

JUL 23 2008

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5978

DATE COMPLAINT FILED: February 19, 2008

DATE OF NOTIFICATION: March 4, 2008

LAST RESPONSE RECEIVED: March 11, 2008

DATE ACTIVATED: April 22, 2008

EXPIRATION OF STATUTE OF LIMITATIONS:
January 24, 2013

COMPLAINANT:

Michael Kreloff

RESPONDENTS:

Kirk for Congress and Luke F. Praxmarer, in
his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(a)

2 U.S.C. § 441a-1(a)

11 C.F.R. § 104.5(c)

11 C.F.R. § 104.19

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint alleges that Kirk for Congress and Luke F. Praxmarer, in his official capacity as treasurer ("the Committee"), apparently did not file a Form 3Z-1 with its 2008 Pre-Primary report that was due on January 24, 2008, causing the Pre-Primary report "to be considered late and subject to a fine."

In accordance with the Millionaires' Amendment of the Bipartisan Campaign Finance Reform Act, a candidate's principal campaign committee must file a Form 3Z-1, Consolidated

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1 Report of Gross Receipts for Authorized Committees, as part of its July Quarterly and Year End
2 reports in the year preceding the general election. 11 C.F.R. § 104.19; *see generally* 2 U.S.C.
3 § 441a-1.¹ The information provided in Form 3Z-1 allows opposing candidates and the
4 Commission to compute the "gross receipts advantage," which is used to determine whether a
5 candidate running against a self-financed opponent is entitled to increased contributions limits
6 under 2 U.S.C. §§ 441a(i) or 441a-1.

7 The Committee responded by stating that the Form 3Z-1 was timely filed and referenced
8 an attached copy of the Form and a fax transmittal cover sheet dated January 24 that was
9 addressed to the Committee's assigned Reports Analysis Division ("RAD") analyst. The Form
10 and transmittal sheet were manually date-stamped by RAD as received on January 25, 2008 at
11 7:09 a.m., but there is no readable fax transmission line on them to indicate the exact date or time
12 the transmission was sent by the Committee.²

13 On June 26, 2008, the U.S. Supreme Court ruled that the Millionaires' Amendment and
14 its related reporting requirements are unconstitutional. *Davis v. FEC*, 128 S. Ct. 2759 (2008).
15 We view the Commission regulation at issue implementing the Millionaires' Amendment
16 reporting requirements to be voided along with the underlying statutory provisions.
17 Accordingly, we recommend that the Commission dismiss the complaint in this matter.

¹ Because the Illinois congressional primary was held on February 5, 2008, the Commission waived the filing of the 2007 Year End report and instead required the Pre-Primary report, due on January 24, 2008, to include activity through January 16, 2008. *See Reports Due in 2008* at page 6, available at <<http://www.fec.gov/pdf/2008reports.pdf>>; *see also* 2 U.S.C. § 434(a)(2)(A)(i).

² As an electronic filer, the Committee was required to file the Form 3Z-1 with its 2008 Pre-Primary report by 11:59 p.m. on January 24, 2008. 11 C.F.R. § 104.5(e). The Committee timely electronically filed its Pre-Primary report on January 24 at 9:36 p.m. as evidenced by the electronic filing time-stamp. In contrast, the Form 3Z-1 was apparently faxed to the Commission sometime thereafter, but before January 25 at 9:07 a.m. The fact that the Committee faxed the Form 3Z-1 may be the result of an electronic filing software problem that allowed committees to file Form 3Z-1s with only July Quarterly and Year End reports.

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1 **III. RECOMMENDATIONS**

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3 1. Dismiss the complaint in MUR 5978.
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5 2. Approve the attached Factual and Legal Analysis.
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7 3. Approve the appropriate letters.
8
9 4. Close the file.
10

11 Thomasenia P. Duncan
12 General Counsel

13 Ann Marie Terzaken
14 Associate General Counsel
15 for Enforcement
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17
18 7/23/08
19 Date

20 BY:

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