

FEDERAL ELECTION COMMISSION WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
North Carolina Democratic Party and Charles E. Reece in his official	Ì	MIID (222
)	MUR 6732
capacity as treasurer)	

STATEMENT OF REASONS OF CHAIRMAN MATTHEW S. PETERSEN AND COMMISSIONERS CAROLINE C. HUNTER AND LEE E. GOODMAN

This matter began with a complaint alleging that the North Carolina Democratic Party (the "Party") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by overstating its cash on hand and failing to disclose outstanding debts. The alleged reporting violations resulted in little, if any, public harm, and the Party took extensive action to amend its disclosure reports in response to the Complaint. Accordingly, we voted against finding reason to believe and to close the file as an appropriate exercise of our prosecutorial discretion.¹

I. Background

A. Overstatement of Cash on Hand

The complaint alleged that the Party overstated its cash on hand by \$14,115 in its February 2013 FEC report.² In that report, the Party disclosed that it had received \$14,115 on January 15, 2013, from the State of North Carolina for "Tax Check Off Funds." According to the complaint, however, as of January 15, 2013, the North Carolina Department of Revenue had transferred "income tax designations" only to an account maintained by the State of North Carolina, not to party committees' individual accounts.³ In its response, the Party explained that it included the receipt on its February 2013 report because, "[b]ased on conversations with the

Vote Certification in MUR 6732 (Oct. 30, 2015). Commissioner Goodman has set forth additional explanation for his vote. See Statement of Reasons of Commissioner Lee E. Goodman, MUR 6732 (North Carolina Democratic Party) (Dec. 5, 2016).

Compl. at 1.

Id.

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state," it believed that it would be receiving the payment.⁴ The Party subsequently voided the receipt to reverse the transaction.⁵

B. Reporting Debts and Obligations

The complaint also alleged that the Party violated 11 C.F.R. § 104.11(b) when it failed to disclose any debts or obligations on its reports covering January 1, 2012, to February 28, 2013. The complaint did not identify any specific debts or obligations that should have been reported.

In its response, the Party explained that it typically paid vendor invoices within days or weeks of their receipt. When the end of a reporting period fell between the Party's receipt of an invoice and payment of the invoice, the Party did not disclose the invoiced amount as an outstanding debt on its disclosure report for the month in which the invoice was received. Instead, the Party generally disclosed its payment of the invoice as a disbursement on the following month's report. The Party asserted that its prior staff had a "good faith belief... that these invoices were not required to [be included] on any debt schedules due to the speed in which they were paid."

In its response, the Party also stated that as a result of the complaint and staff transition, it "undert[ook] an exhaustive review of all of its reporting practices in 2012 and 2013," which resulted in it filing "comprehensive amendments" to fourteen reports. 11 As discussed above, "most of the debts and obligations included" in the amended reports "resulted from invoices received at the end of a month and that were paid at the beginning of the next month." And "[m]ost of these invoices were paid within 5 to 7 days of receipt." The Party identified \$785,999.08 in debts and obligations that it failed to include on reports, 14 and amended fourteen

Resp. at 1.

Id.; see also Amended 2013 March Monthly Report at 15 (Aug. 27, 2013) (listing receipt of -\$14,115 on Schedule A from the State of North Carolina, described as "Voided Transaction . . . 1/15/2013").

⁶ Compl. at 1.

⁷ Resp. at 2.

⁸ *Id*.

Id. There were some exceptions. The First General Counsel's Report identifies \$1,075,537 of unreported outstanding debt. The discrepancy results from some of the Party's \$786,000 in unpaid expenses that carried across more than one month. These exceptions are not enough to change the disposition of this matter in light of the Party's overall financial activity during the 2014 election cycle.

¹⁰ *Id*.

¹¹ Id. at 2.

^{12 ·} Id.

¹³ *Id*.

¹⁴ *Id*.

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earlier reports.¹⁵ Of the \$785,999.08 in debts and obligations disclosed in these amendments, the Party had paid \$630,000 within 30 days of receiving an invoice, and \$450,000 within ten days.¹⁶

II. Analysis

Neither alleged violation warrants further use of the Commission's resources. The Act requires committees to disclose, *inter alia*, their cash on hand at the beginning of each reporting period and receipts.¹⁷ Due to a miscommunication with the State of North Carolina, the Party misreported a single receipt and, thus, also misreported its cash on hand. Given the circumstances that gave rise to the mistake, it is unlikely the Party will repeat the error. Additionally, the Party has already taken corrective action to clarify its reports. For these reasons, this alleged violation does not warrant further use of Commission resources.

The Act also requires that committees report "the amount and nature of outstanding debts and obligations." The Commission's corresponding debt reporting regulations, however, are not the most intuitive. The regulations generally require that debts "which remain outstanding shall be continuously reported until extinguished." But for debts and obligations that do not exceed \$500, a committee need only report debts when payment is made, or "not later than 60 days after such obligation is incurred." For debts and obligations over \$500, reporting requirements are more complex: Routine "regularly reoccurring administrative expense[s]," like rent or salary, are not reported as outstanding debt until after the payment due date. All other debts and obligations over \$500 "shall be reported as of the date on which the debt or obligation is incurred." Commission regulations do not define when a debt is considered "incurred." And like all disbursements, payments towards a debt must be disclosed.

In response to the complaint, the Party "undert[ook] an exhaustive review of all of its reporting practices" and amended fourteen reports covering thirteen months.²⁵ Those reports

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15
         FGCR at 4.
16
         Resp. Ex. A.
17
         52 U.S.C. § 30104(b)(1)-(3).
18
         52 U.S.C. § 30104(b)(8).
19
         11 C.F.R. § 104.11(a).
20
         11 C.F.R. § 104.11(b).
21
         Id.
22
         Id.
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Another complexity is that some uncertainty is built into the reporting regime. The regulation requires committees to report estimates if, at the reporting deadline, they do not know the final amount of an incurred debt. 11 C.F.R. § 104 11(b). Thus, committees' outstanding debts are often unclear until later reports are filed.

²⁴ 52 U.S.C. § 30104(b)(4)-(6); 11 C.F.R. § 104.3(b)(1), (3).

²⁵ Resp. at 2.

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identified \$785,999.08 in additional debts that had been disclosed. The majority of these debts were invoiced at the end of each reporting period, that is, at the end of each month. The Party then paid most of these invoices within just 5 to 7 days of their receipt, and paid approximately 80% within 30 days of receiving the invoice. ²⁶ It then disclosed its payments on the following month's report as disbursements. The Party's staff at the time had a good-faith belief that such promptly paid invoices did not constitute "outstanding debts" that must be disclosed, and, moreover, its prompt payment and disbursement reporting practices refute any attempt to conceal expenses.

Under these circumstances, seeking a civil penalty is not necessary.²⁷ Dismissal is also consistent with how the Commission has disposed of similar matters in the past²⁸ and the Commission's enforcement priorities for our limited resources.²⁹

²⁶ *Id.*, Ex. A.

See FEC v. Friends of Jane Harman, 59 F. Supp. 2d 1046, 1059 (C.D. Cal. 1999) (rejecting civil penalty given "the nature of the violations involved in this case, [and] the absence of any showing . . . that defendants acted in bad faith"); FEC v. Ted Haley Congressional Committee, 852 F.2d 1111, 1116 (9th Cir. 1988) (affirming district court's holding that "the circumstances . . . and clear innocence of [appellees'] motives leaves no justifiable grounds for assessment of penalties").

See MURs 6606, 6572, 6676 (Tarkanian for Congress) (dismissal of misreported debt in part due to remedial actions taken); MUR 6712 (Kreegel for Congress) (dismissal of failure to disclose disputed debt; reports amended after complaint filed); MURs 6636, 6629, 6626 (Mittman for Congress) (same); MUR 6605 (Gary Latanich for Congress) (same); MUR 6460 (Friends of Jim Bender/Bender for Senate) (dismissal of failure to disclose disputed debt; remedial action after complaint filed); MUR 6165 (Patriots for Crimmins) (same); see also

²⁹ See Heckler v. Chaney, 470 U.S. 821 (1985).

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Accordingly, we voted to close the file.

Matthew S. Petersen

Chair

Date 8, 16

Lee E. Goodman

Commissioner

Dec. 8, Zd6

Date

Caroline C. Hunter

Commissioner

Date