

INDIVIDUAL

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 3085



**Recommendation**

1. Find reason to believe that the political committees and their treasurers, in their official capacity, 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.

CONFIDENTIAL

Federal Election Commission  
 Reason to Believe Circulation Report  
 2016 PRE-PRIMARY Election Sensitive 05/26/2016 AUTH (NJ, NC)

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
3084	C00600775	EXPLORATORY CONGRESSIONAL COMMITTEE FOR DAVID LARSEN DBA: DAVID LARSEN FOR CONGRESS	DAVID LARSEN	DAVID LARSEN	\$388,244	0	6/1/2016	6	\$73,745	\$1,050
3085	C00613232	TODD JOHNSON FOR CONGRESS	TODD JOHNSON	BAXTER STARNES	\$261,292	0	6/2/2016	7	\$201,185	\$2,725

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 Reason To Believe Recommendation - 2016 )  
 12 Day Pre-Primary Report (New Jersey )  
 and North Carolina) for the Administrative )  
 Fine Program: )  
 EXPLORATORY CONGRESSIONAL ) AF# 3084  
 COMMITTEE FOR DAVID LARSEN )  
 DBA: DAVID LARSEN FOR )  
 CONGRESS, and LARSEN, DAVID MR. )  
 in his official capacity as treasurer; )  
 TODD JOHNSON FOR CONGRESS, and ) AF# 3085  
 STARNES, BAXTER in his official )  
 capacity as treasurer;

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CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on July 20, 2016 the Commission took the following actions on the Reason To Believe Recommendation - 2016 12 Day Pre-Primary Report (New Jersey and North Carolina) for the Administrative Fine Program as recommended in the Reports Analysis Division's Memorandum dated July 19, 2016, on the following committees:

AF#3084 Decided by a vote of 6-0 to: (1) find reason to believe that EXPLORATORY CONGRESSIONAL COMMITTEE FOR DAVID LARSEN DBA: DAVID LARSEN FOR CONGRESS, and LARSEN, DAVID MR. in his official capacity as treasurer violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the





under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or August 29, 2016. 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 Todd Johnson 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).

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**3. If You Choose to Pay the Civil Money Penalty**

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. 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.

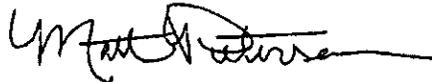
**5. Settlement Offers**

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 Ben Holly 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,



Matthew S. Petersen  
Chair

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**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 \$2,725 for the 2016 Pre-Primary Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit [www.fec.gov/af/pay.shtml](http://www.fec.gov/af/pay.shtml) to be directed to Pay.gov's Administrative Fine Program Payment form.

This penalty may also be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission  
P.O. Box 979058  
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox  
FEC #979058  
1005 Convention Plaza  
Attn: Government Lockbox, SL-MO-C2GL  
St. Louis, MO 63101

**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**

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FOR: Todd Johnson for Congress

FEC ID#: C00613232

AF#: 3085

PAYMENT DUE DATE: August 29, 2016

PAYMENT AMOUNT DUE: \$2,725

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August 29, 2016

Todd Johnson for Congress  
P.O. Box 591  
Monroe, NC 28111

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

RE: Todd Johnson for Congress  
C00613232  
AF#: 3085

Dear Reviewing Officer,

I am writing to respond to Chair Matthew Peterson's reason to believe (RTB) correspondence of July 22, 2016. At this time, I would respectfully request that the civil money penalty in the amount of \$2,725.00 be waived.

By way of background, in March of this year, Todd Johnson filed as a Republican candidate for North Carolina's 9<sup>th</sup> Congressional District. I began serving as treasurer for the campaign shortly thereafter. The committee elected to file quarterly reports to the Federal Election Commission. Since the formation of the Todd Johnson for Congress committee, we have timely filed the following reports:

<u>Report</u>	<u>Date Filed</u>	<u>Filing ID</u>
1 <sup>st</sup> Quarter Report	April 15, 2016	FEC 1064311
48 Hour Report	June 2, 2016	FEC 1075908
48 Hour Report	June 3, 2016	FEC 1076002
48 Hour Report	June 6, 2016	FEC 1076360
2 <sup>nd</sup> Quarter Report	July 15, 2016	FEC 1087468

The form for which the RTB was generated was the FEC Form 3 Report of Receipts and Disbursements (Primary 12P) filed on June 2, 2016. We concede that this form was due on May 26, 2016. However, when the committee's filing calendar was initially prepared, this report was inadvertently overlooked. On Friday, May 27, 2016, at 2:01 p.m., I received an automatically generated electronic correspondence from the Federal Election Commission indicating that this report was past due. At that time, our office had closed early for the Memorial Day Holiday weekend. The following Monday, which was May 30, 2016, was Memorial Day. After receiving the notice upon return to the office following the holiday, I contacted the FEC twice to let them know that we were working on the report, but had some technical questions with the

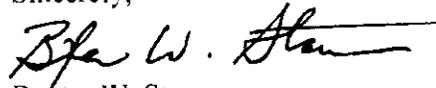
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software. I was referred to an individual in technical support. The technical support person advised that the input for the report that I had previously entered would need to be entered again on a new report.

On Wednesday, June 1, 2016, I worked on the report until after midnight to get the report information re-entered, reviewed and updated. I then completed the report and filed the same on Thursday, June 2, 2016. This was the 4<sup>th</sup> business day after receipt of the late filing notice electronic mail correspondence.

Please note that this delay in filing was not intentional and was not intended to cause undue delay or hardship. The committee has filed all other reports in a timely fashion. Once the late notice was received, we used our best efforts to file the report as soon as possible despite some technical difficulties. In rendering your decision, I would ask that you also take into consideration that the candidate did not win the primary election so committee funds are limited. Therefore, considering all of these factors, I respectfully request that the Federal Election Commission waive the civil money penalty in the amount of \$2,725.00. Thank you for your consideration in this matter.

Sincerely,



Baxter W. Starnes

Treasurer

Todd Johnson for Congress

cc: Todd Johnson

**Baxter W. Starnes**

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**From:** FEC Filing Server <noreply-efiling@fec.gov>  
**Sent:** Friday, April 15, 2016 11:35 PM  
**To:** Baxter W. Starnes  
**Subject:** FEC Electronic Filing Results

DISCLOSE -- FEC Financial Disclosure Filing Acknowledgement

This is to acknowledge the receipt and acceptance of your electronic filing via the DISCLOSE protocol.

Your filing was received and accepted by our system at 04/15/2016 - 23:34:25, and was assigned the Filing ID of: FEC-I064311

Please make a note of this, as it will be necessary to refer to this information in the future.

Thank you for using DISCLOSE.

Do not reply to this notice. It is sent from an unattended account that cannot receive email.

For your reference, the output of the validation check was as follows:

FEC File Validator Version 8.1

For technical support, please contact: ELECTRONIC FILING OFFICE, FEC  
Direct dial: 202-694-1642, Toll free: 1-800-424-9530 x 1642

=== Identification Section =====

Committee ID: C00613232  
Committee Name: Johnson, Todd  
Filing Type: F3N  
From/Through: 20160301 - 20160331

Software/Ver#: FECfile / Ver# 8.1.0.4(f30)

=== Results Section =====

>>>----> FEC data file PASSED validation! <----<<<

Alert: 00026 warnings and/or potential missing information encountered

=== Summary Page Totals Section =====

**Baxter W. Starnes**

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**From:** noreply-efiling@fec.gov  
**Sent:** Thursday, June 02, 2016 7:10 PM  
**To:** Baxter W. Starnes  
**Subject:** FEC Electronic Filing Results

**DISCLOSE -- FEC Financial Disclosure Filing Acknowledgement**

This is to acknowledge the receipt and acceptance of your electronic filing via the DISCLOSE protocol.

Your filing was received and accepted by our system at 06/02/16 19:09:26, and was assigned the Filing ID of: FEC-1075873

Please make a note of this, as it will be necessary to refer to this information in the future.

Thank you for using DISCLOSE.

Do not reply to this notice. It is sent from an unattended account that cannot receive email.

For your reference, the output of the validation check was as follows:

FEC File Validator Version 8.1.0.3

For technical support, please contact: ELECTRONIC FILING OFFICE, FEC  
Direct dial: 202-694-1642, Toll free: 1-800-424-9530 x 1642

=== Identification Section =====

Committee ID: C00613232  
Committee Name: Johnson, Todd  
Filing Type: F3N  
From/Through: 20160401 - 20160518

Software/Ver#: FECfile / Ver# 8.1.0.4(f30)

=== Results Section =====

>>>----> FEC data file PASSED validation! <----<<<

Alert: 00018 warnings and/or potential missing information encountered

=== Summary Page Totals Section =====

**Baxter W. Starnes**

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**From:** noreply-efiling@fec.gov  
**Sent:** Thursday, June 02, 2016 9:39 PM  
**To:** Baxter W. Starnes  
**Subject:** FEC Electronic Filing Results

DISCLOSE -- FEC Financial Disclosure Filing Acknowledgement

This is to acknowledge the receipt and acceptance of your electronic filing via the DISCLOSE protocol.

Your filing was received and accepted by our system at 06/02/16-02' - 21:39:03, and was assigned the Filing ID of: FEC-1075908

Please make a note of this, as it will be necessary to refer to this information in the future.

Thank you for using DISCLOSE.

Do not reply to this notice. It is sent from an unattended account that cannot receive email.

For your reference, the output of the validation check was as follows:

FEC File Validator Version 8.1.0.3

For technical support, please contact: ELECTRONIC FILING OFFICE, FEC  
Direct dial: 202-694-1642, Toll free: 1-800-424-9530 x 1642

=== Identification Section =====

Committee ID: C00613232  
Committee Name: Todd Johnson for Congress  
Filing Type: F6N  
Filing Date: 20160602

Software/Ver#: FECfile / Ver# 8.1.0.4(f30)

=== Results Section =====

>>>----> FEC data file PASSED validation! <----<<<  
MD5 checksum:  
280fe65957d24a9152e33ab82c6bd32b

**Baxter W. Starnes**

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**From:** noreply-efiling@fec.gov  
**Sent:** Friday, June 03, 2016 2:35 PM  
**To:** Baxter W. Starnes  
**Subject:** FEC Electronic Filing Results

DISCLOSE -- FEC Financial Disclosure Filing Acknowledgement

This is to acknowledge the receipt and acceptance of your electronic filing via the DISCLOSE protocol.

Your filing was received and accepted by our system at 06/03/16 14:34:36, and was assigned the Filing ID of: FEC-1076002

Please make a note of this, as it will be necessary to refer to this information in the future.

Thank you for using DISCLOSE.

Do not reply to this notice. It is sent from an unattended account that cannot receive email.

For your reference, the output of the validation check was as follows:

FEC File Validator Version 8.1.0.3

For technical support, please contact: ELECTRONIC FILING OFFICE, FEC  
Direct dial: 202-694-1642, Toll free: 1-800-424-9530 x 1642

=== Identification Section =====

Committee ID: C00613232  
Committee Name: Todd Johnson for Congress  
Filing Type: F6N  
Filing Date: 20160603

Software/Ver#: FECfile / Ver# 8.1.0.4(f30)

=== Results Section =====

>>>----> FEC data file PASSED validation! <----<<<  
MD5 checksum:  
7b49d37d1dea757f464ff8db7fa93b2a

**Baxter W. Starnes**

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**From:** noreply-efiling@fec.gov  
**Sent:** Monday, June 06, 2016 5:06 PM  
**To:** Baxter W. Starnes  
**Subject:** FEC Electronic Filing Results

DISCLOSE -- FEC Financial Disclosure Filing Acknowledgement

This is to acknowledge the receipt and acceptance of your electronic filing via the DISCLOSE protocol.

Your filing was received and accepted by our system at 06/06/16-06:13, and was assigned the Filing ID of: FEC-1076360

Please make a note of this, as it will be necessary to refer to this information in the future.

Thank you for using DISCLOSE.

Do not reply to this notice. It is sent from an unattended account that cannot receive email.

For your reference, the output of the validation check was as follows:

FEC File Validator Version 8.1.0.3

For technical support, please contact: ELECTRONIC FILING OFFICE, FEC  
Direct dial: 202-694-1642, Toll free: 1-800-424-9530 x 1642

==== Identification Section =====

Committee ID: C00613232  
Committee Name: Todd Johnson for Congress  
Filing Type: F6N  
Filing Date: 20160606

Software/Ver#: FECfile / Ver# 8.1.0.4(f30)

==== Results Section =====

>>>----> FEC data file PASSED validation! <----<<<  
MD5 checksum:  
6487cda4696ee7e1f563e4c4114b92e4

**Baxter W. Starnes**

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**From:** noreply-efiling@fec.gov  
**Sent:** Friday, July 15, 2016 10:42 PM  
**To:** Baxter W. Starnes  
**Subject:** FEC Electronic Filing Results

DISCLOSE -- FEC Financial Disclosure Filing Acknowledgement

This is to acknowledge the receipt and acceptance of your electronic filing via the DISCLOSE protocol.

Your filing was received and accepted by our system at 07/15/16 - 22:42:01, and was assigned the Filing ID of: FEC-1087468

Please make a note of this, as it will be necessary to refer to this information in the future.

Thank you for using DISCLOSE.

Do not reply to this notice. It is sent from an unattended account that cannot receive email.

For your reference, the output of the validation check was as follows:

FEC File Validator Version 8.1.0.3

For technical support, please contact: ELECTRONIC FILING OFFICE, FEC  
Direct dial: 202-694-1642, Toll free: 1-800-424-9530 x 1642

=== Identification Section =====

Committee ID: C00613232  
Committee Name: Todd Johnson for Congress  
Filing Type: F3N  
From/Through: 20160519 - 20160630

Software/Ver#: FECfile / Ver# 8.1.0.4(f30)

=== Results Section =====

>>>----> FEC data file PASSED validation! <----<<<

Alert: 00023 warnings and/or potential missing information encountered

=== Summary Page Totals Section =====



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 30, 2016

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

AF# 3085 – Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer (C00613232)

**Summary of Recommendation**

Make a final determination that Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$2,725 civil money penalty.

**Reason-to-Believe Background**

The 2016 North Carolina Pre-Primary Report was due on May 26, 2016. The Committee filed the report on June 2, 2016, 7 days late. The report is election sensitive and was filed prior to four days before the North Carolina Primary Election held on June 7, 2016; therefore, the report is considered late. 11 C.F.R. §§ 111.43(d)(1) and (e)(2).

On July 20, 2016, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2016 Pre-Primary Report and made a preliminary determination that the civil money penalty was \$2,725 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 July 22, 2016 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 pre-election report no later than 12 days before any primary election in which the candidate seeks election. 52 U.S.C. § 30104(a)(2)(A)(i) and 11 C.F.R. § 104.5(a)(2)(i). Reports electronically filed must be received and validated at or before 11:59 pm Eastern Standard/Daylight Time on the filing deadline 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).

**Summary of Respondents' Challenge**

On August 30, 2016, the Commission received the written response ("challenge") from the Treasurer, Mr. Baxter Starnes, requesting that the Commission waive the penalty. The Treasurer notes that prior reports were timely filed, and then states "...when the [C]ommittee's filing calendar was initially prepared, this report was inadvertently overlooked."

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The Treasurer further explains:

On Friday, May 27, 2016, at 2:01 p.m., I received an automatically generated electronic correspondence from the Federal Election Commission indicating that this report was past due. At that time, our office had closed early for the Memorial Day Holiday weekend. The following Monday, which was May 30, 2016, was Memorial Day. After receiving the notice upon return to the office following the holiday, I contacted the FEC twice to let them know that we were working on the report, but had some technical questions with the software. I was referred to an individual in technical support. The technical support person advised that the input for the report that I had previously entered would need to be entered again on a new report.

On Wednesday, June 1, 2016, I worked on the report until after midnight to get the report information re-entered, reviewed and updated. I then completed the report and filed the same on Thursday, June 2, 2016. This was the 4th business day after receipt of the late filing notice.

The Treasurer concludes by stating the late filing was not intentional and again notes the Committee timely filed all other reports. He also mentions the Candidate lost the Primary Election; therefore, Committee funds are limited.

The challenge includes copies of the RTB Letter and notification emails from the Commission's Electronic Filing Office ("EFO").

### **Analysis**

The Commission sent multiple emails to the respondents regarding the 2016 North Carolina Pre-Primary Report. On May 3, 2016, the Commission's Information Division sent an email regarding the filing requirement to [votetoddjohnson@gmail.com](mailto:votetoddjohnson@gmail.com), the email address listed on the Committee's Statement of Organization. On May 27, 2016, the day following the filing deadline, RAD sent the non-filer notification to the same email address. Also on May 27, 2016, EFO sent the late notification email to [bstarnes@gotopotter.com](mailto:bstarnes@gotopotter.com), the email address previously used to electronically file reports.

In the challenge, the Treasurer acknowledges that the Committee overlooked the 2016 Pre-Primary Report filing requirement. He also only mentions receiving the EFO notification email, which was sent to [bstarnes@gotopotter.com](mailto:bstarnes@gotopotter.com). One can reasonably presume the Treasurer was not aware of the emails sent to [votetoddjohnson@gmail.com](mailto:votetoddjohnson@gmail.com), and he did not personally receive the May 3, 2016 email notifying the respondents of the filing requirement. However, the Reviewing Officer confirms the Commission appropriately sent the email to [votetoddjohnson@gmail.com](mailto:votetoddjohnson@gmail.com), the only email address listed on the Committee's Statement of Organization. Therefore, the respondents should have been aware of the 2016 North Carolina Pre-Primary Report filing requirement.

17-00000-11-00000

As contended in the challenge, EFO records indicate the Treasurer experienced some technical difficulties as a result of the Committee maintaining multiple datasets. The Reviewing Officer recognizes the Treasurer's data consolidation process, combined with the Memorial Day Holiday, further delayed the filing of the 2016 Pre-Primary Report until June 2, 2016. However, these defenses cannot be considered reasonably unforeseen circumstances beyond the respondents' control, nor did they in fact prevent them from timely filing the report. 11 C.F.R § 111.35(b)(3).

Moreover, failure to know filing dates and failure to use filing software properly are both included at 11 C.F.R. § 111.35(d) as examples of circumstances that will not be considered reasonably unforeseen and beyond the respondents' control. A committee's history of compliance and amount of cash on hand are also not considered. Their challenge fails to adequately address any of the three valid grounds at 11 C.F.R § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they 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. 11 C.F.R. § 111.35(b). 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 \$2,725 civil money penalty.

#### **OAR Recommendations**

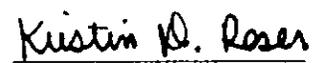
- 1) Adopt the Reviewing Officer recommendation for AF# 3085 involving Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer, in making the final determination; and
- 2) Make a final determination in AF# 3085 that Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$2,725 civil money penalty; and
- 3) Send the appropriate letter.

#### **Attachments**

- Attachment 1 - ;
- Attachment 2 -
- Attachment 3 -
- Attachment 4 – Declaration from RAD ;
- Attachment 5 – Declaration from OAR

### 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. 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 FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Todd Johnson for Congress:
  - A) Non-Filer Letter, dated May 27, 2016, referencing the 2016 12 Day Pre-Primary Report (sent via electronic mail to: [votetoddjohnson@gmail.com](mailto:votetoddjohnson@gmail.com));
  - B) Reason-to-Believe Letter, dated July 22, 2016 referencing the 2016 12 Day Pre-Primary Report (sent via overnight mail to the address of record).
4. I hereby certify that I have searched the Commission's public records and find that Todd Johnson for Congress filed the 2016 12 Day Pre-Primary Report with the Commission on June 2, 2016.
- 5 Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecons for the matter have been provided. This declaration was executed at Washington, D.C. on the 8<sup>th</sup> day of September, 2016.

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



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20543

RQ-7

May 27, 2016

STARNES, BAXTER, TREASURER  
TODD JOHNSON FOR CONGRESS  
PO BOX 591  
MONROE, NC 28111

IDENTIFICATION NUMBER: C00613232

REFERENCE: PRE-PRIMARY REPORT (04/01/2016 - 05/18/2016)

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 as required by the Federal Election Campaign Act, as amended, 52 U.S.C. §30104(a)

You will be allowed until **5:00 pm est on the fourth (4th) business day** from the date of this notice to file this report to avoid publication. If you have already filed the report by express, certified or registered mail or are planning to file it within four (4) business days from the date of this notice, **please notify us immediately** of the certified, registered or express tracking number and the date that the report was sent.

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](http://www.fec.gov).

In addition, the failure to timely file this report may result in civil money penalties, an audit or other 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.

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TODD JOHNSON FOR CONGRESS

Page 2 of 2

If you have any questions regarding this matter, please contact David Garr in the Reports Analysis Division on our toll-free number (800)424-9530. The Analyst's direct number is (202)694-1137.

Sincerely,

*Debbie Chacona*

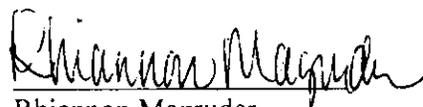
Deborah Chacona  
Assistant Staff Director  
Reports Analysis Division

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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) A principal campaign committee shall file a pre-election report no later than 12 days before any primary election in which the candidate seeks election. Reports filed electronically must be received and validated at or before 11:59 pm, Eastern Standard/Daylight Time on May 26, 2016 for the 2016 North Carolina Pre-Primary Report to be timely filed.
- 3) I hereby certify that I have searched the Commission's public records and that the documents identified herein are the true and accurate copies of:
  - a) Page 1 of the Statement of Organization filed by Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer. It discloses votetoddjohnson@gmail.com as the Committee's official email address. The report was electronically filed on March 29, 2016.
  - b) Cover page of the 2016 Pre-Primary Report filed by Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer. The report covers the period of April 1 through May 18, 2016 and was electronically filed on June 2, 2016.
- 4) 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 30th day of September, 2016.



Rhiannon Magruder  
Reviewing Officer  
Office of Administrative Review  
Federal Election Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

2016 NOV -1 PM 3:40

November 1, 2016

MEMORANDUM

**SENSITIVE**

To: The Commission

Through: Alcc Palmer *AP*  
Staff Director

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

Rhiannon Magruder *RM*  
Reviewing Officer  
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 3085 – Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer (C00613232)

On July 20, 2016, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2016 North Carolina Pre-Primary Report and made a preliminary determination that the civil money penalty was \$2,725 based on the schedule of penalties at 11 C.F.R. § 111.43.

On August 30, 2016, the Commission received their written response (“challenge”). After reviewing the challenge, the Reviewing Officer Recommendation (“ROR”) dated September 30, 2016 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. Their challenge failed to adequately address any of the three valid grounds at 11 C.F.R § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they 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. 11 C.F.R. § 111.35(b). Therefore, the Reviewing Officer recommended that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$2,725 civil money penalty.

Within 10 days of transmittal of the recommendation, they may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). On November 1, 2016, the

11/01/2016 11:00 AM

Treasurer indicated they would not be submitting a formal response. 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 \$2,725 civil money penalty.

**OAR Recommendations**

- 1) Adopt the Reviewing Officer recommendation for AF# 3085 involving Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer, in making the final determination; and
- 2) Make a final determination in AF# 3085 that Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$2,725 civil money penalty; and
- 3) Send the appropriate letter.

17007200

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AF 3085  
Final Determination Recommendation: )  
Todd Johnson for Congress and Baxter )  
Starnes, in his official capacity as )  
Treasurer )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on November 09, 2016, the Commission decided by a vote of 6-0 to take the following actions in AF 3085:

1. Adopt the Reviewing Officer recommendation for AF# 3085 involving Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 3085 that Todd Johnson for Congress and Baxter Starnes, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$2,725 civil money penalty.
3. Send the appropriate letter.

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

Attest:

November 10, 2016  
Date

  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

170927110007



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 15, 2016

Baxter Starnes, Treasurer  
Todd Johnson for Congress  
P.O. Box 591  
Monroe, NC 28111

C00613232  
AF#: 3085

Dear Mr. Starnes:

On July 20, 2016, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Todd Johnson for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file the 2016 Pre-Primary Report. By letter dated July 22, 2016, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$2,725 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On August 30, 2016, 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 Todd Johnson 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 \$2,725 in accordance with 11 C.F.R. § 111.43. The Reviewing Officer Recommendation was sent to you on September 30, 2016.

On November 9, 2016, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Todd Johnson for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assessed a civil money penalty in the amount of \$2,725. A copy of the Final Determination Recommendation is attached.

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

**1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty**

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the U.S. District Court for the district in which the

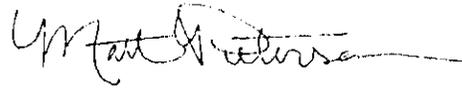


check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

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

On behalf of the Commission,



Matthew S. Petersen  
Chair

17062411010

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**ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the civil money penalty is \$2,725 for the 2016 Pre-Primary Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit [www.fec.gov/af/pay.shtml](http://www.fec.gov/af/pay.shtml) to be directed to Pay.gov's Administrative Fine Program Payment form.

This penalty may also be paid by check or money order made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission  
PO Box 979058  
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox  
FEC #979058  
1005 Convention Plaza  
Attn: Government Lockbox, SL-MO-C2GL  
St. Louis, MO 63101

**PAYMENTS BY PERSONAL CHECK**

Personal checks will be converted into electronic funds transfers (EFTs). Your account will be electronically debited for the amount on the check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

**PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT**  
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FOR: Todd Johnson for Congress

FEC ID#: C00613232

AF#: 3085

PAYMENT AMOUNT DUE: \$2,725

