

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6925)
6 First Congressional District Republican Central)
7 Committee and Alexander Hornaday)
8 individually and as treasurer)
9 Gabriel Schwartz)
10 David Spreccace)
11 Harry L. Arkin)
12 Andrew Struttman)
13 Eric Heyssel)
14 Christopher O. Murray)
15 Colorado Republican Federal Campaign)
16 Committee and Robert Balink as treasurer)
17 Ryan R. Call)
18
19

DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

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FEDERAL ELECTION
COMMISSION

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19 **GENERAL COUNSEL'S REPORT**

20 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
21 basis to allocate its resources and decide which matters to pursue. These criteria include, without
22 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
23 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
24 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
25 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
26 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
27 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
28 discretion to dismiss cases under certain circumstances or, where the record indicates that no
29 violation of the Act has occurred, to make no reason to believe findings. The Office of General
30 Counsel has determined that MUR 6925 should not be referred to the Alternative Dispute Resolution
31 Office.¹

¹ The EPS rating information is as follows: Complaint Filed: March 10, 2015. Addendum to Complaint Filed: March 12, 2015. Responses Filed: April 13, 2015 and April 15, 2015.

1 The Office of General Counsel recommends that the Commission dismiss the Complaint
2 against the First Congressional District Republican Central Committee ("the CD1 Committee") and
3 Alexander Hornaday in his official capacity as treasurer, and the Colorado Republican Federal
4 Campaign Committee ("the State Party Committee") and Robert Balink in his official capacity as
5 treasurer. We further recommend that the Commission find no reason to believe that Alexander
6 Hornaday in his individual capacity, Gabriel Schwartz, David Sprecace, Harry L. Arkin, Andrew
7 Struttman, Eric Heyssel, Christopher O. Murray, and Ryan R. Call violated the Act and Commission
8 regulations.²

9 The Colorado Republican Federal Campaign Committee is registered with the Commission as
10 a state party committee.³ The First Congressional District Republican Central Committee registered
11 with the Commission as a subordinate committee of the State Party Committee on October 14, 2014.⁴
12 Complainant alleges that on March 8, 2013, the CD1 Committee made a \$6,500.80 contribution to
13 the federal account of the State Party Committee via cashier's check.⁵ Complainant further alleges
14 that neither the CD1 Committee nor the State Party Committee reported the contribution in their

² The individually-named Respondents served as officers of the CD1 Committee and State Party Committee in various capacities between 2004 and the present. Each of the individually-named Respondents, apart from Mr. Balink, submitted a joint Response with the State Party Committee. See Colorado Republican Party Resp. (April 15, 2015). Mr. Balink submitted a separate Response on his own behalf. See Balink Resp. (Apr. 13, 2015). The CD1 Committee did not respond to the Complaint.

³ State Party Committee Resp. at 1-2.

⁴ FEC Form 1, First Congressional District Republican Central Committee Statement of Organization (filed Oct. 14, 2014).

⁵ Compl. at 3 (Mar. 10, 2015). The Complaint arises out of an intra-party proceeding called a "controversy" filed with the Colorado Republican Party Executive Committee in January 2015. The Complaint attaches the Petitions of Party Controversy, which also allege various violations of party bylaws and "best practice." *Id.* at 2, Ex. B. Because the alleged party rules violations do not fall under the Commission's jurisdiction, they will not be discussed further.

1 respective FEC filings, and that the CD1 Committee should have registered with the Commission as
2 a political committee in 2013 as a result of this contribution.⁶

3 The Responses acknowledge that on March 8, 2013, the CD1 Committee gave a \$6,500.80
4 cashier's check to the State Party Committee, but they deny any violations.⁷ Three days after
5 receiving the check, the State Party Committee notified the CD1 Committee that it was refusing the
6 contribution, and it asked the CD1 Committee to tell it how to return the check.⁸ The State Party
7 Committee explained that if it accepted the contribution, the CD1 Committee would have to register
8 with the Commission as a federal political committee.⁹ Respondents argue that because the State
9 Party Committee refused the contribution, neither entity was required to report it to the
10 Commission.¹⁰ The Respondents do not specify the date the cashier's check was returned.¹¹

11 The Respondents contend that the CD1 Committee was not required to register with the
12 Commission in 2013 because, other than the \$6,500.80 contribution, the CD1 Committee did not
13 meet the registration threshold for a political committee, and because the State Party Committee
14 refused the \$6,500.80 contribution, it did not trigger federal political committee status either.¹²

⁶ *Id.* at 2.

⁷ State Party Resp. at 2; Balink Resp. at 1.

⁸ State Party Resp. at 2. In support of these assertions, Respondents submitted a copy of the \$6,500.80 check, a copy of the March 11 email from the State Party to the CD1 Committee refusing the contribution, and affidavits or declarations from the individually-named Respondents. *Id.* Exs. A, B.

⁹ *Id.* Ex. B.

¹⁰ *Id.* at 5.

¹¹ See Ryan R. Call Aff. para. 8 (Apr. 10, 2015) (check returned in "mid-March and within [] ten days") and Alexander Hornaday Aff. para. 8 (Apr. 10, 2015) (check returned in "late March of 2013").

¹² State Party Resp. at 3-4.

1 Instead, Respondents contend that the CD1 Committee did not have to register with the Commission
2 until it made a \$2,003 federal contribution in October 2014.¹³

3 A local party committee, including a subordinate committee of a state party, becomes a
4 political committee within the meaning of the Act if it: (1) receives contributions aggregating in
5 excess of \$5,000 during a calendar year, (2) makes payments exempted from the definition of
6 contribution or expenditure aggregating in excess of \$5,000 during a calendar year, or (3) makes
7 contributions aggregating in excess of \$1,000 in a calendar year.¹⁴ Political committees are required
8 to file a Statement of Organization with the Commission no later than ten days after becoming a
9 political committee.¹⁵ All registered political committees are required to file periodic reports
10 containing, among other things, all contributions to and from other political committees during each
11 reporting period.¹⁶ A contribution is considered to be made when the contributor relinquishes control
12 over the contribution.¹⁷ A contributor relinquishes control when the contribution is delivered by the
13 contributor to the political committee or an agent of the committee.¹⁸

¹³ Prior to 2014, the State Party Committee indicates that all receipts of and expenditures made by the CD1 Committee were used for activities that do not fall under the reporting requirements of the Act, such as costs of local or state party meetings. *Id.* at 5. Although Respondents state that the CD 1 Committee filed its Statement of Organization on September 26, 2014, the actual Form 1 filed with the Commission reflects that CD 1 Committee filed its Statement on October 14, 2014, which was 13 days after the contribution that the Respondents state required them to register with the Commission. Thus, the CD-1 Committee missed the filing deadline by three days. See 52 U.S.C. § 30103(a) (“[a]ll other committees shall file a statement of organization within 10 days after becoming a political committee within the meaning of section 30101(4)”).

¹⁴ 52 U.S.C. § 30101(4); 11 C.F.R. §§ 100.5(c), 100.14(b). The Commission generally does not apply the major purpose test to local party committees. See First GCR at n.4, MUR 6683 (Fort Bend Democratic Party).

¹⁵ 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(d).

¹⁶ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3.

¹⁷ 11 C.F.R. § 110.1(b)(6).

¹⁸ *Id.*

1 A state party committee and a subordinate party committee can make unlimited transfers of
2 funds between each other regardless of whether they are registered with the Commission.¹⁹ Those
3 transfers, however, still count towards the reporting and registration thresholds set out in the Act.²⁰

4 It appears that the CD1 Committee made a contribution to the State Party Committee when it
5 delivered the check to the State Party Committee. Because the contribution was in excess of \$1,000
6 in the calendar year, the CD1 Committee met the statutory definition of "political committee," and it
7 should have filed a Statement of Organization within ten days of the contribution and required
8 periodic disclosure reports thereafter.

9 Even so, since it appears that the CD1 Committee may not have understood that its
10 contribution exceeded the statutory threshold for political committee status, the State Party
11 Committee refused it and never deposited it for that reason, and the check was returned, we
12 recommend that the Commission dismiss the allegations against the First Congressional District
13 Republican Central Committee and Alexander Hornaday in his official capacity as treasurer
14 consistent with the Commission's prosecutorial discretion to determine the proper ordering of its
15 priorities and use of agency resources.²¹ Because there is no evidence before the Commission to
16 suggest Alexander Hornaday individually, Gabriel Schwartz, David Spreace, Harry L. Arkin,
17 Andrew Struttman, Eric Heyssel, Christopher O. Murray, and Ryan R. Call violated the Act, we
18 recommend the Commission find no reason to believe they violated the Act.

19 As to the State Party Committee, any contribution may be returned to the contributor without
20 being deposited within ten days of receipt of the contribution.²² Here, the State Party Committee

¹⁹ *Id.* § 102.6(a)(1)(ii).

²⁰ *Id.* § 102.6(a)(2).

²¹ *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

²² 11 C.F.R. § 103.3(a).

1 notified the CD1 Committee of its refusal to accept the donation three days after it received the
2 contribution.²³ However, the State Party Committee was required to return the check to the CD1
3 Committee within ten days from its receipt on March 8, 2013, and there is conflicting information as
4 to whether the State Party Committee complied with that deadline.²⁴ Notwithstanding, it is clear that
5 the check was ultimately returned to the CD1 Committee, and the State Party Committee promptly
6 informed the CD1 Committee that it could not accept the check without triggering registration and
7 reporting requirements under the Act. Under these circumstances we recommend that the
8 Commission dismiss the Complaint against the Colorado Republican Federal Campaign Committee
9 and Robert Balink in his official capacity as treasurer consistent with the Commission's prosecutorial
10 discretion to determine the proper ordering of its priorities and use of agency resources.²⁵

11 RECOMMENDATIONS

- 12
13 1. Dismiss the allegations that the First Congressional District Republican Central
14 Committee and Alexander Hornaday in his official capacity as treasurer violated 52
15 U.S.C. § 30103(a), 11 C.F.R. § 102.1(d), 52 U.S.C. § 30104(b)(4), and 11 C.F.R. § 104.3;
16
- 17 2. Dismiss the allegations that the Colorado Republican Federal Campaign Committee and
18 Robert Balink in his official capacity as treasurer violated 52 U.S.C. § 30104(a)(4) and 52
19 U.S.C. § 30104(b)(2);
20
- 21 3. Find no reason to believe Alexander Hornaday in his individual capacity, Gabriel
22 Schwartz, David Spreccace, Harry L. Arkin, Andrew Struttman, Eric Heyssel, Christopher
23 O. Murray, and Ryan R. Call violated the Federal Election Campaign Act of 1971, as
24 amended, and Commission regulations;
25
- 26 4. Approve the Factual and Legal Analyses;
27
- 28 5. Approve the appropriate letters; and

²³ See State Party Resp., Exs. A, B.

²⁴ The State Party Committee submitted a sworn affidavit from its former chairman stating his belief that the donation was returned within the ten days allowed under the Act. Call Aff. para. 8. Evidence submitted by the Complainant indicates the check could have been returned in "approximately May 2013." Compl. add. at 3 (Mar. 12, 2015). Alexander Hornaday, the former chairman of the CD1 Committee, submitted a sworn affidavit stating his belief that the check was returned "in late March of 2013. Hornaday Aff. para. 8.

²⁵ See *Heckler*, 470 U.S. at 831-32.

6. Close the file as to all Respondents.

Kathleen M. Guith
Acting Associate General Counsel
for Enforcement

12/14/16
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel

Jeff S. Jordan
Jeff S. Jordan
Assistant General Counsel

Derek H. Ross
Derek H. Ross
Attorney

Attachments:

1. Factual and Legal Analysis (Alexander Hornaday, Gabriel Schwartz, David Sprecace, Harry L. Arkin, Andrew Struttman, Eric Heyssel, Christopher O. Murray, and Ryan R. Call)
2. Factual and Legal Analysis (First Congressional District Republican Central Committee and Alexander Hornaday as treasurer, and Colorado Republican Federal Campaign Committee and Robert Balink as treasurer)

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Alexander Hornaday MUR 6925
Gabriel Schwartz
David Spreccace
Harry L. Arkin
Andrew Struttman
Eric Heyssel
Christopher O. Murray
Ryan R. Call

I. INTRODUCTION

This matter was generated by a Complaint filed on March 10, 2015, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by Respondents. 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.

The Complaint alleges that on March 8, 2013, the First Congressional District Republican Central Committee ("the CD1 Committee") made a \$6,500.80 contribution to the federal account of Colorado Republican Federal Campaign Committee ("the State Party Committee") via cashier's check.¹ The Complaint argues that neither the CD1 Committee nor the State Party Committee reported the contribution in their respective FEC filings, and that the CD1 Committee should have registered with the Commission as a political committee in 2013 as a result of this contribution.²

¹ Compl. at 3 (Mar. 10, 2015). The Complaint arises out of an intra-party proceeding called a "controversy" filed with the Colorado Republican Party Executive Committee in January 2015. The Complaint attaches the Petitions of Party Controversy, which also allege various violations of party bylaws and "best practice." *Id.* at 2, Ex. B. Because the alleged party rules violations do not fall under the Commission's jurisdiction, they will not be discussed further.

² *Id.* at 2.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The State Party Committee is registered with the Commission as a state party committee.³
3 The CD1 Committee registered with the Commission as a subordinate committee of the State
4 Party Committee on October 14, 2014.⁴

5 The Responses acknowledge that on March 8, 2013, the CD1 Committee gave a
6 \$6,500.80 cashier's check to the State Party Committee, but they deny any violations.⁵ Three
7 days after receiving the check, the State Party Committee notified the CD1 Committee that it was
8 refusing the contribution, and it asked the CD1 Committee to tell it how to return the check.⁶
9 The State Party Committee explained that if it accepted the contribution, the CD1 Committee
10 would have to register with the Commission as a federal political committee.⁷ Respondents
11 argue that because the State Party Committee refused the contribution, neither entity was
12 required to report it to the Commission.⁸ The Respondents do not specify the date the cashier's
13 check was returned.⁹

14 The Respondents contend that the CD1 Committee was not required to register with the
15 Commission in 2013 because, other than the \$6,500.80 contribution, the CD1 Committee did not

³ State Party Committee Resp. at 1-2 (Apr. 15, 2015).

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1 meet the registration threshold for a political committee, and because the State Party Committee
2 refused the \$6,500.80 contribution, it did not trigger federal political committee status either.¹⁰
3 Instead, Respondents contend that the CD1 Committee did not have to register with the
4 Commission until it made a \$2,003 federal contribution in October 2014.¹¹

5 A local party committee, including a subordinate committee of a state party, becomes a
6 political committee within the meaning of the Act if it: (1) receives contributions aggregating in
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2 transfers of funds between each other regardless of whether they are registered with the
3 Commission.¹⁷ Those transfers, however, still count towards the reporting and registration
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8 reason to believe they violated the Act.

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11 contribution and required periodic disclosure reports thereafter.

12 Even so, since it appears that the CD1 Committee may not have understood that its
13 contribution exceeded the statutory threshold for political committee status, the State Party
14 Committee refused it and never deposited it for that reason, and the check was returned, the
15 Commission dismisses the allegations against the First Congressional District Republican Central
16 Committee and Alexander Hornaday in his official capacity as treasurer consistent with its
17 prosecutorial discretion to determine the proper ordering of its priorities and use of agency
18 resources.¹⁹

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2 without being deposited within ten days of receipt of the contribution.²⁰ Here, the State Party
3 Committee notified the CD1 Committee of its refusal to accept the donation three days after it
4 received the contribution.²¹ However, the State Party Committee was required to return the
5 check to the CD1 Committee within ten days from its receipt on March 8, 2013, and there is
6 conflicting information as to whether the State Party Committee complied with that deadline.²²
7 Notwithstanding, it is clear that the check was ultimately returned to the CD1 Committee, and the
8 State Party Committee promptly informed the CD1 Committee that it could not accept the check
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11 Federal Campaign Committee and Robert Balink in his official capacity as treasurer consistent
12 with its prosecutorial discretion to determine the proper ordering of its priorities and use of
13 agency resources.²³

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²¹ See State Party Resp., Ex. A, B.

²² The State Party Committee submitted a sworn affidavit from its former chairman stating his belief that the donation was returned within the ten days allowed under the Act. Call Aff. para. 8. Evidence submitted by the Complainant indicates the check could have been returned in "approximately May 2013." Compl. add. at 3 (Mar. 12, 2015). Alexander Hornaday, the former chairman of the CD1 Committee, submitted a sworn affidavit stating his belief that the check was returned "in late March of 2013." Hornaday Aff. para. 8.

²³ See *Heckler*, 470 U.S. at 831-32.