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² Compl. at 2.

1 The Complainant asserts that the Committee's Debt Settlement Plan, filed with the Commission,
2 inaccurately disclosed debt owed to his company, Security Financial Enterprises, Inc. ("SFE"), for
3 office space the Committee leased during the 2012 election cycle.³ The Complainant asserts that the
4 Committee owes \$3,815.55⁴ rather than \$1,830.45, the amount the Committee disclosed.⁵ Further,
5 the Complainant suggests that the Committee should have reported the debt as disputed if it thought
6 it owed the lower amount.⁶ The Complainant also states he would like full payment.⁷

7 The Committee asserts that its debt reporting is accurate, the Complainant's company
8 improperly assessed late fees, and the Complainant is improperly using the enforcement process to
9 collect a commercial debt.⁸ The Committee offers to amend its Debt Settlement Plan to
10 indicate that the debt is disputed, and states that it will continue to discuss the dispute with SFE
11 outside of the Commission's enforcement process.⁹

12 Committee treasurers are required to file reports of receipts and disbursements in accordance
13 with the provisions of the Act.¹⁰ The reports must include the amount and nature of outstanding
14 debts and obligations owed by or to the political committee.¹¹ Further, the Commission's regulations

³ *Id.*

⁴ *Id.*; see also Compl. Ex. E. Complainant states that the amount owed is \$2,430.45, the remaining balance for the lease, plus \$1,385 accrued interest, for a total of \$3,815.55.

⁵ *Id.* See also FEC Form 8, Debt Settlement Plan, <http://docquery.fec.gov/pdf/846/201608020300092846/201608020300092846.pdf> (Aug. 1, 2016).

⁶ *Id.*

⁷ *Id.*

⁸ Resp. at 5-6. In addition to the interest charge, the Committee disputes \$600 in payments that the Complainant does not acknowledge.

⁹ *Id.* at 5.

¹⁰ 52 U.S.C. § 30104(a)(1), 11 C.F.R. § 104.1(a).

¹¹ 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

1 specify that a debt or obligation exceeding \$500 must be disclosed in the report that covers the date
2 on which the debt or obligation is incurred.¹² Debts and obligations shall be continuously reported
3 until extinguished, and shall also include a statement explaining the circumstances under which each
4 debt and obligation was incurred or extinguished.¹³ A Committee shall also report a disputed debt¹⁴
5 if the creditor has provided something of value to the political committee.¹⁵ Until the dispute is
6 resolved, the committee shall disclose on the appropriate reports any amounts paid to the creditor,
7 any amount the political committee admits it owes, and the amount the creditor claims is owed.”¹⁶

8 The Committee concedes that it owes SFE money, but the Committee and SFE disagree as to
9 the amount. Since 2012, the Committee has disclosed the debt in its disclosure reports.¹⁷ In its FEC
10 Form 8, Debt Settlement Plan, the Committee discloses \$1,830.45 owed to SFE, but does not indicate
11 that SFE disputes the amount. The Committee volunteers to amend its Plan to indicate that the debt
12 is disputed, although it has not yet done so.

13 In light of the Committee's decision to report the debt as disputed, the *de minimis* nature of
14 the alleged reporting violation, and in furtherance of the Commission's priorities, relative to other
15 matters pending on the Enforcement docket, we recommend that the Commission exercise its

¹² 11 C.F.R. § 104.3(d).

¹³ See 11 C.F.R. § 104.11(b).

¹⁴ A debt is disputed where there is an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee. 11 C.F.R. § 116.1(d).

¹⁵ 11 C.F.R. § 116.10(a).

¹⁶ *Id.*

¹⁷ Although the invoice attached to the Complaint is dated March 1, 2012, the debt was first disclosed in the Committee's 2012 October Quarterly report (Page 144). The Committee consistently included the debt in its disclosure reports filed after that date. <http://docquery.fec.gov/pdf/964/12972602964/12972602964.pdf>.

prosecutorial discretion and dismiss this matter.¹⁸ We also recommend that the Committee be reminded to amend its Debt Settlement Plan to show the debt at issue as disputed.

RECOMMENDATIONS

1. Dismiss the allegation that Newt 2012 and Taylor O. Swindle in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and 11 C.F.R. § 116.10(a) ;
2. Remind Newt 2012 and Taylor O. Swindle in his official capacity as treasurer, to file an amended Debt Settlement Plan (Form 8).
3. Approve the Factual and Legal Analysis;
4. Approve the appropriate letters; and
5. Close the file as to all Respondents.

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Acting Associate General Counsel

4.11.17

Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel

Jeff S. Jordan
Jeff S. Jordan
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Wanda D. Brown
Wanda D. Brown
Attorney

Attachment: Factual and Legal Analysis

¹⁸ *Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Newt 2012 MUR 7134
Taylor O. Swindle as treasurer

I. INTRODUCTION

This matter was generated by a Complaint alleging that Newt 2012 and Taylor O. Swindle in his official capacity as treasurer (the "Committee"), violated the Act by misreporting debt owed to the Committee.¹

II. FACTUAL AND LEGAL ANALYSIS

The Complainant asserts that the Committee's Debt Settlement Plan, filed with the Commission, inaccurately disclosed debt owed to his company, Security Financial Enterprises, Inc. ("SFE"), for office space the Committee leased during the 2012 election cycle.² The Complainant asserts that the Committee owes \$3,815.55³ rather than \$1,830.45, the amount the Committee disclosed.⁴ Further, the Complainant suggests that the Committee should have reported the debt as disputed if it thought it owed the lower amount.⁵ The Complainant also states he would like full payment.⁶

The Committee asserts that its debt reporting is accurate, the Complainant's company improperly assessed late fees, and the Complainant is improperly using the enforcement process

¹ Compl. At 2 (June 13, 2016).

² *Id.*

³ *Id.*; see also Compl. Ex. E. Complainant states that the amount owed is \$2,430.45, the remaining balance for the lease, plus \$1,385 accrued interest, for a total of \$3,815.55.

⁴ *Id.* See also FEC Form 8, Debt Settlement Plan, <http://docquery.fec.gov/pdf/846/201608020300092846/201608020300092846.pdf> (Aug. 1, 2016).

⁵ *Id.*

⁶ *Id.*

1 to collect a commercial debt.⁷ The Committee offers to amend its Debt Settlement Plan to
2 indicate that the debt is disputed, and states that it will continue to discuss the dispute with SFE
3 outside of the Commission's enforcement process.⁸

4 Committee treasurers are required to file reports of receipts and disbursements in
5 accordance with the provisions of the Act.⁹ The reports must include the amount and nature of
6 outstanding debts and obligations owed by or to the political committee.¹⁰ Further, the
7 Commission's regulations specify that a debt or obligation exceeding \$500 must be disclosed in
8 the report that covers the date on which the debt or obligation is incurred.¹¹ Debts and
9 obligations shall be continuously reported until extinguished, and shall also include a statement
10 explaining the circumstances under which each debt and obligation was incurred or
11 extinguished.¹² A Committee shall also report a disputed debt¹³ if the creditor has provided
12 something of value to the political committee.¹⁴ Until the dispute is resolved, the committee

⁷ Resp. at 5-6. In addition to the interest charge, the Committee disputes \$600 in payments that the Complainant does not acknowledge.

⁸ *Id.* at 5.

⁹ 52 U.S.C. § 30104(a)(1), 11 C.F.R. § 104.1(a).

¹⁰ 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

¹¹ 11 C.F.R. § 104.3(d).

¹² See 11 C.F.R. § 104.11(b).

¹³ A debt is disputed where there is an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee. 11 C.F.R. § 116.1(d).

¹⁴ 11 C.F.R. § 116.10(a).

1 shall disclose on the appropriate reports any amounts paid to the creditor, any amount the
2 political committee admits it owes, and the amount the creditor claims is owed.”¹⁵

3 The Committee concedes that it owes SFE money, but the Committee and SFE disagree
4 as to the amount. Since 2012, the Committee has disclosed the debt in its disclosure reports.¹⁶
5 In its FEC Form 8, Debt Settlement Plan, the Committee discloses \$1,830.45 owed to SFE, but
6 does not indicate that SFE disputes the amount. The Committee volunteers to amend its Plan to
7 indicate that the debt is disputed, although it has not yet done so.

8 In light of the Committee’s decision to report the debt as disputed, the *de minimis* nature
9 of the alleged reporting violation, and in furtherance of the Commission’s priorities, relative to
10 other matters pending on the Enforcement docket, the Commission exercised its prosecutorial
11 discretion and dismissed this matter.¹⁷ The Commission also reminds the Committee to amend
12 its Debt Settlement Plan to show the debt at issue as disputed.

¹⁵ *Id.*

¹⁶ Although the invoice attached to the Complaint is dated March 1, 2012, the debt was first disclosed in the Committee’s 2012 October Quarterly report (Page 144). The Committee consistently included the debt in its disclosure reports filed after that date. <http://docquery.fec.gov/pdf/964/12972602964/12972602964.pdf>.

¹⁷ *Heckler v. Chaney*, 470 U.S. 821 (1985).