



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 2963

DATE SCANNED 3/9/16

SCANNER NO. 7

SCAN OPERATOR 01



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2015 APR -1 PM 5:20

April 1, 2015

SENSITIVE

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *for PCO*
Staff Director

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

Debbie Chacona *for PCO*
Assistant Staff Director
Reports Analysis Division

BY: *KDR* Kristin D. Roser/Sari Pickerall *JP*
Reports Analysis Division
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2014 Year-End Report for the
Administrative Fine Program

Attached is a list of political committees and their treasurers who failed to file the 2014 Year-End Report in accordance with 52 U.S.C. § 30104(a). The Year-End Report was due on January 31, 2015.

The committees listed in the attached RTB Circulation Report either failed to file the report, no more than thirty (30) days after the due date (considered a late filed report), or filed the report more than thirty (30) days after the due date (considered a non-filed report). In accordance with the schedule of civil money penalties for reports at 11 C.F.R. 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 52 U.S.C. § 30104(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.

Federal Election Commission
Reason to Believe Circulation Report
2014 YEAR-END Not Election Sensitive 01/31/2015 H_S_P_UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
2953	C00546630	ABELER4SENATE	ABELER, JAMES J	BART J. WARD	\$309,184	0	3/6/2015	Not Filed	\$8,601	\$330
2954	C00543074	BARFIELD FOR CONGRESS	BARFIELD, JONATHAN JR	TUFANNA L THOMAS	\$120,923	0	3/15/2015	Not Filed	\$658	\$275
2955	C00540385	BEALE FOR CONGRESS	BEALE, ANTHONY A	STEVEN R BURRIS	\$369,434	5		Not Filed	\$92,359 (est)	\$8,662
2956	C00559146	BELIEVE IN LIFE LIBERTY YOURSELF AKA BILLY PAC		RONALD NEVILLE	\$121,412	0		Not Filed	\$24,282 (est)	\$550
2957	C00559799	BRAD PECK FOR CONGRESS	PECK, LOWELL B	ALLEN WILLIAM BERKMAN III	\$200,492	0		Not Filed	\$66,831 (est)	\$2,970
2958	C00550129	CALVIN D TURNQUEST FOR CONGRESS	TURNQUEST, CALVIN DEON	OLIVIA OUTMEZGUINE	\$112,964	1		Not Filed	\$37,655 (est)	\$1,362
2959	C00405852	CAM CAVASSO FOR U S SENATE	CAVASSO, CAMPBELL	RAYNETTE K NICHOLSON	\$628,063	0		Not Filed	\$62,806 (est)	\$2,970
2960	C00558601	CICOTTE FOR CONGRESS	CICOTTE, GEORGE FREDERICK	GEORGE FREDERICK CICOTTE	\$453,747	0		Not Filed	\$113,437 (est)	\$4,950
2961	C00460238	CUBIST PHARMACEUTICALS INC. PAC (CUBIST PAC)		MARK BATTALIGNI	\$194,531	0		Not Filed	\$17,685 (est)	\$550
2962	C00553297	DAN FREI FOR CONGRESS	FREI, DANIEL EDWARD	MATTHEW SAKALOSKY	\$102,720	0		Not Filed	\$20,544 (est)	\$550
2963	C00547257	DEFRANCO FOR CONGRESS	DEFRANCO, MARISA A	KAL P. MOY	\$186,985	0	2/24/2015	24	\$2,969	\$147
2964	C00176420	DEMOCRATIC FOUNDATION OF ORANGE COUNTY		GLEN HATTON	\$268,359	0		Not Filed	\$42,187 (est)	\$1,090
2965	C00548453	DOC MOYLAN GOES TO WASHINGTON ELECTION COMMITTEE	MOYLAN, DAVID JOHN III MD	ROBERT BEAUVAIS	\$185,684	0	3/16/2015	Not Filed	\$1,000	\$275
2966	C00522821	EMPOWER CITIZENS NETWORK		ROBERT WAYNE WARTHER	\$102,072	0		Not Filed	\$20,414 (est)	\$550
2967	C00547057	ESPERO FOR CONGRESS	ESPERO, WILLIAM	BRYAN GALLARDE	\$225,170	0		Not Filed	\$45,034 (est)	\$1,090
2968	C00554345	FISCHER FOR CONGRESS	FISCHER, JAMES M	STACEY J. FANTAUZZI	\$297,553	0		Not Filed	\$49,592 (est)	\$1,090
2969	C00561688	FLINN FOR SENATE	FLINN, GEORGE SHEA	LLOYD HEITZER	\$2,980,586	0		Not Filed	\$993,529 (est)	\$13,200
2970	C00148999	FRIENDS OF DICK DURBIN	DURBIN, RICHARD J	DOUGLAS A. DOUGHERTY	\$17,561,979	0	2/13/2015	13	\$170,433	\$2,930
2971	C00559054	IF HE VOTES LIKE THAT IN SALEM IMAGINE WHAT HE WILL DO IN CONGRESS		CAROL RUSSELL	\$228,068	0		Not Filed	\$32,581 (est)	\$1,090
2972	C00543033	JAY STAMPER FOR SENATE COMMITTEE	STAMPER, JEREMY MICHAEL	JEREMY M. STAMPER	\$125,244	1		Not Filed	\$20,874 (est)	\$687
2973	C00560672	JETT FOR CONGRESS	JETT, SHANE DAVID	LESLIE SUSANNE LANDWERT	\$151,331	0		Not Filed	\$37,833 (est)	\$1,090
2974	C00505800	JILL STEIN FOR PRESIDENT	STEIN, JILL	JAMES MORAN	\$230,734	5		Not Filed	\$11,537 (est)	\$1,237

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
2975	C00545715	JORGE BONILLA FOR US CONGRESS INC	BONILLA, JORGE L JR	MAGDALENA BONILLA	\$270,955	2		Not Filed	\$54,191 (est)	\$4,455
2976	C00552513	KALEKA FOR CONGRESS	KALEKA, AMARDEEP	PETER BELLIN	\$312,974	0		Not Filed	\$62,595 (est)	\$2,970
2977	C00552982	KWASMAN FOR CONGRESS	KWASMAN, ADAM CHARLES	ADAM KWASMAN	\$619,532	0	2/19/2015	19	\$21,000	\$205
2978	C00553958	LARRY WILSKE FOR CONGRESS	WILSKE, LARRY ALBERT	ANTHONY ELLIOTT STEWART	\$406,466	0	2/27/2015	27	\$715	\$162
2979	C00548024	LORENZO 'LARRY' PALOMARES-STARBUCK FOR CONGRESS	PALOMARES-STARBUCK, LORENZO 'LARRY'	ELY CESAR	\$161,220	0		Not Filed	\$80,610 (est)	\$3,850
2980	C00546606	LOUIE MINOR FOR CONGRESS	MINOR, LOUIE JR	ANNA VAZQUEZ	\$135,391	0		Not Filed	\$19,342 (est)	\$550
2981	C00545301	MARJORIE 2014	MARGOLIES-MEZVINSKY, MARJORIE	JENNIFER MAY	\$2,918,618	0	3/19/2015	Not Filed	\$6,524	\$330
2982	C00564724	MCCLINE FOR CONGRESS	MCCLINE, JAMEEL	TRINE ANDERSEN	\$149,352	0		Not Filed	\$74,676 (est)	\$2,970
2983	C00343590	MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA POLITICAL ACTION COMMITTEE (MCA/PAC)		JOHN, MCNERNEY P.	\$230,556	0	3/3/2015	Not Filed	\$2,873	\$275
2984	C00553420	NEW MEXICANS FOR RICHARD PRIEM	PRIEM, RICHARD G	PATTI RIVAS	\$207,589	0		Not Filed	\$51,897 (est)	\$2,970
2985	C00568246	OUR VOICES MATTER		CHARLES PASCAL THOMAS FREILING	\$100,037	0		Not Filed	\$100,037 (est)	\$4,950
2986	C00509489	PATRIOT SUPER PAC			\$116,793	1		Not Filed	\$23,359 (est)	\$687
2987	C00261891	REPUBLICAN CENTRAL COMMITTEE OF LOS ANGELES COUNTY (FED. ACCT)		ALBERT GERSH	\$478,815	3		Not Filed	\$5,347 (est)	\$577
2988	C00547299	RICHARD BOLGER FOR CONGRESS	BOLGER, RICHARD OWEN	JAMES B. VELTRI	\$235,024	1		Not Filed	\$47,005 (est)	\$1,362
2989	C00549824	ROBLES FOR CONGRESS	ROBLES, LUZ M	SILVIA CASTRO	\$314,322	0	3/11/2015	Not Filed	\$8,543	\$330
2990	C00557694	SCOTT BRION FOR CONGRESS	BRION, SCOTT FLOYD	ERIC J. LOUDENSLAGER	\$385,242	0	3/4/2015	Not Filed	\$11,504	\$550
2991	C00558312	SEND LARA TO CONGRESS	LARA, BRIAN	BRIAN LARA	\$236,197	0		Not Filed	\$59,049 (est)	\$2,970
2992	C00499137	SHARON SUND FOR CONGRESS	SUND, SHARON	EUGENE ROBERSON	\$283,782	1		Not Filed	\$31,531 (est)	\$1,362
2993	C00542811	THE REAL CONSERVATIVES NATIONAL COMMITTEE		MICHAEL LEAHY	\$544,837	0	3/9/2015	Not Filed	\$3,500	\$275
2994	C00560649	TOM CARTER FOR CONGRESS	CARTER, THOMAS G	THOMAS CARTER	\$411,859	0		Not Filed	\$137,286 (est)	\$4,950
2995	C00548701	WALTERS FOR CONGRESS	WALTERS, RONALD NEAL JR	MICHAEL E. GREENLEAF	\$261,156	0		Not Filed	\$43,526 (est)	\$1,090
2996	C00553545	WES NEUMAN FOR CONGRESS	NEUMAN, WESLEY RYAN	LINDA NEUMAN	\$107,255	0		Not Filed	\$17,876 (est)	\$550

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reason To Believe Recommendation - 2014)
Year-End Report of the Administrative Fine)
Program:)
ABELER4SENATE, and BART J WARD) AF# 2953
as treasurer;)
BARFIELD FOR CONGRESS, and) AF# 2954
TUFANNA L THOMAS as treasurer;)
BEALE FOR CONGRESS, and STEVEN R) AF# 2955
BURRIS as treasurer;)
BELIEVE IN LIFE LIBERTY YOURSELF) AF# 2956
AKA BILLY PAC, and RONALD)
NEVILLE as treasurer;)
BRAD PECK FOR CONGRESS, and) AF# 2957
ALLEN WILLIAM BERKMAN III as)
treasurer;)
CALVIN D TURNQUEST FOR) AF# 2958
CONGRESS, and OLIVIA)
OUTMEZGUINE as treasurer;)
CAM CAVASSO FOR U S SENATE, and) AF# 2959
RAYNETTE K NICHOLSON as treasurer;)
CICOTTE FOR CONGRESS, and) AF# 2960
GEORGE FREDERICK CICOTTE as)
treasurer;)
CUBIST PHARMACEUTICALS INC.) AF# 2961
PAC (CUBIST PAC), and MARK)
BATTALIGNI as treasurer;)
DAN FREI FOR CONGRESS, and) AF# 2962
SAKALOSKY, MATTHEW as treasurer;)
DEFRANCO FOR CONGRESS, and KAI P) AF# 2963
MOY as treasurer;)
DEMOCRATIC FOUNDATION OF) AF# 2964
ORANGE COUNTY, and HATTON,)
GLEN as treasurer;)

DOC MOYLAN GOES TO WASHINGTON ELECTION COMMITTEE, and ROBERT BEAUVAIS as treasurer;	)	AF# 2965
EMPOWER CITIZENS NETWORK, and	)	AF# 2966
ROBERT WAYNE WARTHER as treasurer;)	
ESPERO FOR CONGRESS, and	)	AF# 2967
GALLARDE, BRYAN as treasurer;)	
FISCHER FOR CONGRESS, and	)	AF# 2968
FANTAUZZI, STACEY J. as treasurer;)	
FLINN FOR SENATE, and LLOYD HETZER as treasurer;	)	AF# 2969
FRIENDS OF DICK DURBIN, and	)	AF# 2970
DOUGLAS A DOUGHERTY as treasurer;)	
IF HE VOTES LIKE THAT IN SALEM	)	AF# 2971
IMAGINE WHAT HE WILL DO IN CONGRESS, and CAROL RUSSELL as treasurer;)	
JAY STAMPER FOR SENATE COMMITTEE, and JEREMY M STAMPER as treasurer;	)	AF# 2972
JETT FOR CONGRESS, and LESLIE	)	AF# 2973
SUSANNE LANDWERT as treasurer;)	
JILL STEIN FOR PRESIDENT, and	)	AF# 2974
MORAN, JAMES as treasurer;)	
JORGE BONILLA FOR US CONGRESS INC, and MAGDALENA BONILLA as treasurer;	)	AF# 2975
KALEKA FOR CONGRESS, and BELLIN,	)	AF# 2976
PETER as treasurer;)	
KWASMAN FOR CONGRESS, and	)	AF# 2977
KWASMAN, ADAM as treasurer;)	
LARRY WILSKE FOR CONGRESS, and	)	AF# 2978
STEWART, ANTHONY ELLIOTT as treasurer;)	
LORENZO 'LARRY' PALOMARES- STARBUCK FOR CONGRESS, and ELY CESAR as treasurer;	)	AF# 2979
LOUIE MINOR FOR CONGRESS, and	)	AF# 2980
ANNA VAZQUEZ as treasurer;)	
MARJORIE 2014, and JENNIFER MAY as treasurer;	)	AF# 2981
MCCLINE FOR CONGRESS, and TRINE ANDERSEN as treasurer;	)	AF# 2982

MECHANICAL CONTRACTORS) AF# 2983
ASSOCIATION OF AMERICA)
POLITICAL ACTION COMMITTEE)
(MCA-PAC), and JOHN, MCNERNEY P.)
as treasurer;)
NEW MEXICANS FOR RICHARD) AF# 2984
PRIEM, and PATTI RIVAS as treasurer;)
OUR VOICES MATTER, and CHARLES) AF# 2985
PASCAL as treasurer;)
PATRIOT SUPER PAC, and FREILING,) AF# 2986
THOMAS as treasurer;)
REPUBLICAN CENTRAL COMMITTEE) AF# 2987
OF LOS ANGELES COUNTY (FED.)
ACCT.), and ALBERT GERSH as)
treasurer;)
RICHARD BOLGER FOR CONGRESS,) AF# 2988
and JAMES B. VELTRI as treasurer;)
ROBLES FOR CONGRESS, and SILVIA) AF# 2989
CASTRO as treasurer;)
SCOTT BRION FOR CONGRESS, and) AF# 2990
ERIC J LOUDENSLAGER as treasurer;)
SEND LARA TO CONGRESS, and) AF# 2991
BRIAN LARA as treasurer;)
SHARON SUND FOR CONGRESS, and) AF# 2992
ROBERSON, EUGENE as treasurer;)
THE REAL CONSERVATIVES) AF# 2993
NATIONAL COMMITTEE, and)
MICHAEL LEAHY as treasurer;)
TOM CARTER FOR CONGRESS, and) AF# 2994
CARTER, THOMAS as treasurer;)
WALTERS FOR CONGRESS, and) AF# 2995
MICHAEL E GREENLEAF as treasurer;)
WES NEUMAN FOR CONGRESS, and) AF# 2996
LINDA NEUMAN as treasurer;)

CERTIFICATION

I, Shelley E. Garr, Deputy Secretary of the Federal Election Commission, do hereby certify that on April 03, 2015 the Commission took the following actions on the Reason To Believe Recommendation - 2014 Year-End Report of the Administrative Fine Program as recommended in the Reports Analysis Division's Memorandum dated April 01, 2015, on the following committees:

AF#2953 Decided by a vote of 6-0 to: (1) find reason to believe that ABELER4SENATE, and BART J WARD as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2954 Decided by a vote of 6-0 to: (1) find reason to believe that BARFIELD FOR CONGRESS, and TUFANNA L THOMAS as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2955 Decided by a vote of 6-0 to: (1) find reason to believe that BEALE FOR CONGRESS, and STEVEN R BURRIS as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2956 Decided by a vote of 6-0 to: (1) find reason to believe that BELIEVE IN LIFE LIBERTY YOURSELF AKA BILLY PAC, and RONALD NEVILLE as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2957 Decided by a vote of 6-0 to: (1) find reason to believe that BRAD PECK FOR CONGRESS, and ALLEN WILLIAM BERKMAN III as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2958 Decided by a vote of 6-0 to: (1) find reason to believe that CALVIN D TURNQUEST FOR CONGRESS, and OLIVIA OUTMEZGUINE as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2959 Decided by a vote of 6-0 to: (1) find reason to believe that CAM CAVASSO FOR U S SENATE, and RAYNETTE K NICHOLSON as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2960 Decided by a vote of 6-0 to: (1) find reason to believe that CICOTTE FOR CONGRESS, and GEORGE FREDERICK CICOTTE as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2961 Decided by a vote of 6-0 to: (1) find reason to believe that CUBIST PHARMACEUTICALS INC. PAC (CUBIST PAC), and MARK BATTALIGNI as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2962 Decided by a vote of 6-0 to: (1) find reason to believe that DAN FREI FOR CONGRESS, and SAKALOSKY, MATTHEW as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2963 Decided by a vote of 6-0 to: (1) find reason to believe that DEFRANCO FOR CONGRESS, and KAI P MOY as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2964 Decided by a vote of 6-0 to: (1) find reason to believe that DEMOCRATIC FOUNDATION OF ORANGE COUNTY, and HATTON, GLEN as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2965 Decided by a vote of 6-0 to: (1) find reason to believe that DOC MOYLAN GOES TO WASHINGTON ELECTION COMMITTEE, and ROBERT BEAUVAIS as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2966 Decided by a vote of 6-0 to: (1) find reason to believe that EMPOWER CITIZENS NETWORK, and ROBERT WAYNE WARTHER as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2967 Decided by a vote of 6-0 to: (1) find reason to believe that ESPERO FOR CONGRESS, and GALLARDE, BRYAN as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2968 Decided by a vote of 6-0 to: (1) find reason to believe that FISCHER FOR CONGRESS, and FANTAUZZI, STACEY J. as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2969 Decided by a vote of 6-0 to: (1) find reason to believe that FLINN FOR SENATE, and LLOYD HETZER as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2970 Decided by a vote of 6-0 to: (1) find reason to believe that FRIENDS OF DICK DURBIN, and DOUGLAS A DOUGHERTY as treasurer violated 52 U.S.C.

30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2971 Decided by a vote of 6-0 to: (1) find reason to believe that IF HE VOTES LIKE THAT IN SALEM IMAGINE WHAT HE WILL DO IN CONGRESS, and CAROL RUSSELL as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2972 Decided by a vote of 6-0 to: (1) find reason to believe that JAY STAMPER FOR SENATE COMMITTEE, and JEREMY M STAMPER as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2973 Decided by a vote of 6-0 to: (1) find reason to believe that JETT FOR CONGRESS, and LESLIE SUSANNE LANDWERT as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2974 Decided by a vote of 6-0 to: (1) find reason to believe that JILL STEIN FOR PRESIDENT, and MORAN, JAMES as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2975 Decided by a vote of 6-0 to: (1) find reason to believe that JORGE BONILLA FOR US CONGRESS INC, and MAGDALENA BONILLA as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2976 Decided by a vote of 6-0 to: (1) find reason to believe that KALEKA FOR CONGRESS, and BELLIN, PETER as treasurer violated 52 U.S.C. 30104(a) (formerly 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

Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2977 Decided by a vote of 6-0 to: (1) find reason to believe that KWASMAN FOR CONGRESS, and KWASMAN, ADAM as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2978 Decided by a vote of 6-0 to: (1) find reason to believe that LARRY WILSKE FOR CONGRESS, and STEWART, ANTHONY ELLIOTT as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2979 Decided by a vote of 6-0 to: (1) find reason to believe that LORENZO 'LARRY' PALOMARES-STARBUCK FOR CONGRESS, and ELY CESAR as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2980 Decided by a vote of 6-0 to: (1) find reason to believe that LOUIE MINOR FOR CONGRESS, and ANNA VAZQUEZ as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2981 Decided by a vote of 6-0 to: (1) find reason to believe that MARJORIE 2014, and JENNIFER MAY as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2982 Decided by a vote of 6-0 to: (1) find reason to believe that MCCLINE FOR CONGRESS, and TRINE ANDERSEN as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2983 Decided by a vote of 6-0 to: (1) find reason to believe that MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA POLITICAL ACTION COMMITTEE (MCA-PAC), and JOHN, MCNERNEY P. as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2984 Decided by a vote of 6-0 to: (1) find reason to believe that NEW MEXICANS FOR RICHARD PRIEM, and PATTI RIVAS as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2985 Decided by a vote of 6-0 to: (1) find reason to believe that OUR VOICES MATTER, and CHARLES PASCAL as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2986 Decided by a vote of 6-0 to: (1) find reason to believe that PATRIOT SUPER PAC, and FREILING, THOMAS as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2987 Decided by a vote of 6-0 to: (1) find reason to believe that REPUBLICAN CENTRAL COMMITTEE OF LOS ANGELES COUNTY (FED. ACCT.), and ALBERT GERSH as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2988 Decided by a vote of 6-0 to: (1) find reason to believe that RICHARD BOLGER FOR CONGRESS, and JAMES B. VELTRI as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2989 Decided by a vote of 6-0 to: (1) find reason to believe that ROBLES FOR CONGRESS, and SILVIA CASTRO as treasurer violated 52 U.S.C. 30104(a) (formerly

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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2990 Decided by a vote of 6-0 to: (1) find reason to believe that SCOTT BRION FOR CONGRESS, and ERIC J LOUDENSLAGER as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2991 Decided by a vote of 6-0 to: (1) find reason to believe that SEND LARA TO CONGRESS, and BRIAN LARA as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2992 Decided by a vote of 6-0 to: (1) find reason to believe that SHARON SUND FOR CONGRESS, and ROBERSON, EUGENE as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2993 Decided by a vote of 6-0 to: (1) find reason to believe that THE REAL CONSERVATIVES NATIONAL COMMITTEE, and MICHAEL LEAHY as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2994 Decided by a vote of 6-0 to: (1) find reason to believe that TOM CARTER FOR CONGRESS, and CARTER, THOMAS as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2995 Decided by a vote of 6-0 to: (1) find reason to believe that WALTERS FOR CONGRESS, and MICHAEL E GREENLEAF as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#2996 Decided by a vote of 6-0 to: (1) find reason to believe that WES NEUMAN FOR CONGRESS, and LINDA NEUMAN as treasurer violated 52 U.S.C. 30104(a) (formerly 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 Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

Attest:

April 6, 2015
Date

Shelley E. Garr
Shelley E. Garr
Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 6, 2015

Kai P Moy, in official capacity as Treasurer
Defranco for Congress
P.O. Box 103
Middleton, MA 01949

C00547257
AF#: 2963

Dear Treasurer:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a Year-End Report of Receipts and Disbursements every calendar year. This report, covering the period October 1, 2014 through December 31, 2014, shall be filed no later than January 31, 2015. 52 U.S.C. § 30104(a). Records at the Federal Election Commission ("FEC") indicate that this report was filed on February 24, 2015, twenty-four (24) days late.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109(a)(4). On April 3, 2015, the FEC found that there is reason to believe ("RTB") that Defranco for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file timely this report on or before January 31, 2015. Based on the FEC's schedules of civil money penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$147. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. Your payment of \$147 is due within forty (40) days of the finding, or by May 13, 2015, and is based on these factors:

Election Sensitivity of Report: Not Election Sensitive
Level of Activity: \$2,969
Number of Days Late: 24
Number of Previous Civil Money Penalties Assessed: 0

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

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 to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the

Commission's RTB finding, or May 13, 2015. 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 52 U.S.C. § 30109. 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 Defranco for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(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 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.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

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

5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. 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 assesses 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.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

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 Sari Pickerall 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,



Ann M. Ravel
Chair

ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$147 for the 2014 Year-End 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 May 13, 2015. 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: Defranco for Congress

FEC ID#: C00547257

AF#: 2963

PAYMENT DUE DATE: May 13, 2015

PAYMENT AMOUNT DUE: \$147

Marisa A. DeFranco

PO Box 103
Middleton, MA 01949

April 16, 2015

VIA USPS EXPRESS OVERNIGHT MAIL

FEC Office of Administrative Review
999 E Street, NW
Washington, DC 20463

RE: AF# 2963, COO547257—CHALLENGE TO RTB FINDING AND CIVIL MONEY PENALTY

Dear FEC Office of Administrative Review:

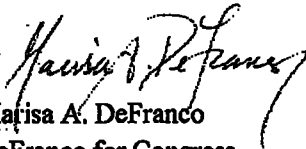
I am challenging the RTB finding and the calculated civil money penalty. I received your letter on April 7, 2015, and I am responding as required well within the forty (40) days, with a written response that includes the reasons why I am challenging both.

Pursuant to the FEC's strong encouragement, I am submitting my document in the form of a declaration, signed under the penalties of perjury. My declaration includes, as required, the factual basis supporting the reasons for my challenge.

I have raised all arguments in a timely fashion in the attached Declaration.

I respectfully request a reversal of the RTB finding and civil money penalty. If the FEC could make a favorable determination on this matter prior to the next report filing date so that I may close this committee, then that would be most appreciated.

Respectfully submitted,


Marisa A. DeFranco
DeFranco for Congress

DECLARATION OF MARISA DEFRANCO

AF#: 2963

I, **Marisa DeFranco** hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge.

1. My name is Marisa DeFranco, and I was the candidate of the committee DeFranco for Congress.
2. During the campaign, we had problems with the FECFile software—it kept freezing and then it would not print the report (this was when we filed paper reports). We did contact technical assistance. The Commission IT person explained to us that the software required the most recent version of Java. We checked our laptop system and although it had the current version, FECFile was still not working. She suggested that we re-install Java from the Java site. We followed her instructions and the software did work.
3. A second time, we had the same problem with freezing and failure to print, we uninstalled and reinstalled Java, and that fixed the glitch.
4. Knowing the problems with the software, a few weeks before each filing, we checked the software requirements and made sure no new versions of Java or other system requirements were required. I did the same the first week of January, and the software was working.
5. On January 20, 2015, I started the report and input my data, and the software was working fine. Then, on January 28, 2015, I logged on to finish the report, and the software would not open, it just kept cycling and cycling, but would not open. That day happened to be the same day after an historic blizzard of 2+ feet (26 inches) hit Massachusetts. I was shoveling for the entire day, but did come in to check on the software to see if I could get it to work, but it didn't.
6. On January 29, 2015, I tried repeatedly to call the technical assistance line but could not get through. Finally, before more time elapsed, I decided to send in a handwritten report as a temporary measure, so as to at least get something to the FEC and make my best efforts to file in a timely manner. I mailed the handwritten report on January 29, 2015. I did not keep a copy for my records.
7. From January 29 to February 23, 2015, I spent all of my time after my job, working to keep my driveway clear so I could get out of the house and then working to keep the snow off the roof to avoid the roof from collapsing while simultaneously working to melt the ice dams that had formed and that were causing water leaks to come through the ceilings in the home. There was water coming through the breaks in the ceiling to the point of near collapse. Saving my roof from collapsing was my priority and I did not have the availability to figure out why the software wasn't working.
8. In between shoveling, roof snow removal and ice dam removal, I did attempt, on February 4, 2015, and February 10, 2015, to call technical assistance again, but again, to no avail. The unavailability

of technical assistance was beyond my control. Several blizzards hit between January 29, 2015 and February 23, 2015, and all my time was spent on severe weather and disaster-related incidents.

9. Finally, 24 hours after the last of the blizzards and the ceiling damage was under control, on February 24, 2015, I spent several hours uninstalling and reinstalling the software, finally got it to work, and then I filed the report. It was not possible to file earlier because I did not have several hours to sit down and fix the software because all of my time was spent on severe weather and disaster-related incidents. February 23, 2015, was my last day of shoveling and roof/ceiling damage control. Pursuant to the regulations, I filed "no later than 24 hours after the end of these circumstances." 11 CFR § 111.35 (b)(3)(ii)
10. The unprecedented and completely unforeseen circumstances of blizzard after blizzard and the severe damage to my home that I was trying to mitigate were totally beyond my control.
11. I thought the issue of this report had been resolved given the fact that I had spoken directly to FEC CFA Chris Jones. On Friday, February 27, 2015, when I was checking the FEC site to see if my electronic report had been uploaded, I discovered the RFAI Letter dated February 18, 2015 referring to the Year-End Report. I immediately took action and called the FEC at 4:10 PM. The operator put me on hold, and then transferred me to Chris Jones's voicemail, wherein I left a message.
12. The next week, Mr. Jones and I played phone tag, and then on Friday, March 6, 2015, Mr. Jones called me and we connected, and we spoke from 10:30-11:30 AM.
13. I asked Mr. Jones if I should respond in writing to the February 18, 2015 letter, and he said I did not have to take any action because I had now filed the report. I explained to him the above timeline of the blizzards, the damage to my house, the software problems and my paper report, and I asked a second time if it was certain that I did not have to put that timeline down in writing and send it to the FEC. He repeated his previous answer that no action was necessary because the report was now on file. I took proactive measures on this report and directly contacted the FEC regarding it. If I had been told or asked to put the reasons for the late filing in writing, I would have done so more than a month ago, in that first week of March.
14. The Campaign is over, I have wound down the committee, I no longer have any staff and I have taken over the filings. Before I received the FEC notice of the penalty, I was planning on closing the committee before the next filing date. I only have \$146.14 left in the campaign account. I was planning on allocating those funds to my candidate loan, foregoing repayment of the remainder of my loan, and closing the committee. I will delay these actions until after the Commission's decision on this challenge.
15. Please note that I did consider simply paying the fine to be done with it in a timely and efficient manner. Writing the check would have taken me considerably less time than sitting down to write this Declaration. But, I am challenging the finding because this case is one that fits squarely within the parameters of the Code and is of the very nature contemplated by the exact language of the Code, and the committee should not have to pay a penalty when the regulations provide for no penalty where the respondent meets the requirements of the regulations. Furthermore, I

respectfully request that the Commission take into consideration that I specifically explained the reasons for the late filing directly to an FEC employee and I specifically asked if I should commemorate that explanation to writing.

16. Specifically, 11 CFR § 111.35(b)(3) requires "The respondent used best efforts to file in a timely manner in that: (i) The respondent was prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; and (ii) The respondent filed no later than 24 hours after the end of these circumstances." and 11 CFR § 111.35(c) "Circumstances that will be considered reasonable unforeseen and beyond the control of respondent include, but are not limited to: (c)(1) A failure of Commission or Commission-provided software despite the respondent seeking technical assistance from Commission personnel and resources;...(c)(3) Severe weather or other disaster-related incident."
17. As explained above, I used my best efforts but was prevented from filing in a timely manner due to reasonably unforeseen circumstances—a once-in-a-century record snowfall through dangerous and consecutive blizzards most definitely fits the definition of unforeseen circumstances. Moreover, it fits the definition of severe weather, and the damage caused by these blizzards to my home was a disaster-related incident.
18. I believe we already meet the "(c)(3) severe weather or disaster-related incident requirement", and pursuant to the code, the burden on the respondent is to meet only one of the delineated subsections. However, pursuant to requirement to raise all arguments or have them be deemed waived, we raise the argument that we also meet (c)(1) "a failure of Commission-provided software despite the respondent seeking technical assistance from Commission personnel and resources" as explained above.
19. I respectfully request that the Commission find in favor of the DeFranco for Congress Committee and reverse its finding and the penalty.

Signed under the penalties of perjury,

04/16/2015
Date

Marisa DeFranco
Marisa DeFranco



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

2015 MAY 26 P 3:40

May 26, 2015

MEMORANDUM

SENSITIVE

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

Rhiannon Magruder *RM*
Reviewing Officer
Office of Administrative Review

Subject: Reviewing Officer Recommendation in AF# 2963 – DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer (C00547257)

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



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 26, 2015

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

AF# 2963 – DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer (C00547257)

Summary of Recommendation

Make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$147 civil money penalty.

Reason-to-Believe Background

The 2014 Year-End Report was due on January 31, 2015. The respondents filed the report on February 24, 2015, 24 days late. The report is not election sensitive and was filed within 30 days of the due date; therefore, the report is considered late. 11 C.F.R. §§ 111.43(d)(1) and (e)(1).

On April 3, 2015, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2014 Year-End Report and made a preliminary determination that the civil money penalty was \$147 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter was mailed to the respondents' address of record from the Reports Analysis Division ("RAD") on April 6, 2015 to notify them of the Commission's RTB finding and civil money penalty.

Legal Requirements

The Federal Election Campaign Act ("Act") states that the treasurer of a principal campaign committee shall file a report for the quarter ending December 31 no later than January 31 of the following calendar year. 52 U.S.C. § 30104(a) and 11 C.F.R. § 104.5(a)(1)(i). Political committees required to file reports with the Commission must file in an electronic format if they have received contributions or made expenditures or expect to receive contributions or make expenditures in a calendar year aggregating in excess of \$50,000. 52 U.S.C. § 30104(a)(11) and 11 C.F.R. § 104.18(a). Reports electronically filed must be received and validated at or before 11:59 p.m. Eastern Standard/Daylight Time on the filing date to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Respondents' Challenge

On April 20, 2015, the Commission received the written response ("challenge") from the Candidate, Ms. Marisa DeFranco, requesting that the Commission reverse the RTB finding and civil money penalty due to circumstances beyond her control. The declaration of Ms. DeFranco states that she was unable to timely file the 2014 Year-End Report due to the unavailability of FEC technical assistance to help her resolve issues with FECFile and the multiple blizzards that occurred in Massachusetts around the filing deadline.

The Candidate further explains that the Committee previously had technical difficulties using FECFile. FEC technical staff advised the Committee to reinstall their Java software, and this solved the Committee's technical issues with FECFile on two separate occasions. The Candidate states:

"Knowing the problems with the software, a few weeks before each filing, we checked the software requirements and made sure no new versions of Java or other system requirements were required. I did the same the first week of January, and the software was working."

The Candidate began working on the report on January 20, 2015. On January 27, 2015, Massachusetts experienced a blizzard resulting in 26 inches of snow. On January 28, 2015, when the Candidate went to finish the report, FECFile would not open. The Candidate explained that in the midst of shoveling snow, she again attempted to open FECFile but was unsuccessful.

On January 29, 2015, the Candidate made repeated attempts to contact FEC technical support but was unable to get through. The Candidate then decided to send in a paper report "...as a temporary measure, so as to at least get something to the FEC and make [her] best efforts to file in a timely manner." The Candidate mailed the report on January 29, 2015, but is unable to provide a copy of the documents or receipt of mailing.

From January 29, 2015 through February 23, 2015, the Candidate's priority was removing snow and ice from the multiple blizzards and preventing further damage to her home. While the Candidate was unable to devote a large amount of time to resolving her issues with FECFile, she did attempt to contact FEC technical assistance on February 4 and 10, 2015, again without success.

On February 24, 2015, within 24 hours of the last blizzard and getting the damage under control, the Candidate spent several hours working to resolve her issues with FECFile. She successfully filed the 2014 Year-End Report that same day.

On February 27, 2015, the Candidate discovered the February 18, 2015 Request for Additional Information ("RFAI") from RAD referencing the failure to file the 2014 Year-End Report. The Candidate called the RAD Analyst and left a message. On March 6, 2015, after playing phone tag, the Candidate and the Analyst connected. The Candidate explained her issues with FECFile and the blizzards, and asked if she needed to do anything to respond to the RFAI. The Analyst explained that she did not need to take any further action because she had already filed the report. The Candidate states that she was proactive and would have provided a written explanation in early March if advised to do so.

The Candidate concludes by stating that her circumstances are acceptable defenses to challenge the RTB finding. She also indicates that she has wound down the Committee and will be terminating once this matter is closed. She requests that the challenge be processed expeditiously in hopes of terminating the Committee prior to the 2015 July Quarterly filing deadline.

Analysis

The Candidate states that the Java software on her computer has been known to cause issues with using FECFile. At the advice of Commission technical support, she is usually able to resolve her issues by reinstalling Java. The Candidate states that FECFile was working on January 20, 2015, but she started having issues again on January 28, 2015, three days before the January 31, 2015 filing deadline for the 2014 Year-End Report.

The Candidate's technical troubles were compounded by the effects of historic snowfall around the filing deadline. The Committee's address of record is Middleton, Massachusetts, which is located in Essex County and approximately 20 miles north of Boston. According to data published by the National Weather Service ("NWS"), Essex County experienced a blizzard January 26 - 28, 2015, followed by significant snowfall again February 2-3, 9-10, and 14-15. In addition to these major storms, the area accumulated a few additional inches of snow on February 5 and 22. During the period of January 26 through February 22, NWS data indicates nearby Boston accumulated a total of 86.9 inches of snow.

The Candidate states that snow removal and controlling the resulting damage to her home was her priority from January 29, 2015 through February 23, 2015, but she did spend some time during the period trying to resolve the FECFile issues. The Candidate contends she was unable to reach Commission technical support on January 29, February 4, and February 10, 2015. However, according to the Manager of the E-Filing and Disclosure Branch in the Commission's Office of the Chief Information Officer, the Electronic Filing Office ("EFO") has no record of any contacts with the Committee on or around these dates. The Manager states EFO was fully staffed and taking calls on all of these dates. Further, the Manager states there is no record of any issues with FECFile that would have prevented the Committee from timely filing the report. RAD also has no record of any contacts with the Committee on or around these dates. Therefore, there is not enough evidence to suggest EFO or RAD failed to provide assistance to the Committee.

On February 24, 2015, the Committee successfully electronically filed the 2014 Year-End Report. The Candidate states she was able to resolve her issues with FECFile after spending several hours uninstalling and reinstalling the software. There are no EFO or RAD records to indicate the Candidate contacted the Commission for technical support.

As the challenge states, on March 6, 2015, the Candidate spoke to the RAD Analyst regarding the February 18, 2015 non-filer notice sent for the 2014 Year-End Report. According to RAD telecoms (written records of telephone conversations), the Candidate asked if the Committee should do anything regarding the late filing of the report. The Analyst explained that since the report had now been filed, there was nothing further she could do to remedy the situation. In the challenge, the Candidate mentions she was given this advice. The Candidate then implies that perhaps if she had followed through with submitting an explanation of the late filing in writing, the Commission would not have assessed the civil money penalty. The Reviewing Officer confirms that the Analyst's advice was adequate, and the Commission would not have considered this additional explanation when making the RTB finding. The Commission only reviews such explanations when submitted as a challenge to an RTB finding.

The Candidate also contends that she mailed in a paper version of the report on January 29, 2015. However, there is no indication that the Commission ever received this document. The Candidate was unable to provide any supporting documentation; therefore, there is not enough evidence to suggest the Commission's record is incomplete. Moreover, the Committee is a mandatory electronic filer pursuant to 52 U.S.C. § 30104(a)(11) and 11 C.F.R. § 104.18(a). Page 82 of the Commission's *Campaign Guide for Congressional Candidates* explains: "...If a committee required to file electronically files a paper report instead of an electronic report, the report will be considered not filed..." Ultimately, the Candidate's contention that she filed a paper version of the report is moot.

The Candidate implies that she used best efforts to file in a timely manner. The "best efforts" defense is a two-part test: the respondents used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances. The Candidate contends her circumstances fall into the acceptable defense categories of 1) a failure of Commission or Commission provided software despite the respondent seeking technical assistance from Commission personnel and resources and 2) a severe weather or other disaster-related incident. She states that the unavailability of technical support and the damaging effects of multiple snow storms were reasonably unforeseen circumstances beyond her control, and she filed the report no later than 24 hours after the end of these circumstances.

With respect to the failure of FECFile and unavailability of technical support, as mentioned above, there is no evidence to suggest there were any issues with FECFile around that time or that the Commission failed to provide technical support to the Committee. Therefore, this "best efforts" defense does not succeed.

With respect to the snow storms, the Commission states in its *Explanation and Justification for Revised 11 CFR § 111.35(b)(3) – "Best Efforts" Defense*, 72 Fed. Reg. 14662, 14664-14666 (Mar. 29, 2007) that respondents must show

"...that the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report...[T]his rule requires a strict causal relationship between the circumstances described in the challenge...and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing." (emphasis included)

The Reviewing Officer recognizes the damaging effects of the multiple snow storms made it more difficult for the Committee to file the report; however, the severe weather did not directly *prevent* the respondents from filing the report. Therefore, this "best efforts" defense also does not succeed.

The Committee's untimely filing of the 2014 Year-End Report can only be attributed to the failure of the Committee's computer and the failure to use filing software properly, which are included at 11 C.F.R. § 111.35(d) as examples of a circumstance that will not be considered reasonably unforeseen and beyond the respondents' control. Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$147 civil money penalty.

OAR Recommendations

- 1) Adopt the Reviewing Officer recommendation for AF# 2963 involving DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer, in making the final determination;
- 2) Make a final determination in AF# 2963 that DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$147 civil money penalty; and
- 3) Send the appropriate letter.

Attachments

- Attachment 1 –
- Attachment 2 –
- Attachment 3 –
- Attachment 4 – *Campaign Guide for Congressional Candidates*, p. 82
- Attachment 5 – *Explanation and Justification*, 72 Fed. Reg. 14662-14668 (Mar. 29, 2007)
- Attachment 6 – Declaration from RAD
- Attachment 7 – Declaration from OAR

For information on when to report last-minute contributions received as part of a joint fundraising transfer, see Appendix C, Section 13.

Special Elections

Filing dates for special elections are published on the FEC's website, in the FEC Record and in the Federal Register. The Commission also notifies the principal campaign committees of candidates who are on the ballot in a special election.

If a regularly scheduled report is due within 10 days of the date a special election report is due, the Commission may waive the regular report. 104.5(h).

Meeting the Filing Deadline

By Registered Mail, Certified Mail, Priority Mail with Delivery Confirmation, Express Mail with Delivery Confirmation or Overnight Delivery

If a statement or report is sent by registered mail, certified mail or overnight mail with an online tracking system,⁴ it is considered filed on the date of the U.S. postmark. (Note the special rule for pre-election reports, above.) 100.19. The committee should retain evidence that it delivered the report to the U.S. Postal Service or the overnight delivery service, in the event of a delivery failure.

By First Class Mail

If a statement or report is sent by first class mail, it is considered filed on the date it is received by the Secretary of the Senate or the Federal Election Commission. 100.19(b)(2) and 104.5(e). The risk of timely delivery is on the filer.

By Electronic Filing

An electronic report is considered "filed" when it is received and validated by the Commission's computer system on or before 11:59 p.m. (Eastern Time) on the filing date. Incomplete or inaccurate reports that do not pass the FEC's validation program will not be considered filed. The Commission will notify the filer that the report has not been accepted. 100.19(c) and 104.18(e)(2).

⁴ Overnight mail is often used to refer to priority mail having a delivery confirmation, express mail having a delivery confirmation, or an overnight delivery service with an online tracking system.

By CD

While most electronic filers find it more convenient to file through the Internet, the Commission also accepts properly-formatted electronic reports on CDs either hand delivered or sent by other delivery means, such as the U.S. Postal Service. It is important to note that all mail sent to the FEC through the U.S. Postal Service undergoes special processing which might damage the information on a CD. For specific instructions on how to file electronically using a CD, see the Electronic Filing section of the FEC website at <http://go.usa.gov/8hUA>.

Mandatory Electronic Filing

Some committees must file electronically (See Section 5, "Electronic Filing"). If a committee required to file electronically files a paper report instead of an electronic report, the report will be considered not filed. The committee may be subject to the Commission's enforcement process for nonfilers and may have its name published as a nonfiler. See 104.18(a)(2).

4. ADMINISTRATIVE FINES FOR LATE FILERS AND NONFILERS

The Administrative Fines Program, which is based on amendments to the *Federal Election Campaign Act*,⁵ assesses civil money penalties for violations involving:

- Failure to file reports on time;
- Failure to file reports at all;
- Failure to file 48-hour notices.

If the Commission finds "reason to believe" (RTB) that a committee violated the law, the Commission will notify the committee in writing of its finding and the amount of the civil money penalty. 111.32. The committee will have 40 days to either pay the civil money penalty or submit a written challenge to the Commission action. If the committee challenges the finding, it will be reviewed by an independent reviewing officer who was not involved in the RTB finding. After the Commission considers the re-

⁵ Pub. L. No. 106-58, 106th Cong., § 640, 113 Stat. 430, 476-77 (1999); Commission authority extended in Pub. L. No. 106-67, 107th Cong., § 642, 115 Stat. 514, 555 (2001); in Pub. L. No. 108-199, 108th Cong., § 639, 118 Stat. 3 (2004); in Pub. L. No. 109-115, § 721, 119 Stat. 2396, 2493-2494 (2006); and in Pub. L. No. 113-72, § 721, 119 Stat. 2396, 2493-2494 (2013).

extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from \$4.00 per pound to \$11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price for the period from 1980 to 2005 of \$12.72 per pound for Scotch spearmint oil and \$9.84 per pound for Native spearmint oil.

During the period of 1998 through 2005, however, large production and carry-in inventories have contributed to prices below the 26-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from \$8.00 to \$11.00 per pound for Scotch spearmint oil and between \$9.10 and \$10.00 per pound for Native spearmint oil. The 2005 Native price exceeded the 26-year average by \$0.16. Producers stated, however, that fuel cost increases more than offset the price increase.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 4, 2006, meeting was a public meeting and

all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the *Federal Register* on January 22, 2007 (71 FR 2639). Copies of the rule were provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested person. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 21, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/maab.html>. Any questions about the compliance guide should be sent to Jay Guerbor at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.226 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.226 Salable quantities and allotment percentages—2007–2008 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2007, shall be as follows:

(a) *Class 1 (Scotch) oil*—a salable quantity of 886,667 pounds and an allotment percentage of 45 percent.

(b) *Class 3 (Native) oil*—a salable quantity of 1,062,336 pounds and an allotment percentage of 48 percent.

Dated: March 23, 2007.

Lloyd C. Day,
Administrator, Agricultural Marketing
Service.
[FR Doc. E7–5811 Filed 3–28–07; 8:45 am]
BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007–7]

Best Efforts in Administrative Fines Challenges

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Rules to Congress.

SUMMARY: The Federal Election Commission is revising its regulations to amend four aspects of its Administrative Fines Program ("AFP"), a streamlined process through which the Commission assesses civil money penalties for late filers and non-filers under the Federal Election Campaign Act of 1971, as amended ("FECA"). First, the Commission is revising its rules regarding the permissible grounds for challenging a proposed civil money penalty by clarifying the scope of the defense based on factual errors. Second, the Commission is incorporating a defense for political committees that demonstrate that they used their best efforts to file reports timely. Third, the Commission is revising its rules regarding its final determinations to clarify when the Commission finds that no violation has occurred. Lastly, the rules are being amended to explain that the Commission's statement of reasons for its final decision in an AFP matter usually consists of the reasons set forth by the Commission's reviewing officer as adopted by the Commission. The supplementary information that follows provides further information.

EFFECTIVE DATE: April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Through the AFP, the Commission may assess a civil money penalty for a violation of the reporting requirements of 2 U.S.C. 434(a) (such as not filing or filing late) without using the traditional enforcement procedures reserved for more serious violations under 2 U.S.C.

437g. See 2 U.S.C. 437g(a)(4)(C).¹ Congress intended the Commission to process these straightforward violations through a "simplified procedure" that would ease the enforcement burden on the Commission. See H.R. Rep. No. 106-295, at 11-12 (1999). The rules governing the AFP create a streamlined procedure that balances the respondent's rights to notice and opportunity to be heard with the need to operate the AFP in an expeditious manner without undue administrative burden. See Explanation and Justification for Final Rule on Administrative Fines, 65 FR 31787, 31788 (May 19, 2000) ("Admin Fines E&J").²

When the Commission finds reason to believe ("RTB") that a political committee and its treasurer ("respondents") violated the reporting requirements, the respondents may challenge the finding and the proposed civil money penalty only for certain specified reasons. See revised 11 CFR 111.35. The Commission's reviewing officer considers the challenge and forwards a recommendation to the Commission. See 11 CFR 111.36(e). After considering the challenge, the reviewing officer's recommendation, and any subsequent comments from the respondent regarding the recommendation, the Commission makes a final determination. See revised 11 CFR 111.37. The Commission assesses civil money penalties based on published penalty schedules set forth in 11 CFR 111.43. Respondents may challenge the Commission's final determination in U.S. District Court. See 2 U.S.C. 437g(a)(4)(C)(iii); 11 CFR 111.38.

In *Lovely v. FEC*, 307 F. Supp. 2d 294 (D. Mass. 2004), a political committee challenged a civil money penalty assessed by the Commission through the AFP. The political committee argued that it had used its best efforts to file the report in question and that this constituted a valid and complete defense under FECA's "best efforts" provision in 2 U.S.C. 432(i). See *Lovely*, 307 F. Supp. 2d at 299. Section 432(i) provides that "[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political

committee, any report or any records of such committee shall be considered in compliance with [FECA]." 2 U.S.C. 432(i).³ The *Lovely* court concluded that the plain language of FECA requires the Commission to consider the "best efforts" defense in the AFP, and that the record in the *Lovely* case did not establish whether the Commission had considered that defense. See *Lovely*, 307 F. Supp. 2d at 300-01. The court remanded the case to the Commission for further proceedings. See *id.* at 301. On remand, the Commission determined that the political committee had failed to show it used best efforts to file timely and confirmed the earlier imposition of the civil money penalty. See *Statement of Reasons in Administrative Fines Case 549* (Oct. 4, 2005), available at http://www.fec.gov/law/law_rulemakings.shtml under the heading "Best Efforts in Administrative Fines Challenges."

Although the *Lovely* decision did not directly challenge the AFP rules, and did not affect the validity of 11 CFR 111.35 or the Commission's consideration of any other AFP matters, the Commission opted to open a rulemaking by publishing a Notice of Proposed Rulemaking on December 8, 2006, to seek public comment on proposed revisions to the AFP based on the court's concerns. See *Notice of Proposed Rulemaking for Best Efforts in Administrative Fines Challenges*, 71 FR 71093 (Dec. 8, 2006) ("NPRM"). The Commission received two comments, which are available at http://www.fec.gov/law/law_rulemakings.shtml under the heading "Best Efforts in Administrative Fines Challenges."⁴ One comment made several recommendations as to how the Commission could further clarify the "best efforts" defense by incorporating the business management concept of "best practices" regarding corporate operation, financial controls, risk prevention and risk assessment, while

the other comment was not relevant to this rulemaking.

After consideration of the relevant comment, the Commission has decided to revise its rules governing the AFP in four ways, as described below: (1) Clarifying the scope of the "factual errors" defense; (2) incorporating a "best efforts" defense for challenges to RTB findings; (3) clarifying when the Commission may find that no violation has occurred in an AFP matter; and (4) explaining the procedure for issuing Commission statements of reasons for AFP final determinations. These changes address the concerns raised by the *Lovely* court and provide greater clarity regarding permissible grounds for challenging an RTB finding. The revisions are substantially similar to those proposed in the *NPRM*.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the *Federal Register* at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on March 23, 2007.

Explanation And Justification

I. Revised 11 CFR 111.35—Respondent Challenges to Reason To Believe Finding or Proposed Civil Money Penalty

Revised section 111.35 sets forth the requirements for AFP respondents' challenges to RTB findings and proposed civil money penalties. Revised section 111.35(a) is clarified so that it applies only to respondents that seek to challenge an RTB finding or proposed civil money penalty.⁵ The Commission is reorganizing and clarifying section 111.35 so that respondents may easily identify the basis for challenges in the AFP. See revised 11 CFR 111.35(b).

A. Revised 11 CFR 111.35(b)(1)—Changes to the "Factual Errors" Defense

The *NPRM* sought comment on proposed clarifications to the "factual errors" defense and asked whether the regulation should include examples of the types of factual errors that would suffice as grounds for challenging an RTB finding. See *NPRM*, 71 FR at 71094. The comment did not address this issue. The Commission has decided to revise

¹ The AFP applies to violations of the reporting requirements by political committees and their treasurers. See 11 CFR 111.30.

² The AFP is set to expire on December 31, 2008. See Pub. L. No. 109-115, sec. 721, 119 Stat. 2396, 2493-94 (2005); *Final Rule on Extension of Administrative Fines Program*, 70 FR 75717 (Dec. 21, 2005) (extending the sunset date in 11 CFR 111.30 to Dec. 31, 2008).

³ The Commission had long interpreted the "best efforts" safe harbor to be limited to political committees' obligation to report certain substantive information that may be beyond the control of the committees to obtain. See 11 CFR 104.7 (defining "best efforts" for purposes of obtaining and submitting contributor information). The Commission is currently considering in a separate proceeding whether to revise its application of this provision in enforcement matters outside the scope of the AFP. See *Proposed Statement of Policy Regarding Treasurer's Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act*, 71 FR 71084 (Dec. 8, 2006). The Commission anticipates issuing a final policy statement this year.

⁴ The Internal Revenue Service did not comment on the *NPRM*.

⁵ The revisions to section 111.35(a) did not alter the basic timing requirement that a respondent must file a challenge with the Commission within forty (40) days of when the Commission issues its reason to believe finding. See revised 111.35(a); *Admin Fines E&J*, 65 FR at 31789.

the rule regarding the "factual errors" defense as proposed in the *NPRM*, except for stylistic changes. The revised rule states that the facts alleged to be in error must be facts upon which the Commission relied in its RTB finding. See revised 11 CFR 111.35(b)(1). Thus, a respondent may not challenge an RTB finding based on factual errors that are irrelevant to the Commission's actual RTB finding, such as errors in the RTB finding regarding individual names or titles of committee staff.

The revised rule provides two examples of the type of factual errors that would properly support a challenge: the respondent was not required to file the report in question, and the respondent did in fact timely file as described in 11 CFR 100.19. See revised 11 CFR 111.35(b)(1). For example, a political committee that is not subject to electronic filing requirements could challenge an RTB finding and proposed civil money penalty under section 111.35(b)(1) by showing that the paper copy was filed on time and the Commission relied on the factual error that the committee was required instead to file electronically. See 11 CFR 104.18(a). As referenced in the rule's second example, Commission rules currently state that certain reports are "timely filed" if they are deposited as registered or certified mail with the U.S. Post Office, as Priority Mail or Express Mail through the U.S. Post Office, or with an overnight delivery service to be delivered the next business day with a postmark no later than 11:59 p.m. EST on the filing date. See 11 CFR 100.19(b). Thus, a respondent who is not required to file electronically could challenge an RTB finding based on evidence that it deposited the report in the proper manner pursuant to section 100.19(b) on the filing date, even if the Commission did not receive the report because of a delivery failure by the U.S. Post Office or other delivery service. The Commission emphasizes that the revisions to section 111.35(b)(1) do not create any new "factual errors" defenses, but simply recognize the types of errors that the Commission has accepted previously as a defense in the AFP.

B. Revised 11 CFR 111.35(b)(3)—"Best Efforts" Defense

The *NPRM* also sought comment on whether to replace the "extraordinary circumstances" defense in the prior rule with a "best efforts" defense for challenging an RTB finding based upon 2 U.S.C. 432(i). See *NPRM*, 71 FR at 71094-95 and former 11 CFR 111.35(b)(1)(iii). The comment generally supported the idea of a "best efforts"

defense. The Commission has decided to adopt the *Lovely* court's interpretation of 2 U.S.C. 432(i) and to incorporate a "best efforts" defense into the AFP. It appears in revised 11 CFR 111.35(b)(3) and is the same as the proposed rule, except for the changes noted below. The "best efforts" defense in the revised rule completely replaces the prior "extraordinary circumstances" defense because the two defenses are largely coextensive. The Commission reiterates its policy determination, as stated in the initial rulemaking for the AFP, that respondents' defenses in the AFP should be limited because the complete and timely disclosure of the political committee's financial activity is a "cornerstone of campaign finance law." See *Admin Fines E&J*, 65 FR at 31789.

The *Lovely* court recognized that the Commission could "refine by regulation what best efforts means in the context of submitting a report." *Lovely*, 307 F. Supp. 2d at 300. In exercising its authority to interpret how to incorporate a "best efforts" defense into the AFP rules, the Commission is mindful of the statutory terms chosen by Congress. As also explained by the Commission in its statement of reasons in the *Lovely* case after remand, section 432(i) creates a safe harbor for treasurers who demonstrate that best efforts have been used to submit reports required by FECA. "Best" is an adjective of the superlative degree. Therefore, best efforts requires more than "some" or "good" efforts. Section 432(i)'s use of the phrase "best efforts," instead of a "good faith" standard, means that an AFP respondent cannot rely upon the state of mind of the committee's treasurer or staff to claim this defense.⁶ Instead, the Commission's revised rule at 11 CFR 111.35(b)(3), which sets forth the "best efforts" defense, focuses on actions taken by the respondent committee or treasurer to comply with reporting deadlines.

The "best efforts" defense is described in the revised rule as a two-part test. The AFP respondent must demonstrate that: (1) The respondent was prevented from filing in a timely manner by "reasonably unforeseen circumstances that were beyond the control" of the respondent; and (2) the respondent filed the report in question no later than 24 hours after the end of the reasonably unforeseen circumstances preventing the timely filing. See revised 11 CFR 111.35(b)(3). The Commission believes this test is straightforward and should be easy for

respondents to understand and document in their written responses. The final rule differs slightly from the proposed rule, which would have stated that the respondent must be prevented from filing in a timely manner by "unforeseen" circumstances. The Commission is making this change to emphasize that the "best efforts" defense is an objective test, which uses a reasonable person standard and does not depend upon the committee's treasurer or staff's subjective ability to foresee a particular circumstance. The examples included in the rule in 11 CFR 111.35(c) and (d), described below, illustrate how this defense operates as an objective test.

Under the first part of the defense, the respondent bears the burden of showing that the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report. The *NPRM* requested public comment regarding whether the Commission should apply a "but for" or "contributing factor" test for determining whether a respondent was prevented from timely filing under the rule. See *NPRM*, 71 FR at 71095. The comment did not address this issue. The Commission has decided that this rule requires a strict causal relationship between the circumstances described in the challenge (such as a natural disaster) and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing. "Best efforts" is a high standard set by FECA, and the Commission reminds respondents that there are multiple ways for a committee to file required reports properly and timely. See, e.g., 11 CFR 100.19(b) (political committees not required to file electronically may file on paper by hand delivery, first class, registered, certified, Priority or Express U.S. Mail, or overnight delivery service); 11 CFR 104.18 (mandatory electronic filings accepted through the Commission's filing system via internet, modem, or by submission of diskette or CD). If the respondent is prevented from using one method of filing by a problem (such as a technical problem with the Commission's modems), the respondent cannot claim the "best efforts" defense if it did not attempt to use other available methods to file timely (such as

⁶ See *Statement of Reasons in Administrative Fines Case 549* (Oct. 4, 2005).

submission on a diskette or CD).⁷ Therefore, to satisfy the "best efforts" defense, a respondent must demonstrate that it attempted to use all available methods to file, but that timely filing by each method was prevented by the reasonably unforeseen circumstances beyond the control of the respondent.

The direct causal link between the reasonably unforeseen circumstances and the ability of the respondent to file the report also underlies the second part of the test for the "best efforts" defense. A respondent must show that the report was properly filed no later than 24 hours after the resolution of the circumstances preventing the timely filing. When the situation (such as a problem with Commission computers) is resolved, the Act's high standard of "best efforts" requires that the respondent file the report within a reasonably short period of time. The NPRM requested public comment regarding whether the 24-hour period in the proposed rule was appropriate for the "best efforts" defense. See NPRM, 71 FR at 71095. The comment did not address this issue. The Commission has determined that a 24-hour period best serves the interest in disclosure of the information as soon as practicable after the circumstances preventing the timely disclosure are resolved.

C. Examples of Circumstances Under the "Best Efforts" Defense

To provide further guidance to respondents regarding the scope of the "best efforts" defense, the revised rule includes examples of circumstances that will be considered "reasonably unforeseen and beyond the control of the respondent," and examples of circumstances that will not be considered "reasonably unforeseen and beyond the control of the respondent." See revised 11 CFR 111.35(c) and (d). The comment argued that the rule should not be limited to examples of defenses that would be unacceptable under the new "best efforts" defense, but should also include examples of defenses that would meet the new defense to provide guidance to

committees and treasurers. The revised rule provides such illustrations. The examples of defenses in the revised rule are the same as proposed in the NPRM, except as noted otherwise below. Both sets of examples in revised section 111.35(c) and (d) are non-exhaustive lists and should not be read to override the general requirements of the defense in revised section 111.35(b)(3) as discussed above.

1. Revised 11 CFR 111.35(c)—Reasonably Unforeseen Circumstances Beyond Respondents' Control

Revised section 111.35(c) provides three examples of circumstances that the Commission will consider "reasonably unforeseen and beyond the control" of the respondent under a "best efforts" defense. The first example is that a failure of Commission computers or Commission-provided software, despite the respondent seeking technical assistance, caused the respondent's untimely electronic filing. See revised 11 CFR 111.35(c)(1). This example is similar to the example in the prior rules, in which a failure of Commission computers satisfied the "extraordinary circumstances" defense. See former 11 CFR 111.35(b)(4)(iv); *Admin Fines E&J*, 65 FR at 31790 ("Any failure of the Commission's system that prevents committees from filing their reports when due would be recognized as an extraordinary circumstance beyond the respondents' control.").* The revised rule differs from the proposed rule by including the respondent's seeking technical assistance as part of the example. Consistent with the prior defense based on Commission computer failures, the revised example clarifies that political committees must use all Commission resources available to aid with electronic filing, such as technical support manuals and personnel, before a respondent will be considered "prevented" from timely filing by Commission computer or software failures. Thus, any failure of Commission computers, servers, filing system or Commission-provided software of sufficient severity that it results in a respondent being unable to file, despite the respondent seeking assistance from the Commission's technical support personnel, is a

reasonably unforeseen circumstance beyond the respondent's control.

The second example in revised section 111.35(c)(2) is a "widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider." This example covers circumstances in which technological problems at a third-party hub or information transfer location, rather than the Commission's or respondent's computer systems, caused widespread communication failures on the Internet that left the respondent unable to send, or the Commission unable to receive, an electronically filed report. This failure to transmit information must occur irrespective of any failures of the Commission's or respondent's computer systems or Internet service providers. If a respondent demonstrates such a widespread disruption of information transmissions occurred, the Commission will consider it "reasonably unforeseen circumstances that were beyond the control" of the respondent. As with all the examples in revised section 111.35(c)(2), the respondent bears the burden of showing that these reasonably unforeseen circumstances *in fact prevented* the respondent from filing timely, despite attempts to file by any available alternative methods permitted under Commission regulations.⁸ This example has been refined from the proposed rule to clarify the types of transmission failures contemplated.

The final example in the rule states that a "[s]evere weather or other disaster-related incident" is a reasonably unforeseen circumstance beyond the control of the respondent. See revised 11 CFR 111.35(c)(3). Under the prior rule, the Commission deemed certain weather conditions (lasting more than 48 hours) met the "extraordinary circumstances" test, explaining that "natural disasters where a committee's office is located in the disaster area and the committee cannot timely file a report because of lack of electricity or flooding or destruction of committee records" would satisfy the defense. See previous 11 CFR 111.35(b)(1)(iii); *Admin Fines E&J*, 65 FR at 31790. The revised rule permits such severe weather-related events occurring at the respondent's or Commission's location

⁷ The Commission's guidance and instructions to political committees required to file electronically makes clear that if a report is successfully uploaded and accepted by the Commission, a confirmation receipt (including a validation number) is immediately sent to the committee via e-mail, fax or both. If a committee does not receive such a receipt, the committee should not assume the filing was received and should contact the Commission's technical support personnel. See, e.g., "Frequently Asked Questions About Electronic Filing," available at http://www.fec.gov/support/fec_filing.shtml (last visited Mar. 16, 2007); "Common Electronic Filing Mistakes," available at <http://www.fec.gov/electfil/mistakes.shtml> (last visited Mar. 16, 2007).

⁸ In order to satisfy the prior "extraordinary circumstances" defense, the failure of Commission computers had to last at least 48 hours. See former 11 CFR 111.35(b)(1)(iii). The new "best efforts" defense does not contain any minimum time period for the "reasonably unforeseen circumstances that were beyond the control" of the respondent. See revised 11 CFR 111.35(b)(3).

⁹ The Commission's electronic filing manuals detail step-by-step instructions for the various methods of acceptable electronic filing via the Internet, modem, or by saving the report to a diskette or CD. See, e.g., "FECFile User Manual for Candidate Committees," available at http://www.fec.gov/electfil/authorized_manual/manual.shtml (last visited Mar. 16, 2007).

to form the basis for a "best efforts" defense. The Commission is not defining with specificity the level of severity for weather or other disaster-related incidents in revised section 111.35(c)(3) because a respondent's challenge must show that the weather or disaster-related incident *in fact prevented* the respondent from filing timely. Given that the effects upon the respondent of each weather or disaster-related incident will vary, the Commission will evaluate the particular facts contained in individual challenges, instead of mandating such details in a rule of general application.

2. Revised 11 CFR 111.35(d)—Circumstances That Are Not Reasonably Unforeseen or Beyond Respondents' Control

Revised section 111.35(d) includes a non-exhaustive list of circumstances that are *not* considered "reasonably unforeseen and beyond the control" of the respondent, and will not support a "best efforts" finding. See revised 11 CFR 111.35(d)(1) through (6). All but two of these examples are drawn from the list of events that did not constitute "extraordinary circumstances" under the Commission's prior rule: Negligence; delays caused by committee vendors or contractors; illness, inexperience or unavailability (including death) of the treasurer or other staff; and committee computer, software or Internet service provider failures. Compare revised 11 CFR 111.35(d)(1) through (4) with former 11 CFR 111.35(b)(4). One example concerns Internet service provider failures. See revised 11 CFR 111.35(d)(4). The proposed rule described this example as failures of committee computers or software. The final rule also includes Internet service provider failures. Because many Internet service providers are available, a failure limited to one provider is not a defense for late filing or not filing. The revised rule adds two examples to this list based upon the Commission's experience with respondent challenges in the AFP: A failure to know filing dates and a failure to use Commission software properly. See revised 11 CFR 111.35(d)(5) and (6).

Under the revised rule, a respondent's challenge will not succeed if its "best efforts" defense is based on any of these circumstances as the cause of the failure to file timely. The Commission notes that the examples in revised section 111.35(d) are not exhaustive, but are illustrative of the types of situations that are not reasonably unforeseen and beyond the respondent's control. The Commission strongly encourages all political committees to name assistant treasurers and have additional staff

available so that their ability to file reports on time will not be compromised due to the unavailability or inexperience of the treasurer or other staff. See *Final Rules on Administrative Fines*, 68 FR 12572, 12573 (Mar. 17, 2003) (adding staff "inexperience" and "unavailability" as examples of circumstances that will not be considered "extraordinary" under former 11 CFR 111.35(b)(4)(iii)).

The Commission's implementation of the "best efforts" defense set forth in this revised rule serves as a proxy for the factual investigation of a respondent's internal practices regarding filing of reports that would ordinarily be necessary to determine whether such practices were sufficient to constitute best efforts. The comment argued that the Commission should conduct a full examination of the business models and management procedures of each committee to determine whether the committee implemented proper back-up systems and other measures reflecting management "best practices" in the relevant industry to reduce the risk of a late filing. However, such an investigation would be resource-intensive for the Commission, burdensome for the respondent, and inappropriate in the AFP, which is a streamlined procedure created by Congress to alleviate the Commission's enforcement burden for routine and minor filing violations. Absent reasonably unforeseen circumstances that were beyond the control of the respondent, the Commission sees no reason why political committees cannot file reports on time.¹⁰ Thus, the Commission's implementation of the "best efforts" defense appropriately incorporates a statutory "best efforts" standard, while taking into account the unique streamlined nature of the AFP.

D. Revised 11 CFR 111.35(e)—Factual Basis for Challenge

The Commission is adding paragraph (e) to 11 CFR 111.35 to require that the respondent's written response must detail the factual basis supporting its challenge. Furthermore, respondents must provide supporting documentation for their challenges. The comment did not address this provision, which is identical to the proposed rule.

The three defenses specified in sections 111.35(b)(1) through (3) (factual

¹⁰ See *Admin Fines EE*, 65 FR at 31790 (stating that political committees should be aware of their reporting duties and noting that the Commission makes efforts to send reminders of deadlines and political committees have ample time from the end of the reporting period to the filing deadline to prepare and file reports).

error, miscalculation of civil money penalty, and best efforts) are the only permissible grounds for challenging the Commission's RTB finding or proposed civil money penalty, and a respondent's written response must be based on one of these grounds to be considered by the reviewing officer and the Commission. Respondents bear the burden of showing that a permissible defense is satisfied.¹¹

II. Revised 11 CFR 111.37—Commission Review of Respondent's Challenge and Reviewing Officer's Recommendation

A. Revised 11 CFR 111.37(b)—Commission Finding That No Violation Has Occurred

Revised section 111.37 sets forth procedures regarding the Commission's final determination for AFP matters upon receipt of the respondent's challenge and the reviewing officer's recommendation. See revised 11 CFR 111.37(a) through (d). The NPRM sought comment on proposed revisions to section 111.37(b) regarding Commission determinations that no violation has occurred where the RTB finding is based on a factual error, and where the respondent demonstrated it used best efforts to file timely. See NPRM, 71 FR at 71095. The comment did not address these rules. The Commission is revising section 111.37(b) to clarify that the existence of factual errors or a finding of best efforts are complete defenses. Thus, if one of these defenses is satisfied, the Commission will conclude that no violation of FECA has occurred. Please note that the defense based on an incorrect basis for calculating the civil money penalty (section 111.35(b)(2)) is a defense only as to the amount of the civil money penalty and does not serve as a basis for a finding of no violation under the AFP.

B. Revised 11 CFR 111.37(d)—Commission Statement of Reasons in AFP Final Determinations

The NPRM sought comment on proposed revisions to section 111.37(d) to make clear that the reasons for the reviewing officer's recommendation regarding the challenge, unless modified or rejected by the Commission, will serve as the Commission's statement of reasons regarding the final determination in the AFP matter.¹² See NPRM, 71 FR at 71095. This proposed

¹¹ The Commission considers affidavits more persuasive evidence than unsworn statements submitted in support of the respondent's challenge.

¹² These revisions do not affect any statements of reasons the Commissioners may issue in enforcement matters under review.

revision addresses the *Lovely* court's concerns that it was unclear what constituted the statement of reasons for the Commission's final determination in that matter. The comment did not address this issue.

The Commission is revising section 111.37(d) to indicate that, unless otherwise indicated by the Commission, the statement of reasons for the Commission's final determination in an AFP matter consists of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission. See *Lovely*, 307 F. Supp. 2d at 301 (stating that the Commission's "adoption of a reviewing officer's recommendation may suffice in some circumstances"). Statements setting forth additional or different reasons may also be issued. The revised rule also recognizes that the Commission may modify or reject the reviewing officer's recommendation in whole or in part. See 11 CFR 111.37(d). In such cases, the Commission will indicate the grounds for its action and it or individual Commissioners may issue one or more statements of reasons.

Former section 111.37(d) provided that the Commission could determine that a violation of 2 U.S.C. 434(a) had occurred, but waive the civil money penalty because the respondent demonstrated the existence of "extraordinary circumstances" under former section 111.35(b)(1)(iii). See former 11 CFR 111.37(d). As discussed above, the Commission is removing the "extraordinary circumstances" defense and replacing it with a "best efforts" defense in revised section 111.35(b)(3). Under 2 U.S.C. 432(i), if the Commission determines that the treasurer used best efforts in compliance with this rule, there is no violation of FECA and the Commission will so notify the respondent pursuant to revised section 111.37(b). See revised 11 CFR 111.37(b). Therefore, the Commission need not retain the former section 111.37(d).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities affected by these rules are not "small entities" under 5 U.S.C. 601(6). The definition of "small entity" does not include individuals, and classifies a not-for-profit enterprise as a "small organization" if it is independently owned and operated and not dominant

in its field. 5 U.S.C. 601(4). The rules apply to all types of political committees and their treasurers. State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties or any other political committees might be considered "small organizations," the number that would be affected by this rule is not substantial.

Furthermore, any separate segregated funds affected by these rules are not-for-profit political committees that do not meet the definition of "small organization" because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated. Most of the other political committees affected by these rules are not-for-profit committees that do not meet the definition of "small organization." Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

The final rules also do not impose any additional restrictions or increase the costs of compliance for respondents within the AFP. Instead, the final rules provide additional defenses available to political committees and their treasurers, thereby potentially increasing the number of situations in which the Commission assesses no civil money penalty. Moreover, these rules apply only in the AFP, where penalties are proportionate to the amount of a political committee's financial activity. Any political committee meeting the definition of "small entity" would be subject to lower fines than larger committees with more financial activity. Therefore, the final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

■ For the reasons set out in the preamble, the Federal Election Commission is amending subchapter A of chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

■ 1. The authority citation for part 111 is revised to read as follows:

Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

■ 2. Section 111.35 is revised to read as follows:

§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

(a) To challenge a reason to believe finding or proposed civil money penalty, the respondent must submit a written response to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) The respondent's written response must assert at least one of the following grounds for challenging the reason to believe finding or proposed civil money penalty:

(1) The Commission's reason to believe finding is based on a factual error including, but not limited to, the committee was not required to file the report, or the committee timely filed the report in accordance with 11 CFR 100.19;

(2) The Commission improperly calculated the civil money penalty; or

(3) The respondent used best efforts to file in a timely manner in that:

(i) The respondent was prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; and

(ii) The respondent filed no later than 24 hours after the end of these circumstances.

(c) Circumstances that will be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) A failure of Commission computers or Commission-provided software despite the respondent seeking technical assistance from Commission personnel and resources;

(2) A widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider; and

(3) Severe weather or other disaster-related incident.

(d) Circumstances that will not be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

- (1) Negligence;
- (2) Delays caused by committee vendors or contractors;
- (3) Illness, inexperience, or unavailability of the treasurer or other staff;
- (4) Committee computer, software or Internet service provider failures;
- (5) A committee's failure to know filing dates; and
- (6) A committee's failure to use filing software properly.

(e) Respondent's written response must detail the factual basis supporting its challenge and include supporting documentation.

■ 3. In section 111.37, paragraphs (b) and (d) are revised to read as follows:

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred (either because the Commission had based its reason to believe finding on a factual error or because the respondent used best efforts to file in a timely manner) or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(d) When the Commission makes a final determination under this section, the statement of reasons for the Commission action will, unless otherwise indicated by the Commission, consist of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission, although statements setting forth additional or different reasons may also be issued. If the reviewing officer's recommendation is modified or not approved, the Commission will indicate the grounds for its action and one or more statements of reasons may be issued.

Dated: March 22, 2007.

Robert D. Lenhard,
Chairman, Federal Election Commission.

[FR Doc. E7-5730 Filed 3-28-07; 8:45 am]

BILLING CODE 5715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA-2006-26477]

FAA Civil Penalty Adjudication Web Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA has a Web site that provides access to many documents relating to the agency's administrative adjudication of civil penalty cases. Currently, the address provided in the regulations for the civil penalty adjudication Web site is incorrect. In this rulemaking, we are amending the regulations to substitute the correct Web site address.

DATES: This rule is effective on March 29, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila Skojec, Office of the Chief Counsel, Adjudication Branch, 800 Independence Avenue, SW., Washington, DC, 20591; telephone 202/385-8228.

SUPPLEMENTARY INFORMATION:

Background

The FAA assesses civil penalties for violations of certain provisions of the Federal aviation statute and the Federal hazardous materials transportation statute. The rules of practice in 14 CFR 13.16 and 14 CFR part 13, subpart G (14 CFR 13.201-13.235) govern these proceedings involving the adjudication of civil penalties.

The agency has a Web site containing documents relating to the agency's adjudication of civil penalties. These documents include decisions and orders issued by the Administrator, indexes of decisions, contact information for the Hearing Docket and the administrative law judges, the rules of practice, and other information.

We recently discovered that the address for the Web site set forth in 14 CFR 13.210 is incorrect. As a result, we are amending the rules to correct this problem.

This Rulemaking

FAA Civil Penalty Adjudication Web Site. We are amending section 13.210 to correct the Web site address for the FAA civil penalty adjudication Web site. The correct address is: http://www.faa.gov/about/office_org/headquarters_offices/ogc/pol_adjudication/AGC400/Civil_Penalty.

Procedural Matters

In general, under the Administrative Procedure Act (APA), 5 U.S.C. 553, agencies must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirements if the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. In this case, the FAA finds that notice and comment requirements are unnecessary due to the administrative nature of the change. It is in the public interest for the Rules of Practice to provide the correct address for the civil penalty adjudication Web site as soon as possible.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendments

■ Accordingly, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority section for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121-5128, 40113-40114, 44103-44106, 44702-44703, 44709-44710, 44713, 46101-46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304-46316, 46318, 46501-46502, 46504-46507, 47106, 47107, 47111, 47122, 47306, 47531-47532; 49 CFR 1.47.

■ 2. Amend § 13.210 by revising paragraphs (e)(2) to read as follows:

§ 13.210 Filing of documents.


(e) * * *

(1) * * *

(2) Decisions and orders issued by the Administrator in civil penalty cases, indexes of decisions, contact information for the FAA Hearing Docket and the administrative law judges, the rules of practice, and other information are available on the FAA civil penalty adjudication Web site at: http://www.faa.gov/about/office_org/headquarters_offices/ogc/pol_adjudication/AGC400/Civil_Penalty.

DECLARATION OF KRISTIN D. ROSER

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 by the Commission to DeFranco for Congress:
 - A) Non-Filer Letter, dated February 18, 2015, referencing the 2014 Year-End Report (sent via electronic mail to: team@marisadefranco.com);
 - B) Reason-to-Believe Letter, dated April 6, 2015 referencing the 2014 Year-End Report (sent via overnight mail to the address of record).
3. I hereby certify that I have searched the Commission's public records and find that DeFranco for Congress filed the 2014 Year-End Report with the Commission on February 24, 2015.
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 22nd day of April, 2015.


Kristin D. Roser
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

February 18, 2015

KAI P. MOY, TREASURER
DEFRANCO FOR CONGRESS
PO BOX 103
MIDDLETON, MA 01949

IDENTIFICATION NUMBER: C00547257

REFERENCE: YEAR-END REPORT (10/01/2014 - 12/31/2014)

Dear Treasurer:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced report of receipts and disbursements or failed to file a report covering the entire reporting period as required by the Federal Election Campaign Act, as amended. 52 U.S.C. §30104(a) (formerly 2 U.S.C. §434(a))

It is important that you file this report immediately. The report must be filed with the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463 for House candidates, or the Secretary of the Senate, 232 Hart Senate Office Building, Washington, DC 20510 (if sent via overnight delivery service) or Senate Office of Public Records, P.O. Box 77578, Washington, DC 20013-7578 (if sent via USPS) for Senate Candidates. Please note that electronic filers must submit their reports electronically, as per 11 CFR §104.18. A copy of the report must also be filed with the Secretary of State or equivalent State officer unless the State is exempt from the federal requirement to receive and maintain paper copies. You can verify the Commission's receipt of any documents submitted by your committee on the FEC website at www.fec.gov.

The failure to timely file a complete report may result in civil money penalties, an audit or legal enforcement action. The civil money penalty calculation for late reports does not include a grace period and begins on the day following the due date for the report. Due to heightened security screening measures, delivery of mail by the US Postal Service may be delayed. The Commission recommends that you submit your report via overnight delivery or courier service.

DEFRANCO FOR CONGRESS

Page 2 of 2

If you have any questions regarding this matter, please contact Christopher Ritchie at our toll-free number (800)424-9530. The analyst's direct number is (202)694-1146.

Sincerely,

Debbie Chacona

Deborah Chacona
Assistant Staff Director
Reports Analysis Division

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DECLARATION OF RHIANNON MAGRUDER

- 1) I am the 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 a report for the quarter ending December 31 no later than January 31 of the following calendar year. Reports filed electronically must be received and validated at or before 11:59 pm, Eastern Standard/Daylight Time on January 31 for the Year-End Report to be timely filed.
- 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) Statement of Organization filed by DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer. According to the Commission's records, the document was received on July 18, 2013, and lists an address of record in Middleton, Massachusetts;
 - b) Cover Page, Summary Page, and Detailed Summary Pages of the 2014 Year-End Report electronically filed by DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer. According to the Commission's records, the report was received on February 24, 2015.
- 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 26th day of May, 2015.



Rhiannon Magruder
Reviewing Officer
Office of Administrative Review
Federal Election Commission

FEC
FORM 1

STATEMENT OF
ORGANIZATION

RECEIVED

2013 JUL 19 AM 11:59

Office Use Only
FEC MAIL CENTER

1. NAME OF
COMMITTEE (in full)

☐

(Check if name
is changed)

Example: If typing, type
over the lines.

12FB4M5

DEFRANCO FOR CONGRESS

ADDRESS (number and street)

PO Box 103

☐

(Check if address
is changed)

Middleton

MA

01949

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

☐

(Check if address
is changed)

team@marisadefranco.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

☐

(Check if address
is changed)

marisadefranco.com

2. DATE

07 ' 15 ' 2013

3. FEC IDENTIFICATION NUMBER

C

4. IS THIS STATEMENT

☒

NEW (N)

OR

☐

AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Kai P. Moy

Signature of Treasurer

Kai P. Moy

Date

07 ' 17 ' 2013

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office
Use
Only

For further information contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-694-1100

FEC FORM 1
(Revised 02/2009)

5. TYPE OF COMMITTEE

Candidate Committee:

- (a) ☒ This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) ☐ This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate

Marisa A. DeFranco

Candidate
Party Affiliation

DEM

Office
Sought:

House



Senate



President

State

MA

District

06

- (c) ☐ This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of
Candidate**Party Committee:**

- (d) ☐ This committee is a _____ (National, State or subordinate) committee of the _____ (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e) ☐ This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
- | | | |
|--|--|---|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Corporation w/o Capital Stock | <input type="checkbox"/> Labor Organization |
| <input type="checkbox"/> Membership Organization | <input type="checkbox"/> Trade Association | <input type="checkbox"/> Cooperative |
- ☐ In addition, this committee is a Lobbyist/Registrant PAC.
- (f) ☐ This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)
- ☐ In addition, this committee is a Lobbyist/Registrant PAC.
- ☐ In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (g) ☐ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) ☐ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

- | | | | |
|----|----------------------|---------------|---|
| 1. | <input type="text"/> | FEC ID number | C |
| 2. | <input type="text"/> | FEC ID number | C |
| 3. | <input type="text"/> | FEC ID number | C |
| 4. | <input type="text"/> | FEC ID number | C |

13031092837

DEFRANCO FOR CONGRESS

8. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

STATE

ZIP CODE

Relationship: ☐ Connected Organization ☐ Affiliated Committee ☐ Joint Fundraising Representative ☐ Leadership PAC Sponsor

Full Name Kai P. Moy

PO Box 103
Middleton MA 01949

Middleton

MA

01949

CITY

STATE

ZIP CODE

Treasurer

Telephone number

Full Name of Treasurer Kai P. Moy

PO Box 103
Middleton MA 01949

Middleton

MA

10,1949

CITY

STATE

ZIP CODE

Treasurer

Telephone number

Full Name of
Designated
Agent

Ruth DeFranco

Mailing Address

PO Box 103

Middleton

CITY

MA

STATE

01949

ZIP CODE

Title or Position

Assistant Treasurer

Telephone number

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

CITIZENS BANK

Mailing Address

301 Newbury Street MA-137

Danvers

CITY

MA

STATE

01923

ZIP CODE

Name of Bank, Depository, etc.

Mailing Address

CITY

STATE

ZIP CODE

13031092839

**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

DeFranco for Congress

ADDRESS (number and street) ▼

PO Box 103

Check if different
than previously
reported. (ACC)

Middleton

MA

01949

2. FEC IDENTIFICATION NUMBER ▼

CITY ▲

STATE ▲

ZIP CODE ▲

STATE ▼ DISTRICT

C C00547257

3. IS THIS
REPORT

X

NEW
(N)

OR

AMENDED
(A)

MA

06

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:

April 15 Quarterly Report (Q1)

July 15 Quarterly Report (Q2)

October 15 Quarterly Report (Q3)

X 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

in the
State of

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

General (30G)

Runoff (30R)

Special (30S)

Election on

in the
State of

5. Covering Period 10 01 2014 through 12 31 2014

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 Kai Moy

Signature of Treasurer

Kai Moy

[Electronically Filed]

Date

01 31 2015

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)

SUMMARY PAGE
of Receipts and Disbursements

FEC Form 3 (Revised 02/2003)

PAGE 2 / 11

Write or Type Committee Name

DeFranco for Congress

Report Covering the Period: From: 10 01 2014 To: 12 31 2014

	COLUMN A This Period	COLUMN B Election Cycle-to-Date
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e))	435.00	24866.00
(b) Total Contribution Refunds (from Line 20(d))	0.00	0.00
(c) Net Contributions (other than loans) (subtract Line 6(b) from Line 6(a))	435.00	24866.00
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	2534.97	2037.75
(b) Total Offsets to Operating Expenditures (from Line 14)	0.00	0.00
(c) Net Operating Expenditures (subtract Line 7(b) from Line 7(a))	2534.97	2037.75
8. Cash on Hand at Close of Reporting Period (from Line 27)	751.62	
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	0.00	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	5000.00	

For further information contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Toll Free 800-424-9530
Local 202-694-1100

DETAILED SUMMARY PAGE of Receipts

FEC Form 3 (Revised 12/2003)

PAGE 3 / 11

Write or Type Committee Name

DeFranco for Congress

Report Covering the Period: From: 10 01 2014 To: 12 31 2014

I. RECEIPTS	COLUMN A Total This Period	COLUMN B Election Cycle-to-Date
11. CONTRIBUTIONS (other than loans) FROM:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A)	325.00	16323.00
(ii) Unitemized	110.00	8543.00
(iii) TOTAL of contributions from individuals	435.00	24866.00
(b) Political Party Committees	0.00	0.00
(c) Other Political Committees (such as PACs)	0.00	0.00
(d) The Candidate	0.00	0.00
(e) TOTAL CONTRIBUTIONS (other than loans) (add Lines 11(a)(iii), (b), (c), and (d))..	435.00	24866.00
12. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES	0.00	0.00
13. LOANS:		
(a) Made or Guaranteed by the Candidate	0.00	0.00
(b) All Other Loans	0.00	0.00
(c) TOTAL LOANS (add Lines 13(a) and (b))	0.00	0.00
14. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)	0.00	0.00
15. OTHER RECEIPTS (Dividends, Interest, etc.)	0.00	0.00
16. TOTAL RECEIPTS (add Lines 11(e), 12, 13(c), 14, and 15) (Carry Total to Line 24, page 4)	435.00	24866.00

DETAILED SUMMARY PAGE of Disbursements

FEC Form 3 (Revised 02/2003)

PAGE 4 / 11

II. DISBURSEMENTS	COLUMN A Total This Period	COLUMN B Election Cycle-to-Date
17. OPERATING EXPENDITURES.....	2534.97	2037.75
18. TRANSFERS TO OTHER AUTHORIZED COMMITTEES	0.00	0.00
19. LOAN REPAYMENTS:		
(a) Of Loans Made or Guaranteed by the Candidate.....	0.00	0.00
(b) Of All Other Loans	0.00	0.00
(c) TOTAL LOAN REPAYMENTS (add Lines 19(a) and (b)).....	0.00	0.00
20. REFUNDS OF CONTRIBUTIONS TO:		
(a) Individuals/Persons Other Than Political Committees	0.00	0.00
(b) Political Party Committees.....	0.00	0.00
(c) Other Political Committees (such as PACs)	0.00	0.00
(d) TOTAL CONTRIBUTION REFUNDS (add Lines 20(a), (b), and (c)).....	0.00	0.00
21. OTHER DISBURSEMENTS	0.00	0.00
22. TOTAL DISBURSEMENTS (add Lines 17, 18, 19(c), 20(d), and 21) ►	2534.97	2037.75

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD.....	2851.59
24. TOTAL RECEIPTS THIS PERIOD (from Line 16, page 3).....	435.00
25. SUBTOTAL (add Line 23 and Line 24).....	3286.59
26. TOTAL DISBURSEMENTS THIS PERIOD (from Line 22).....	2534.97
27. CASH ON HAND AT CLOSE OF REPORTING PERIOD (subtract Line 26 from Line 25).....	751.62



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 26, 2015

Kai P. Moy, Treasurer
DeFranco for Congress
P.O. Box 103
Middleton, MA 01949

C00547257
AF#: 2963

Dear Mr. Moy:

On April 3, 2015, the Federal Election Commission ("Commission") found reason to believe ("RTB") that DeFranco for Congress and you, in your official capacity as Treasurer ("respondents"), violated 52 U.S.C. § 30104(a) for failing to timely file the 2014 Year-End Report. The Commission also made a preliminary determination that the civil money penalty was \$147 based on the schedule of penalties at 11 C.F.R. § 111.43.

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. 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 or via facsimile (202-208-3333). 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,

A handwritten signature in black ink that reads "Rhiannon Magruder". The signature is written in a cursive, flowing style.

Rhiannon Magruder
Reviewing Officer
Office of Administrative Review

Marisa A. DeFranco

PO Box 103
Middleton, MA 01949

June 2, 2015

VIA FACSIMILE

Commission Secretary
999 E Street, NW
Washington, DC 20463
202-208-3333

RE: AF# 2963, COO547257—RESPONSE TO REVIEWING OFFICER'S RECOMMENDATION

Dear Commission Secretary:

We dispute the Reviewing Officer's findings on the merits, and that is sufficient for the Commission to find in our favor.

The Reviewing Officer's decision is wrong on the law, and the Recommendation has inaccurate details. We incorporate by reference and emphasize the points made by the candidate in her Affidavit dated April 16, 2015.

1. Recommendation, page 3, paragraph 3: the Reviewing Officer ("RO") writes that the EFO "has no record of any contacts with the Committee on or around these dates." Naturally the EFO would not have a record of my calls, that is what "could not get through" means. The line was busy. I did not have the time, as I attested, to sit and hit redial and try to get through a government line. "Fully staffed" does not mean adequately staffed—the burden should not be on the candidate to dial for extensive periods of time in order to get assistance. The failure of EFO to take all calls as they are dialed meets the requirement of 11 CFR § 111.35(b)(3) "reasonably unforeseen circumstances in fact prevented the timely and proper filing of the required report." It is reasonable to expect our U.S. federal government to take calls in an orderly fashion; it is "reasonably unforeseen circumstances" that a candidate would have to dial in repeatedly on any given day, but especially unreasonable to expect her to do so while she is trying to save her home from irreparable snow damage and a roof collapse.
2. Recommendation, page 3, paragraph 3 and page 4, paragraph 3: the RO writes that there were no records of any issues with FECFile. The problem with FECFile is that it is a rudimentary software. For most software programs, once a fix is executed, such as the update of Java that we did, it should run smoothly. Just because EFO didn't have a system-wide reported "issue" with FECFile does not mean it doesn't and didn't have glitches. We understood our responsibilities, once informed by Tech support to ensure the proper Java version, and as I stated, I met my due diligence burden by checking the software "the first week of January". FECFile failing me when

I tried to use it again on January 29, 2015, again, is a "reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report."

3. We do meet the burden of a "strict causal relationship between the circumstances described in the challenge...and the respondent's inability to file the report timely." 86.9 inches of snow in the span of 27 days is an incomprehensible amount of snow. No one understands the devastation this incredible weight of snow does to a roof and a home unless they experience it. I have owned a home in Massachusetts for 15 years, but had never seen my roof on the verge of collapse. The RO fails to understand and acknowledge how dire the situation was, and how this dire situation of blizzard-induced home damage caused my inability to file the report timely. But for the fact that my roof was in danger of caving in and collapsing on our heads, I would have had the time to sit down and address the unforeseen FECFile glitch of "cycling and cycling" aka freezing. But for reasonably unforeseen circumstances beyond my control that FECFile was not working despite my recent check of the system, I would have filed the report timely. The RO would be correct that the Java issue was a foreseen glitch, but that was not the cause as I had checked the correct version, and the Java issue was not the cause, as the RO implies on page 3, paragraph 1, "The Candidate states the Java software on her computer has been known to cause issues with using FEC File". As I state, I had to uninstall and reinstall the *FECFile software itself*, not the supporting interface software. Once the reasonably unforeseen circumstances of an imminent roof collapse and the emergency need of my sole attention to its prevention that prevented me from fixing the software subsided, I did exactly that, uninstall, reinstall, and file within 24 hours.
4. The RO also fundamentally misunderstands our challenge. Successive blizzards of 86.9 inches of snow in the span of 27 days did not make it "merely more difficult than usual for the respondent to file on time." Historic storms that incapacitate an entire state as evidenced by the shutdown of schools, the entire public transportation system (MBTA), roads and more are at a far higher level than "merely more difficult". They meet the threshold of *preventing our ability to timely file*. The blizzards and their dangerous after effects prevented me from doing anything else but saving our roof, our home, everything in it, and our ability to continue to live there—all extremely urgent needs to the exclusion of all else. But for these blizzards, I would have been able to deal with the software problems in a timely fashion.
5. The RO writes in the Recommendation, page 5, paragraph 1, "Committee's untimely filing of the 2014 Year-End Report can only be attributed to the failure of the Committee's computer and the failure to use filing software properly." That is a complete misstatement of the facts and a misrepresentation, and a total assumption of facts not in evidence. The Commission cannot make a decision based on a RO's manufacturing of evidence out of thin air. There was no failure by the Committee's computer. The computer had access to the Internet that day and it was operating other software perfectly fine and normally. Attempting to launch FECFile and having it fail to launch and having it freeze is not evidence that we failed to use the filing software properly. In order for the RO to make that statement, she would have had to have been standing next to me watching me allegedly committing a "failure to use filing software properly" and watching the alleged "failure of the Committee's computer." In fact, the Commission has several instances of direct evidence that directly contradicts the RO's misstatement: the fact that the Committee successfully filed previous reports is direct evidence of our ability to use the software properly.

6. For the foregoing reasons in addition to the reasons set forth in our original challenge, we believe we meet our burden of proving the strict causal relationship between the historic blizzard, the "circumstances described in the challenge", "and the respondent's inability to file the report timely.

We received Officer's Magruder's Recommendation on May 28, 2015. I am responding as required well within the ten (10) days, with a written response.

However, if the Commission does not agree with our position, as I understand from Officer Magruder, discretion is available at the Commission level, and I request such. I worked very hard in my campaign to remain dedicated to the highest standard of ethics: I ran as a clean money candidate, taking a pledge to reject PAC money. Although I was endorsed by two prominent national organizations, I did not take their PAC money.

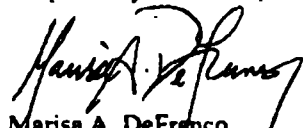
We did better than following the bare minimum of the rules—we set a higher standard for our campaign by taking a clean money pledge and standing by it, and we would have been in compliance with the rule to file the Year-End Report but for the fact of the "reasonably unforeseen circumstances that were beyond the control" of the committee, specifically the historic blizzards (the most snow ever recorded in Massachusetts).

I emphasize paragraph fourteen (14) in my Affidavit: the campaign had been over at the point of filing the Year-End report, and we had wound down. The amounts in the Year-End Report were extremely small: \$435 in Net Contributions, and \$2534.97 in Net Operating Expenditures. As noted above, and in my original challenge, we believe we meet the test of the CFR, but if the Commission does not find in our favor based on the law and facts, and discretion is available, our situation is the model case for which discretion is created: a clean money, grassroots campaign raising modest money that followed the rules and in this one instance filed a report three weeks late due to a confluence of epic blizzards.

We respectfully request that the Commission:

- 1) Reject the Reviewing Officer recommendation for AF#2963 involving DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer, in making the final determination;
- 2) Make a final determination in AF#2963 that DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer, did not violate 52 U.S.C. § 30104(a) and reverse the RTB finding and assessment of the \$147 civil money penalty;
- 3) Make a finding that DeFranco for Congress meets the requirements of 11 CFR § 111.35(b)(3) in that "the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report...."
- 4) Make a favorable determination on this matter prior to the next report filing date so that we may close this committee.

Respectfully submitted,


Marisa A. DeFranco
DeFranco for Congress



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2015 AUG 25 PM 3: 21

August 25, 2015

MEMORANDUM

SENSITIVE

To: The Commission

Through: Alec Palmer
Staff Director *AP*

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

Rhiannon Magruder *RM*
Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 2963 – DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer (C00547257)

On April 3, 2015, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2014 Year-End Report and made a preliminary determination that the civil money penalty was \$147 based on the schedule of penalties at 11 C.F.R. § 111.43.

On April 20, 2015, the Commission received their written response ("challenge"). After reviewing the challenge, the Reviewing Officer Recommendation ("ROR") dated May 26, 2015 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. Their "best efforts" defense did not succeed. 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).

Summary of Respondents' Response to ROR

On June 3, 2015, the Commission received their response to the ROR. The Candidate reiterates the points made in the original challenge, which contend that the Committee was prevented from timely filing the 2014 Year-End Report due to the lack of Commission technical support to address FECFile issues and historical snow storms in Massachusetts around the filing deadline.

The Candidate provides additional details regarding her attempts to contact the Commission's Electronic Filing Office ("EFO"), stating:

"...the Reviewing Officer ("RO") writes that the EFO 'has no record of any contacts with the Committee on or around these dates.' Naturally the EFO would not have a record of my calls, that is what 'could not get through' means. The line was busy. I did not have the time, as I attested, to sit and hit redial and try to get through a government line. 'Fully staffed' does not mean adequately staffed-the burden should not be on the candidate to dial for extensive periods of time in order to get assistance. The failure of EFO to take all calls as they are dialed meets the requirement of 11 CFR § 111.35(b)(3) 'reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report.' It is reasonable to expect our U.S. federal government to take calls in an orderly fashion: it is 'reasonably unforeseen circumstances' that a candidate would have to dial in repeatedly on any given day, but especially unreasonable to expect her to do so while she is trying to save her home from irreparable snow damage and a roof collapse."

The Candidate also states that there is no evidence to prove that the "...Committee's untimely filing of the 2014 Year-End Report can only be attributed to the failure of the Committee's computer and the failure to use filing software properly," as stated in the ROR. The Candidate states that "[j]ust because EFO didn't have a system-wide reported 'issue' with FECFile does not mean it doesn't and didn't have glitches." She reiterates that she had already executed the Java fix as previously recommended by EFO, and met her due diligence burden by ensuring FECFile was working a few weeks before the filing deadline. "The computer had access to the Internet that day and it was operating other software perfectly fine and normally." Given the Committee has successfully electronically filed reports in the past, she states that FECFile's failure to open on January 29, 2015 was an unforeseen circumstance that prevented her from timely filing the report.

The Candidate further reiterates that 86.9 inches of snow falling in 27 days also qualifies as an unforeseen circumstance that prevented the timely filing of the 2014 Year-End Report. She states:

"The blizzards and their dangerous after effects prevented me from doing anything else but saving our roof, our home, everything in it, and our ability to continue to live there--all extremely urgent needs to the exclusion of all else. But for these blizzards, I would have been able to deal with the software problems in a timely fashion."

The Candidate concludes by stating that they have met their burden of proving the strict causal relationship between the historical blizzards, FECFile issues, unavailability of technical support, and their failure to timely file the 2014 Year-End Report. She also explains:

"...the campaign had been over at the point of filing the Year-End [R]eport, and we had wound down. The amounts in the Year-End Report were extremely small: \$435 in Net Contributions, and \$2534.97 in Net Operating Expenditures. As noted above, and in my original challenge, we believe we meet the test of the CFR, but if the Commission does not find in our favor based on the law and facts, and discretion is available, our situation is the model case for which discretion is created: a clean money, grassroots campaign raising modest money that followed the rules and in this one instance filed a report three weeks late due to a confluence of epic blizzards."

Analysis

The Reviewing Officer maintains that the respondents' "best efforts" defenses do not succeed. As explained in the ROR, the Commission states in its *Explanation and Justification for Revised 11 CFR § 111.35(b)(3)* -- "*Best Efforts*" Defense, 72 Fed. Reg. 14662, 14664-14666 (Mar. 29, 2007) that respondents must show

"...that the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report...[T]his rule requires a strict causal relationship between the circumstances described in the challenge...and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing." (emphasis included)

The Reviewing Officer recognizes that the snow storms may have limited the Candidate's time to contact the Commission for technical support and address the issues with FECFile. However, the Committee does not contend that it lost access to its data, computer, electricity, internet, or any other resources necessary to electronically file the report. Therefore, as explained in the ROR, the snow storms did not in fact *prevent* the respondents from timely filing the 2014 Year-End Report.

The Reviewing Officer also recognizes the Committee had technical difficulties using FECFile, which the Candidate contends were not related to her computer or internet access. She also emphasizes that she has previously electronically filed reports with no issues. However, as stated in the ROR, the Candidate was able to resolve her issues with FECFile after spending several hours uninstalling and reinstalling the software on February 24, 2015. Given the Candidate was able to file the report without Commission assistance, and OCIO states there is no record of any issues with FECFile around that time, there is not enough evidence to suggest there was a problem with FECFile that in fact *prevented* the Committee from timely filing the 2014 Year-End Report.

The Reviewing Officer requested additional information from the Office of the Chief Information Officer ("OCIO") regarding the Candidate's contention that she received a busy

signal when attempting to contact EFO on multiple occasions.¹ According to OCIO, when all EFO phone lines are in use, the phone system is designed to forward calls to EFO's voicemail. OCIO states that the phone service provider confirmed there were no outages or disruptions in the Commission's phone service that would have caused the Committee to receive a busy signal. OCIO acknowledges that it is not impossible that the caller received a busy signal but notes that it has received no other complaints of callers receiving a busy signal when attempting to contact EFO. OCIO also explains it is unlikely that EFO's phone system gave a busy signal on multiple occasions on all dates indicated, unless the issue was with the caller's phone system.

In an effort to retrieve additional details regarding the specific calls made by the Committee to the Commission, OCIO worked with Verizon and the General Services Administration ("GSA") for several weeks to no avail. Verizon and GSA were unable to provide any further information to prove or disprove the Committee received a busy signal.

OCIO's statement that the respondents may have received a busy signal, although unlikely, does indicate the *possibility* that technical support was unavailable. However, as stated in the ROR and above, the Committee ultimately electronically filed the report on February 24, 2015, without any assistance from EFO. Therefore, the absence of technical support also did not *prevent* the timely filing of the 2014 Year-End Report.

The Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104 and assess a \$147 civil money penalty.

OAR Recommendations

- 1) Adopt the Reviewing Officer recommendation for AF# 2963 involving DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer, in making the final determination;
- 2) Make a final determination in AF# 2963 that DeFranco for Congress and Kai P. Moy, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$147 civil money penalty; and
- 3) Send the appropriate letter.

¹ The original challenge states that the Candidate attempted to call EFO on January 29, February 4, and February 10, 2015.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) AF 2963
DeFranco for Congress and Kai P. Moy)
in his official capacity as Treasurer)
(C00547257))

CERTIFICATION

I, Shelley E. Garr, recording secretary of the Federal Election Commission executive session, do hereby certify that on December 10, 2015, the Commission took the following actions in the above-captioned matter:

1. Decided by a vote of 6-0 to:

Ratify the Commission's April 3, 2015 reason to believe finding that DeFranco for Congress and Kai P. Moy as Treasurer violated 52 U.S.C. § 30104(a) and the preliminary determination that a civil money penalty of \$147 be assessed.

Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

2. Decided by a vote of 6-0 to:

Pursuant to 11 C.F.R. § 111.37(b), otherwise terminate the proceedings.

Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

Attest:

December 14, 2015
Date

Shelley E. Garr
Shelley E. Garr
Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 14, 2015

Kai P. Moy, Treasurer
DeFranco for Congress
P.O. Box 103
Middleton, MA 01949

C00547257
AF#: 2963

Dear Mr. Moy:

On April 3, 2015, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that DeFranco for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file the 2014 Year-End Report. By letter dated April 6, 2015, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$147 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On April 20, 2015, 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 your written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that DeFranco for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty in the amount of \$147 in accordance with 11 C.F.R. § 111.43. A copy of the Reviewing Officer Recommendation was sent to you on May 26, 2015. On June 3, 2015, the Commission received your response.

On December 10, 2015, the Commission failed to adopt the Reviewing Officer's recommendation, and voted to terminate the proceedings with respect to 52 U.S.C. § 30104(a) and close the file. A copy of the Final Determination Recommendation is attached.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within 30 days from the date of this notification.

If you have any questions regarding this matter, 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,

A handwritten signature in black ink, appearing to read "Ann M. Ravel". The signature is fluid and cursive, with the first name "Ann" and middle initial "M" being more distinct than the last name "Ravel".

Ann M. Ravel
Chair

Attachment



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 2963

DATE SCANNED

3/9/16

SCANNER NO.

2

SCAN OPERATOR

BJ