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**BEFORE THE FEDERAL ELECTION COMMISSION**

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FEDERAL ELECTION COMMISSION  
4 11 2014

2014 OCT 27 AM 11: 07

In the Matter of )

MUR 6909 )

Chuck Fleischmann for Congress Committee, Inc. )

Randall B. Hebert, as treasurer )

DISMISSAL AND

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY

SYSTEM

CELA

**GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a  
12 basis to allocate its resources and decide which matters to pursue. These criteria include, without  
13 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into  
14 account both the type of activity and the amount in violation; (2) the apparent impact the alleged  
15 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the  
16 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as  
17 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing  
18 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial  
19 discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored  
20 MUR 6909 as a low-rated matter and has determined that it should not be referred to the Alternative  
21 Dispute Resolution Office.<sup>1</sup>

22 The Office of General Counsel recommends that the Commission exercise its prosecutorial  
23 discretion and dismiss the allegations that Chuck Fleischmann for Congress Committee, Inc. and  
24 Randall B. Hebert in his official capacity as treasurer (collectively the "Committee") violated the Act  
25 by accepting prohibited and excessive contributions and by utilizing contributions designated for the  
26 2014 general election during the 2014 primary.

<sup>1</sup> The EPS rating information is as follows:  
Committee filed: February 10, 2015.

1 The allegations in the complaint are based on two Requests for Additional Information  
2 ("RFAIs") sent to the Committee by the Commission's Reports and Analysis Division ("RAD").<sup>2</sup>  
3 First, the Complainant alleges that the Committee did not resolve the issue of a \$20,000 transfer from  
4 a purportedly unauthorized fundraising entity, Texas Opportunity Partnership ("TOP").<sup>3</sup> Second, the  
5 Complainant alleges that the Committee did not redesignate to the general election excessive primary  
6 election contributions.<sup>4</sup>

7 The Committee responds that it timely resolved the issues raised in the two RFAIs.<sup>5</sup>  
8 Specifically, the Committee asserts that it received less than \$4,000, not \$20,000, from TOP, a  
9 fundraising organization, and it followed RAD's instructions and amended its Statement of  
10 Organization to authorize TOP as its joint fundraising representative.<sup>6</sup> Further, the Committee states  
11 it redesignated or refunded the excessive contributions, in accordance with RAD's instructions, and it  
12 amended its disclosure reports accordingly.<sup>7</sup>

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<sup>2</sup> Compl. at 1-2 (Dec. 19, 2014).

<sup>3</sup> Texas Opportunity Partnership is a joint fundraising committee that registered with the Commission in February 2014 and terminated in May 2014.

<sup>4</sup> *Id.* at 1. The Complainant also alleges that the Committee committed "voter fraud" by using an image of an opposing candidate in a mailer and misrepresenting that candidate's position on an issue. *Id.* at 3. The Committee's treasurer responds that he does not believe that the flyer presented by the complaint violates the Act, and says that he knows nothing of the Committee's campaign strategy or advertisements. Resp. at 2 (Feb. 9, 2015). To the extent that this claim could be read to allege that the Committee committed fraudulent misrepresentation, *see* 52 U.S.C. § 30124(a); 11 C.F.R. § 110.16, that claim would fail because a reasonable person would not believe that the Fleischmann Committee was speaking on behalf of the opponent, and the mailer contains a disclaimer stating that the Committee paid for it. Further, Complainant alleges that despite the redesignation of campaign contributions, the Committee used general election funds during the 2014 primary. There is, however, no information to suggest that the Committee improperly used general election funds.

<sup>5</sup> Resp. at 1.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> *Id.* at 1.

1 An individual could not make a contribution to a candidate with respect to any election in  
2 excess of the legal limit, which was \$2,600 per election during the 2014 election cycle.<sup>8</sup> A primary  
3 election and a general election are each considered separate "elections" under the Act, and the  
4 contribution limits are applied separately with respect to each election.<sup>9</sup> Candidate committees are  
5 prohibited from accepting excessive contributions.<sup>10</sup> If a committee receives a contribution that  
6 appears to be excessive, the committee must either return the contribution to the donor or deposit the  
7 contribution into its federal account and keep enough funds in the account to cover all potential  
8 refunds until the legality of the contribution is established.<sup>11</sup> Alternatively, a committee may  
9 "presumptively redesignate" the excessive portion of a contribution to another election, provided  
10 that, within 60 days of receipt of the contribution, the committee notifies the contributor of the  
11 amount of the contribution that was redesignated and of the option to request a refund.<sup>12</sup> Finally,  
12 each candidate for federal office shall designate in writing a political committee to serve as its  
13 principal campaign committee, and may also designate a political committee established solely for  
14 the purpose of joint fundraising as an authorized committee.<sup>13</sup>

15 The Committee concedes it received excessive contributions, but maintains that it properly  
16 and timely responded to the Commission's Request for Additional Information ("RFAI") by  
17 redesignating the primary contributions for use in the 2014 general election, and amending its  
18 disclosure reports to reflect these redesignations. The Committee also, in response to the RFAI,

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<sup>8</sup> 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

<sup>9</sup> 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6).

<sup>10</sup> 52 U.S.C. § 30116(f).

<sup>11</sup> 11 C.F.R. § 103.3(b)(3) and (4).

<sup>12</sup> 11 C.F.R. § 110.1(b)(5)(ii)(B) and (C).

<sup>13</sup> 52 U.S.C. § 30102(e)(1) and (3).

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1 amended its Statement of Organization to designate TOP as a joint fundraiser on behalf of the  
2 Committee.<sup>14</sup>

3 Therefore, in furtherance of the Commission's priorities, relative to other matters pending on  
4 the Enforcement docket, and in light of the corrective actions taken by the Committee, the Office of  
5 General Counsel believes that the Commission should exercise its prosecutorial discretion and  
6 dismiss the matter.<sup>15</sup>

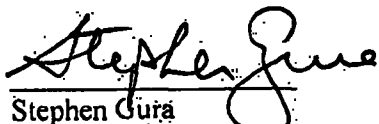
7 RECOMMENDATIONS

- 8  
9 1. Dismiss the allegation that Chuck Fleischmann for Congress Committee, Inc. and Randall  
10 B. Hebert in his official capacity as treasurer violated 52 U.S.C. §§ 30116(a)(1)(A),  
11 30116(f), and 11 C.F.R. § 110.1(b)(1);  
12  
13 2. Approve the Factual and Legal Analysis;  
14  
15 3. Approve the appropriate letters; and  
16  
17 4. Close the file as to all respondents.

18  
19 Kathleen M. Guith  
20 Acting Associate General Counsel  
21 for Enforcement  
22

23  
24  
25 10.27.16  
26 Date

27  
28 BY:

  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

<sup>14</sup> RAD confirms that the Committee's response to the RFAs fully resolved the joint fundraising issue and brought the excessive contribution issue below RAD's threshold for referral.

<sup>15</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).



Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination  
& Legal Administration



Wanda D. Brown  
Attorney

Attachment:  
Factual and Legal Analysis

1-000444041-1

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Chuck Fleischmann for Congress Committee, Inc. MUR 6909  
Randall B. Hebert, as treasurer

**I. INTRODUCTION**

This matter was generated by a Complaint filed by Dennis E. Norwood ("Complainant") on December 19, 2014, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Chuck Fleischmann for Congress Committee, Inc., and Randall B. Hebert in his official capacity as treasurer ("Committee"). It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

**II. FACTUAL AND LEGAL ANALYSIS**

The Complainant alleges that the Committee violated the Act when it accepted prohibited and excessive contributions and by utilizing contributions designated for the 2014 general election during the 2014 primary. The allegations in the complaint are based on two Requests for Additional Information ("RFAs") sent to the Committee by the Commission's Reports and Analysis Division ("RAD").<sup>1</sup> First, the Complainant alleges that the Committee did not resolve the issue of a \$20,000 transfer from a purportedly unauthorized fundraising entity, Texas Opportunity Partnership ("TOP").<sup>2</sup> Second, the Complainant alleges that the Committee did not redesignate to the general election excessive primary election contributions.<sup>3</sup>

<sup>1</sup> Compl. at 1-2 (Dec. 19, 2014).

<sup>2</sup> Texas Opportunity Partnership is a joint fundraising committee that registered with the Commission in February 2014 and terminated in May 2014.

1 The Committee responds that it timely resolved the issues raised in the two RFAs.<sup>4</sup>  
2 Specifically, the Committee asserts that it received less than \$4,000, not \$20,000, from TOP, a  
3 fundraising organization, and it followed RAD's instructions and amended its Statement of  
4 Organization to authorize TOP as its joint fundraising representative.<sup>5</sup> Further, the Committee  
5 states it redesignated or refunded the excessive contributions, in accordance with RAD's  
6 instructions, and it amended its disclosure reports accordingly.<sup>6</sup>

7 An individual could not make a contribution to a candidate with respect to any election in  
8 excess of the legal limit, which was \$2,600 per election during the 2014 election cycle.<sup>7</sup> A  
9 primary election and a general election are each considered separate "elections" under the Act,  
10 and the contribution limits are applied separately with respect to each election.<sup>8</sup> Candidate  
11 committees are prohibited from accepting excessive contributions.<sup>9</sup> If a committee receives a  
12 contribution that appears to be excessive, the committee must either return the contribution to the

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<sup>3</sup> *Id.* at 1. The Complainant also alleges that the Committee committed "voter fraud" by using an image of an opposing candidate in a mailer and misrepresenting that candidate's position on an issue. *Id.* at 3. The Committee's treasurer responds that he does not believe that the flyer presented by the complainant violates the Act, and professes that he handled only the responsibilities of a committee treasurer, and says that he knows nothing of the Committee's campaign strategy or advertisements. Resp. at 2 (Feb. 9, 2015). To the extent that this claim could be read to allege that the Committee committed fraudulent misrepresentation, see 52 U.S.C. § 30124(a); 11 C.F.R. § 110.16, that claim would fail because a reasonable person would not believe that the Fleischmann Committee was speaking on behalf of the opponent, and the mailer contains a disclaimer stating that the Committee paid for it. Further, Complainant alleges that despite the redesignation of campaign contributions, the Committee used general election funds during the 2014 primary. There is, however, no information to suggest that the Committee improperly used general election funds.

<sup>4</sup> Resp. at 1.

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

<sup>8</sup> 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6).

<sup>9</sup> 52 U.S.C. § 30116(f).

1 donor or deposit the contribution into its federal account and keep enough funds in the account to  
2 cover all potential refunds until the legality of the contribution is established.<sup>10</sup> Alternatively, a  
3 committee may "presumptively redesignate" the excessive portion of a contribution to another  
4 election, provided that, within 60 days of receipt of the contribution, the committee notifies the  
5 contributor of the amount of the contribution that was redesignated and of the option to request a  
6 refund.<sup>11</sup> Finally, each candidate for federal office shall designate in writing a political  
7 committee to serve as its principal campaign committee, and may also designate a political  
8 committee established solely for the purpose of joint fundraising as an authorized committee.<sup>12</sup>

9 The Committee concedes it received excessive contributions, but maintains that it  
10 properly and timely responded to the Commission's RFAs by redesignating the primary  
11 contributions for use in the 2014 general election, and amending its disclosure reports to reflect  
12 these redesignations. The Committee also, in response to the RFAI, amended its Statement of  
13 Organization to designate TOP as a joint fundraiser on behalf of the Committee.

14 Therefore, in furtherance of the Commission's priorities, relative to other matters pending  
15 on the Enforcement docket, and in light of the corrective actions taken by the Committee, the  
16 Commission exercised its prosecutorial discretion and dismissed the matter.<sup>13</sup>

<sup>10</sup> 11 C.F.R. § 103.3(b)(3) and (4).

<sup>11</sup> 11 C.F.R. § 110.1(b)(5)(ii)(B) and (C).

<sup>12</sup> 52 U.S.C. § 30102(e)(1) and (3).

<sup>13</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).