



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

SEP 22 2006

**Robert Bruce Lamutt, Treasurer
Lamutt for Congress**

Marietta, GA 30066

**RE: MUR 5814
Lamutt for Congress and
Robert Bruce Lamutt, in his
official capacity as treasurer**

Dear Mr. Lamutt:

On September 13, 2006, the Federal Election Commission found that there is reason to believe Lamutt for Congress ("Committee") and you, in your official capacity as treasurer, violated U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v) & (6)(B)(v), 441a-1(b)(1)(D), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 104.3 and 400.22(b). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause

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conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Marianne Abely, the staff attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis
Designation of Counsel Form
Procedures

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** Lamutt for Congress and MUR: 5814
5 Robert Bruce Lamutt, in his official capacity
6 as treasurer; and Robert Bruce Lamutt
7
8

9 **I. INTRODUCTION**

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11 This matter was generated based on information ascertained by the Federal Election
12 Commission (the "Commission") in the normal course of carrying out its supervisory
13 responsibilities. See 2 U.S.C. § 437g(a)(2).
14

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Embezzlement of Campaign Funds**

17 **1. Background**

18 Information obtained by the Commission indicates that on or about January 2004,
19 candidate Robert Bruce Lamutt was alerted by a Lamutt for Congress ("Lamutt Committee" or
20 "Committee") staffer to unspecified problems with the campaign's finances. At some point
21 thereafter, Lamutt apparently confronted his campaign manager, Jack Thomas ("Thomas"), who
22 confessed to having stolen campaign funds. The available information indicates that the Lamutt
23 Committee instituted an internal financial audit and referred the matter to the Department of
24 Justice ("DOJ"). DOJ launched an investigation and subsequently prosecuted Thomas for mail
25 fraud. See 18 U.S.C. § 1341.

26 Publicly available information indicates that Thomas served as the Lamutt Committee's
27 campaign manager from July 19, 2003 through February 1, 2004, and in that position supervised

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1 the day-to-day operation of the campaign and its employees.¹ Information obtained by the
2 Commission also indicates that Thomas was "ultimately responsible for the Committee's
3 finances," including collecting and recording contributions, tracking disbursements, making
4 deposits into the appropriate bank account and accounting for all receipts. The available
5 information also indicates that Thomas received the committee's bank statements and appears to
6 have been in charge of account reconciliation. Further, although Lamutt was the committee's
7 treasurer of record, in actuality Thomas prepared and filed the Lamutt Committee's disclosure
8 reports with the Commission.

9 Information obtained by the Commission indicates that the Lamutt Committee had certain
10 internal procedures designed to restrict staff access to campaign funds. For example, while
11 authorized staffers were permitted to incur nominal campaign related expenditures, all
12 expenditures over that nominal amount required the candidate's approval. Checks for more than
13 \$1,000 drawn on the Lamutt Committee's bank account required two signatures, one of which
14 had to be the candidate's. Additionally, the campaign's staff was prohibited from obtaining a
15 bank debit card on the Lamutt Committee's bank account. There is, however, some conflicting
16 information relating to the level of fiscal oversight employed by the Lamutt Committee.
17 According to a news article, Lamutt "made it a practice to look over his campaign books every
18 week to 10 days." Lisa Getter, *Campaigns Catching Hands in the Till; Amid Record Donations*
19 *and Little Oversight, More Candidates and PACs Become Victims of Embezzlement*, L.A. TIMES,
20 May 31, 2004, at 1. This article, however, does not specify the time period during which Lamutt

¹ Although publicly available information describes Thomas as the Lamutt Committee's campaign manager, other information indicates that he held the position of deputy campaign manager. It does not appear, however, that anyone else besides Thomas served as the Lamutt Committee's campaign manager.

1 employed this practice, nor explains how Thomas was able to continue using the Committee's
2 bank debit card after he was terminated.²

3 Information obtained by the Commission indicates that, notwithstanding the Committee's
4 internal procedures, Thomas embezzled \$34,855 from the Lamutt Committee's bank account
5 between September 2003 and February 2004 by issuing unauthorized checks to himself, his wife,
6 Nancy Trott, and his brother-in-law, Rick Gant.³ Thomas forged the candidate's signature on
7 most of these unauthorized checks. Also, in direct contravention of the Committee's internal
8 procedures, Thomas had a debit bank card issued in the Lamutt Committee's name and used the
9 card to make \$6,072.96 worth of unauthorized purchases. Neither the candidate nor the
10 campaign authorized the payments to Thomas, Trott and Gant or the purchases made with the
11 bank debit card. In an effort to conceal his scheme, Thomas inaccurately reported the Lamutt
12 Committee's disbursements on the 2003 October Quarterly Report, the amended 2003 October
13 Quarterly Report and the 2003 Year-End Report.⁴

14 On January 24, 2006, Thomas pled guilty to one count of mail fraud in violation of
15 18 U.S.C. § 1341 in connection with his embezzlement of Lamutt for Congress campaign funds.

² According to information obtained by the Commission, Lamutt fired Thomas soon after Thomas confessed to stealing funds from the campaign. The available information indicates that Thomas retained the Committee's bank debit card after leaving the campaign, on or about February 1, 2004, and continued using it for at least another 10 days.

³ Publicly available information indicates that Thomas hired his wife and his brother-in-law to work on the campaign. Additional information obtained by the Commission indicates that Gant may have volunteered for the campaign. However, other information obtained by the Commission indicates that neither Trott nor Gant had employment contracts with the campaign and were not considered employees.

⁴ The Lamutt Committee disclosed unauthorized disbursements in an amended 2003 Year-End Report, the 2004 April Quarterly Report, and an amended 2004 April Quarterly Report. The campaign has not filed amendments to its 2003 October Quarterly Report to reflect any unauthorized disbursements, even though Thomas began embezzling funds during that reporting period.

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1 Sentencing is scheduled for October 26, 2006. Press Release, Department of Justice, *Former*
2 *Campaign Manager Pleads Guilty to Defrauding Congressional Campaign*, January 24, 2006;
3 Saed Ahmed, *Campaign Aide Pleads Guilty*, ATLANTA J. CONSTITUTION, January 25, 2006, at
4 D6.

5 **2. Liability for Failing to Report Disbursements**

6 While the Lamutt Committee's failure to accurately report disbursements in the 2003
7 October Quarterly Report, the amended 2003 October Quarterly Report and the 2003 Year-End
8 Report stems from Thomas's embezzlement of campaign funds, the Committee nevertheless
9 violated the Act when it filed the resulting inaccurate reports. Under the Act, the Lamutt
10 Committee, through its treasurer, was required to account accurately for disbursements and report
11 them to the Commission. 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v), (6)(B)(v) and 11 C.F.R.
12 § 104.3(b). Ultimately, the Lamutt Committee's treasurer, who in this case was the candidate,
13 was responsible for the timely and complete filing of the disclosure reports and for the accuracy
14 of the information contained therein and is therefore, liable for the inaccurate reports. 11 C.F.R.
15 § 104.14(d). The available information indicates that the Lamutt Committee failed to institute
16 internal controls and oversight policies sufficient to protect its assets, suggesting that these
17 deficiencies may have contributed to the misappropriation of funds and misreporting of
18 disbursements to the Commission.

19 Thomas's ability to write checks to himself, Trott and Gant for over \$1,000 without the
20 candidate's approval and dual signatures, as well as his acquisition of the bank debit card, *see*
21 *supra* p.3, appear to demonstrate that the Lamutt Committee's internal controls were easily
22 circumvented and were thus inadequate to protect the campaign's financial assets. In addition,

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1 the Lamutt Committee apparently failed to segregate responsibility for the control over receipts
2 and disbursements from the reconciliation of its bank account. Information obtained by the
3 Commission suggests that the flow of cash into and out of the campaign was under the complete
4 control of a single individual - Thomas. At the very least, had the Lamutt Committee segregated
5 its cash management practices, the checks issued to Trott and Gant, who apparently were not
6 officially on the payroll, and the use of the prohibited bank debit card would likely have been
7 uncovered earlier, perhaps preventing some of the committee's losses. Additionally, there was
8 the apparent failure on the part of the Lamutt Committee to ensure that anyone, including Lamutt
9 as the treasurer, *see supra* p. 3, exercised any meaningful supervision over Thomas in the
10 performance of his duties.⁵ It appears that the Lamutt campaign's lack of basic internal controls
11 (e.g., separation of duties) and oversight may have created an environment in which Thomas was
12 able to use his unfettered control over the Committee's funds to perpetrate his embezzlement
13 scheme, which included misreporting disbursements. Therefore, that Thomas's conduct was
14 illegal and that the treasurer (under whose signature reports were filed) and the rest of the
15 campaign were apparently unaware of Thomas's activity may mitigate, but does not vitiate, the
16 Lamutt Committee's liability for filing the three inaccurate disclosure reports.

17 The embezzlement of funds from the Lamutt Committee extended from September 2003
18 through February 2004. The publicly available information suggests that the campaign
19 discovered Thomas's embezzlement at the end of 2004. The Lamutt Committee reported

⁵ In the past, the Commission has noted insufficient oversight during its analysis of committee liability. See, e.g., MUR 2602 (Rhodes) (finding probable cause of violations when finance chair "was not supervised or held accountable on a regular basis for his fundraising activities") and MUR 3585 (Tsongas) (noting that the committee's financial operations lacked a "system of checks and balances" because the chief fundraiser controlled both the receipts and the disbursements).

1 \$39,780.82 in unauthorized expenditures on two amended 2003 Year-End disclosure reports, the
2 2004 April Quarterly Report and an amended 2004 April Quarterly Report. However, the Lamutt
3 Committee has not amended its 2003 October Quarterly Report to reflect \$1,147.14 in
4 unauthorized disbursements made by Thomas during that reporting period in violation of the Act
5 and Commission regulations.

6 Based on the foregoing, there is reason to believe that Lamutt for Congress and Robert
7 Bruce Lamutt, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4),
8 (6)(A), and 11 C.F.R. §§ 104.3(b) by failing to record and report accurately certain
9 disbursements.

10 **B. Late Reporting of a Personal Funds Expenditure**

11 **1. Background**

12 Lamutt filed FEC Form 2, Statement of Candidacy, in April 2003. As part of the Form 2,
13 Lamutt declared his intention to expend personal funds exceeding the threshold amount in the
14 primary election by \$650,000. He subsequently lost the August 10, 2004, primary run-off
15 election.⁶ In all, Lamutt made \$1,615,000 in expenditures from his personal funds, all designated
16 for the primary election cycle.

17 On December 3, 2003, Lamutt loaned his campaign \$518,000, triggering and exceeding
18 the reporting threshold of \$350,000, which required the filing of FEC Form 10.⁷ See 2 U.S.C.

⁶ The failure of the six candidates to win a majority in the July 20, 2004 primary election necessitated the run-off election between the two top vote getters, Lamutt and Tom Price. *Early Returns Suggest Three Runoffs For Open House Seats*, AUGUSTA CHRONICLE, July 21, 2004, at B06.

⁷ Prior to filing the first FEC Form 10, Lamutt had made the following loans to his campaign: \$1,000 on April 15, 2003; \$8,000 on May 10, 2003; \$2,000 on June 6, 2003; and \$71,000 on June 28, 2003.

1 § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b). The Lamutt Committee timely filed the requisite FEC
2 Form 10 on that same day. Lamutt made six additional loans totaling \$1,015,000 from personal
3 funds to the Lamutt Committee between March 13, 2004 and August 3, 2004. For each of these
4 expenditures from personal funds, which aggregated in excess of \$10,000, the Lamutt Committee
5 timely filed the requisite FEC Form 10. See 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R.
6 § 400.22(b).

7 The day after losing the primary run-off election, the Lamutt Committee contacted RAD
8 and inquired whether it was necessary to file an FEC Form 10 for subsequent loans made to the
9 campaign. While noting that the regulations were unclear, RAD recommended that the
10 Committee file the FEC Form 10. On August 12, 2005, two days after the election, the candidate
11 loaned the campaign an additional \$65,000 but did not file an FEC Form 10.⁸ RAD sent the
12 Lamutt Committee a Request for Additional Information on March 3, 2005, asking that it clarify
13 disclosure of the \$65,000 loan in its 2004 April Quarterly Report or immediately file an FEC
14 Form 10. The Lamutt Committee responded that its failure to file the FEC Form 10 was based
15 on an understanding that the filing was unnecessary because Lamutt was no longer a candidate at
16 the time the loan was made. On March 29, 2005, after being informed by RAD that the relevant
17 law made no distinction between filing FEC Form 10s before or after the date of an election, the
18 Lamutt Committee filed an FEC Form 10, disclosing the \$65,000 in expenditures from the
19 candidate's personal funds for the purpose of retiring the campaign's 2004 primary run-off
20 election debt. This FEC Form 10 was filed 228 days late.

⁸ The Committee's 2004 October Quarterly Report disclosed the \$65,000 loan and noted that it was designated for the 2004 run-off election.

2. The Lamutt Committee's Liability for Failing to File the Post-election
FEC Form 10

Candidates who make expenditures from personal funds to their campaigns in excess of a specified threshold amount must meet particular reporting and disclosure requirements.⁹ Not later than 24 hours after a congressional candidate "makes or obligates to make an aggregate amount of expenditures from personal funds in excess of \$350,000 in connection with any election, the candidate shall file a notification" with the Commission, each candidate in the same election and the national party of each opposing candidate. 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b). After this initial notification, the Commission's regulation requires the filing of additional FEC Form 10s "when the candidate makes expenditures from personal funds in connection with the election exceeding \$10,000." See 11 C.F.R. § 400.22(b) (emphasis added); see also 11 C.F.R. § 400.4(a)(1) (defining "[e]xpenditure from personal funds" as including an expenditure "for the purpose of influencing the election in which he or she is a candidate"). Each notification must include the date and the amount of each expenditure and the total amount of expenditures from personal funds that the candidate has made or obligated to make, with respect to an election. 2 U.S.C. § 441a-1(b)(1)(E); 11 C.F.R. § 400.23.¹⁰ Although

⁹ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by the candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 434(a)(6)(B)(i); 11 C.F.R. § 400.4. Congressional candidates are required to declare as part of the Statement of Candidacy, FEC Form 2, the total amount of expenditures from personal funds the candidate intends to make with respect to the election that will exceed \$350,000. 2 U.S.C. § 441a-1(b)(1)(B); 11 C.F.R. §§ 400.20 and 400.9. Such declarations of intent must be filed within 15 days of becoming a candidate. See 11 C.F.R. §§ 400.20(a)(1). Under specific circumstances, 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(d). See 2 U.S.C. § 441a-1(a)(1); 11 C.F.R. § 400.41; see also 2 U.S.C. § 441a-1(a)(2)(B)(ii); 11 C.F.R. § 400.10.

¹⁰ An election cycle runs from the date after the most recent election for the specific office to the date of the next election for that office. See 11 C.F.R. § 400.2(a). The primary and general election are considered separate election cycles. See 11 C.F.R. § 400.2(b).

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1 the FEC Form 10 is signed by the committee treasurer, the candidate is responsible for ensuring
2 that it is filed in a timely manner. 11 C.F.R. § 400.25.

3 Here, the post-election loan of \$65,000 from Lamutt to his campaign on August 12, 2004,
4 was designated for use in retiring the campaign's primary run-off election debt. Under these
5 circumstances, the post-primary expenditure from the candidate's personal funds was both "in
6 connection with" the primary and "for the purpose of influencing" the primary, thus requiring the
7 filing of an FEC Form 10. See 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.222(b); *see also*
8 *Federal Election Commission v. Haley*, 852 F.2d 1111, 1115 (9th Cir. 1988) (stating that "funds
9 raised after an election to retire election campaign debts are just as much *for the purpose of*
10 *influencing* an election and *in connection with* the election as are those contributions received
11 before the election") (emphasis added); *see also* MUR 5607 (Socas for Congress) (where the
12 Commission found reason to believe and conciliated with respondents who filed a post-primary
13 FEC Form 10 late).

14 Based on the foregoing, there is reason to believe that Lamutt for Congress and Robert
15 Bruce Lamutt, in his official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(D) and 11
16 C.F.R. § 400.22(b). Since the statute and regulations obligate the candidate to ensure that
17 appropriate filings are made with respect to his expenditures from personal funds, there is also
18 reason to believe that Robert Bruce Lamutt violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R.
19 § 400.25.

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