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FIRST GENERAL COUNSEL'S REPORT

MUR 5218  
DATE COMPLAINT FILED: July 12, 2001  
DATE OF NOTIFICATION: July 12, 2001  
DATE ACTIVATED: August 2, 2002

EXPIRATION OF STATUTE OF  
LIMITATIONS: May 12, 2005

COMPLAINANT:

Steve McManus

RESPONDENTS:

Russ Francis  
Russ Francis for Congress and  
Russ Francis, as treasurer

RELEVANT STATUTES  
AND REGULATIONS:

- 2 U.S.C. § 439a
- 11 C.F.R. §§ 113.1(g), (g)(1)(i), (g)(1)(i)(C) & (E)
- 11 C.F.R. §§ 113.1(g)(1)(ii), (g)(1)(ii)(C)
- 11 C.F.R. §§ 113.1(g)(3), (g)(4)
- 11 C.F.R. § 113.2(d)
- 2 U.S.C. § 431(4)
- 2 U.S.C. § 431(6)
- 2 U.S.C. § 431(8)(A)
- 2 U.S.C. §§ 431(9)(A)(i)-(ii)
- 2 U.S.C. §§ 432(c)(5), (d)
- 2 U.S.C. § 432(h)(1)
- 2 U.S.C. §§ 434(a), (a)(1), (a)(11)(D)
- 2 U.S.C. §§ 434(b), (b)(2), (b)(4)(A), (b)(5)(A), (b)(8)
- 2 U.S.C. § 437g(a)(5)(B)
- 2 U.S.C. § 437g(d)
- 2 U.S.C. § 441a(a)(1)(A)
- 2 U.S.C. § 441a(f)
- 2 U.S.C. § 441b(a)
- 11 C.F.R. §§ 104.3(b)(2)(i), (b)(3), (b)(4)(i), (d)

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- 11 C.F.R. § 104.11(a)
- 11 C.F.R. § 100.7
- 11 C.F.R. § 102.1
- 11 C.F.R. § 102.11
- 11 C.F.R. §§ 116.1(a), (d)
- 11 C.F.R. § 116.2(a)
- 11 C.F.R. § 116.5(b)
- 11 C.F.R. §§ 116.6(a), (b), (c)
- 11 C.F.R. §§ 116.7(b)(2), (b)(3), (c)(2)
- 11 C.F.R. § 116.10

INTERNAL REPORTS CHECKED: Disclosure Reports and Internal Indices

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

The complaint alleges that Russ Francis, treasurer of Russ Francis for Congress (the "Committee"), made personal use of campaign contributions in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The complaint also alleges that the Committee failed to file reports accurately listing disbursements, debts and obligations; that Francis accepted kickbacks from salary payments to staff which were converted to personal use; that the Committee failed to report a debt settlement plan; and that the Committee failed to pay expenses due in the form of salary and advances from Committee staff. Neither Francis nor the Committee responded to the complaint. This Office recommends the Commission find reason to believe that respondents violated the Act.<sup>2</sup> However, due to the unusual circumstances of this matter (*i.e.*, the likelihood that this Office would never obtain a civil penalty or other remedy from respondents), this Office also recommends taking no further action on these apparent violations

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<sup>2</sup> Complainant, Steve McManus, was also notified that he may have violated the Act. As discussed *infra* at 15-16, we recommend the Commission take no further action with regard to McManus.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Statement of Facts – General History of the Campaign**

3 In the 2000 general election Francis was the Republican nominee in Hawaii's Second  
4 Congressional District. Francis filed his Statement of Candidacy on April 9, 2000. Two months  
5 later, on June 10, 2000, the Committee hired its third campaign manager, Steve McManus.  
6 Complaint at 8. According to McManus, "[t]he accounting end of the campaign had gone  
7 through an upheaval" and the campaign was "in shambles." *Id.* As McManus later learned,  
8 several of the original staff had either quit or been forced out because Francis ignored the legal  
9 or political advice given regarding potential violations or because he failed to pay salaries or  
10 reimburse advanced expenses.<sup>3</sup> Ultimately, Russ Francis assumed both the roles of treasurer and  
11 campaign manager during the campaign.

12 McManus stated that although Francis owes him \$9,500 in unpaid salary, he filed the  
13 complaint against Francis for two reasons: "1) He may win the lottery; 2) His arrogance and  
14 complete disdain for any ethics and laws deserve an accounting." *Id.* at 2.

15 McManus alleges that "[m]atters of personal finance and federal regulations were met  
16 with complete indifference." *Id.* at 9. Interestingly, McManus also states that Francis "was  
17 running his own agenda, and simply had stopped asking for money." *Id.* at 7,9. According to  
18 McManus, it seemed as though Francis had stopped campaigning and was merely using the  
19 existing campaign funds to further his own interests. He states, "Russ Francis misused at least  
20 \$20,000, probably more," and that "[t]rying to get [Francis] to sit for issues briefings, or prepare  
21 for an October debate, or most anything else was fruitless." *Id.* at 9,12. Roll Call noted that

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<sup>3</sup> The first campaign manager, Bob Awana, was replaced by Bob Hogue for an unknown period of time. Hogue was replaced by McManus who remained campaign manager until August 26, 2000. Complaint at 8-10. The first treasurer, Kathi Thomassen, was replaced by Lyle Holden, Francis' personal accountant, for two weeks. Holden was then replaced by assistant treasurer Doug Fairhurst from mid-June to November 14, 2000. *Id.* After both McManus and Fairhurst resigned, Francis assumed the roles of both campaign manager and treasurer. *Id.*

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1 "Francis is offering a little-noticed challenge to [Representative Patsy] Mink in this ...  
2 Democratic stronghold" and that "he shows no signs of posing a serious threat to Mink." *Does*  
3 *the Majority Rest on West?*, Roll Call, Oct. 16, 2000 (2000 WL 8735805). Just prior to the  
4 general election, the Associated Press also reported that Rep. Mink faced "Russ Francis' almost  
5 invisible campaign." *Hawaii Elections at a Glance*, AP Online, Nov. 8, 2000 (2000 WL  
6 29038874). This "invisible campaign" was despite the fact that the Committee had raised over  
7 \$199,818.00 in contributions through the general election and reported expenditures of  
8 \$195,173.55. Post-General Report at 3. According to the Committee's December 12, 2000 Post-  
9 General Report, the last report filed with the Commission, the Committee had \$4,644.85 cash-  
10 on-hand and \$21,955.36 in outstanding debts and obligations. *Id.*

11 **B. Legal Analysis**<sup>4</sup>

12 **1. Russ Francis and the Russ Francis for Congress Committee Appear to**  
13 **Have Knowingly and Willfully Violated 2 U.S.C. § 439a by Using**  
14 **Campaign Funds for Personal Use**

15 According to the complaint, Francis repeatedly used campaign funds against the advice  
16 of campaign treasurers, managers, and at least one attorney, for expenses that would have existed  
17 irrespective of Francis' campaign. These expenses ranged from mortgage payments on his  
18 Hawaii residence and airfare on personal trips, to excessive gifts and specialized clothing.

19 While a candidate and his or her campaign committee have wide discretion in making  
20 expenditures in support of a candidate's election, no person may convert campaign funds to the  
21 personal use of the candidate or any other person. 2 U.S.C. § 439a; 11 C.F.R. § 113.2(d).  
22 "Personal use" is defined as "any use of funds in a campaign account of a present or former  
23 candidate to fulfill a commitment, obligation or expense of any person that would exist

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<sup>4</sup> The activity in this case is governed by the Act and the regulations in effect during the pertinent time period, which precedes amendments to the personal use regulations made by the Bipartisan Campaign Reform Act of 2002 ("BCRA").

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1 irrespective of the candidate's committee or duties as a Federal officeholder." 11 C.F.R.  
2 § 113.1(g).

3 **a. Disbursements for Rental/Mortgage Payments**

4 The complaint alleges that Francis used campaign funds to pay for the rent or mortgage  
5 on his personal residence in violation of 2 U.S.C. § 439a. At an unknown date prior to the filing  
6 of Francis' Statement of Candidacy, Francis entered into a contract to rent or lease a house  
7 located at 146 Palapu Street, Kailua, Hawaii on Oahu island (the "Palapu residence"), with Miki  
8 Blackstad ("Blackstad"), a realtor on the island, for \$2,000 a month. Francis listed the Palapu  
9 residence as his personal residence on his Statement of Candidacy. According to the complaint,  
10 the Committee also operated its "campaign headquarters" from the top two rooms in Francis'  
11 Palapu residence. Complaint at 8.

12 The complaint alleges that Francis used campaign funds to pay for the mortgage on his  
13 Palapu residence but disguised this practice by claiming it was for the Committee's headquarters.  
14 Complaint at 6. During the campaign, the Committee reported four disbursements to Blackstad:

Payee:	Date:	Amount:	Reported in:
Miki Blackstad	5/12/00	\$2,000.00	2 <sup>nd</sup> Quarter Report
Miki Blackstad	6/07/00	\$2,000.00	2 <sup>nd</sup> Quarter Report
Miki Blackstad	7/11/00	\$2,000.00	Pre-Primary Report
Miki Blackstad	11/10/00	\$2,000.00	Post-General Report
	<b>TOTAL</b>	<b>\$8,000.00</b>	

16  
17 *Id.* In the Committee's disclosure reports, the "purpose/event" field of each disbursement  
18 indicated that these checks went for "Rent for campaign HQ 5/00," "Office rent," "Office rent,"  
19 and "Ofc rental" respectively.<sup>5</sup> Second Quarter Report at 26,29; Pre-Primary Report at 30; Post-  
20 General Report at 12.

<sup>5</sup> This Office suspects that Francis also used campaign funds to pay rent for the months of August, September and October, notwithstanding the lack of information in the reports. It is likely, as discussed *infra*, that Francis either

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1 Commission regulations list a number of uses of campaign funds that constitute personal  
2 use *per se*, including:

3 (E) Mortgage, rent or utility payments—

- 4 (1) For any part of any personal residence of the candidate or a member of the  
5 candidate's family; or  
6 (2) For real or personal property that is owned by the candidate or a member  
7 of the candidate's family and used for campaign purposes, to the extent  
8 the payments exceed the fair market value of the property usage[.]  
9

10 11 C.F.R. § 113.1(g)(1)(i) (defining personal use); *see also* AO 1995-8; Commission Regulations  
11 on Personal Use of Campaign Funds, Explanation & Justification, 60 Fed. Reg. 7862, 7865 (Feb.  
12 9, 1995).<sup>6</sup> Thus, notwithstanding that part of Francis' home was used by the campaign, based on  
13 the information provided in the complaint, it appears that Francis used campaign funds to pay for  
14 a *per se* personal use – his mortgage payments. 2 U.S.C. § 439a; 11 C.F.R. § 113.2(d).

15 **b. Disbursements for Travel Expenses**

16 The complaint alleges that Francis never documented his travel for the campaign and that  
17 some of the campaign funds spent for travel was for non-campaign related travel. Complaint at  
18 6. The Commission's regulations provide that where a specific use of campaign funds is not  
19 listed as personal use, like travel expenses, the Commission makes a determination on a case-by-  
20 case basis whether the expense would exist irrespective of the candidate's campaign, and  
21 therefore constitute personal use. 11 C.F.R. § 113.1(g)(1)(ii)(C). When travel is mixed,  
22 containing both personal activities and campaign activities, "the incremental expenses that result  
23 from the personal activities are personal use, unless the person(s) benefiting from this use

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took money out of "petty cash" to pay rent directly or reimburse himself for the payment, or that his excess payments to Philips were used to cover this expense.

<sup>6</sup> In AO 2000-2, the Commission allowed a candidate to pay for office space in the same building as his residence, but did so with several distinguishing factors, none of which is present here: that the leased property as both a residence and an office predated his candidacy, that the leased premises were in a commercial building, that for several years the candidate followed a tax treatment that reflected a division between residential and office space, and that campaign funds would be tailored to pay only the portion of rent previously ascribed to the office use.

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1 reimburse(s) the campaign account within thirty days for the amount of the incremental  
2 expenses." *Id.*; AO 1984-48 (stating mixed use of an aircraft must be reported and itemized).

3 Being in Hawaii, air travel to neighboring islands in Francis' campaign district is  
4 common. Francis is also a licensed commercial pilot. Complaint at 6. As a pilot, Francis rented  
5 an airplane and purchased fuel for travel from George's Aviation Service ("George's").  
6 According to the Committee's disclosure reports, there were seven disbursements to George's,  
7 five of which were specifically highlighted in the complaint as being personal use:

Payee:	Date:	Amount: <sup>7</sup>	Reported in:
George's	4/15/00	\$526.04	2 <sup>nd</sup> Quarter Report
George's	7/18/00	\$2,200.00*	Pre-Primary Report
George's	9/05/00	\$30.19	3 <sup>rd</sup> Quarter Report
George's	9/26/00	\$1,057.27*	3 <sup>rd</sup> Quarter Report
George's	11/02/00	\$870.84*	Post-General Report
George's	11/15/00	\$350.00*	Post-General Report
George's	11/21/00	\$345.83*	Post-General Report
	<b>TOTAL</b>	<b>\$5,380.17</b>	

8  
9 *Id.* McManus stated:

10 I know for a fact that some of the flying was legitimate, some of the flying was  
11 for personal reasons, and some of it for who knows what. Specifically, I once  
12 observed a bill from George's for Thursday, July 6, and know that no campaign  
13 activity was conducted. The entire first week of July, Russ had business  
14 associates in town on an IT venture and he spent time with them.

15  
16 *Id.*<sup>8</sup>

17 Under the Act, the treasurer of a political committee must obtain documentation,  
18 consisting of a receipt, invoice, or canceled check, for any disbursement in excess of \$200.  
19 2 U.S.C. § 432(c)(5). However, the complaint alleges that "[m]ore than once" Francis was  
20 "asked by his campaign treasurers (he had three) to document his flying for the campaign. He

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<sup>7</sup> Asterisks indicate that the disbursement was specifically mentioned in the complaint.

<sup>8</sup> Although the reports only list the date a disbursement was made, and not the date of the bill, it is possible that the July 18 disbursement included the July 6 bill that McManus mentions.

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1 never did." Complaint at 6. Francis' failure to provide documentation to his own staff itemizing  
2 what was and was not for the campaign suggests that some of the travel expenses paid for by the  
3 Committee would have existed irrespective of his campaign and that proper documentation was  
4 not kept. 2 U.S.C. §§ 432(c)(5), 439a. Moreover, to the extent that any of Francis' personal use  
5 was incremental, no reimbursement was ever reported and therefore some travel disbursements  
6 appear to be personal use. 2 U.S.C. § 439a; 11 C.F.R. § 113.2(d).

7 **c. Disbursements to "Petty Cash"**

8 The complaint further alleges that Francis used "petty cash" from the Committee's funds  
9 for personal use. Primarily, the complaint alleges that a check given to Francis for \$1,000 for  
10 "petty cash" on June 14, and a tuxedo rental check for \$115.45 to Gary's Tux Shop made on the  
11 same day, were personal uses of campaign funds. Complaint at 7. Allegedly, Francis "was en  
12 route to Buffalo, New York for a birthday gala for a friend. Then-Treasurer Lyle Holden . . .  
13 expressed strong reservations about such an expenditure and literally demanded receipts and  
14 documentation later. He never received them. . . . No accounting was ever made of the \$1,000."  
15 *Id.*

16 The tuxedo rental is personal use *per se*. 11 C.F.R. § 113.1(g)(i)(C); Explanation &  
17 Justification, 60 Fed. Reg. at 7865 (stating "specialized attire" even for both social and official  
18 business is personal use); MUR 4112 (James M. Jeffords) (finding reason to believe that the  
19 purchase of clothing with campaign funds violated Section 439a); AO 1985-22 (stating tuxedos  
20 are not proper campaign expenditures). Moreover, because it appears that the birthday gala  
21 would have existed irrespective of Francis' candidacy and this Office has no information to the

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1 contrary, it is likely that the entire amount taken from petty cash for the trip was personal use.<sup>9</sup>

2 2 U.S.C. § 439a; 11 C.F.R. § 113.2(d).

3 In addition to the disbursement of petty cash for the birthday gala trip, the complaint  
4 states that petty cash disbursements generally "should be scrutinized." Complaint at 7. "Russ  
5 forced Treasurer Doug Fairhurst to resign, then assumed control of the checkbook without any  
6 resistance." *Id.* There were a total of six entries for petty cash in the Committee's Reports:

Payee:	Date:	Amount:	Reported in:
Petty Cash	6/14/00	\$1,000.00*	2 <sup>nd</sup> Quarter Report
Petty Cash	9/05/00	\$500.00*	3 <sup>rd</sup> Quarter Report
Petty Cash	10/06/00	\$200.00	Pre-General Report
Petty Cash	10/28/00	\$1,200.00	Post-General Report
Petty Cash	11/10/00	\$2,500.00*	Post-General Report
Petty Cash	11/24/00	\$350.00*	Post-General Report
	<b>TOTAL</b>	<b>\$5,750.00</b>	

7  
8 *Id.* In light of the allegation that Francis repeatedly converted campaign monies to personal use,  
9 this Office believes it is credible that other disbursements reported as "petty cash" actually may  
10 have been for Francis' personal use.

11 **d. "Kickbacks" of Campaign Funds for Personal Use**

12 The complaint also alleges that Francis received \$8,000.00 in kickbacks from Carol  
13 Philips. Complaint at 6-7. Over the course of the campaign, Philips, who did

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<sup>9</sup> Although gifts of "nominal value" on "specific occasions" are exempted from the definition of personal use, 11 C.F.R. § 113.1(g)(4), there is no information that Francis purchased any birthday gift with the petty cash, only that he took the money. Moreover, to the extent that any of the \$1,000 taken by Francis on the trip was used as or for a gift, this would still be personal use as it would not be considered a nominal amount. The regulations do not define what is "nominal," but the Commission's Explanation & Justification, 60 Fed. Reg. at 7870, states that this rule would allow "a committee to use campaign funds to send flowers to a constituent's funeral," recognizing that "small gifts to constituents and supporters on special occasions would not exist irrespective of the candidate's . . . status." There are also possible reporting violations with respect to petty cash disbursements, as discussed *infra* at 16. See MUR 3974 (Congressman Charles B. Rangel) (finding that the Committee's failure to itemize and account for checks to "cash" violated 2 U.S.C. §§ 432(c)(5) and 432(h)(1)).

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1 "website maintenance" for the Committee,<sup>10</sup> received several disbursements from the  
2 Committee:

Payee:	Date:	Amount:	Reported in:
Carol Philips	9/05/00	\$1,040.00	3 <sup>rd</sup> Quarter Report
Carol Philips	9/05/00	\$141.36	3 <sup>rd</sup> Quarter Report
Carol Philips	9/14/00	\$4,000.00*	3 <sup>rd</sup> Quarter Report
Carol Philips	9/18/00	\$400.00	3 <sup>rd</sup> Quarter Report
Carol Philips	9/26/00	\$236.34	3 <sup>rd</sup> Quarter Report
Carol Philips	10/06/00	\$1,000.00	Pre-General Report
Carol Philips	10/18/00	\$4,000.00*	Pre-General Report
Carol Philips	10/18/00	\$649.74	Pre-General Report
Carol Philips	11/03/00	\$193.63	Post-General Report
	<b>TOTAL</b>	<b>\$11,661.07</b>	

3  
4 *Id.* The complaint alleges that the two checks for \$4,000 were "[o]stensibly for website  
5 maintenance, which in fact she did," but were "widely seen being 'kicked back' to the candidate.  
6 Carol was a longtime friend and girlfriend who became active in the campaign and lived in the  
7 Francis house for much of September." *Id.* McManus added, Philips is "a good person who  
8 conceded to me . . . that it was 'a hectic time,' but completely steered away from this kickback  
9 issue when I raised it, and she never denied it." *Id.*

10 Philips was not notified of the complaint and given that Francis did not respond to the  
11 complaint, this Office has no information other than McManus' allegation as to whether these  
12 funds were used for "website maintenance," to compensate Philips, or whether part was given to  
13 Francis for his use. However, McManus' allegation that this was merely another means to get  
14 Francis campaign funds that in turn were converted to personal use is credible. First, the two  
15 disbursements for \$4,000 were disproportionate when compared to other disbursements Philips  
16 received. Second, the timing of the disbursements roughly corresponds to the time period that  
17 previous disbursements were made to Blackstad to cover Francis' mortgage, and also at a time

<sup>10</sup> The campaign website "russfrancis2000.com" is no longer operational. The website is registered with "NIC.net." The current registrant is only referred to as "Smore..., FL 33067" and the NIC record showing this registration was created on December 31, 2001, over a year after the campaign had ended.

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1 when the Committee failed to report expenses for office rent as they previously had. Third,  
2 McManus' alleged confrontation with Phillips regarding the kickback issue and the fact that she  
3 "never denied it" may also suggest that the kickbacks were for Francis' personal use. *Id.*

4 Philips herself may have some civil liability for converting campaign funds to personal  
5 use because 2 U.S.C. § 439a includes conversion by "any person to any personal use" and is not  
6 limited to the personal use of the candidate. *Id.*; 2 U.S.C. § 431(11) (defining "person").  
7 However, since the allegation and information in the complaint is that these "kickbacks" were to  
8 the benefit of Francis, this Office makes no recommendation as to Philips.

9 **e. Knowing & Willful Violations of the Act**

10 The complaint provides specific information alleging that Francis knowingly and  
11 willfully violated the Act by converting campaign funds to his personal use. *See* 2 U.S.C.  
12 §§ 437g(a)(5)(B), 437g(d). The phrase "knowing and willful" indicates that "actions [were]  
13 taken with full knowledge of all of the facts and a recognition that the action is prohibited by  
14 law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *Federal Election Comm'n v. John A.*  
15 *Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). A knowing and willful  
16 violation may be established "by proof that the defendant acted deliberately and with  
17 knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir.  
18 1990).

19 Specifically, the complaint states that Francis used campaign funds to pay for the rent or  
20 mortgage on his personal residence knowing that it was illegal to do so. Complaint at 6-9,14-16.  
21 "Kathy [sic] Thomasen was the first treasurer and finally packed it in when [Francis] disregarded  
22 her advice on using campaign monies for the mortgage." *Id.* at 8-9. Joan Bennett, an attorney  
23 volunteering with the campaign, also resigned because Francis ignored her advice on the

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1 mortgage payments and lied to her about what others had told him during earlier conversations.  
2 *Id.* at 13-16. Bennett wrote in her resignation letter regarding the mortgage payments, "You  
3 assured me that both Terry Allen [a political consultant from Washington, D.C.] and the RNC  
4 Chief Counsel advised you that it was legal." *Id.* She added that Francis repeated at a staff  
5 meeting that his conduct was "legal within the FEC guidelines." *Id.* However, Bennett would  
6 later confirm that Francis had known for months that his actions were illegal. She wrote:

7 On 7/30/00 and 7/31/00, I learned that both Terry [Allen] and the RNC Chief Counsel in  
8 fact advised you *when this subject was first broached by you* that it was illegal to make  
9 mortgage payments with campaign contributions. On these two recent dates, they simply  
10 reiterated the advice they gave you *months ago*. This perplexes me, for you told me  
11 otherwise on two separate occasions.

12 *Id.* at 15-16 (emphasis added).

13 Based on the information in the complaint, Francis knew that he could not use campaign  
14 funds for personal use and that paying for the mortgage or rental payments on his Palapu  
15 residence was such a prohibited personal use. Despite this knowledge, and contrary to the advice  
16 of at least one treasurer, one volunteer staff person who was also an attorney, the campaign's  
17 political consultant, and the Republican National Committee's Chief Counsel, the available  
18 information shows that Francis continued to make prohibited expenditures.

19 Therefore, this Office recommends that the Commission find there is reason to believe  
20 Russ Francis and the Russ Francis for Congress Committee knowingly and willfully violated  
21 2 U.S.C. § 439a.

22 **2. The Russ Francis for Congress Committee and Russ Francis, as**  
23 **treasurer, Appear to Have Violated Multiple Reporting Requirements**  
24 **of the Act and Regulations When The Committee Failed to Report**  
25 **Debts Owed to Staff and Details Surrounding Other Disbursements**  
26

27 According to the complaint, Russ Francis for Congress Committee and Russ Francis, as  
28 treasurer, committed a series of reporting violations stemming from unpaid staff salaries. A

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1 review of the information in the complaint reveals five potential reporting violations: failing to  
2 report unpaid salaries as debts, failing to file mid-year and year-end reports, failing to report a  
3 proposed debt settlement plan, failing to report unreimbursed advances as contributions, and  
4 failing to report disbursements. Each is addressed in turn.

5 **a. Failure to Report Unpaid Salaries**

6 **McManus states in the complaint that the Committee failed to report his unpaid employee**  
7 **salary as a debt in disclosure reports filed with the Commission. 2 U.S.C. § 434(b)(4)(A);**  
8 **11 C.F.R. § 104.3(b)(2); Complaint at 7,10. After McManus was hired by the Committee and**  
9 **negotiated a \$1,000 weekly salary, he stated that, "So far, I have received [j]ust a check for \$1,500.**  
10 **The balance owed is \$9,500." *Id.* at 8-9,17.**

11 **Generally, the Act provides that an authorized committee must itemize and report any**  
12 **disbursement, including staff salaries. 2 U.S.C. §§ 434(b)(4)(A), (5)(A); 11 C.F.R.**  
13 **§§ 104.3(b)(2)(i), 104.3(b)(4)(i). Where a salary payment is owed to a committee employee for**  
14 **services rendered in accordance with an employment contract, the unpaid amount may be treated**  
15 **as a debt owed by the committee or the committee may convert a paid employee into a**  
16 **"volunteer," provided that the employee signs a written statement to that effect. 11 C.F.R.**  
17 **§ 116.6(a). Since McManus did not consent by written declaration to be treated as a volunteer,**  
18 **the Committee's reports should show either a salary paid to him or a debt owed to him. The**  
19 **Committee's reports, however, list only a single \$1,500 payment to McManus, which is**  
20 **consistent with his allegation. Pre-Primary Report at 31; Complaint at 9. For that reason, the**  
21 **Committee had an obligation to report this unpaid salary as a debt owed in its disclosure reports**  
22 **even if the debt was disputed. 11 C.F.R. §§ 104.11(a), 116.6(a) & (c).**

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1           Therefore, this Office recommends that the Commission find reason to believe that Russ  
2 Francis for Congress Committee and Russ Francis, as treasurer, violated 2 U.S.C.  
3 §§ 434(b)(4)(A), (5)(A), and (8).

4                           **b. Failure to File Reports**

5           In addition to its failure to report unpaid salaries as debts, the Committee violated its  
6 related obligation to file reports with the Commission until all of its debts and obligations are  
7 extinguished. 2 U.S.C. § 434(a); 11 C.F.R. §§ 104.1(a), 104.3(d), 104.11(a), 116.6(c). The last  
8 report submitted by the Committee was the 30-day Post-General Election Report, filed on  
9 December 12, 2000. The Committee's subsequent failure to file the Year-End 2000 report  
10 resulted in an administrative fine proceeding. In AF 0409, the Commission assessed a \$3,500  
11 fine against the Committee and treasurer for failing to file the Year-End 2000 Report.<sup>11</sup>

12  
13  
14                           Therefore, this Office recommends that the Commission find reason  
15 to believe that Russ Francis for Congress and Russ Francis, as treasurer, violated 2 U.S.C.  
16 § 434(a) by failing to file its Mid-Year 2001, Year-End 2001, Mid-Year 2002, and Year-End  
17 2002 reports.

18                           **c. Failure to Report Debt Settlement Plans**

19           The complaint also alleges that the Committee "fail[ed] to report a debt settlement plan to  
20 the FEC." Complaint at 5,7. According to McManus, "Russ Francis has evaded many people  
21 from the campaign, and while a debt settlement [sic] plan on several occasions was put to him—  
22 even when I was manager--- he chose not to accept them." *Id.* at 7. The settlement plan referred  
23 to covered costs advanced by McManus as well as his unpaid salary, and were outlined in a

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<sup>11</sup> In September 2001, OAR referred the Committee to the U.S. Department of Treasury for non-payment. The Treasury has not collected any of the fine assessed.

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1 Memo dated September 12, 2000 and facsimile dated February 1, 2001, included with the  
2 complaint. *Id.* at 17,18-19. No information suggests that either Francis or the Committee ever  
3 responded to McManus' letter or fax, or otherwise attempted to settle the stated debt.

4 The Commission's regulations state that a terminating committee may settle outstanding  
5 debts, including debts arising from unpaid salaries and advances, by filing a debt settlement plan  
6 with the Commission. 11 C.F.R. §§ 116.1(a), 116.2(a), 116.6(b), 116.7(b)(2)-(3). Once there is  
7 an "agreed" debt settlement plan, that plan is subject to Commission review and approval. *Id.*;  
8 Explanation & Justification, 55 Fed. Reg. at 26378, 26384-5 (June 27, 1990) (stating debt  
9 settlement plans may be filed "once [the Committee has] reached agreements with some of their  
10 creditors"). Disputed debts, however, are not subject to the debt settlement and Commission  
11 review requirements and procedures. 11 C.F.R. § 116.7(c)(2).

12 Here it appears that there was only an offer to settle from McManus, resulting in a  
13 disputed debt. Therefore, the Committee was not obligated under the Act and regulations to  
14 report the proposed agreement and this Office recommends the Commission find no reason to  
15 believe that either the Committee or Francis violated 11 C.F.R. § 116.7.

16 **d. Unpaid Employee Salary and Advances by Committee Staff**

17 Related to the failure to report salaries is the issue of whether an unpaid salary is  
18 essentially a contribution to the Committee. Indeed, after explaining the Committee's failure to  
19 report his unpaid salary, McManus stated in the cover letter to his complaint, "Another way of  
20 looking at this is: I made a \$9,500 contribution to his campaign." Complaint at 2. After  
21 receiving the complaint, on July 19, 2001, this Office mailed a complaint notification letter to  
22 McManus to which McManus responded. *See* Attachment 1. On this issue, the regulations make  
23 clear that an unpaid staff salary is not considered a contribution:

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1 If a political committee does not pay an employee for services rendered . . . in  
2 accordance with an employment contract or a formal or informal agreement to do  
3 so, the unpaid amount . . . shall *not* be treated as a contribution under 11 C.F.R.  
4 § 100.7.

5  
6 11 C.F.R. § 116.6(a) (emphasis added).

7 Advances, unlike unpaid salary payments, however, are considered contributions. If an  
8 individual uses personal funds to pay for incidental campaign expenses incurred in providing  
9 goods or services to the candidate or committee, the amount advanced is considered a  
10 contribution “unless the payment is exempted from the definition of contribution under 11 C.F.R.  
11 § 100.7(b)(8),” or the campaign reimburses staff within a certain period of time. 11 C.F.R.  
12 § 116.5(b); AO 1992-1 at 2-3. Here, McManus reported that the campaign owes him \$976 for  
13 “out-of-pocket expenses.” Complaint at 3. McManus apparently used his personal credit card  
14 for some of the expenses. *Id.* at 7. While section 116.5(b)(2) provides that if a committee  
15 reimburses an individual within sixty days of a credit card expenditure the amount advanced is  
16 not considered a contribution, because McManus states he had unreimbursed expenses, it appears  
17 that he made an in-kind contribution to the Committee. Since there is no other reported  
18 contribution by McManus, it would nevertheless be a permissible contribution that the  
19 Committee would be required to report as such. 2 U.S.C. § 441a(a)(1)(A). Therefore, this  
20 Office recommends that the Commission find reason to believe that Russ Francis for Congress  
21 and Russ Francis, as treasurer, violated 2 U.S.C. §§ 434(a), 434(b)(2)(A), and 434(b)(5), but find  
22 no reason to believe that McManus violated 2 U.S.C. § 441a(a)(1).

23 **e. Failure to Report Disbursements with Proper Descriptions**

24 Finally, information in the complaint suggests that the Committee failed to include proper  
25 descriptions of Francis’ “petty cash” disbursements. Under the Act, all disbursements by an  
26 authorized committee must be reported and itemized. 2 U.S.C. § 434(b). The report must also

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1 include, a description of the "purpose" of the expenditure. 11 C.F.R. § 104.3(b)(4)(i)(A)-(B).  
2 Examples of descriptions provided in the regulations which meet the requirements of this section  
3 include, "dinner expenses, media, salary, polling, travel, party fees, phone banks, travel  
4 expenses, travel expense reimbursement and catering costs." *Id.* Vague descriptions of  
5 disbursements, such as "advance" or "miscellaneous," do not satisfy these requirements. *Id.*

6 In each report filed with the Commission, the Committee reported disbursements to  
7 "petty cash." However, like "miscellaneous," a description of "petty cash" would not meet the  
8 requirements of 11 C.F.R. § 104.3(b)(4)(i)(A)-(B). Moreover, because the Act requires that all  
9 political committee disbursements, other than petty cash disbursements of \$100 or less, must be  
10 made by check or similar draft drawn on a committee account established at a qualified  
11 committee depository, since the complaint states that no accounting or documentation was made  
12 for the \$1,000 in petty cash taken by Francis to the birthday gala, discussed *supra*, the  
13 Committee's failure to disburse money properly appears to have violated 2 U.S.C. §§ 432(h)(1)  
14 and 432(c)(5). *See* MUR 3974 (Congressman Charles B. Rangel) (finding a violation of sections  
15 432(h)(1) and 432(c)(5) when respondents wrote four checks to "cash" and failed to account for  
16 use of those funds).

17 Therefore, this Office recommends that the Commission find reason to believe that Russ  
18 Francis for Congress and Russ Francis, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(A) and  
19 434(b)(5) for failing to appropriately report and itemize disbursements, and that Russ Francis for  
20 Congress and Russ Francis, as treasurer, violated 2 U.S.C. §§ 432(h)(1) and 432(c)(5) for  
21 making petty cash disbursements exceeding \$100 without proper description.

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1           **C.    Conclusion**

2           Although it appears based on preliminary information that Respondents violated the Act,  
3 this Office believes that the Commission would spend a substantially disproportionate amount of  
4 time and limited taxpayer resources in pursuing Francis or the Committee civilly.<sup>12</sup>

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6  
7  
8           Initially this Office considered recommending opening a limited investigation, consisting  
9 of a formal subpoena to the Bank of Hawaii, where the Committee and Francis had accounts, and  
10 interviewing former campaign staff since, according to the complaint, "Russ Francis burned his  
11 bridges with virtually everyone who came into the campaign." Complaint at 9 (emphasis in  
12 complaint). This investigation would discover if Francis used any of the remaining Committee's  
13 cash-on-hand (a limited source of any civil penalty). However, even a limited investigation prior  
14 to a probable cause finding either for civil enforcement or a criminal referral of FECA violations  
15 would require disproportionate resources, and there is little likelihood of ever obtaining a civil  
16 penalty.<sup>13</sup>

17           First, preliminary information indicates that Respondents will be unlikely to cooperate in  
18 any civil investigation and that litigation would be necessary to enforce the Act. After the  
19 campaign, Francis was "incommunicado," not returning calls, letters or facsimiles. Complaint at

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<sup>12</sup> On November 25, 2002, the Commission approved new regulations for personal use. Substantively, the rules now permit a non-incumbent candidate to receive a salary from his campaign committee, but keep intact the prohibitions on personal use of funds directly, discussed *infra*. Thus, had the regulations been in effect, Francis could have drawn a salary and then used that salary for otherwise prohibited activity. However, Francis' bad faith and willful disregard for the Act and Commission's regulations at that time warrant further action.

<sup>13</sup> Francis may have committed a FECA criminal misdemeanor, under 2 U.S.C. § 437g(d), if he knowingly and willfully violated 2 U.S.C. § 439a.

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1 1,11. He later absconded from Hawaii to Lincoln, Nebraska, where we believe he works as a  
2 regional commercial airplane pilot. Because Francis' exact whereabouts are unknown,  
3 additional costs would be incurred in both locating and serving Francis.

4 Second, even if a court enters a civil judgment against Respondents, we believe that any  
5 civil penalty against Francis personally will likely go uncollected. Reviewing public records and  
6 an October 18, 2000 news article from the Honolulu Advertiser, it appears that Francis is deeply  
7 in debt and has evaded numerous creditors in the past, including both state and federal  
8 government entities. See Complaint at 20-21. Francis' reported debts total more than \$831,592.  
9 He has had civil judgments against him totaling \$22,169, federal tax liens against him totaling  
10 \$668,067, and a State of California tax lien against him for \$141,356. Francis filed for Chapter 7  
11 bankruptcy to avoid some of the civil judgments. The FEC assessed a \$3,500 civil penalty  
12 against the Committee for failure to file the 2000 Year-End Report, discussed *supra*, and in  
13 September 2001, referred the Committee to the Department of Treasury for non-payment. The  
14 Hawaii State Spending Commission appears to also have an outstanding \$2,000 fine for  
15 reporting violations in connection with Francis' 1999 run for the Hawaii City Council. Further,  
16 although Francis is a former professional football player, his entire NFL pension has purportedly  
17 been pledged to pay child support to his former wife. Based on the modest income Francis likely  
18 earns, a judgment in the FEC's favor would still place the FEC in a long line of unpaid creditors.

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17           As for the remaining FECA violations, discussed *supra*, this Office recommends that the  
18 Commission send an admonishment letter to Russ Francis and Russ Francis for Congress, but  
19 take no further action on those violations.

20 **III.   RECOMMENDATIONS**

- 21           1.   Find reason to believe that Russ Francis knowingly and willfully violated  
22               2 U.S.C. § 439a.  
23  
24           2.   Find reason to believe that Russ Francis for Congress and Russ Francis, as  
25               treasurer, knowingly and willfully violated 2 U.S.C. § 439a.

- 1           3.     Find reason to believe that Russ Francis for Congress and Russ Francis, as  
2           treasurer, violated 2 U.S.C. §§ 434(a), 434(b)(2)(A), 434(b)(4)(A), 434(b)(5),  
3           434(b)(8), 432(h)(1), and 432(c)(5).
- 4
- 5           4.     Take no further action with respect to the above respondents and approve an  
6           admonishment letter to Russ Francis and Russ Francis for Congress.
- 7
- 8           5.     Find no reason to believe that Steve McManus violated 2 U.S.C. § 441a(a)(1).
- 9
- 10          6.     Find no reason to believe that Russ Francis for Congress or Russ Francis violated  
11          11 C.F.R. § 116.7.
- 12
- 13          7.
- 14
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- 17          8.     Approve the appropriate letters.
- 18
- 19          9.     Close the file.
- 20

Lawrence H. Norton  
General Counsel

21  
22  
23  
24     8/29/03  
25     Date

26           BY: Rhonda J. Vosdingh  
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