



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**FEB -5 2014**

John Siegal  
Baker Hostetler  
45 Rockefeller Plaza  
New York, New York 10111

RE: MUR 6554  
Friends of Weiner

Dear Mr. Siegal:

On April 18, 2012, the Federal Election Commission notified your clients, Friends of Weiner and Nelson Braff in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on January 28, 2014, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Blumberg", with a long, sweeping horizontal line extending to the right.

Peter Blumberg  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Friends of Weiner and **MUR: 6554**  
6 Nelson Braff in his official capacity as treasurer  
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8 **I. INTRODUCTION**

9 Complainant, Whitney Burns, alleges that Friends of Weiner and Nelson Braff in his  
10 official capacity as treasurer ("Committee" or "Friends of Weiner"), principal campaign  
11 committee of Representative Anthony D. Weiner, violated the Federal Election Campaign Act of  
12 1971, as amended (the "Act") and Commission regulations by failing to report over \$68,000 in  
13 outstanding debts owed to her for compliance services she provided to the Committee from 2001  
14 to 2009.<sup>1</sup> Compl. at 1 (Apr. 10, 2012). The Committee contends it does not owe any payments  
15 to Burns, and therefore it did not fail to report any debts to Burns in its disclosure reports. Resp.  
16 at 1 (May 31, 2012).

17 For reasons discussed below, the Commission dismisses, as a matter of prosecutorial  
18 discretion, the allegations that Friends of Weiner and Nelson Braff in his official capacity as  
19 treasurer violated 2 U.S.C. § 434(b)(8). *See Heckler v. Chaney*, 470 U.S. 821 (1985).

20 **II. FACTUAL BACKGROUND**

21 Friends of Weiner was the subject of Commission audits for the 2000 and 2004 election  
22 cycles. Burns alleges in the Complaint that the Committee owes her over \$68,000 for  
23 compliance services she provided to the Committee for these audits, and that the Committee has  
24 failed to disclose this debt to the Commission. For the 2000 election cycle audit, Burns claims  
25 that Friends of Weiner owes her \$15,258.75 for 404.5 hours of compliance services she provided  
26 from 2001 to 2003. Compl. at 1-2. In support of her claim, Burns provided a one-page invoice,

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<sup>1</sup> On June 16, 2011, Weiner resigned from Congress and ended his candidacy for the 2012 primary election.

1 dated September 2, 2003, billing the Committee for services allegedly provided from 2001 to  
2 2003 (the invoice claims 234.75 hours, not 404.50, for a total of \$15,258.75). *Id.*, Ex. 1. The  
3 invoice is billed to "Friends of Weiner" but shows no Committee address or contact person. *Id.*  
4 For the 2004 election cycle audit, Burns claims that Friends of Weiner owes her \$53,077.50 for  
5 529.5 hours of services she provided from 2005 to 2009. *Id.* at 2-3. Burns provided a second  
6 invoice, dated August 21, 2009, which is identical in form to the first invoice. *Id.*, Ex. 3.  
7 Complainant provided no proof of contemporaneous mailing for either invoice.<sup>2</sup>

8 Burns asserts that she never received any payments for these services despite making  
9 repeated attempts "over the years" to collect the debt, including having multiple conversations  
10 with Friends of Weiner staff about the debt. *Id.* at 4. On June 17, 2011, Burns sent a certified  
11 letter to the Committee treasurer with copies of the invoices requesting payment.<sup>3</sup> *Id.* at 3, Ex. 4.  
12 In the letter, Burns states she had difficulty billing Friends of Weiner and obtaining a  
13 commitment on a payment schedule due to multiple staff changes and "the fact that the audits  
14 were not a popular subject with the Congressman's senior staff, or the Congressman himself."  
15 *Id.* The letter also states that Burns agreed to provide services for the 2004 audit on the  
16 condition that she would be paid for the services rendered for the 2000 audit, but that she never  
17 received any payments. *Id.* Finally, Burns notes in the letter that the Friends of Weiner's  
18 disclosure reports show that it "appears to have sufficient funds" to pay her, but that her

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<sup>2</sup> The Commission's Audit Division provided information and documents to the Office of General Counsel ("OGC") regarding Burns's involvement with the 2004 Friends of Weiner audit. The Audit Division noted that Burns and an attorney from the law firm of Perkins Coie, worked together on the 2004 audit.

<sup>3</sup> Burns sent her June 17, 2011, letter the day after Weiner resigned from Congress. Friends of Weiner claims that this timing shows that Burns's Complaint is "nothing more than a strike suit." Resp. at 2. Burns states that she hesitated in filing a complaint with the Commission or suing the campaign while Weiner was in Congress because of concerns that taking such actions would damage her business. Compl. at 4.

1 "invoices have not been listed as a debt owed to the vendor." *Id.* Burns also asserts in the  
2 Complaint that she notified the Committee of the outstanding debt again on January 27, 2012,  
3 when she contacted the person who prepared the Committee's 2011 Year-End Report. *Id.* at 3.  
4 The Committee's disclosure reports do not reflect any disbursements to or any debt owed to  
5 Burns.

6 Burns alleges that Friends of Weiner's failure to disclose these debts violated 2 U.S.C.  
7 § 434(b)(8), 11 C.F.R. §§ 104.3(d) and 104.11(a). *Id.* at 1. Burns further alleges that even if the  
8 Committee disputes the debt, its failure to report it is still a violation of 11 C.F.R. § 116.10(a).  
9 *Id.*

10 In response, Friends of Weiner argues that it has not violated the Act or Commission  
11 regulations and requests that the Commission dismiss the matter. Resp. at 1. The Committee  
12 asserts that it does not owe any debt to Burns because it never had a contract with her, did not  
13 hire her, and never directed or supervised her. Resp. at 2. Friends of Weiner also asserts that, to  
14 the extent she performed services for the Committee "she did so at the request and under the  
15 direction of a law firm" representing Friends of Weiner, noting that Friends of Weiner relied on  
16 counsel for its compliance work and that counsel used a consultant for assistance with that work.  
17 *Id.*

18 Friends of Weiner further states that Burns did not bill Friends of Weiner for her services  
19 until Representative Weiner's final days in office and is merely using the Commission's  
20 enforcement process "to buttress a baseless — and substantially time-barred — commercial  
21 claim." Resp. at 1. The Committee states that it first heard from Burns regarding the alleged  
22 debt on June 17, 2011, the day after Weiner resigned from Congress, and when Weiner was  
23 involved in a public controversy. The Committee alleges the invoices submitted with the letter

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1 were "backdated to September 2, 2003, and August 21, 2009, purportedly for work done on 2000  
2 and 2004 audits." *Id.* at 2.

3 Finally, the Committee states that it relied on guidance from Commission staff on how to  
4 handle the demand for payment, explaining that it contacted Commission staff regarding the  
5 monetary claim and was advised that under the circumstances described by the Committee at the  
6 time, no disclosure was required. *Id.* at 1. The available information shows that the Committee  
7 filed an Advisory Opinion Request on how to respond in the matter at issue, discussed the issue  
8 with staff from the Policy Division, and subsequently withdrew its request.<sup>4</sup> *Id.*

### 9 III. ANALYSIS

10 The Act and Commission regulations require political committees to continuously report  
11 the amount and nature of their outstanding debts until those debts are extinguished. 2 U.S.C.  
12 § 434(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a). Where there is a "disputed debt," the political  
13 committee must report the disputed debt if the creditor has provided "something of value" to the  
14 political committee. *Id.* § 116.10(a). A "disputed debt" is "an actual or potential debt or  
15 obligation owed by a political committee, including an obligation arising from a written contract,  
16 promise or agreement to make an expenditure, where there is a bona fide disagreement between  
17 the creditor and the political committee as to the existence or amount of the obligation owed by  
18 the political committee." *Id.* § 116.1(d). Until the dispute is resolved, the political committee

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<sup>4</sup> On January 31, 2012, the Committee treasurer, submitted a request for an advisory opinion on how to handle a demand for payment from a vendor for a debt it asserted was not bona fide. In its request, the Committee explained that it was contacted by a vendor with whom it never had a contract, for services allegedly provided to the Committee many years ago, most of which was past any applicable statute of limitations, and for which the vendor had not previously claimed any unpaid bills or provided any contemporaneous records until now. On March 28, 2012, the Committee withdrew its request for an advisory opinion after concluding, based on guidance from the Policy Division regarding the debt reporting regulations, that the Committee had no reporting obligation with respect to the demand. *Resp.* at 1.

1 must disclose any amounts paid to the creditor, any amount the political committee admits it  
2 owes, and the amount the creditor claims is owed. *Id.* § 116.10(a).

3 The Complaint and other available information in the record do not provide information  
4 sufficient to establish that any actual or disputed debt existed between Friends of Weiner and  
5 Burns from 2001 (when Burns's services were allegedly first rendered) to June 17, 2011 (when  
6 Burns sent a certified letter to Friends of Weiner demanding payment). First, Burns has  
7 produced no evidence that she had a contract with Friends of Weiner. Burns attached to the  
8 Complaint invoices itemizing charges for services provided to Friends of Weiner, *see* Compl.,  
9 Exs. 1, 3, but there is no corroboration that those documents were created and sent  
10 contemporaneously with the dates on the invoices (September 2, 2003 and August 21, 2009), and  
11 Friends of Weiner asserts that those invoices are backdated, *see* Resp. at 2. Similarly, though  
12 Burns asserts that in addition to sending the invoices she "made repeated attempts over the years  
13 to collect the debt owed by Weiner" and "had numerous conversations with Weiner staff about  
14 the outstanding debt," *see* Compl. at 4, she has provided no names, dates, e-mails, letters, or  
15 contemporaneous documents to support these conclusory assertions.<sup>5</sup>

16 Friends of Weiner denies having a contractual relationship with Burns, hiring her, being  
17 in privity with her, or otherwise directing or supervising her services. Resp. at 2. As noted  
18 above, Friends of Weiner asserts that to the extent Burns provided it services, "she did so at the  
19 request and under the direction of a law firm" representing Friends of Weiner, and the  
20 Committee therefore had no financial responsibility for any such services. *Id.* Indeed,

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<sup>5</sup> By contrast, in previous matters involving allegations of unpaid services or disputed debts, there has typically been evidence of a past or present contractual relationship with the political committee or the committee has acknowledged the existence of a relationship, but disputed that a debt was owed. *See, e.g.,* MUR 5624 (Jaliman) (committee acknowledged that complainants provided services to the campaign for which they were initially unpaid, but claimed that complainants primarily served as volunteers, and thus the value of the services did not need to be reported).

1 Committee disclosure reports reflect numerous disbursements to Perkins Coie, LLC, during the  
2 period from 2003 to 2011 for legal services provided to Friends of Weiner, but no disbursements  
3 to Burns.<sup>6</sup> Accordingly, there is insufficient information to establish that there is reason to  
4 believe an actual or disputed debt existed between Friends of Weiner and Burns from 2001 to  
5 June 2011, that Friends of Weiner would have been required to disclose during that time under  
6 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a).

7 With the record now before the Commission, whether the letter Burns sent to Friends of  
8 Weiner on June 17, 2011, her contact with the Committee on January 27, 2012, and information  
9 that she was involved with the audits, created a “disputed debt” that Friends of Weiner was  
10 required to subsequently disclose, is a closer question. Unlike the invoices Burns purportedly  
11 sent to Friends of Weiner in 2003 and 2009, the June 17, 2011 letter requesting payment is  
12 substantiated by the record, including the Committee’s own acknowledgement that it received  
13 the letter. Further, the available evidence indicates that Burns may have “provided something of  
14 value” to the Committee under section 116.10(a) in the form of services in connection with the  
15 Commission audits, although it is disputed whether any such services were provided directly to  
16 the Committee or through sub-contracted services.

17 Nevertheless, in light of the unique circumstances presented here, including that over ten  
18 years passed from the time Friends of Weiner allegedly began incurring the debt to the time that  
19 Burns demanded payment and the nature of the relationship between Burns and the Committee is  
20 disputed, the Commission dismisses the allegations that Friends of Weiner and Nelson Braff in  
21 his official capacity as treasurer violated 2 U.S.C. § 434(b)(8) as a matter of prosecutorial  
22 discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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<sup>6</sup> See *supra* n.2, describing Burns’s work with Perkins Coie in connection with the audits.

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