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BEFORE THE FEDERAL ELECTION
COMMISSION

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In the Matter of)
MUR 6476) DISMISSAL AND
LOIS J. FRANKEL, LOIS FRANKEL) CASE CLOSURE UNDER THE
FOR CONGRESS, AND JUDITH) ENFORCEMENT PRIORITY SYSTEM
ZAMORE AS TREASURER)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6476 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. The Office of General Counsel therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6476.

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1 In this matter, the Complainant alleges that Lois J. Frankel, Lois Frankel for Congress,
2 and Judith Zamore,¹ in her official capacity as treasurer (the "Committee" or "Respondents"),
3 violated the Act and Commission regulations by failing to properly disclose disbursements
4 related to the Committee's expenses. The Complainant also alleges that unnamed individuals
5 paid these expenses, thereby making in-kind contributions to the Committee.

6 The Respondents deny that any other individuals paid for campaign expenses. Instead,
7 they state that the expenses related to the start-up of Frankel's campaign were incurred just
8 weeks before the Commission's reporting deadline and were largely paid by the candidate from
9 her personal funds. Further, the Committee amended its 2011 April Quarterly Report to reflect
10 all disbursements for campaign expenses made prior to the March 31, 2011 reporting deadline,
11 and requests that the Commission, due to the *de minimis* nature of the disbursements in question,
12 and the fact that the disbursements were disclosed more than a year prior to the August 2012
13 primary election, dismiss this matter.

14 In support of the allegations, the Complainant points to the Committee's 2011 April
15 Quarterly Report, filed with the Commission on April 15, 2011, which reveals that the
16 Committee accepted \$254,605 in contributions, but disclosed only \$706.04 in net operating
17 expenditures. The Complainant alleges that the Committee must have had other undisclosed
18 expenses in order to raise these funds, including expenses related to "direct mail fund-raising
19 letters," creating and maintaining a Committee website, hiring a campaign consultant,²
20 incorporating the Committee and paying for a registered agent, and establishing phone services

¹ In its Statement of Organization filed with the Commission on April 5, 2011, the Committee named Lois Frankel as its treasurer. The Committee amended its Statement of Organization on June 20, 2011, naming Judith Zamore as its treasurer.

² See Anthony Man, "Outgoing Mayor to Challenge U.S. Rep Allen West," South Florida Sun Sentinel, March 22, 2011 (Reporting that Frankel hired Representative Ron Klein's 2006 campaign manager, Brian Smoot, as a consultant).

1 for the Committee, but did not disclose any disbursements for these types of expenses. The
2 Complainant states that there is "little doubt" that the Respondents used direct mailings in an
3 effort to raise funds, citing to a news article and a blog posting that reference a "fundraising
4 letter" that solicited funds, stating that it was "critically important" to raise over \$100,000 prior
5 to the end of the Commission's quarterly reporting deadline. See "Six-figure Initial Haul for
6 Frankel's Congressional Campaign," George Bennett, Post on Politics, at
7 [http://www.postonpolitics.com/2011/03/six-figure-initial-haul-for-frankels-congressional-](http://www.postonpolitics.com/2011/03/six-figure-initial-haul-for-frankels-congressional-campaign)
8 [campaign](http://www.postonpolitics.com/2011/03/six-figure-initial-haul-for-frankels-congressional-campaign).

9 In the response, the Respondents explain that the "fundraising letter" mentioned in the
10 aforementioned blog post was actually an e-mail, which did not result in any expenditures. Thus,
11 the Respondents contend that the letter did not trigger the reporting requirements under the Act
12 and Commission regulations. The Respondents submitted a copy of the solicitation e-mail,
13 which included the quote attributed to a "fundraising letter." Response, Attachment A. Further,
14 although the Respondents admit to hiring a consultant from the consulting firm 4C Partners,
15 LLC, they maintain that they did not pay the consultant until after March 31, 2011, the end of the
16 reporting period. And, in fact, the Committee disclosed its first payment to the consultant, made
17 on April 14, 2011, in its 2011 July Quarterly Report filed with the Commission on July 15, 2011.
18 In addition, in its 2011 July Quarterly Report, the Committee disclosed a reimbursement to Craig
19 Auster on April 21, 2011, which the Respondents claim included the cost of the campaign's post
20 office box.

21 The Respondents admit, however, that the Committee did not disclose three
22 disbursements in its 2011 April Quarterly Report: (1) an in-kind contribution from the candidate
23 to the Committee for \$450.17 for the payment of the Committee's incorporation fees and

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1 registered agent fees; (2) an in-kind contribution from the candidate to the Committee for \$63.58
2 for telephone costs; and (3) an unitemized disbursement for \$44.32 for internet domain fees
3 related to the creation of the Committee's website. A review of the Committee's disclosure
4 reports shows that the Committee amended its 2011 April Quarterly Report on July 15, 2011, to
5 disclose these disbursements, most likely after the Respondents received notification of this
6 complaint. Thus, the Committee admits that it failed to disclose disbursements totaling \$558.07
7 related to campaign expenses in its 2011 April Quarterly Report filed with the Commission, in
8 violation of 2 U.S.C. § 434(b)(6)(A), but after it learned of the complaint, the Committee took
9 remedial action and amended its disclosure reports to include the missing disbursements.
10 Additionally, there is no information suggesting that unnamed individuals were financing the
11 campaign.

12 Based on the forgoing reasons, in light of the low amount in violation, and the fact that
13 remedial action has been taken by the Committee, further Enforcement action is unwarranted.
14 Accordingly, under EPS, the Office of General Counsel has scored MUR 6476 as a low-rated
15 matter and, in furtherance of the Commission's priorities, as discussed above, the Office of
16 General Counsel therefore believes that the Commission should exercise its prosecutorial
17 discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

18 RECOMMENDATIONS

19 The Office of General Counsel recommends that the Commission dismiss MUR 6476,
20 close the file, and approve the appropriate letters.

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11/14/11
Date

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