

In the United States District Court

for the

District of South Carolina

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U.S. DISTRICT COURT, CHARLESTON, SC
2014 JAN -6 P 12:22

Kuhn for Congress,

Plaintiff

C/A: 2:13-CV-03337-PMD-BHH

v.

Federal Election Commission,

Defendant

Petition for Review

The above-named Plaintiff, Kuhn for Congress, by attorney John Kuhn, Esq., makes the following representations to this Court for the purpose of obtaining judicial review of a decision of the Defendant, Federal Election Commission, adverse to the Plaintiff:

FACTS AND COMPLAINT

1. The Plaintiff, Kuhn for Congress, is established at 39 Broad Street, Suite 301, Charleston, South Carolina.
2. The Plaintiff complains of a decision which adversely affects the Plaintiff in whole or in part. The decision has become the final decision of the Federal

Election Commission for purposes of judicial review. The Federal Election Commission, on October 31, 2013, found Kuhn for Congress in violation of 2 U.S.C. § 434(a) and assessed a civil money penalty in the amount of \$8,800.00 in accordance with 11 CFR § 111.43 for late filing of the April 15, 2013, Quarterly informational report. The civil money penalty was based on the factors of election sensitivity of the report, the level of activity, the number of days the report was filed late, and the number of previous civil money penalties assessed. The FEC determined that the informational report was not election sensitive, that it was filed a little over four months late, and that Kuhn for Congress had never filed any previous report late and had no prior civil money penalties.

PETITIONS

1. The amount of the penalty is in no relation, whatsoever, to the severity of the mistake. First, this report is an information-only report. It only serves to provide information to the Federal Election Commission ("Commission") and to make that information available to the media, other Candidates, and donors and/or potential donors to review should they choose to contact the Commission and review this information. Second, the late filing of the 2013 April Quarterly Report was not election sensitive. The election was held on March 19, 2013, and the Candidate lost the election; therefore, the Commission is correct that the

report is not election sensitive. In other words, because the Candidate lost the election prior to the due date of the report, no person or entity had any interest in this report (except the Commission itself and the Candidate himself). Since no other Candidate or media had any interest in this filing whatsoever, fining the Candidate any more than \$300.00 for the late filing is nothing more than egregious, punitive, and even unconstitutional. The report was due April 15, 2013, 27 days after the Candidate lost the election and was filed on August 20, 2013, four months and a week after it was due. The report is simply a listing of the donors and expenses for the quarter. What makes this fine even more incomprehensible is that most of the exact same donations and donors were actually listed on the prior interim report that is required to be filed just before the election. Therefore, most of these donors and their donations were already filed and available for public and media scrutiny before the election since the campaign filed the March, 2013, report on a timely basis before the election. Since this report's due date was after the election there was no public interest or media scrutiny as evidenced by the fact that no media, opposing Candidate or individual cared that the report was filed late (except the Commission itself). The Candidate would be perfectly fine with paying a reasonable fine for missing the due date for filing four months and a week late. A fine of approximately

\$300.00 for late reporting is reasonable. A fine of \$8,800.00 for filing an information-only report four months and a week late is basically stealing from the Candidate and his donors; it is excessive, punitive, egregious, not to mention, serves no productive purpose whatsoever. Furthermore, the fine of \$8,800.00 does not fit the misdeed and may be unconstitutional under the U.S. Constitution under due process. In fact, this does not look good for the Federal Election Commission. This looks extremely heavy-handed on the part of the Commission. This does not reflect a government that is supposed to be "by the people, of the people, for the people." To the contrary, this Federal Commission's fine of \$8,800.00 for a late report is "against" the people, inordinately punishing those citizens who offer to selflessly serve the public in elected office. This fine is heavy-handed, punitive, and irreconcilable to the offense.

2. The Kuhn For Congress Committee ("Committee") used its best efforts to file this informational report on time. The reason the report did not get filed on time was due to a lot of extenuating circumstances that do not normally exist in a normal one to two year full-blown congressional election campaign. First, it is important to note that this was not a normal election cycle. This was a special election held to fill the vacated Congressional Seat (S.C. First Congressional District), which

was vacated by Congressman Tim Scott when he was appointed by the Governor of South Carolina as the new United States Senator for South Carolina, upon the resignation of United States Senator Jim DeMint. Therefore, all of the Candidates who announced for election had to do so immediately after Senator Scott's appointment and then had to build up a campaign committee, a campaign staff, and a whole Congressional campaign (including TV commercials, multiple mass-mailings to the whole district, Candidate appearances almost nightly, fundraising, thank you letters, etc.) in time for the special election merely 60 days later. It is actually an impossible task to create a whole congressional campaign and run a congressional campaign in 60 days. In that process, John Kuhn tried to find a number of people willing to serve as Campaign Treasurer and was unable to find anyone in the 10 days he was allotted before the initial FEC Committee filing was due in January, 2013, so he appointed his in-house business accountant, Amanda Michelle Perry, whom agreed to the job as a favor. Amanda Perry was six months pregnant at the time, and unfortunately, she delivered her baby 12 days early (*Baby CPE, name and birthday not stated due to Federal Rule of Civil Procedure 5.2(a)*). Most unfortunately for the already extremely abbreviated congressional campaign, this meant that the Treasurer had her baby 12 days early, exactly eight days before the actual election. Because

Amanda Perry went on a two month maternity leave eight days before the election, there was no way for her to file this report in a timely manner. (After Amanda Perry returned from her two month paid maternity leave, the law firm was no longer in a position to keep paying her because 2013 was financially an extremely difficult year, so she was downsized out of a position within several days of her return. She has not worked for the campaign or the law firm since March 11, 2013.) Despite this, the campaign did timely file the Committee's Pre-Election Report to the Commission – due three days before the election – because this report was virtually finished because of Amanda Perry's great work while pregnant. The Candidate also hired an Accountant that specializes in filing Federal Election Commission reports. In January, 2013, the Candidate hired Accountant Lisa Lisker of Huckaby Davis Lisker Inc., in Washington, D.C., to file the Candidate's election reports in a timely manner. The reason that the Candidate hired Lisa Lisker is because the Candidate himself had no experience and no knowledge of filing Federal Election Commission reports, and the Treasurer, Amanda Perry, had no election experience of any kind whatsoever and was in no position to file unfamiliar reports to an extremely unfamiliar Commission. On the other hand, Accountant Lisa Lisker specialized in filing FEC reports and had done so for over 20 years. When Treasurer Amanda Perry

went on maternity leave for two months (from both the Kuhn for Congress Committee and from the Candidate's own law practice) it was disastrous for both the Candidate's business and the Candidate's Committee. Mind you, Amanda Perry delivered 12 days earlier than expected, the Candidate was in a 60 day "hell bent for election" election, and was trying to run a law practice and commercial building at the same time. Amanda Perry kept the books for all three. After Amanda Perry delivered her baby early, eight days before the actual election, the Candidate appointed his most junior associate attorney at his law firm, Sarah Miller, to be the Alternate Treasurer. The only reason Sarah Miller was considered qualified for the job is because there was no one else to appoint eight days before the election. In addition, she just happened to have a "Finance Degree" from Clemson University a few years prior and had experience making deposits and writing small checks for the law firm when Amanda Perry, the bookkeeper and Marketing Director, was out of the office. Lisa Lisker, the Committee's D.C. accountant and hired expert FEC filing agent, worked with Sarah Miller to file this report in question on a timely basis, on April 15, 2013. Sarah Miller gave Lisa Lisker all she needed to file the report on a timely basis. However, the information Sarah Miller give Lisa Lisker did not balance and Lisa Lisker did not want to file the report without a zero balance. Unfortunately, Lisa

Lisker did not call the Candidate, John Kuhn, at any time and tell him that she was having problems with a zero balance and informing the Candidate that she was considering not filing the report. In fact, she did not even email the Candidate, or write the Candidate a letter. Then, Lisa Lisker did the unthinkable... She did not file the April 15, 2013, Kuhn for Congress FEC report at all. This was remarkable because filing a report without a zero balance would have been a lot better than not filing the report. The Candidate relied on his hired agent, Lisa Lisker, to know how to file with the Commission and to do her job, especially since Lisa Lisker did not call, fax, email or write the Candidate that she was not filing the FEC report on time. On the other hand, in fairness to Lisa Lisker, it is difficult to file a report when the Campaign Treasurer has a baby early, eight days before the election, and the replacement Treasurer is not overly qualified for the job and is appointed just to get through the election itself and the election aftermath. To compound the problem, the law firm and the Campaign could not afford to keep Amanda Perry on after she returned from paid maternity leave. Thus, Sarah Miller continued on in her temporary capacity as Assistant Treasurer for the Committee and relied on the Campaign's hired agent, Lisa Lisker to do her job. The Candidate also relied on Lisa Lisker to do her job, and when he finally found out, three months later, that the Committee

did not file its April 15, 2013, Quarterly report with the FEC, he immediately called the Commission to see what could be done and immediately called his agent, Lisa Lisker to see why she had not filed it. Lisa Lisker said that she did not file it because it would not have had a zero balance and the Committee would be fined by the FEC for that. The Candidate asked Ms. Lisker why she did not realize that not filing a timely FEC quarterly report would have a much higher fine than filing timely without a zero balance, to which she replied that "in twenty years I have never had this happen (a late report filed) so I did not know that the FEC fines would be anywhere near this high for a simple late filing of a report." (This of course, begs the question as to why the Commission's fine is so absorbently and egregiously high.) After the Candidate brought the problem up to his FEC filing agent Lisa Lisker, she immediately went to work on the report, fixed the zero balance problem, and filed the report several days later, on August 20, 2013. Therefore, the Committee did file the report a little over four months late. However, it is a fact that this report was nothing more than an informational report, much of which had actually been filed with the FEC just one month prior, and was of no interest to anyone other than the FEC and the Candidate since the Candidate lost the election and the report that was of interest to the public and the media (the pre-election report) was filed by the Committee

on a timely basis, just before the election, with the Commission. It is also evident that the Committee used its best efforts to file this informational report on time and the Candidate immediately had the report filed with the Commission by the Committee when he found out in August, 2013, that the report had not been filed by those he hired to file it. Therefore, the Committee should not be fined at all for late filing of the report. In the alternative, if the court finds that the Committee should be fined for late filing of a report that is not election sensitive, then the fine should be in reasonable correlation to the mistake and, taking into consideration the extenuating circumstances of a very short and high-stress Special Congressional Election and the untimely delivery of a baby by the Treasurer, the best efforts of the fill-in Treasurer, and the reasoned opinion of the hired FEC filing agent, the fine should be no more than \$300.00. Otherwise, the fine is nothing more than heavy-handed, exceedingly punitive, considering the circumstances, and in no way in correlation with the offense.

3. By requiring Plaintiff to pay an \$8,800.00 fine without an opportunity for hearing or review is in violation of Plaintiff's constitutional right to due process under the Fifth and Fourteenth Amendments of the United States Constitution.

Defendant, as an agency of the federal government, is attempting to deprive Plaintiff of a significant amount of money. Procedural due process should afford

the Plaintiff the right to appeal this judgment to the Commission on its merits. The Candidate first spoke to the Federal Election Commission in August, 2013, when the FEC sent him a letter informing him that the report had not been filed on a timely basis and simultaneously informing him that the FEC was fining his Committee \$8,800.00. Moreover, on this same August, 2013 phone call, the Federal Election Commission told the Candidate that he could not appeal to the Commission on a number of factors that he wished to argue in front of the Commission – especially the argument of “The committee used best efforts to file on time.” This is denying due process to the Candidate by the FEC. Again, this is a heavy-handed attempt to extract \$8,800.00 out of a Committee (and out of U.S. Citizen John Kuhn) for merely late filing of an information-only report. To deny the Plaintiff the right to appeal to the Commission on the very issue that existed and created the late filing is a direct violation of the Plaintiff’s rights to due process under the United States Constitution.

4. The Plaintiff has exhausted administrative remedies in this matter and this Court has jurisdiction for judicial review pursuant to 2 U.S.C. § 437g(a)(4)(C)(iii).

Plaintiff seeks judicial review by this Court and requests that the final determination be modified or set aside as may be proper.



John Kuhn, Esq.

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