



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 5 2009

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K Street, NW, Suite 500
Washington, DC 20007-5143

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

Dear Ms. Mitchell:

Your clients were previously notified that the Federal Election Commission ("Commission"), on September 23, 2006, found reason to believe that Lamutt for Congress and Robert Bruce Lamutt, in his official capacity as treasurer ("the Committee") 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.22(b) and that Robert Bruce Lamutt violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.25 (provisions of the Millionaires' Amendment) by failing to timely file a 24-Hour Notice of Expenditure from Candidate's Personal Funds (FEC Form 10) after the candidate made expenditures from personal funds aggregating in excess of \$10,000 for the 2004 Primary/Runoff election. The Commission also found reason to believe that the Committee violated 2 U.S.C. §§ 432(c)(5), 434(b)(4)(G) & (6)(A) and 11 C.F.R. § 104.3(b) by failing to accurately account for and report certain disbursements.

Following the Supreme Court decision in *Davis v. FEC*, 128 S. Ct. 2759 (2008) that found Sections 319(a) and 319(b) of the Bipartisan Campaign Reform Act of 2002 — the so-called "Millionaires' Amendment" — unconstitutional, the Commission, on September 23, 2008, determined to take no further action as to the Committee and Mr. Lamutt in connection with 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.22(b) and 400.25.

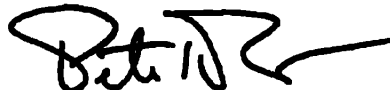
After considering the circumstances of this matter, the Commission, on May 21, 2009, as a matter of prosecutorial discretion, determined to take no further action as to the Committee in connection with the reason to believe findings that the Committee violated 2 U.S.C. §§ 432(c)(5), 434(b)(4)(G) & (6)(A) and 11 C.F.R. § 104.3(b). However, the Commission cautions your client to take steps to ensure that it accurately accounts for and reports disbursements in the future.

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The Commission closed the file in this matter on May 21, 2009. Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis explaining the basis for the Commission's decisions on September 23, 2008 and May 21, 2009 is enclosed.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a long horizontal line extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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

9 **I. BACKGROUND**

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

13 The Commission previously found reason to believe that Lamutt for Congress and Robert
14 Bruce Lamutt, in his official capacity as treasurer, ("the Committee") violated 2 U.S.C. § 441a-
15 1(b)(1)(D) and 11 C.F.R. § 400.22(b) and that Robert Bruce Lamutt violated 2 U.S.C. § 441a-
16 1(b)(1)(D) and 11 C.F.R. § 400.25 (provisions of the Millionaires' Amendment) by failing to
17 timely file a 24-Hour Notice of Expenditure from Candidate's Personal Funds (FEC Form 10)
18 after the candidate made expenditures from personal funds aggregating in excess of \$10,000 for
19 the 2004 Primary/Runoff election. The Commission also found reason to believe that the
20 Committee violated 2 U.S.C. §§ 432(c)(5), 434(b)(4)(G), (6)(A), and 11 C.F.R. § 104.3(b) of the
21 Federal Election Campaign Act of 1974, as amended ("the Act"), by failing to accurately account
22 for and report certain disbursements.

23 **II. DISCUSSION**

24 **A. Millionaires' Amendment Provision**

25 On June 26, 2008, the U.S. Supreme Court ruled that the Millionaires' Amendment and
26 its related reporting requirements are unconstitutional. *Davis v. FEC*, 128 St. Ct. 2759 (2008).
27 The statutory provisions pertaining to the Millionaires' Amendment were voided by *Davis*.

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1 Accordingly, the Commission determined to take no further action as to Lamutt for Congress and
2 Robert Bruce Lamutt, in his official capacity as treasurer, in connection with 2 U.S.C. § 441a-
3 1(b)(1)(D) and 11 C.F.R. § 400.22(b).

4 **B. Failure to Accurately Account For and Report Certain Disbursements**

5 The recordkeeping and reporting finding was based on the embezzlement of Lamutt for
6 Congress' campaign funds by deputy campaign manager, Jack Thomas, who embezzled \$34,855
7 from the Lamutt Committee's bank account between September 2003 and February 2004 by
8 issuing unauthorized checks to himself, his wife, and his brother-in-law, and by making
9 unauthorized purchases on a Lamutt Committee debit bank card. In an effort to conceal his
10 scheme, Thomas inaccurately reported the Lamutt Committee's disbursements on the 2003
11 October Quarterly Report, the amended 2003 October Quarterly Report, and the 2003 Year-End
12 Report, causing the Committee to violate the Act when it filed the resulting inaccurate reports.
13 The Department of Justice launched an investigation and subsequently prosecuted Thomas for
14 mail fraud. See 18 U.S.C. § 1341. The Committee is defunct, has no cash on hand and owes
15 \$306.25 in debt.

16 After considering the circumstances of this matter, the Commission exercised its
17 prosecutorial discretion to take no further action as to Lamutt for Congress and Robert Bruce
18 Lamutt, in his official capacity as treasurer, in connection with the Respondents' violations of
19 2 U.S.C. §§ 432(c)(5), 434(b)(4)(G) & (6)(A) and 11 C.F.R. § 104.3(b) by failing to accurately
20 account for and report certain disbursements, except to send a cautionary letter. See *Heckler v.*
21 *Chaney*, 470 U.S. 821 (1985).

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