

Before the  
Administrative Hearing Commission  
State of Missouri



NORTHEAST AMBULANCE & FIRE PROTECTION DISTRICT IMPROVEMENT COMMITTEE, and LINDA LOVE TOLBERT,	)	
	)	
	)	
	)	
	)	
Petitioners,	)	No. 10-0242 EC
	)	
vs.	)	
	)	
MISSOURI ETHICS COMMISSION,	)	
	)	
	)	
Respondent.	)	

**DECISION**

We impose a fee of \$206,594.52 upon Petitioners for violations of Missouri's campaign finance laws as found in Chapter 130, RSMo.

**Procedure**

Petitioners filed a complaint on February 16, 2010, seeking this Commission's determination that they are not subject to fees imposed by the Missouri Ethics Commission ("MEC"). The MEC filed a motion to dismiss or, in the alternative, a motion for more definite statement on March 18, 2010. On April 26, 2010, Petitioners filed an amended complaint, and the MEC filed an answer on May 5, 2010.

We held a hearing on June 15, 2010. The MEC was represented by Glen D. Webb and Stephanie White Thorn. Petitioners were represented by Elbert A. Walton. The matter became ready for decision on August 30, 2010, when Petitioners' brief was due.

### **Findings of Fact**

1. Petitioner Northeast Ambulance & Fire Protection District Improvement Committee ("Committee") is a continuing committee that was in existence at all relevant times.
2. Tolbert was at all relevant times the Treasurer of the Committee.
3. A statement of committee organization for the Committee was filed with the MEC on February 8, 2008.
4. The statement of committee organization listed the official fund depository at Truman Bank, 8151 Clayton Road, St. Louis, Missouri. Petitioner Tolbert was the sole signatory on the official fund depository.
5. The statement of committee organization indicated that the Committee supported Proposition B.
6. Proposition B was a bond issue relating to the Northeast Ambulance & Fire Protection District in the April 8, 2008 municipal election. The Northeast Ambulance & Fire Protection District was formerly named the Normandy Fire and Protection District.
7. Proposition B was also on the ballot in the August 5, 2008, primary election.
8. In addition to Proposition B, Petitioners were also involved with petitions to recall Robert Edwards and Joseph Washington, board members of the Northeast Ambulance and Fire

Protection District. Prior to the April and August 2008 elections, Petitioners published, circulated or distributed printed matter in support of Edwards and Washington and opposing the intent to file recall petitions, including door hangers that stated "Don't sign that Petition." The printed matter contained the words "Paid for by Northeast Ambulance & Fire Protection District Improvement Committee, Linda Tolbert, Treasurer."

9. Petitioners also published, circulated, or distributed printed additional matter regarding the recall petitions prior to the November 4, 2008, general election that read: "Did you know you signed an illegal recall petition?" The flier referenced efforts to again circulate petitions, and states: "WARNING! DON'T SIGN ANY MORE ILLEGAL AND FRAUDULENT PETITIONS! If anyone asks you to sign a petition, JUST SAY NO!"

10. Further, Petitioners supported Proposition Y, a bond issue relating to the Northeast Ambulance & Fire Protection District in the November 4, 2008, general election.

11. Proposition Y was also a bond issue relating to the Northeast Ambulance & Fire Protection District in the April 7, 2008, municipal election.

12. On May 5, 2008, a complaint was filed with the MEC against Petitioners. This complaint alleged violations of the campaign finance disclosure law concerning fliers and mailings in support of Proposition B and also fliers and mailings regarding petitions to recall Washington and Edwards.

13. The MEC also received another complaint on August 28, 2008, regarding Petitioners.

14. The MEC conducted an internal audit and investigation of Petitioners.

15. The MEC conducted a closed hearing on January 26, 2010 regarding the complaints.

16. The MEC issued findings of fact, conclusions of law, and an order dated January 26, 2010, which found Petitioners liable for violations of campaign finance laws and imposed fees of \$167,712.00 against Petitioners.

Failure to File (or Timely File) Quarterly Campaign  
Finance Disclosure Reports or Properly File Limited Activity Report

January 1 – March 31, 2008 Quarterly Report

17. An April 2008 quarterly disclosure report or a statement of limited activity for the period of January 1, 2008, through March 31, 2008, was due on April 15, 2008.<sup>1</sup>

18. On April 28, 2008, Petitioners filed a statement of limited activity that reported activity for the period from February 4 through April 15, 2008.<sup>2</sup> The statement certified that neither the aggregate amount of contributions received nor the aggregate amount of expenditures made by the Committee exceeded \$500.00.

19. On June 18, 2008, Petitioners filed an amended April quarterly disclosure report for the period closing March 30, 2008. Although this quarterly report was supposed to cover the period of January 1, 2008, through March 31, 2008, line 13 of the report stated that it covered the period of February 4, 2008, through April 15, 2008.

20. The June 18, 2008, report was the first such report that disclosed any contributions and expenditures for the reporting period ending March 31, 2008.

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<sup>1</sup>Sections 130.046.1(3) and 130.046.5(2) . Statutory references are to RSMo Supp. 2010 otherwise noted.

<sup>2</sup>The report was dated April 15, 2008, but was electronically filed April 28, 2008.

April 1, 2008 – June 30, 2008 Quarterly Report

21. A quarterly disclosure report for the period April 1, 2008, to June 30, 2008, was due on July 15, 2008.<sup>3</sup>

22. Petitioners filed this quarterly report on July 25, 2008.

Quarterly Reports for First Three Quarters of 2009

23. Quarterly disclosure reports for the periods January 1 to March 31, 2009, April 1 to June 30, 2009, and July 1 to September 30, 2009, periods were due April 15, July 15, and October 15, 2009 respectively.<sup>4</sup>

24. Petitioners failed to file the quarterly disclosure reports described in the previous paragraph.

Failure to File “8 Days Before Election” Reports

April 8, 2008 Election

25. An “8 Days Before Election” report for the period ending March 27, 2008, was due on March 31, 2008, if the Committee made contributions or expenditures either in support of or opposition to any candidate or ballot measure made during that period.<sup>5</sup>

26. The amended April quarterly disclosure report filed on June 18, 2008, listed \$3,800.00 in contributions received on or before March 27, 2008.

27. That report also disclosed that the Committee made \$3,380.95 in expenditures before March 27, 2008.

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<sup>3</sup>Section 130.046.1(3).

<sup>4</sup>*Id.*

<sup>5</sup>Section 130.046.1(1).

28. These expenditures were made in support of Proposition B, Proposition Y, Edwards, and/or Washington.

29. Petitioners did not file an "8 Days Before Election" report for this period.

November 4, 2008 Election

30. An "8 Days Before Election" report for the period July 28 to October 23, 2008, was due on October 27, 2008, if the Committee made contributions or expenditures either in support of or opposition to any candidate or ballot measure during that period.<sup>6</sup>

31. On October 15, 2008, Petitioners paid \$622.20 to O.R. Pechman Co., Inc. for printed matter.

32. This expenditure was made in support of Proposition Y, Edwards, and Washington.

33. Petitioners did not file an "8 Days Before Election" report for this period.

Failure to File a 30 Days After April and August 2008 Election Report

April 8, 2008 Election

34. A "30 Days After Election" report for the period March 28 to May 3, 2008, was due on May 8, 2008, if the Committee made contributions or expenditures either in support of or opposition to any candidate or ballot measure during that period.<sup>7</sup>

35. The amended quarterly disclosure report filed on June 18, 2008, disclosed that the Committee received \$2,850.00 in contributions between March 28 and May 3, 2008.

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<sup>6</sup>Section 130.046.1(1).

<sup>7</sup>Section 130.046.1(2).

36. The amended quarterly disclosure report filed on June 18, 2008, disclosed that the Committee made \$2,734.00 in expenditures between March 28 and May 3, 2008.

37. The quarterly disclosure report filed on July 25, 2008, disclosed \$1,048.20 in expenditures made between March 28 and May 3, 2008.

38. These expenditures were made in support of Proposition B, Proposition Y, Edwards, and/or Washington.

39. Petitioners did not file a "30 Days After Election" report for this period.

August 5, 2008 Election

40. A "30 Days After Election" report was due on September 4, 2008, if the Committee made contributions or expenditures either in support of or opposition to any candidate or ballot measure during that period.<sup>8</sup>

41. A quarterly report filed on October 15, 2008, disclosed that the Committee made \$5,101.36 in expenditures between July 28, 2008 and August 30, 2008.

42. Petitioners made \$1,185.00 in expenditures from the official fund depository on August 5, 2008, also within the reporting period for 30 days after the August 5, 2008, election.

43. These expenditures were made in support of Proposition B, Proposition Y, Edwards, and/or Washington.

44. Petitioners did not file a "30 Days After Election" report for this period.

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<sup>8</sup>Section 130.046.1(2).

### Failure to Report Contributions Received

45. On March 27, 2009, Petitioners received a cash contribution in the amount of \$450.00, which was deposited in Petitioners' official fund depository.
46. On March 30, 2009, Petitioners received two cash contributions in the amounts of \$100.00 and \$150.00, which were deposited in Petitioners' official fund depository.
47. On or prior to October 31, 2008, Petitioners received a cash contribution in the amount of \$100.00, which was deposited in Petitioners' official fund depository.
48. Petitioners received contributions by check from the Normandy Fire Protection General Fund Account in the amounts of \$175.00 and \$460.00 on May 23 and May 29, 2008. These checks were deposited in Petitioners' official fund depository.
49. Petitioners received 14 contributions by check, made during the period July 14 to September 30, 2008, in the aggregate amount of \$1,205.00. These checks were deposited in the Petitioners' official fund depository.
50. Petitioners received seven contributions by check during the period October 2 to November 3, 2008, in the aggregate amount of \$2,575.00. These checks were deposited in the Petitioners' official fund depository.
51. Petitioners did not report the cash or check contributions listed in the six paragraphs above.

### Bulk Mail Permit

52. As described earlier, Petitioners published, circulated or distributed printed matter related to Proposition B, Proposition Y, and the recall petitions.



53. The printed material related to Proposition B, Proposition Y, and the recall petitions contained a bulk mail permit No. 3586, St. Louis, MO.

54. The bulk mail permit No. 3586 is registered to Elbert A. Walton Jr., 2320 Chambers Rd., St. Louis, MO 63136.

55. Petitioners did not report any contribution related to use of the bulk mail permit No. 3586, St. Louis, MO, or in the alternative, did not report any expenditure that could be identified as for use of the bulk mail permit No. 3568 used by the Committee, or an expenditure showing the purchase of a bulk permit number in the Committee's name.

#### Failure to Timely Report Late Contributions Received

##### April 8, 2008 Election

56. For the April 8, 2008, election, the period of time for reporting late contributions<sup>9</sup> of more than \$250.00 within 24 hours of receipt was March 28, 2008, through April 7, 2008.<sup>10</sup>

57. On the amended April quarterly report, Petitioners reported receiving three contributions in the amounts of \$1,000.00 from Joseph Washington on April 3, 2008; \$500.00 from Peter O'Neal on April 3, 2008; and \$500.00 from Airst Wilson on April 3, 2008.

Petitioners did not report these contributions within 24 hours of receipt.

58. On the amended April quarterly report, Petitioners reported receiving \$500.00 from Michael Garstang on April 7, 2008. Petitioners did not report this contribution within 24 hours of receipt.

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<sup>9</sup>A "late contribution" is one received after the closing date of the last disclosure report required to be filed before an election but received prior to the date of the election itself. Section 130.050.3.

<sup>10</sup>Section 130.050.3.

August 5, 2008 Election

59. For the August 5, 2008, election, the period of time for reporting late contributions of more than \$250.00 within 24 hours of receipt was July 25, 2008, through August 4, 2008.

60. On the October 15, 2008, report, Petitioners reported receiving 13 contributions totaling \$6,175.00. All 13 contributions were received on August 1, 2008. Ten of those contributions were for more than \$250.00 as follows:

<b>Contributor</b>	<b>Amount</b>	<b>Exhibit A page</b>
Kevin McPike	\$300.00	28
Michael Hampton	\$400.00	28
Steve Walton	\$350.00	28
Quinton Rudolph	\$350.00	28
Linda Love	\$300.00	28
Joseph McNeal	\$350.00	29
Angelia Elgin	\$2,500.00	29
Airest Wilson	\$300.00	29
Robert Manuel	\$350.00	29
Peter ONeal	\$350.00	29
total	\$5,550.00	

Petitioners did not report these contributions within 24 hours of their receipt on August 1, 2008.

61. Petitioners received seven checks and one cash contribution totaling \$5,350.00 in contributions in the official fund depository on August 4, 2008, after July 24, 2008, which was the closing date of the last disclosure report required, as follows:

<b>Contributor</b>	<b>Amount</b>	<b>Exhibit M page</b>
(no contributor identified)	\$600.00	578
Chief Peter O'Neal	\$500.00	579
Joseph McNeal	\$350.00	581
Angelia Mary Elgin	\$2,500.00	582
Quinten & Jacqueline Randolph	\$350.00	583
Linda A. Love	\$300.00	586
Steven G. Walton	\$350.00	589
Michael Hampton II	\$400.00	590
Total Received:	\$5,350.00	

Petitioners did not report these contributions within 24 hours of receipt.

#### November 4, 2008 Election

62. For the November 4, 2008, election, the period of time for reporting late contributions of more than \$250.00 within 24 hours of receipt was October 24, 2008, through November 3, 2008.<sup>11</sup>

63. Petitioners received two checks totaling \$1,920.00 in contributions in the amounts of \$920.00 from Northeast Ambulance and Fire Protection District General Account, and \$1,000.00 from Angelia M. Elgin, both on November 3, 2008. Petitioners did not report these contributions within 24 hours of receipt.

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<sup>11</sup>Section 130.050.3.

Failure to Report Aggregate Amounts and  
Contributor Address and Employment

64. On the amended April 2008 quarterly report, Petitioners did not disclose the aggregate to date amounts per contributor for all of its 15 contributions received, totaling \$6,650.45.

65. On the amended April 2008 quarterly report, Petitioners did not disclose the required employer, occupation or retirement information for eight individuals who made contributions which aggregated more than \$100.00, for a total of \$3,450.00.

66. On the amended April 2008 quarterly report, Petitioners did not list the street address for three business contributors, totaling \$1,050.00 in contributions.

67. On the July 2008 quarterly report, Petitioners did not disclose the required aggregate to date amounts per contributor, and the address, and employer, occupation or retirement notation for 13 contributions, totaling \$355.00.

68. On the October 2008 quarterly report Petitioners did not list the aggregate to date contributions per contributor, and the employer, occupation or retirement notation for all 13 contributions, totaling \$6,175.00.

Failure to Report Expenditures Made

69. On March 18, 2008, a check was written from the official fund depository to Anthony Weaver for \$600.00. The memorandum portion of the check states "postage." The check was endorsed by Anthony L. Weaver and stamped by "Truman Bank and presented for payment at Truman Bank.

70. On April 3, 2008, an expenditure in the amount of \$2,234.00 was made to cash. The check was endorsed by Linda A. Love, and the memorandum portion of the check states, "cashier check."

71. On April 3, 2008, a check was written from the official fund depository to "Unity PAC" for \$500.00. The back of the check was endorsed "deposit only" and presented for payment.

72. Petitioners did not report \$1,185.00 in expenditures to various individuals on August 5, 2008 (with the checks stating "poll worker") on any campaign finance report.

73. Petitioners did not report on any campaign finance disclosure report expenditures totaling \$2,940.86, which were paid from the official fund depository.

#### Failure to Timely Report Late Expenditures Made

##### April 8, 2008 Election

74. For the April 8, 2008, election, the period of time for reporting late expenditures of \$250.00 or more no later than 24 hours after the expenditure was March 28, 2008, through April 7, 2008.<sup>12</sup>

75. On the amended April quarterly report, Petitioners reported making the following expenditures: \$2,234.00 in expenditures to the St. Louis Post Office on April 3, 2008, and \$500.00 in expenditures to City Graphics on April 7, 2008. Petitioners did not report these expenditures within 24 hours.

76. On April 3, 2008, a check was written from the official fund depository to "Unity PAC" for \$500.00. The back of the check was endorsed "deposit only" and presented for payment.

77. Petitioners did not report an expenditure to Unity PAC in the amount of \$500.00 within 24 hours or at any other time.

#### August 5, 2008 Election

78. For the August 5, 2008, election, the period of time for reporting late expenditures of \$250.00 or more no later than 24 hours after the expenditure was July 25, 2008, through August 4, 2008.<sup>13</sup>

79. On the October 2008 quarterly report, Petitioners reported making \$2,553.83 in expenditures on August 1, 2008, and a \$775.84 expenditure on August 4, 2008. Petitioners did not report these expenditures within 24 hours. Also, according to records of the official fund depository, there was an \$855.86 expenditure made to Fed Ex Kinkos on August 2, 2008. This expenditure was not reported within 24 hours, nor was it reported on the October 15, 2008, quarterly disclosure report.

#### November 4, 2008 Election

80. For the November 4, 2008, election, the period of time for reporting late expenditures of \$250.00 or more no later than 24 hours after the expenditure was October 24, 2008 through November 3, 2008.<sup>14</sup>

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<sup>12</sup>Section 130.046.3(2).

<sup>13</sup>Section 130.046.3(2).

<sup>14</sup>*Id.*

81. According to the Committee's official fund depository, there was a \$2,200.00 expenditure in cash made on November 3, 2008. The memorandum stated "payment for poll workers." Petitioners did not report this expenditure on any disclosure report.

Failure to Report the Full Name and Address for Expenditures

82. On the amended April 2008 quarterly report, Petitioners did not disclose the mailing address for seven expenditures of more than \$100.00 each, totaling \$5,614.95.

83. On the July 2008 quarterly report, Petitioners did not disclose the mailing address for two expenditures of more than \$100.00 each, totaling \$1,750.20.

Failure To File Direct Expenditure Report

84. Committees that support or oppose a ballot measure must file with each financial disclosure report the amount of expenditures the committee makes towards its support or opposition to that ballot measure.<sup>15</sup>

85. Petitioners supported Proposition B, a bond issue relating to the Northeast Ambulance & Fire Protection District in the April 8, 2008, municipal election and August 5, 2008, primary election.

86. Petitioners also supported Edwards and Washington in their recall elections.

87. Further, Petitioners were in support of Proposition Y, a bond issue relating to the Northeast Ambulance & Fire Protection District in the November 4, 2008, general election and April 7, 2009, municipal election.

88. Petitioners did not file a direct expenditure report on any campaign finance disclosure report filed with the MEC.

#### Cash Contributions

89. Petitioners made cash deposits into the official fund depository as follows: \$450.00 on August 4, 2008; \$150.00 on August 5, 2008; \$600 on March 27, 2009; and \$200 on March 30, 2009.

#### Cash Expenditures

90. On April 3, 2008, a counter check was issued from the official fund depository for \$2,234.00 payable to cash and was signed by Tolbert. On the amended April 2008 quarterly disclosure report, Petitioners reported an expenditure dated April 3, 2008 to the St. Louis Post Office for postage in the amount of \$2,234.00.

91. On June 19, 2008, a counter check was issued from the official fund depository for \$127.50 payable to cash and was signed by Tolbert. On the July 2008 quarterly disclosure report, Petitioners reported an expenditure dated June 19, 2008 entitled "Board of Election" in the amount of \$127.50.

92. On October 15, 2008, Petitioners paid \$622.20 to O.R. Pechman Co. Inc. in cash for printed matter relating to the November 4, 2008, election. On October 15, 2008, a \$622.20 expenditure was made payable to cash from the official fund depository.

93. On August 6, 2008, a counter check was issued from the official fund depository for \$545.00 payable to cash and was signed by Tolbert. This transaction was not reported in any campaign finance disclosure report.

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<sup>15</sup>Section 130.041.1(7) RSMo 2000.



94. On November 3, 2008, a counter check was issued from the official fund depository for \$2,200.00 payable to cash and was signed by Tolbert. This transaction was not reported in any campaign finance disclosure report.

95. There is no evidence that the Committee kept a petty cash fund, and Petitioners' filings say nothing about any such fund.

Expenditures Not Made by the  
Committee Treasurer or Deputy Treasurer

96. On March 18, 2008, a check was issued from the official fund depository to Marks Quick Print for \$929.38 and signed by Anthony L. Weaver; on March 19, 2008, a check was issued from the official fund depository to Marks Quick Print for \$727.48 and signed by Anthony L. Weaver.

97. Weaver was neither the treasurer nor the assistant treasurer for the Committee.

**Conclusions of Law**

Respondent has the burden of proof and persuasion in this matter.<sup>16</sup> Our duty is to decide the issues that were before the MEC.<sup>17</sup> We must follow the same law that the MEC must follow.<sup>18</sup>

Tolbert was, at all relevant times, responsible for all reporting requirements for the Committee.<sup>19</sup> The MEC was, and is, the appropriate officer designated to receive campaign finance reports for the Committee.<sup>20</sup>

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<sup>16</sup>*Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App. St.L.D. 1974).

<sup>17</sup>*Geriatric Nursing Facility v. Department of Social Servs.*, 693 S.W.2d 206, 209 (Mo. App., W.D. 1985).

<sup>18</sup>*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

<sup>19</sup>Sections 130.041.1 and 130.058 RSMo 2000.



## Petitioners' Constitutional Arguments

Petitioners argue that:

a. the MEC's procedures (which it characterized as "serv[ing] as both Complainant, Investigator, Prosecutor, Judge, and Jury" in their amended complaint) violated their constitutional rights to a fair and impartial hearing; and

b. the issuance of fines by the MEC violates a constitutional limitation that no administrative agency can issue fines without constitutional authority to do so.

This Commission does not have authority to decide constitutional issues.<sup>21</sup> The issues have been raised and may be argued before the courts if necessary.<sup>22</sup>

### The MEC's Authority to Issue "Fines"

Petitioners allege that the MEC was without any jurisdiction or statutory authority to issue fines against them, arguing that under § 105.961.4(6), it had to proceed under either reconciliation or civil action. We note first that the applicable statutes, such as § 105.961.4(6), refer to the monetary penalties as fees, not as fines. Petitioners also overlook the multiple steps of the statutory fee collection process. Section 105.961 requires first that a complaint be received, then second, that an investigation occur, and then, if the MEC concludes from the investigator's report that there are reasonable grounds to believe that a non-criminal violation of law occurred, that it conduct the closed hearing on the matter.<sup>23</sup> Only upon a finding that a violation took place does the MEC have the power to seek fees.

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<sup>21</sup>*Sprint Communications Co., L.P. v. Director of Revenue*, 64 S.W.3d 832, 834 (Mo. banc 2002); *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999); *Williams Cos. v. Director of Revenue*, 799 S.W.2d 602, 604 (Mo. banc, 1990).

<sup>22</sup>*Tadrus v. Missouri Bd. of Pharmacy*, 849 S.W.2d 222 (Mo. App., W.D. 1993).

<sup>23</sup>Section 105.961.1-.3 RSMo 2000.

In its brief, the MEC states that “Section 105.961 does not grant the MEC the authority to execute the assessment of fees; therefore, in order to collect the fees, the MEC would need to seek an enforcement action through circuit court.”<sup>24</sup> The MEC’s complaint, investigation, and hearing process culminated in an imposition of fees, not an order to pay them, and is therefore within the authority granted by § 105.961.4(6).

We also do not read § 105.961.4(6) as requiring the MEC to proceed through any reconciliation process. The statutory language is clear – the MEC can employ *either* reconciliation or civil action to seek the fees. It chose the civil action route – a determination of a violation of law and the amount of the fees accruing as a result, followed by a civil action to enforce the fees.

#### Petitioners’ Arguments Concerning the MEC’s Actions

Petitioners argue that:

1. the “fine” that the MEC imposed was excessive, unreasonable, arbitrary, and capricious;
2. the MEC’s findings of fact, conclusions of law, and order was unsupported by competent and substantial evidence; and
3. The MEC’s decision was based primarily on inadmissible hearsay.

As we decide *de novo* the issues before the MEC, and as our conclusions differ in several respects from those of the MEC, these arguments are moot.

#### Failure to Timely File Quarterly Campaign Finance Disclosure Reports or Properly File Limited Activity Report

Section 130.046.1(3) sets out when quarterly disclosure reports must be filed:

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<sup>24</sup>Resp. Brief at 49.

1. The disclosure reports required by section 130.041 for all committees shall be filed at the following times and for the following periods:

\* \* \*

(3) Not later than the fifteenth day following the close of each calendar quarter.

Section 130.046.5(2) sets out when a statement of limited activity can be filed by a committee:

5. Notwithstanding any other provisions of this chapter to the contrary:

\* \* \*

(2) No disclosure report needs to be filed for any reporting period if during that reporting period the committee has neither received contributions aggregating more than five hundred dollars nor made expenditure aggregating more than five hundred dollars and has not received contributions aggregating more than three hundred dollars from any single contributor and if the committee's treasurer files a statement with the appropriate officer that the committee has not exceeded the identified thresholds in the reporting period.

Petitioners improperly filed a statement of limited activity report for the period February 4 to April 15, 2008, in which they incorrectly certified that neither the aggregate amount of contributions received nor the aggregate amount of expenditures made by the Committee exceeded \$500.00 during the reporting period.

Petitioners then filed an amended April 2008 quarterly finance disclosure report on June 18, 2008. The amended report listed \$6,650.45 in contributions from the dates March 7, 2008, through April 7, 2008, the date before the April 8, 2008, election. The report also listed \$5,614.95 in expenditures from the dates March 19, 2008, through April 7, 2008, the date before the April 8, 2008, election.

The amended April 2008 report showed that Petitioners' certification on the April 2008 statement of limited activity report, which certified that neither the aggregate amount of contributions received nor the aggregate amount of expenditures made by the Committee exceeded \$500.00 during the reporting period, was inaccurate.

Then Petitioners: a) failed to timely file the July 2008 quarterly finance disclosure report by filing the report on July 25, 2008; and b) failed to file their April, July and October 2009 quarterly finance disclosure reports. The improper filing of a limited activity statement violated § 130.046.5(2), while the late filing of the April and July 2008 report and the failure to file reports for April, July and October 2009 constitute separate violations of § 130.046.1(3).

Failure to File "8 Days Before" April 2008 and  
November 2008 Election Reports

Section 130.046.1(1) sets out when "8 Days Before Election" reports must be filed:

1. The disclosure reports required by section 130.041 for all committees shall be filed at the following times and for the following periods:

(1) Not later than the eighth day before an election for the period closing on the twelfth day before the election if the committee has made any contribution or expenditure either in support or opposition to any candidate or ballot measure[.]

The Committee's amended April quarterly report showed that it received \$3,800.00 in contributions and made \$3,380.95 in expenditures in support of Proposition B, Proposition Y, Edwards, and/or Washington on or before March 27, 2008. However, Petitioners failed to file an "8 Days Before" report for the period ending March 27, 2008, as required by § 130.046.1(1). Then on October 15, 2008, Petitioners paid \$622.20 to O.R. Pechman Co., Inc., for printed

matter in support of Proposition Y. They failed to file an "8 Days Before Election" report for that expenditure. Their failure to file these reports violated § 130.046.1(1).

Failure to File "30 Days After" April  
and August 2008 Election Reports

Section 130.046.1(2) sets out when "30 Days After Election" reports must be filed:

1. The disclosure reports required by section 130.041 for all committees shall be filed at the following times and for the following periods:

\* \* \*

(2) Not later than the thirtieth day after an election for a period closing on the twenty-fifth day after the election, if the committee has made any contribution or expenditure either in support of or opposition to any candidate or ballot measure. . . .

Petitioners received \$2,850.00 in contributions and made \$3,782.20 in expenditures in the period March 28, 2008, to May 3, 2008, all in support of Proposition B, Proposition Y, Edwards, and/or Washington, but did not file a 30 days after election report for that period. Then Petitioners made \$6,286.36 in expenditures between July 28, 2008 and August 30, 2008, in support of Proposition B, Proposition Y, Edwards, and/or Washington. Their failure to file "30 Days After Election" reports after the April 2008 and August 2008 elections violated § 130.046.1(2).

Failure to Report Contributions Received (Money or In-Kind)

Section 130.041.1(3)(a) and (d)<sup>25</sup> sets out the requirements for reporting contributions:

Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer

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<sup>25</sup>RSMo 2000.

designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:

\* \* \*

(3) Receipts for the period, including:

(a) Total amount of all monetary contributions received which can be identified in the committee's records by name and address of each contributor. In addition, the candidate committee shall make a reasonable effort to obtain and report the employer, or occupation if self-employed or notation of retirement, of each person from whom the committee received one or more contributions which in the aggregate total in excess of one hundred dollars and shall make a reasonable effort to obtain and report a description of any contractual relationship over five hundred dollars between the contributor and the state if the candidate is seeking election to a state office or between the contributor and any political subdivision of the state if the candidate is seeking election to another political subdivision of the state;

\* \* \*

(d) Total dollar value of all in-kind contributions received[.]

Petitioners failed to report various contributions that they received and deposited in their official fund depository, totaling \$5,250.85. Their failure to report these contributions violated § 130.041.1(3)(a). Petitioners also failed to report a contribution related to use of the bulk mail permit No. 3586 used by the Committee, or in the alternative, to report an expenditure for use of bulk mail permit No. 3568 used by Committee or the purchase of a bulk mail permit in the Committee's name. Their failure to report this contribution in kind violated § 130.041.1(3)(d).

Failure to Timely Report Late Contributions Received



Section 130.050.3 sets out what constitutes a "late contribution" and when such contributions must be reported:

The receipt of any late contribution or loan of more than two hundred fifty dollars by a candidate committee supporting a candidate for statewide office or by any other committee shall be reported to the appropriate officer no later than twenty-four hours after receipt. For purposes of this subsection the term "**late contribution or loan**" means a contribution or loan received after the closing date of the last disclosure report required to be filed before an election but received prior to the date of the election itself. The disclosure report of a late contribution may be made by any written means of communication, setting forth the name and address of the contributor or lender and the amount of the contribution or loan and need not contain the signatures and certification required for a full disclosure report described in section 130.041. A late contribution or loan shall be included in subsequent disclosure reports without regard to any special reports filed pursuant to this subsection.

Petitioners failed to file 24-hour reports of late contributions received before the April, August and November 2008 elections as follows: Petitioners received \$2,500.00 in late contributions before the April 2008 election; \$11,525.00 in late contributions prior to the August 2008 election; and \$1,920.00 in late contributions prior to the November 2008 election. Petitioners' failure to report these late contributions within 24 hours of receipt violated § 130.050.3.

Failure to Report Aggregate Amounts  
and Contributor Addresses and Employers

Section 130.041.1(3)(a) and (e)<sup>26</sup> sets out the requirements for reporting the amounts contributed by each contributor, the contributors' addresses, and for individual contributors, their employer:

Except as provided in subsection 5 of section 130.016, the

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<sup>26</sup>RSMo 2000.

candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:

\* \* \*

(3) Receipts for the period, including:

(a) Total amount of all monetary contributions received which can be identified in the committee's records by name and address of each contributor. . . .

\* \* \*

(e) A separate listing by name and address and employer, or occupation if self-employed or notation of retirement, of each person from whom the committee received contributions, in money or any other thing of value, aggregating more than one hundred dollars, together with the date and amount of each such contribution[.]

Petitioners failed to include the aggregate amount of contributions from each contributor totaling \$6,650.45 on the amended April 2008 quarterly report. Petitioners further failed to list: the required employer, occupation, or retirement information, for eight contributions which aggregated more than \$100.00, for a total of \$3,450.00 on the amended April 2008 quarterly report; the required address notation for three contributors totaling \$1,050.00 on the amended April 2008 quarterly report; the required aggregate to date amounts per contributor; and the address, employer, occupation, or retirement notation for 13 contributions totaling \$355.00 on the July 2008 quarterly report; and the required aggregate to date contributions per contributor,

and employer, occupation or retirement notation for all contributions totaling \$6,175.00 on the October 2008 quarterly report. These failures constitute violations of § 130.041.1(3)(a) and (e).

Failure to Report Expenditures Paid

Section 130.041.1(4)(d)<sup>27</sup> sets out the requirements for reporting expenditures:

Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:

\* \* \*

(4) Expenditures for the period, including:

\* \* \*

(d) The full name and mailing address of each person to whom an expenditure of money or any other thing of value in the amount of more than one hundred dollars has been made, contracted for or incurred, together with the date, amount and purpose of each expenditure.

Petitioners failed to report the following expenditures: \$600.00 for Anthony Weaver; \$2,234.00 for expenditures related to bulk mail permit No. 3586, St. Louis, MO 63121; \$500.00 to "Unity PAC;" \$1,185.00 to campaign workers; and other expenditures amounting to \$2,940.86. These omissions constituted violations of § 130.041.1(4)(d).

Failure to Timely Report Late Expenditures Paid

Section 130.046.3(2) sets out the requirements for reporting late expenditures:

3. . . . A political action committee shall submit additional reports if it makes aggregate expenditures, other than contributions to a committee, of five hundred dollars or more, within the reporting period at the following times for the following periods:

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27 RSMo 2000.

\* \* \*

2. Not later than twenty-four hours after aggregate expenditures of two hundred fifty dollars or more are made after the twelfth day before the election[.]

Petitioners failed to report late expenditures totaling \$2,834.00 made on April 3, 2008, or an expenditure of \$500.00 made on April 7, 2008, within 24 hours of making such expenditures.

Petitioners failed to report late expenditures totaling \$2,553.83 made August 1, 2008, an expenditure of \$855.86 on August 2, 2008, and an expenditure of \$775.84 on August 4, 2008, within 24 hours of making such expenditures. Also, Petitioners failed to timely report late expenditures totaling \$2,200.00 on November 3, 2008, within 24 hours of such expenditures.

These failures constituted violations of § 130.046.3(2).

Failure to Report the Full Name and  
Address for Recipients of Expenditures

Section 130.041.1(4)(d)<sup>28</sup> provides the requirements for listing full names and addresses for recipients of expenditures:

Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:

\* \* \*

(4) Expenditures for the period, including:

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<sup>28</sup>RSMo 2000.

\* \* \*

(d) The full name and mailing address of each person to whom an expenditure of money or any other thing of value in the amount of more than one hundred dollars has been made, contracted for or incurred, together with the date, amount and purpose of each expenditure.

On the amended April 2008 quarterly report, Petitioners did not disclose the mailing address for seven expenditures of more than \$100.00 each, totaling \$5,614.95. On the July 2008 quarterly report, Petitioners did not disclose the mailing address for two expenditures of more than \$100.00 each, totaling \$1,750.20. These omissions constitute violations of § 130.041.1(4)(d).

#### Failure To File Direct Expenditure Report

Section 130.041.1(7)<sup>29</sup> provides in relevant part:

Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:

\* \* \*

(7) The amount of expenditures for or against a candidate or ballot measure during the period covered and the cumulative amount of expenditures for or against that candidate or ballot measure, with each candidate being listed by name, mailing address and office sought. For the purpose of disclosure reports, expenditures made in support of more than one candidate or ballot measure or both shall be apportioned reasonably among the candidates or ballot measure or both. In apportioning expenditures to each candidate or ballot measure, political party committees and continuing committees need not include expenditures for maintaining a

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<sup>29</sup>RSMo 2000.

permanent office, such as expenditures for salaries of regular staff, office facilities and equipment or other expenditures not designed to support or oppose any particular candidates or ballot measures; however, all such expenditures shall be listed pursuant to subdivision (4) of this subsection[.]

Even though Petitioners supported Proposition B, Proposition Y, Edwards, and Washington, Petitioners failed to file direct expenditure reports. This failure constituted a violation of §130.041.1(7).

#### Failure to Report Cash Contributions

Section 130.031.1<sup>30</sup> provides as follows regarding cash contributions:

No contribution of cash in an amount of more than one hundred dollars shall be made by or accepted from any single contributor for any election by a continuing committee, a campaign committee, a political party committee, an exploratory committee or a candidate committee.

Petitioners made cash deposits of \$450.00 on August 4, 2008; \$150.00 on August 5, 2008; \$600 on March 27, 2009; and \$200 on March 30, 2009. The MEC alleges that these deposits prove that Petitioners violated § 130.031.1. The MEC, however, failed to adduce any evidence that all or part of these deposits were made up of contributions from a single contributor, so we find no violation of § 130.031.1.

#### Cash Expenditures

Section 130.031.2<sup>31</sup> provides as follows regarding cash expenditures:

Except for expenditures from a petty cash fund which is established and maintained by withdrawals of funds from the committee's depository account and with records maintained pursuant to the record-keeping requirements of section 130.036 to account for expenditures made from petty cash, each expenditure

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<sup>30</sup>RSMo 2000.

<sup>31</sup>RSMo 2000.

of more than fifty dollars, except an in-kind expenditure, shall be made by check drawn on the committee's depository and signed by the committee treasurer, deputy treasurer or candidate. A single expenditure from a petty cash fund shall not exceed fifty dollars, and the aggregate of all expenditures from a petty cash fund during a calendar year shall not exceed the lesser of five thousand dollars or ten percent of all expenditures made by the committee during that calendar year. A check made payable to "cash" shall not be made except to replenish a petty cash fund.

Petitioners issued checks to cash from the official fund depository, then made payments in cash from money obtained thusly: \$2,234.00 on April 3, 2008, paid to the St. Louis Post Office; \$127.50 on June 19, 2008, paid to the Board of Election; and \$622.20 on October 15, 2008, paid to O.R. Pechman Co. These payments were made by cash, not by check issued from the official fund depository.

Also, counter checks were issued on August 6, 2008, and November 3, 2008, for \$545.00 and \$2,200.00 respectively, from the official fund depository. The only purpose allowed for checks made to "cash" is to replenish a petty cash fund, and there is no evidence that Petitioners operated any such fund. Petitioners' actions therefore violated § 130.031.2.

#### Expenditures Not Made by Committee Treasurer or Deputy Treasurer

Section 130.021.4(1) provides in relevant part:

Contributions shall not be accepted and expenditures shall not be made by a committee except by or through an official depository account and the committee treasurer, deputy treasurer or candidate.

Section 130.031.2<sup>32</sup> provides in relevant part:

Except for expenditures from a petty cash fund which is established and maintained by withdrawals of funds from the committee's depository account and with records maintained

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<sup>32</sup>RSMo 2000.



pursuant to the record-keeping requirements of section 130.036 to account for expenditures made from petty cash, each expenditure of more than fifty dollars, except an in-kind expenditure, shall be

made by check drawn on the committee's depository and signed by the committee treasurer, deputy treasurer or candidate.

Petitioners issued checks, dated March 18 and March 19, 2008, respectively, that were signed by Anthony Weaver to pay for two expenditures. Anthony Weaver was not the Committee treasurer or deputy treasurer. Weaver's signing of the checks when he lacked statutory authority to do so constituted violations of §§ 130.021.4(1) and 130.031.2.

#### MEC's Procedure Upon Receiving Complaints

Pursuant to § 105.961.1,<sup>33</sup> the MEC can receive complaints and conduct investigations regarding Missouri's campaign finance law. If the MEC finds that a committee or a committee treasurer has violated Missouri's campaign finance law, the MEC may assess fees of either \$1,000 per violation, or double the amount involved in the violation. Section 105.961.4(6).

#### Amount of Fees to Assess

Based on the above, Petitioners violated Missouri's finance disclosure laws in multiple ways. The only other question is to determine the amount of fees to assess. In this case, the MEC assessed a fee of \$167,712 under § 105.961.4(6)<sup>34</sup> for the violations listed above. The amount of the fee is governed by § 105.961.4(6), which provides in relevant part:

If the appropriate disciplinary authority receiving a report from the commission pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the report, the recommendations contained in the report, or if the commission determines, by a vote of at least four members of the commission that some action other than referral for criminal prosecution or for action by the

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<sup>33</sup>RSMo 2000.

<sup>34</sup>RSMo 2000.

appropriate disciplinary authority would be appropriate, the commission shall take any one or more of the following actions:

\* \* \*

(6) Through reconciliation agreements or civil action, the power to seek fees for violations in an amount not greater than one thousand dollars or double the amount involved in the violation.

Paragraph 6 above allows the MEC to impose a fee of either \$1,000 or double the amount involved in the violation, whichever is greater. The following chart shows the choices for each fee available to us, and the fee that we impose, pursuant to § 105.961.4(6), for each of the individual violations:

<b>Violation (including paragraph numbers from Findings of Fact)</b>	<b>Amount of Money Involved</b>	<b>\$1,000 per violation</b>	<b>Double the Amount Involved</b>	<b>Fee Imposition</b>
Inappropriately filing Statement of Limited Activity for April 2008 (¶¶ 17-18)	n/a	\$1,000.00	n/a	\$1,000.00
Failure to timely file April 2008 Quarterly Report (¶¶ 19-20)	n/a	\$1,000.00	n/a	\$1,000.00
Failure to timely file July 2008 Quarterly Report (¶¶ 21-22)	n/a	\$1,000.00	n/a	\$1,000.00
Failure to file April 2009 Quarterly Report (¶ 23-24)	n/a	\$1,000.00	n/a	\$1,000.00
Failure to file July 2009 Quarterly Report (¶¶ 23-24)	n/a	\$1,000.00	n/a	\$1,000.00
Failure to file October 2009 Quarterly Report (¶¶ 23-24)	n/a	\$1,000.00	n/a	\$1,000.00

Failure to file 8 Days Before April 2008 Election Report (§§ 25-29)	\$7,180.95	\$1,000.00	\$14,361.90	\$14,361.90
Failure to file 8 Days Before November 2008 Election Report (§§ 30-33)	\$622.20	\$1,000.00	\$1,244.40	\$1,244.40
Failure to File a 30 Days After April 2008 Election Report (§§ 34-39)	\$6,632.20	\$1,000.00	\$13,264.40	\$13,264.40
Failure to File a 30 Days After August 2008 Election Report (§§ 40-44)	\$6,286.36	\$1,000.00	\$12,572.72	\$15,572.72
Failure to report contributions (§§ 45-51)	\$5,215.00	\$1,000.00	\$10,430.00	\$10,430.00
Failure to report contributions or expenditure of bulk mail receipt (§§ 52-55)	n/a	\$1,000.00	n/a	\$1,000.00
Failure to timely report late contributions for April 2008 election (§§ 56-58)	\$2,500.00	\$1,000.00	\$5,000.00	\$5,000.00
Failure to timely report late contributions for August 2008 election (§§ 59-61)	\$10,900.00	\$1,000.00	\$21,800.00	\$21,800.00
Failure to timely report late contributions for November 2008 election (§§ 62-63)	\$1,920.00	\$1,000.00	\$3,840.00	\$3,840.00

Failure to report aggregate per date contributions per contributor, April 2008 report (§ 64)	\$6,650.45	\$1,000.00	\$13,300.90	\$13,300.90
Failure to disclose employer info for contributors, April 2008 report (§ 65)	\$3,450.00	\$1,000.00	\$6,900.00	\$6,900.00
Failure to list street address for business contributors, April 2008 report (§ 66)	\$1,050.00	\$1,000.00	\$2,100.00	\$2,100.00
Failure to disclose aggregate to date amounts for contributors, July 2008 report (§ 67)	\$355.00	\$1,000.00	\$710.00	\$710.00
Failure to disclose employer info for contributors, July 2008 report (§ 67)	\$355.00	\$1,000.00	\$710.00	\$710.00
Failure to list aggregate to date amounts for contributors, October 2008 report (§ 68)	\$6,175.00	\$1,000.00	\$12,350.00	\$12,350.00
Failure to list employer info for contributors, October 2008 report (§ 68)	\$6,175.00	\$1,000.00	\$12,350.00	\$12,350.00
Failure to report expenditure to Anthony Weaver (§ 69)	\$600.00	\$1,000.00	\$1,200.00	\$1,200.00
Failure to report expenditure to cash (§ 70)	\$2,234.00	\$1,000.00	\$4,468.00	\$4,468.00

Failure to report "Unity PAC" expenditure (§ 71)	\$500.00	\$1,000.00	\$1,000.00	\$1,000.00
Failure to report expenditures to campaign workers (§ 72)	\$1,185.00	\$1,000.00	\$2,370.00	\$2,370.00
Failure to report other expenditures (§ 73)	\$2,940.86	\$1,000.00	\$5,881.72	\$5,881.72
Failure to timely report late expenditures within 24 hours of receipt, April 2008 election (§§ 74-77)	\$3,234.00	\$2,000.00 (for expenditures received April 3 and 7, 2008)	\$6,468.00	\$6,468.00
Failure to timely report late expenditures within 24 hours of receipt, August 2008 election (§§ 78-79)	\$4,185.53	\$3,000.00 (for expenditures received August 1, 2, and 4, 2008)	\$8,371.06	\$8,371.06
Failure to timely report late expenditures within 24 hours of receipt, November 2008 election (§§ 80-81)	\$2,200.00	\$1,000.00	\$4,400.00	\$4,400.00
Failure to report full name and address on expenditures on April 08 report (§ 82)	\$5,614.95	\$1000.00	\$11,229.90	\$11,229.90
Failure to report full name and address on 2 expenditures on August 08 report (§ 83)	\$1,750.20	\$1,000.00	\$3,500.40	\$3,500.40

Failure to file direct expenditure reports for April 2008 and November 2008 elections (§§ 84-88)	n/a <sup>35</sup>	\$2,000.00 (two violations)	n/a	\$2,000.00
Failure to report cash expenditures (§§ 90-95)	\$5,728.70	\$1,000.00	\$11,457.40	\$11,457.40
Checks not written by treasurer or deputy treasurer (§§ 96-97)	\$1,656.86	\$2,000.00 (two violations)	\$3,313.72	\$3,313.72
<b>Total:</b>				<b>\$206,594.52</b>

### Summary

Petitioners improperly filed a limited activity report, filed two quarterly reports late, failed to file three quarterly reports, failed to file two "8 Days Before Election" reports, failed to file two "30 Days After Election" reports, failed to report contributions received (both of money and in kind), failed to timely report late contributions received, failed to report aggregate amounts received from each contributor, failed to report the addresses and employers of individual contributors, failed to report expenditures paid, failed to timely report late expenditures paid, failed to report the full names and addresses of recipients of expenditures, failed to file direct expenditure reports, failed to report cash expenditures, and allowed a person who was not the treasurer or assistant treasurer of the Committee to sign checks drawn on the Committee's official depository account. Petitioners are subject to fees of \$206,594.52.

SO ORDERED on January 25, 2011.

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<sup>35</sup>It is unknown how much was expended directly for support of the propositions and the board members.

SREENIVASA RAO DANDAMUDI  
Commissioner