

MAR 6 2006

FEDERAL ELECTION COMMISSION

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Washington, D.C. 20463 MAR -6 P 1 02

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL 05L-17

DATE OF REFERRAL May 10, 2005

DATE ACTIVATED January 25, 2006

EXPIRATION OF SOL September 3, 2009

SOURCE

Internally Generated

RESPONDENTS

Jack Davis

Jack Davis for Congress, and

Robert R Davis, in his official capacity as treasurer

RELEVANT STATUTES

2 U S C § 434(b)

2 U S C § 441a(a)(1)(A)

2 U S C § 441a-1(b)

11 C F R § 400 10

11 C F R § 400 21

11 C F R § 400 22

11 C F R § 400 25

INTERNAL REPORTS CHECKED

Disclosure Reports

FEDERAL AGENCIES CHECKED

None

I. INTRODUCTION

This matter concerns reporting requirements arising under the so-called "millionaires' amendment" of the Bipartisan Campaign Reform Act, which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of specific thresholds. The Reports Analysis Division ("RAD") has referred Jack Davis for Congress, the principal campaign committee of congressional candidate Jack Davis, and Robert R Davis, in his official capacity as treasurer, (the "Committee") for its failure to file a statement

1 notifying the Commission and Mr Davis's opponents that Mr Davis surpassed the applicable
2 thresholds by expending over \$350,000 in personal funds in support of his candidacy and for
3 failing to timely file additional notifications for additional expenditures of personal funds
4 exceeding \$10,050 in support of his candidacy

5 Based on a review of the relevant disclosure reports and available information, this Office
6 recommends that the Commission find reason to believe that the Committee violated provisions
7 of the Federal Election Campaign Act of 1971, as amended (the "Act") regarding the reporting of
8 personal funds expenditures. Because these laws create specific obligations for candidates, this
9 Office recommends that the Commission also find that Jack Davis violated the Act

10 II. FACTUAL SUMMARY

11 Jack Davis declared his candidacy for New York's 26th District seat in the United States
12 House of Representatives to the Federal Election Commission on March 18, 2004, by filing FEC
13 Form 2, Statement of Candidacy. As part of the Form 2, Mr Davis declared his intention to
14 spend \$500,000 in personal funds for the general election. Mr Davis ran unopposed in the
15 Democratic primary, but he lost in the general election on November 2, 2004.¹

16 Mr Davis started spending personal funds on his campaign on March 18, 2004 with a
17 \$10,000 direct contribution. On March 31, 2004, he made his only other direct contribution to
18 his campaign, in the amount of \$7,280. Between March 31 and October 22, 2004, Mr Davis
19 made loans to the Committee totaling \$1,240,000, which increased his total personal

¹ Although news reports indicate Mr Davis intends to run in 2006, the Committee reported negligible activity, and no contributions, during 2005. Krestia DeGeorge, *Congressional races: Monroe in the spotlight?*, Rochester City

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4 Neither Mr Davis nor the Committee filed an initial notification or any additional notifications
5 (FEC Form 10s) with the Commission or with Mr Davis's opponents disclosing his expenditures
6 from personal funds

7 RAD sent Requests For Additional Information to the Committee on October 21,
8 November 16, and December 23, 2004, requesting explanations for the non-filed FEC Form 10s

9 On December 20, 2004, the Commission received a letter from the Committee explaining that its

	Initial Investment	Transaction	Final Balance
March 18, 2004	\$10,000	Contribution	\$10,000
March 31, 2004	\$7,280	Contribution	\$17,280
March 31, 2004	\$100,000	Loan	\$117,280
May 11, 2004	\$50,000	Loan	\$167,280
June 7, 2004	\$40,000	Loan	\$207,280
August 6, 2004	\$60,000	Loan	\$267,280
August 11, 2004	\$80,000	Loan	\$347,280
September 2, 2004	\$30,000	Loan	\$377,280
September 2, 2004	\$80,000	Loan	\$457,280
September 2, 2004	\$100,000	Loan	\$557,280
September 2, 2004	\$200,000	Loan	\$757,280
October 15, 2004	\$100,000	Loan	\$857,280
December 15, 2004	\$200,000	Loan	\$1,057,280
December 15, 2004	\$200,000	Loan	\$1,257,280

² In addition to the six quarterly and election reports it was required to file, the Committee also filed eight amendments to correct errors in its original filings. However, the only amended filing that involved Mr. Davis's expenditures was the April 2004 Quarterly report. This amended report removed two candidate contributions in the amounts of \$2,500 and \$3,500, and added a single contribution in the amount of \$7,280. RAD has not made a referral related to the amended filings.

1 failure to file any Form 10s was "a direct result of [its] inexperience in filing requirements for a
2 congressional candidate" and that "there was no intent to conceal facts or to mislead the FEC "
3 Miscellaneous Report to FEC, Jack Davis for Congress (December 20, 2004)

4 **III. LEGAL ANALYSIS**

5 When a candidate for the U S House of Representatives makes aggregate expenditures
6 from personal funds of \$350,000 or more for an election, the candidate or his or her authorized
7 committee shall file a notification of the expenditure (FEC Form 10) within 24 hours of
8 exceeding the threshold³ 2 U S C § 441a-1(b)(1)(C) For each additional expenditure of
9 \$10,000 or more, the candidate is required to file an additional notification within 24 hours
10 2 U S C § 441a-1(b)(1)(D) These notifications must be filed with the Commission, each
11 candidate in the same election, and the national party of each such candidate and must include,
12 among other things, the date and amount of the expenditures and the total amount expended as of
13 the date of the filing⁴ 2 U S C §§ 441a-1(b)(1)(E) and (F) Although FEC Form 10 is signed by

³ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by a candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee 2 U S C § 441a-1(b)(1)(A) There is a separate \$350,000 threshold for the primary and general elections 11 C F R § 400 2(b) However, as discussed above, Mr Davis designated all of his contributions and loans to the general election *Supra*, Section II, at 3

⁴ A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U S C § 441a(a)(1)(A) and a waiver of the limits on coordinated party expenditures under 2 U S C § 441a(e) See 2 U S C § 441a-1(a)(1), 11 C F R § 400 41 Candidates are entitled to higher limits when the "opposition personal funds amount" exceeds \$350,000 The opposition personal funds amount is distinct from the threshold reporting amount of \$350,000 because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates 2 U S C § 441a-1(a)(2), 11 C F R § 400 10 A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits See 2 U S C § 441a-1(a)(2)(B)(ii), 11 C F R § 400 10 Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended See 11 C F R § 400 10

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1 the committee treasurer, the candidate is responsible for ensuring that it is filed in a timely
2 manner See 11 C F R § 400 25

3 An \$80,000 loan made by Mr Davis on September 2, 2004 caused his total personal
4 expenditures for the general election to exceed \$350,000 By exceeding the threshold, the
5 Committee and candidate were obligated to file FEC Form 10, Notification of Expenditures from
6 Personal Funds, with the Commission and send copies to Mr Davis's opponents within 24 hours
7 of the threshold expenditure, or by September 3, 2004 2 U S C § 441a-1(b)(1)(C) However,
8 the Committee completely failed to file a Form 10 with the Commission or send copies to his
9 opponents Therefore, this Office recommends that the Commission find reason to believe that
10 Jack Davis for Congress and Robert R Davis, in his official capacity as treasurer, violated
11 2 U S C § 441a-1(b)(1)(C) and 11 C F R § 400 21(b) Since the Act places a requirement on the
12 candidate to ensure that the appropriate filings are made in a timely manner with respect to
13 expenditures from personal funds, this Office recommends that the Commission also find reason
14 to believe that Jack Davis violated 2 U S C § 441a-1(b)(1)(C)

15 In addition, the Committee failed to file additional FEC Form 10s regarding six additional
16 loans in excess of \$10,000 made by Mr Davis to the Committee between September 17 and
17 October 22, 2004 Therefore, this Office recommends that the Commission find reason to
18 believe that Jack Davis, Jack Davis for Congress and Robert R Davis, in his official capacity as
19 treasurer, violated 2 U S C § 441a-1(b)(1)(D) and that Jack Davis for Congress and Robert R
20 Davis, in his official capacity as treasurer, also violated 11 C F R § 400 22(b)

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IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

This Office concludes that no investigation is necessary and recommends that the Commission enter into pre-probable cause conciliation with the respondents and approve the attached conciliation agreement

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V. RECOMMENDATIONS

- 1 Open a MUR,
- 2 Find reason to believe that Jack Davis for Congress and Robert R. Davis, in his official
3 capacity as treasurer, violated 2 U S C § 441a-1(b)(1)(C), 2 U S C § 441a-1(b)(1)(D),
4 11 CFR § 400 21(b), and 11 CFR § 400 22(b),
5
- 6 Find reason to believe that Jack Davis violated 2 U S C § 441a-1(b)(1)(C), and 2 U S C
7 § 441a-1(b)(1)(D),
8
- 9 Enter into pre-probable cause conciliation with all Respondents and approve the attached
10 Conciliation Agreement,
11
- 12 Approve the attached Factual and Legal Analyses, and
13
14
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6 Approve the appropriate letters

Lawrence H Norton
General Counsel

Lawrence Calvert, Jr
Deputy Associate General Counsel for Enforcement

3/6/06
Date

BY


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