



August 24, 2015

SENT VIA EMAIL AND FIRST CLASS MAIL

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Mary Beth deBeau
999 E Street NW
Washington, DC 20463
mdebeau@fec.gov

RE: AR 15-06

Dear Ms. deBeau:

I am writing to respond to the Audit referral notice we received on August 12, 2015, regarding possible violations of the Federal Election Campaign Act ("FECA") by Gary Johnson 2012 Inc ("GJ2012" or "Committee").

I. Finding 3. Use of General Election Contributions for Primary Election Expenses

Finding 3 of the Commission's Final Audit Report ("FAR") is an unreasonable reading of FECA that works a substantial hardship on GJ2012 and all other committees similarly situated. The general election funds the Committee used for primary election expenses were an advance against anticipated matching funds that were not received until after the Committee's date of ineligibility. In essence, this was a short-term loan between accounts to cover operating expenses. If committees are not permitted to utilize available fungible campaign funds in this way, they would be forced to seek commercial loans, or leave vendors invoices unpaid, neither of which is a reasonable alternative.

The Committee appreciates that the Commission may be concerned about some committees abusing any leeway that these sorts of transactions might provide, but such abuses would be readily discoverable, and in any event did not occur in the instant case; GJ2012 only ever acted in good faith to use available funds to timely pay vendor invoices.

Further, the total amount of general funds used for primary expenses identified in the FAR was \$12,936. When compared to the total of \$160,592 in general contributions – a total that would be well over \$1 million but for the inadvertent failure to update the Committee's disclaimer language – this hardly seems like an amount deserving of limited Commission time and resources already in high demand in a busy election season.

II. Finding 4. Reporting of Debts and Obligations

Finding 4 of the FAR acknowledges that the Committee has amended its reports and materially corrected errors in its reporting of debts and obligations. The Committee is currently attempting to settle its debts with its remaining creditors and conclude the audit process so that it may terminate. There will be no further campaign activity. An enforcement action at this stage is unlikely to be a useful expenditure of limited Commission resources.

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Of the total \$447,567 in unreported debt identified by the Audit Division, \$333,904 was owed to a single vendor, and \$300,000 of that subtotal was for a single primary expense not invoiced for by the vendor until December of 2012. The Committee originally did not report this debt until the amount was invoiced for, based on a reasonable interpretation of the applicable sections of FECA and the Commission's rules. During the audit process, the Committee deferred to the Audit Division's interpretation of those sections with respect to this debt, and amended its reports accordingly.

The remaining \$113,663 was owed in various amounts to eight different vendors. Any failure to properly report these debts stemmed from late invoicing for the amounts due, data entry errors on the relevant reports, and other ministerial oversights.

Given that over two thirds of the total amount improperly reported is attributable to a single transaction with a single vendor, the total dollar value given in Finding 4 does not accurately reflect the seriousness of any reporting errors the Committee may have made.

III. Conclusion

In light of the Committee's good faith efforts to comply with its reporting burden while also fulfilling its obligations to its vendors, and the relatively minor nature of any reporting errors actually made, the Committee does not believe that this case warrants any enforcement action.

The complexity and size of a national presidential campaign necessarily means that any error, no matter how trivial, can result in a large numerical discrepancy. The errors in this case were small ones that simply had outsized – though still only moderate – impacts on the Committee's reported totals, and the Committee has amended the relevant reports to correct them. The matter has been appropriately resolved by the audit process, and is not worth pursuing.

Sincerely,

/s/

Joseph Lilly

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