

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Virginia Foxx for Congress and  
Carolyn Aldridge, in her official capacity as treasurer

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**I. GENERATION OF THE MATTER**

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

**II. FACTUAL AND LEGAL ANALYSIS**

The Committee failed to timely disclose an operating expenditure on its 2004 12 Day Pre-Primary Report. The Committee reported total disbursements of \$195,353.59 on its original 12 Day Pre-Primary Report, and \$330,353.59 in total disbursements on its Amended 12 Day Pre-Primary Report. The omitted disbursement, in the amount of \$135,000, is a 69% increase in total disbursements reported on the original report ( $\$135,000 \div \$195,353.59 = 69\%$ ). The treasurer of a political committee must file reports of all receipts and disbursements in accordance with the Federal Election Campaign Act of 1971, as amended ("the Act). 2 U.S.C. § 434(a)(1). A committee is required to file a pre-election report no later than the 12<sup>th</sup> day before any election in which the candidate is seeking election. 2 U.S.C. § 434(a)(2)(A)(i). The report shall disclose, *inter alia*, the total amount of disbursements, and an itemization of all disbursements, including expenditures made to meet the candidate's or committee's operating expenses. 2 U.S.C. § 434(b)(4)(b); 11 C.F.R. § 104.3(b)(2)(i).

For Ms. Foxx's July 20, 2004 primary, the Committee filed its original 12 Day Pre-Primary Report on July 8, 2004, disclosing disbursements in the total amount of \$195,353.59. However, the Committee voluntarily amended its report on July 13, 2004 to disclose an additional \$135,000 disbursement to an advertising agency for media expenses for the primary election. The disbursement total amount for the amended report was \$330,353.59. Due to the significant discrepancy in the amount of total disbursements reported in the original and amended reports, the Reports Analysis Division ("RAD") sent a Request for Additional Information ("RFAI") to the Committee. In response, on August 12, 2004, the Committee filed a second Amended 2004 12 Day Pre-Primary Report adding a memo text entry to the \$135,000 disbursement which stated "[t]his transaction on [sic] left off the original report by mistake."

The Committee did not comply with reporting requirements when it failed to disclose the \$135,000 operating expenditure on the original 2004 12 Day Pre-Primary Report filed on July 8, 2004. The omission meant that the public lost the benefit of viewing a significant amount, \$135,000 or a 69% increase, of the Committee's total disbursements over a 5-day period before the primary. The earliest amendment to the report was made 7 days before the primary—5 days later than is required by the Act. *See* 2 U.S.C. § 434(b)(4); *see also* 11 C.F.R. § 104.3(b)(2)(i).

Moreover, the disbursement was for the candidate's media expenses in a very close and contentious primary race.<sup>1</sup> Ms. Foxx finished second in the primary, with just 0.9 % more votes

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<sup>1</sup> "The campaign for the general election remained mostly civil . . . [t]he [Republican] primary and runoff [elections] featured some bruising ads." Theo Helm, *Foxx Beats Harrell Easily in 5<sup>th</sup> District*, WINSTON-SALEM JOURNAL, November 3, 2004. Ms. Foxx finished second in the July 20, 2004 primary, with 22.4% of the vote, just behind Vernon Robinson, who garnered 23.6% of the vote, and just ahead of Ed Broyhill, who finished third with 21.5% of the vote. *See* Theo Helm and Danielle Deaver, *Robinson, Foxx Top Hard-Fought 5<sup>th</sup> Race*, WINSTON-SALEM JOURNAL, July 21, 2004. Because neither of the top two candidates obtained more than 40% of the vote, a run-off election was held on August 17, 2004. Ms. Foxx beat Mr. Robinson in the run-off with 55% of the vote, winning the Republican nomination. *See* Danielle Deaver and Jim Sparks, *Foxx Beats Robinson in 5<sup>th</sup> District Runoff*, WINSTON-SALEM JOURNAL, August 18, 2004.

than the third place candidate. As such, she qualified for the run-off election on August 17, 2004. She subsequently won the Republican primary, and thereafter, the general election. Accurate and complete information regarding the amount the Committee spent on media expenses for the primary election should have been made available to the public for the entire prescribed statutory time period. *Id.* Therefore, although the Committee voluntarily amended the report, and the disclosure was made before the election, the Committee's subsequent amendments to the original report did not rectify the omission.

Therefore, there is reason to believe that Virginia Foxx for Congress and Carolyn Aldridge, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(4).