20,520 based on the schedule of penalties at 11 C.F.R. § 111.44. A letter, dated February 15, 2013, was sent to the respondents' address of record by the Reports Analysis Division ("RAD") to notify them of the Commission's RTB finding and civil money penalty.

Legal Requirements

The Federal Election Campaign Act ("Act") requires that the principal campaign committee of a candidate must notify the Commission, in writing, of any contribution of \$1,000 or more received after the 20th day but more than 48 hours before an election. The principal campaign committee must notify the Commission within 48 hours of receipt of the contribution. The 48-hour notification shall be in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(A) and 11 C.F.R. § 104.5(f). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Respondents' Challenge

On March 13, 2013, the Commission received the written response ("challenge") from Counsel challenging the RTB penalty. On behalf of the respondents, Counsel respectfully seeks modification of the proposed civil money penalty due to material factual errors in the RTB finding and provides the following reasons:

- 1) "...[T]he \$3,000 contribution from the Glens Falls City Republican Committee ("GFCRC") was received on November 5, 2012, two days after the 2012 general election 48-Hour Reporting period expired, and not October 29, 2012 as originally reported...An amended report will be filed correctly disclosing November 5, 2012 as the date the GFCRC contribution was

received...There...was no reporting violation here with respect to the GFCRC contribution and it should not be considered in calculating any proposed civil penalty."

- 2) "...[T]he only other receipt identified in the RTB Notification is a \$200,000 loan from the candidate...[T]he 48-Hour Notice requirements for campaign committees...are intended to provide voters with information about the individuals and organizations providing financial support to a federal candidate. A campaign inadvertently missing a 48-Hour Notice disclosing financial support from the candidate himself does not implicate the appearance of corruption., *Davis v. FEC*, 128 S. Ct. 2759 (2008), and certainly does not warrant a \$20,520 penalty. This is particularly true in this instance where the candidate provided – and fully disclosed – significant personal financial support to his 2012 congressional campaign throughout the course of the cycle."

Included with the challenge were a Statement of Designation of Counsel and a copy of the GFCRC contribution check.

Analysis

With respect to the \$3,000 contribution from GFCRC originally reported with a receipt date of October 29, 2012, the Committee's Amended 30 Day Post-General Report discloses a receipt date of November 5, 2012. Since the contribution was received outside of the October 18 to November 3 48-Hour Notice window for the General Election, it should not be included in the calculation of the civil money penalty.

Concerning the receipt of the \$200,000 candidate loan, 11 C.F.R. § 100.52(a) defines a contribution to be a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. Given that candidate loans are defined as contributions, a 48-Hour Notice was required for the October 26 candidate loan of \$200,000, as it exceeded \$1,000 and occurred during the October 18 to November 3 48-Hour Notice window for the General Election.

Commission records show that on October 3, 2012, the General Election Report Notice, which includes the reporting requirements of 48-Hour Notices, was sent via email to "ryan@dohony4congress.com," the email address disclosed on the Committee's Statement of Organization at the time. Page four of the Notice explains that 48-Hour Notices are required if the Committee receives any contributions (including loans from the candidate) of \$1,000 or more per source, during the period of October 18 through November 3, 2012.

At the time of the RTB finding, it appeared that the respondents failed to file 48-Hour Notices for two contributions totaling \$203,000 which were received on two days (October 26 and 29). Based on the challenge and Amended 30 Day Post-General Report, they were not required to file a 48-Hour Notice for the \$3,000 contribution from GFCRC. The Committee did not file one required 48-Hour Notice for the one contribution totaling \$200,000 received on October 26. Under the administrative fine regulations, the civil money penalty is \$110 plus 10% of the amount of the contributions not reported on each 48-Hour Notice. 11 C.F.R. § 111.44.

Therefore, the amount of the civil money penalty would be $(\$110 \times 1) + (.10 \times \$200,000)$ or \$20,110.

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 \$20,110 (reduced from the RTB civil money penalty of \$20,520).

OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 2637 involving Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 2637 that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$20,110; and
- (3) Send the appropriate letter.

Acting Reviewing Officer: Rhiannon Magruder

Attachments

Attachment 1 – Challenge Received from Respondents

Attachment 2 –

Attachment 3 – Declaration from RAD

Attachment 4 – Declaration from OAR

DECLARATION OF RHIANNON MAGRUDER

- 1) I am the Acting Reviewing Officer in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) The principal campaign committee of a candidate must file notifications disclosing contributions of \$1,000 or more which are received between October 18 and November 3, 2012. These notifications (also called 48-Hour Notices) must be filed with the Commission within 48 hours of the committee's receipt of the contribution(s).
- 3) It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the administrative fine regulations, including due dates of reports and filing requirements.
- 4) I hereby certify that I have searched the Commission's public records and that the documents identified herein are the true and accurate copies of:
 - a) Page 1 of the Summary Page and 2 pages of Schedule A for the 2012 30 Day Post-General Report filed by Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer. According to the Commission's records, the report covers the period from October 18 through November 26, 2012, and was received on December 6, 2012. Schedule A lists the receipt of 2 contributions totaling \$203,000 on October 26 and 29, 2012. Each contribution equals \$1,000 or more;
 - b) Page 1 of the Summary Page and 1 page of Schedule A for the Amended 2012 30 Day Post-General Report filed by Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer. According to the Commission's records, the report covers the period from October 18 through November 26, 2012, and was received on March 12, 2013. Schedule A lists the receipt of 1 contribution totaling \$200,000 on October 26, 2012.
- 5) 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 20th day of March, 2013.

Rhiannon Magruder

Rhiannon Magruder
Acting Reviewing Officer
Office of Administrative Review
Federal Election Commission

13092693079

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**
For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT ▼ Example: If typing, type over the lines.

12FE4M5

Doheny for Congress

ADDRESS (number and street) ▼

65 High Street

Check if different
than previously
reported. (ACC)

Alexandria Bay

NY

13607

2. FEC IDENTIFICATION NUMBER ▼

C C00462853

CITY ▲

STATE ▲

ZIP CODE ▲

STATE ▼ DISTRICT

3. IS THIS
REPORT

X

NEW
(N)

OR

AMENDED
(A)

NY

21

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

M M / D D / Y Y Y Y

In the
State of

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

X

General (30G)

Runoff (30R)

Special (30S)

Election on

M M / D D / Y Y Y Y
11 06 2012In the
State of

NY

5. Covering Period

M M / D D / Y Y Y Y
10 18 2012

through

M M / D D / Y Y Y Y
11 26 2012

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 Jeffrey Kirkby

Signature of Treasurer

Jeffrey Kirkby

[Electronically Filed]

Date

M M / D D / Y Y Y Y
12 06 2012

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)

SCHEDULE A (FEC Form 3)
ITEMIZED RECEIPTS

 Use separate schedule(s)
 for each category of the
 Detailed Summary Page

 FOR LINE NUMBER:
 (check only one)

PAGE 21 OF 80

<input type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input checked="" type="checkbox"/> 11c	<input type="checkbox"/> 11d
<input type="checkbox"/> 12	<input type="checkbox"/> 13a	<input type="checkbox"/> 13b	<input type="checkbox"/> 14
<input type="checkbox"/> 15			

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

 NAME OF COMMITTEE (In Full)
 Doheny for Congress

Full Name (Last, First, Middle Initial)

A. AMERICAN MEDICAL ASSOCIATION POLITICAL ACTION COMMITTEE

 Mailing Address 25 MASSACHUSETTS AVE, NW
 SUITE 600

City	State	Zip Code
WASHINGTON	DC	20001

 FEC ID number of contributing federal political committee. **C** C00000422

Name of Employer	Occupation
------------------	------------

Receipt For: 2012

☐ Primary ☒ General
☐ Other (specify)

Election Cycle-to-Date

1000.00

Date of Receipt

M	M	/	D	D	/	Y	Y	Y	Y
10			31			2012			

Transaction ID : SA11C.10828

Amount of Each Receipt this Period

1000.00

Contribution - General

Full Name (Last, First, Middle Initial)

B. Friends of Patty Ritchie

Mailing Address P. O. Box 628

City	State	Zip Code
Canton	NY	13817

 FEC ID number of contributing federal political committee. **C**

Name of Employer	Occupation
------------------	------------

Receipt For: 2012

☐ Primary ☒ General
☐ Other (specify)

Election Cycle-to-Date

100.00

Date of Receipt

M	M	/	D	D	/	Y	Y	Y	Y
10			30			2012			

Transaction ID : SA11C.10838

Amount of Each Receipt this Period

100.00

Contribution - General

Full Name (Last, First, Middle Initial)

C. Glens Falls City Republican Committee

Mailing Address P. O. Box 403

City	State	Zip Code
Glens Falls	NY	12801

 FEC ID number of contributing federal political committee. **C**

Name of Employer	Occupation
------------------	------------

Receipt For: 2012

☐ Primary ☒ General
☐ Other (specify)

Election Cycle-to-Date

3000.00

Date of Receipt

M	M	/	D	D	/	Y	Y	Y	Y
10			29			2012			

Transaction ID : SA11C.10947

Amount of Each Receipt this Period

3000.00

Contribution - General

4100.00

SUBTOTAL of Receipts This Page (optional)

TOTAL This Period (last page this line number only)

SCHEDULE A (FEC Form 3) **ITEMIZED RECEIPTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER: PAGE 26 OF 60

(check only one)

☐ 11a ☐ 11b ☐ 11c ☐ 11d
☐ 12 ☒ 13a ☐ 13b ☐ 14 ☐ 15

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

Doheny for Congress

Full Name (Last, First, Middle Initial)

Matthew Doheny

A.

Mailing Address 303 Paddock Street

City

State

Zip Code

Watertown

NY

13601

FEC ID number of contributing
federal political committee.

C HONY23057

Name of Employer

North Country Capital, L.L.C.

Occupation

Investor

Receipt For: 2012

☐ Primary ☒ General
☐ Other (specify)

Election Cycle-to-Date

2715000.00

Date of Receipt

M M / D D / Y Y Y Y
10 26 2012

Transaction ID : SA13A.10963

Amount of Each Receipt this Period

200000.00

Loan to Campaign

Full Name (Last, First, Middle Initial)

B.

Mailing Address

City

State

Zip Code

FEC ID number of contributing
federal political committee.

C

Name of Employer

Occupation

Receipt For:

☐ Primary ☐ General
☐ Other (specify)

Election Cycle-to-Date

Date of Receipt

M M / D D / Y Y Y Y

Amount of Each Receipt this Period

Full Name (Last, First, Middle Initial)

C.

Mailing Address

City

State

Zip Code

FEC ID number of contributing
federal political committee.

C

Name of Employer

Occupation

Receipt For:

☐ Primary ☐ General
☐ Other (specify)

Election Cycle-to-Date

Date of Receipt

M M / D D / Y Y Y Y

Amount of Each Receipt this Period

200000.00

200000.00

SUBTOTAL of Receipts This Page (optional)

TOTAL This Period (last page this line number only)

**FEC
FORM 3****REPORT OF RECEIPTS
AND DISBURSEMENTS**
For An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (In full) TYPE OR PRINT ▼ Example: If typing, type over the lines. 12FE4M5

Doheny for Congress

ADDRESS (number and street) ▼

65 High Street

Check if different
than previously
reported. (ACC)

Alexandria Bay

NY

13607

2. FEC IDENTIFICATION NUMBER ▼

C C00462853

CITY ▲

STATE ▲

ZIP CODE ▲

STATE ▼ DISTRICT

3. IS THIS
REPORTNEW
(N)

OR

X

AMENDED
(A)

NY

21

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

M M / D D / Y Y Y Y

in the
State of

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

X

General (30G)

Runoff (30R)

Special (30S)

Election on

M M / D D / Y Y Y Y
11 / 06 / 2012in the
State of

NY

5. Covering Period

M M / D D / Y Y Y Y
10 / 18 / 2012

through

M M / D D / Y Y Y Y
11 / 26 / 2012

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 Jeffrey Kirkby

Signature of Treasurer

Jeffrey Kirkby

[Electronically Filed]

Date

M M / D D / Y Y Y Y
03 / 12 / 2013

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)

SCHEDULE A (FEC Form 3) **ITEMIZED RECEIPTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

PAGE 27 OF 61

☐ 11a ☐ 11b ☐ 11c ☐ 11d
☐ 12 ☒ 13a ☐ 13b ☐ 14 ☐ 15

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NAME OF COMMITTEE (in Full)

Doheny for Congress

Full Name (Last, First, Middle Initial)

Matthew Doheny

A. Mailing Address 303 Paddock Street

City State Zip Code
Watertown NY 13601

FEC ID number of contributing federal political committee. C H0NY23057

Name of Employer Occupation
North Country Capital, L.L.C. Investor

Receipt For: 2012
☐ Primary ☒ General
☐ Other (specify)

Election Cycle-to-Date
2715000.00

Date of Receipt

M M / D D / Y Y Y Y
10 20 2012

Transaction ID : SA13A.10963

Amount of Each Receipt this Period

200000.00

Loan to Campaign

Full Name (Last, First, Middle Initial)

B. Mailing Address

City State Zip Code

FEC ID number of contributing federal political committee. C

Name of Employer Occupation

Receipt For:
☐ Primary ☐ General
☐ Other (specify)

Election Cycle-to-Date

Date of Receipt

M M / D D / Y Y Y Y

Amount of Each Receipt this Period

Full Name (Last, First, Middle Initial)

C. Mailing Address

City State Zip Code

FEC ID number of contributing federal political committee. C

Name of Employer Occupation

Receipt For:
☐ Primary ☐ General
☐ Other (specify)

Election Cycle-to-Date

Date of Receipt

M M / D D / Y Y Y Y

Amount of Each Receipt this Period

SUBTOTAL of Receipts This Page (optional).....

TOTAL This Period (last page this line number only).....

200000.00

200000.00



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA OVERNIGHT DELIVERY

March 20, 2013

Mr. William J. McGinley
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037

C00462853
AF# 2637

Dear Mr. McGinley:

On February 14, 2013, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file 48-Hour Notices for the 2012 General Election. The Commission also made a preliminary determination that the civil money penalty was \$20,526 based on the schedule of penalties at 11 C.F.R. § 111.44.

After reviewing the 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,

Rhiannon Magruder

Rhiannon Magruder
Acting Reviewing Officer
Office of Administrative Review

13092693085

PATTON BOGGS LLP

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2550 M Street, NW
Washington, DC 20037
202-457-6000

2013 APR -5 A 8:37

Facsimile 202-457-6315
www.pattonboggs.com

March 25, 2013

William J. McGinley
202-457-6561
wmcginley@pattonboggs.com

VIA FACSIMILE: 202-208-3333

Ms. Shawn Woodhead Werth
Secretary & Clerk
Federal Election Commission
999 E Street, NW
Washington, DC 20463

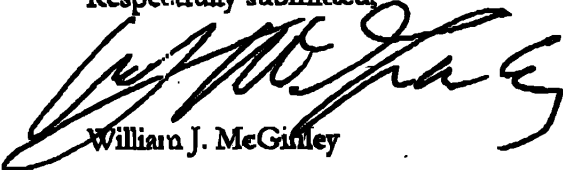
Re: Doheny for Congress and Jeffrey Kirkby, as Treasurer
C00462853
AF#2637

Dear Ms. Werth:

Please find attached the response of our clients, Doheny for Congress and Jeffrey Kirkby, as Treasurer, to the March 20, 2013 notification of the Reviewing Officer's recommendation in the above captioned matter.

Please do not hesitate to contact me with any questions.

Respectfully submitted,



William J. McGinley

13092693086

PATTON BOGGS LLP

RECEIVED

2013 MAR 13 PM 1:13

FEC MAIL CENTER

COPY

2550 M Street, NW
Washington, DC 20037
202-457-8000

Facsimile 202-457-6316
www.pattonboggs.com

March 13, 2013

William J. McGinley
202-457-6561
wmcginley@pattonboggs.com

VIA HAND DELIVERY

Office of Administrative Review
Federal Election Commission
999 E Street, NW
Washington, DC 20463

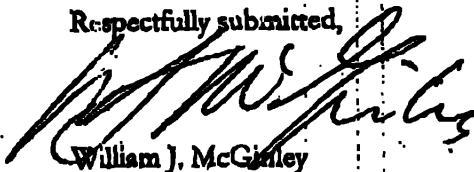
Re: Doheny for Congress
C00462853
AF#2637

To Whom It May Concern:

Please find attached the response of our client, Doheny for Congress, to the notification in the above-referenced matter. Also attached is an executed Statement of Designation of Counsel.

Please do not hesitate to contact us with any questions.

Respectfully submitted,



William J. McGinley

Attachments

13092693087

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
)
Doheny for Congress) AF #2637
) C00462853
and Jeffrey Kirby, as Treasurer)

**RESPONSE OF DOHENY FOR CONGRESS
TO THE REASON TO BELIEVE NOTIFICATION IN AF #2637**

This responds on behalf of our client to the reason to believe ("RTB") notification from the Federal Election Commission ("Commission") alleging that Doheny for Congress ("DFC") failed to file the 48-Hour Notices for contributions of \$1,000 or more, received between October 26, 2012 and October 29, 2012, in the above referenced matter. The notification indicates that the proposed civil penalty at the RTB stage is \$20,520. For the reasons set forth below, DHC respectfully seeks modification of the proposed civil penalty because there are material factual errors in the RTB finding.

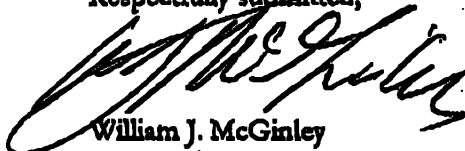
Specifically, the unique facts in this matter warrant at a minimum a significant reduction in – if not an outright elimination of – the proposed penalty. First, the \$3,000 contribution from the Glen Falls City Republican Committee ("GFCRC") was received on November 5, 2012, two days after the 2012 general election 48-Hour Reporting period expired, and not October 29, 2012 as originally reported and alleged in the RTB notification. The 2012 general election 48-Hour Reporting period expired on November 3, 2012. An amended report will be filed correctly disclosing November 5, 2012 as the date the GFCRC contribution was received by DHC. A copy of the GFCRC contribution check is attached as Exhibit B for your review and convenience. There is simply was no reporting violation here with respect to the GFCRC contribution and it should not be considered in calculating any proposed civil penalty.

13092693089

In addition, the only other receipt identified in the RTB Notification is a \$200,000 loan from the candidate, Matthew Doheny. As the Commission well knows, the 48-Hour Notice requirements for campaign committees during the period immediately prior to the general election are intended to provide voters with information about the individuals and organizations providing financial support to a federal candidate. A campaign inadvertently missing a 48-Hour Notice disclosing financial support from the candidate himself does not implicate the appearance of corruption, *Davis v. FEC*, 128 S. Ct. 2759 (2008), and certainly does not warrant a \$20,520 penalty. This is particularly true in this instance where the candidate provided – and fully disclosed – significant personal financial support to his 2012 congressional campaign throughout the course of the cycle.

Accordingly, we respectfully request that the Commission eliminate the civil penalty in its entirety for the reasons explained above. Alternatively, and at a minimum, the Commission should reduce the civil penalty to an appropriate amount.

Respectfully submitted,



William J. McGinley

PATTON BOGGS LLP
2550 M Street, NW
Washington, DC 20037
P: (202) 457-6000
F: (202) 457-6315

March 13, 2013

Attachment: A: Statement of Designation of Counsel
B: Glens Falls City Republican Committee Contribution Check

13092693090

Exhibit A



FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

Statement of Designation of Counsel

AF# 2637/C00462853

Doheny for Congress, and Jeffrey Kirkby, as Treasurer.

Name of Counsel: William J. McInley
Benjamin Wood
Glenn Willard

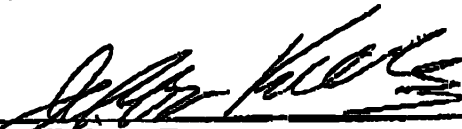
Firm: Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037

Telephone: (202) 457-6000

Fax: (202) 457-6315

The above named individuals are hereby designated as counsel and are authorized to receive any notifications and other communications from the Commission and to act on behalf of Doheny for Congress, and Jeffrey Kirkby, as Treasurer, before the Commission.

3-11-13
Date


Jeffrey Kirkby, as Treasurer
Signature

Name (Print):
Jeffrey Kirkby
Address:

Doheny for Congress
And Jeffrey Kirkby, as Treasurer
65 High Street
Alexandria Bay, NY 13607

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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13092693092

Exhibit B

13092693093

GLENS FALLS CITY REPUBLICAN COMMITTEE P.O. BOX 406 GLENS FALLS, NY 12034		11/5/2012	112
Pay to the Order of <u>Doherty for Goods</u>			
Five Hundred + 00/100			\$ 500.00
Glenn Falls, New York			
For 10-000-2052			

[Handwritten signature]

✓ memo



RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEDERAL ELECTION COMMISSION 2013 APR -5 PM 12: 27
WASHINGTON, D.C. 20463

April 5, 2013

SENSITIVE

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director *AP*

From: Patricia C. Orrock *PC/ACO*
Chief Compliance Officer

Rhiannon Magruder *RM*
Acting Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 2637 – Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer (C00462853)

On February 14, 2013, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failing to file 48-Hour Notices for the 2012 General Election and made a preliminary determination that the civil money penalty was \$20,520, based on the schedule of penalties at 11 C.F.R. § 111.44.

On March 13, 2013, the Commission received their written response ("challenge"). After reviewing the challenge, the Reviewing Officer Recommendation ("ROR") dated March 20, 2013 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer recommended that the Commission make a final determination that they violated 2 U.S.C. § 434(a) and based on the contributions requiring 48-Hour Notices disclosed on the Amended 2012 30 Day Post-General Report (\$200,000 in candidate loans), assess a \$20,110 civil money penalty (reduced from the RTB civil money penalty of \$20,520) because they submitted no evidence that a factual error was made in the RTB finding, that the penalty was miscalculated at RTB or that they used best efforts to file on time. 11 C.F.R. § 111.35(b).

Within 10 days of transmittal of the recommendation, they may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). On April 5, 2013, after the response deadline, the Commission received their written response, which contained the original challenge. During communication with Counsel to confirm the contents of the response, Counsel stated the original challenge was resubmitted to ensure Commission review.

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OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 2637 involving Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 2637 that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$20,110; and
- (3) Send the appropriate letter.

Acting Reviewing Officer: Rhiannon Magruder

Attachment: Response to ROR

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Final Determination Recommendation –) AF 2637
Doheny for Congress and Jeffrey Kirkby,)
in his official capacity as Treasurer)
(C00462853))

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on June 24, 2013 the Commission decided by a vote of 4-0 to take the following actions in AF 2637:

1. Adopt the Reviewing Officer recommendation for AF# 2637 involving Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 2637 that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$20,110.
3. Send the appropriate letter.

Commissioners Hunter, Petersen, Walther, and Weintraub voted affirmatively for the decision. Commissioner McGahn II recused himself with respect to this matter and did not vote.

Attest:

June 25, 2013
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

13092693096



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 8, 2013

VIA OVERNIGHT DELIVERY

Mr. William J. McGinley
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037

C00462853
AF# 2637

Dear Mr. McGinley:

On February 14, 2013, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) for failing to file 48-Hour Notices for the 2012 General Election. By letter dated February 15, 2013, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$20,520 in accordance with the schedule of penalties at 11 C.F.R. § 111.44. On March 13, 2013, the Office of Administrative Review received your written response, challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and the written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) and based on the Amended 2012 30 Day Post-General Report, assess a civil money penalty in the amount of \$20,110 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, 2013.

On June 24, 2013, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Doheny for Congress and Jeffrey Kirkby, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assessed a civil money penalty of \$20,110. It is based on the same factors used to calculate the civil money penalty at RTB. A copy of the final determination recommendation is attached.

At this juncture, the following courses of action are available to you:

1. 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 CFR § 111.38.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal

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 you to 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.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, send the enclosed remittance form, along with your payment, to the address on page 4 within 30 days of receipt of this letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.

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5. Settlement Offers

If you make a payment in an amount less than the civil money penalty as an offer to settle or compromise a debt owed to the Commission, the offer is herewith rejected despite any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

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 CFR § 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 the payment of the civil money penalty, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Ellen L. Weintraub
Chair

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the civil money penalty is \$20,110 for failing to file 48-Hour Notices for the 2012 General Election.

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: Doheny for Congress

FEC ID#: C00462853

AF#: 2637

PAYMENT AMOUNT DUE: \$20,110

FOR: Doheny for Congress

FEC ID#: C00462853

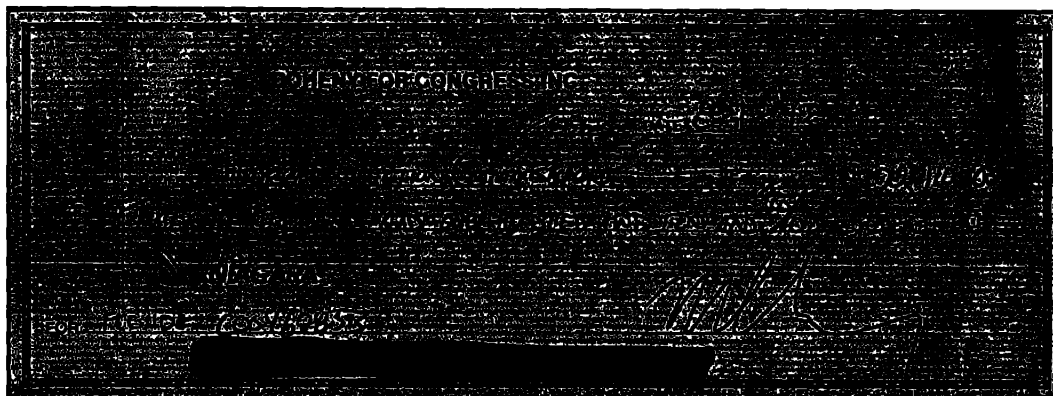
AF#: 2637

PAYMENT AMOUNT DUE: \$20,110

4

FEDERAL ELECTION COMMISSION

Lockbox: GLX-979058 Ledger Date 08/07/2013



Batch	Item	TID	Batch Total	Amount
1	1	Y-3012723	\$20,110.00	\$20,110.00

13092693101

usbank.

St. Louis GA Lockbox
(314) 425-1818