

September 20, 2007

The Honorable Peter D. Keisler
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Attorney General Keisler:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests an immediate investigation into whether Rep. David Scott (D-GA) has violated federal tax laws and prohibitions on using congressional staff for campaign purposes.

Tax Law Violations

Rep. Scott and his wife, Alfredia Scott, own Dayn-Mark Advertising.¹ In 2003, the company began missing federal income tax payments that now total nearly \$154,000.² Dayn-Mark Advertising has also failed to pay over \$4,600 in local and state taxes since 1998.³ Since 2003, the Scotts have failed to pay \$23,200 in taxes on their home in Georgia.⁴ At the same time the Scotts were failing to pay their taxes, they increased their stock holdings from \$5,000 to about \$67,000 and bought a \$702,000 row house in Washington D.C.⁵ More than 40 tax liens have been placed against Rep. Scott’s home and business.⁶

Since Rep. Scott’s first congressional bid in 2002, his wife, two daughters, son-in-law and employees of Dayn-Mark have received disbursements from his campaign committee.⁷

¹ Kenneth P. Vogel, Rep. Scott’s Finances Questioned, *The Politico*, May 24, 2007 (attached as Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Rep. David Scott, Personal Financial Disclosures 2003-2006 (attached as Exhibit 2).

⁶ Bob Kemper, Scott Defends Campaign Finances; Taxes Scrutinized, *The Atlanta Journal Constitution*, May 25, 2007 (attached as Exhibit 3).

⁷ Vogel, *The Politico*, May 24, 2007.

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From 2002 through the July 2007 Federal Election Commission reporting period, Rep. Scott's campaign committee paid a total of \$124,795.98 to his wife, two daughters and son-in-law,⁸ and \$491,382.00 to Dayn-Mark Advertising and its employees.⁹ Dayn-Mark has been paid for rent, office supplies, canvassing management and postage.¹⁰ Rep. Scott has reimbursed himself \$98,952.75 for travel, billboards and fund-raising expenses.¹¹ In total, since 2002, Rep. Scott's campaign committee has disbursed \$715,330.17 to his family, his business, and himself.¹² While such payments are not in themselves illegal, it is notable that the payments to his family and company became larger and more frequent in 2003, around the same time Rep. Scott was falling behind on his taxes.¹³

As you know, any person who willfully attempts to evade or defeat a tax, in addition to other penalties, may be imprisoned up to 5 years and fined up to \$100,000 (\$500,000 in the case of a corporation).¹⁴ Any person who commits fraud or makes false statements in connection with filing a tax return may be imprisoned up to 3 years and fined up to \$100,000 (\$500,000 in the case of a corporation).¹⁵

By failing to pay taxes, Rep. Scott appears to have violated federal tax laws.

⁸ David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 4).

⁹ David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 5).

¹⁰ Id.

¹¹ *See* David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 6).

¹² *See* David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibits 4, 5, 6).

¹³ Vogel, *The Politico*, May 24, 2007.

¹⁴ 26 U.S.C. § 7201.

¹⁵ 26 U.S.C. § 7206.

Misuse of Official Resources

In July 2007, *The Politico* reported that a staff member alleged Rep. Scott misused his federally funded congressional staff and resources to run his political campaigns.¹⁶ The staffer, Robert Merrill, alleged that Rep. Scott had designated certain congressional employees to do only campaign work, that congressional employees often did campaign work on taxpayer time and used government office equipment, that congressional employees on taxpayer-funded time did political work from Rep. Scott's advertising firm and that these employees' absences compromised the productivity of the congressional office.¹⁷

Mr. Merrill forwarded e-mails to *The Politico* sent by Rep. Scott's staff from their congressional e-mail accounts organizing a political fundraiser.¹⁸ The e-mails included an itinerary that spelled out roles for Rep. Scott's congressional employees such as manning the sign-in table and taking photographs at the fundraiser.¹⁹

According to Mr. Merrill, he was fired from his congressional staff position in June of 2007 for contacting the media without approval.²⁰ Rep. Scott's office would not comment on Mr. Merrill's departure and issued a statement calling his allegations untrue.²¹

Federal law prohibits members of Congress from soliciting political contributions from employees.²² Violations of this section are subject to fines and up to three years imprisonment.²³ Federal election law defines "contribution" to include "any gift . . . or anything of value . . ."²⁴ Federal Election Commission regulations define "anything of value" to include all in-kind

¹⁶ Kenneth P. Vogel, Scott Aide Cries Foul, Gets Fired, *The Politico*, July 11, 2007 (Exhibit 7).

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Vogel, *The Politico*, July 11, 2007.

²¹ Id.

²² 18 U.S.C. § 602.

²³ Id.

²⁴ 2 U.S.C. § 431(8)(A)(I).

contributions. Unless specifically exempted under 11 C.F.R. part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services constitutes a contribution.²⁵ To the extent members of Rep. Scott's congressional staff were also performing activities for his political campaign, Rep. Scott illegally solicited contributions, in the form of service, from his employees.

In addition, pursuant to 31 U.S.C. § 1301(a), "[a]ppropriations shall be applied only to the objects for which the appropriations were made." Corresponding regulations of the Committee on House Administration provide that "[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else."²⁶

The Department of Justice has criminally prosecuted the misuse of official resources in the past. In 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business.²⁷ Similarly in 1979, a former member of Congress pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll were paid not for the performance of official duties, but rather for staffing and operating various campaign headquarters in the member's re-election campaign.²⁸

By using congressional staff to engage in campaign activity on official time and with the use of official resources, Rep. Scott appears to have violated federal law.

²⁵ 11 C.F.R. § 100.52(d)(1).

²⁶ Committee on House Administration, Members' Handbook, *Staff*.

²⁷ Campaign Booklet (*citing United States v. Bresnahan*, Criminal No. 93-0409 (D.D.C. 1993); *see* Senate Comm. on Rules and Administration, *Senate Election Law Guidebook 2000*, S. Doc. 106-14, 106th Cong., 2d Sess. 250).

²⁸ Campaign Booklet (*citing United States v. Clark*, Criminal No. 78-207 (W.D. Pa. 1978); *see id.* 249-50).

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Members of Congress, like all other citizens, must obey the law and must be held accountable for breaking the law. Given the information already known about Rep. Scott's actions, it would be appropriate for the Department of Justice to initiate an investigation to determine whether, as it appears, Rep. Scott violated tax law and the prohibition on using official resources for campaign purposes.

Thank you for your attention to this matter.

Sincerely,



Melanie Sloan
Executive Director
Citizens for Responsibility and
Ethics in Washington

Enclosures

cc (w/o enclosures): Richard Morrison
Acting Assistant Attorney General
Tax Division

William Welch
Chief
Public Integrity Section

Linda E. Stiff
Acting Commissioner
Internal Revenue Service

The Honorable Stephanie Tubbs Jones, Chair
The Honorable Doc Hastings, Ranking Member
House Committee on Standards of Official Conduct
U.S. House of Representatives