



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

Ronald M. Jacobs, Esq.
Venable LLP
575 7th Street, NW
Washington, DC 20004

JUN 30 2014

RE: MUR 6572
Tarkanian for Congress and Chrissie
Hastie in her official capacity as
treasurer
Danny Tarkanian

Dear Mr. Jacobs:

On May 14, 2012, the Federal Election Commission (the "Commission") notified Danny Tarkanian for Congress and Judith Flynn in her official capacity as treasurer (the "Committee") and Danny Tarkanian (collectively, "your clients") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On June 24, 2014, based upon the information in the complaint and information that you provided on behalf of your clients, the Commission found no reason to believe that the Committee violated 2 U.S.C. §441a(f), dismissed the remaining allegations in the complaint and closed its file in this matter.

The Commission encourages you and your clients to review the enclosed Factual and Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. The Commission reminds your clients that:

1. Under 2 U.S.C. §§ 434(b)(2)(G), 434(b)(8) and 11 C.F.R. §§ 104.3(a)(3)(vii)(B), 104.3(d), 104.11, the Committee must continuously report the amount and nature of outstanding debts and obligations owed by the committee, including loans made or guaranteed by the candidate;
2. Under 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 104.7(a), (b)(2), 110.1(e), (g), the Committee must report the identity, including employer and occupation, of each person who makes a contribution in the aggregate or in excess of \$200 within the election cycle, together with the date and amount of any such contribution, and the necessary attributions for

contributions from partnerships and limited liability companies that elect to be treated as partnerships for tax purposes;

3. Under 2 U.S.C. § 441b(a), it is unlawful for the Committee to accept or receive any prohibited contribution, including contributions from corporations; and
4. Under 11 C.F.R. § 103.3(b)(1), the Committee's treasurer is responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contributions limitations.

For further information on the Act, please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Emily M. Meyers, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



William A. Powers
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Tarkanian for Congress (f/k/a Danny Tarkanian for
6 Congress) and Chrissie Hastie in her official
7 capacity as treasurer (MURs 6572, 6606, and 6676)
8 DeWayne Zinkin (MURs 6572 and 6606)
9 Zinkin Entertainment LLC (MURs 6572 and 6606)
10 Haig's Quality Printing (MURs 6572 and 6606)
11 B.I. Porter Commercial & Residential Properties (MUR 6572)
12 Mason Contractors Association of America (MUR 6572)
13 Nostrebor Music & Visual Arts (MUR 6572)
14 TLC, a California Partnership (MUR 6572)
15 AM Power Systems (MUR 6606)
16 Cholakian Investments, Inc. (MUR 6606)
17 Attorneys' Investigative Consultants (MUR 6606)
18 The Rogich Communications Group (MUR 6606)
19 Bill E. Carlson (MUR 6676)
20 Fine Properties, LLC (MUR 6676)
21 Herbert's Refrigeration Company (MUR 6676)
22 Prem Investments, LLC¹ (MUR 6676)
23

24 **I. INTRODUCTION**

25 These matters were generated by three separate Complaints filed during the 2012 election
26 cycle with the Federal Election Commission by the Nevada State Democratic Party, alleging
27 various reporting and other violations of the Federal Election Campaign Act of 1971, as
28 amended, (the "Act") by Tarkanian for Congress and Chrissie Hastie in her official capacity as
29 treasurer² (the "Committee"), Danny Tarkanian's designated principal campaign committee in
30 the 2012 election in Nevada's Fourth Congressional District. Tarkanian won the Republican

¹ The Complaint in MUR 6676, the Response submitted by the candidate on behalf of Tarkanian for Congress, and the original 2012 October Quarterly Report all refer to Primm Investments LLC, but the name "Primm" appears to be in error. The name of this entity is correctly spelled Prem Investments, LLC, as indicated in the Committee's Second Amended 2012 October Quarterly Report (June 3, 2013). For the sake of clarity, the Commission refers to this entity as Prem.

² Chrissie Hastie was identified as treasurer in the Committee's most recent Statement of Organization, filed with the Commission on June 7, 2013, although Judith Flynn served as treasurer when the violations alleged in MURs 6576 and 6606 occurred. Robert T. Beers succeeded Flynn as treasurer and served as treasurer when the violations alleged in MUR 6676 occurred. Tarkanian himself has signed all of the disclosure reports submitted by the Committee since April 2013.

1 primary on June 12, 2012, but lost the general election on November 6, 2012. On July 15, 2013,
2 October 15, 2013, January 31, 2014, and April 14, 2014, the Committee filed Termination
3 Reports.

4 The three Complaints allege that the Committee: (1) failed to report or misreported an
5 outstanding loan from the candidate, alleging further that those funds may not have been eligible
6 to be loaned; (2) failed to properly report approximately \$250,000 in operating expenditures;
7 (3) failed to report accurately the attributions for permissible contributions from limited liability
8 companies ("LLCs"); (4) accepted impermissible corporate contributions and failed to timely
9 refund such contributions; (5) accepted excessive contributions; and (6) misreported various
10 other contributions.

11 Although the Committee made a number of reporting errors in violation of the Act and
12 appears to have accepted a \$500 prohibited contribution, the Commission exercises its
13 prosecutorial discretion to dismiss those allegations due to the modest amounts in violation and
14 the Committee's remedial efforts. *See Heckler v. Chaney*, 470 U.S. 821 (1985). With respect to
15 the remaining allegations, the Commission finds no reason to believe that there was a violation
16 of the Act for the reasons provided below.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Reporting Errors Related to Tarkanian's Loans to the Committee**

19
20 The Complaint in MUR 6572 alleges that the Committee misreported a loan that
21 Tarkanian made to his Committee in violation of 2 U.S.C. § 434(b)(8) because the Committee's
22 Amended 2012 April Quarterly report, filed on April 16, 2012 ("First Amended 2012 April
23 Quarterly Report"), shows only \$1,902.10 in loans from the candidate even though Tarkanian
24 had loaned over \$260,000 to the Committee and had publicly stated that most of the loan

1 remained outstanding. Compl. at 2-3, MUR 6572 (May 7, 2012). The MUR 6572 Complaint
2 also notes that the Committee's 2011 Year-End Report states that \$219,304.38 in loans from the
3 candidate were forgiven, which was inconsistent with those public statements. *Id.* at 2.
4 Additionally, a related allegation in the MUR 6606 Complaint alleges that the Committee
5 violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(b)(4)(A) by underreporting its total election
6 cycle to-date operating expenditures and disbursements in the Second Amended 2012 April
7 Quarterly Report, filed on May 31, 2012 ("Second Amended 2012 April Quarterly Report").
8 Compl. at 2, MUR 6606 (July 11, 2012). Finally, in MUR 6676, the Complaint alleges that the
9 Committee failed to disclose loans on Schedule C of its reports in violation of 11 C.F.R.
10 § 104.11. Comp. at 2, MUR 6676 (Oct. 31, 2012).

11 In response, the Committee admits that its 2011 Year-End Report erroneously reported
12 that the loans made by the candidate in the previous reporting periods had been forgiven.
13 Comm. Resp. at 4, MUR 6572 (June 29, 2012). The Committee asserts that Flynn, who became
14 the Committee's treasurer after the 2011 Year-End Report was filed, erroneously assumed that
15 the 2011 Year-End Report accurately disclosed that the candidate's loans to the Committee had
16 been forgiven, and therefore included in the 2012 April Quarterly Report only the loans from the
17 candidate that the Committee incurred during that reporting period. *Id.* at 4-5; Decl. of Danny
18 Tarkanian ¶ 8 (June 27, 2012) (attached to Comm. Resp., MUR 6572) ("Tarkanian Decl."); Decl.
19 of Judith Flynn ¶ 6 (June 27, 2012) (attached to Comm. Resp., MUR 6572) ("Flynn Decl."). The
20 Committee did not report any of the previously outstanding loans from the candidate in the First
21 Amended 2012 April Quarterly Report, filed on April 16, 2012, but subsequently filed amended

1 accurately and timely its outstanding debt to the candidate, and it also did not comply with
2 2 U.S.C. § 434(b)(4)(A) and 11 C.F.R. § 104.3(b)(2)(i) because it failed to report accurately its
3 operating expenditures. Nonetheless, the original loan was properly reported from the July 2010
4 Quarterly reporting period through the 2011 Year End reporting period and the public record was
5 corrected as to the loan itself before the June 2012 primary election.⁶ Accordingly, because the
6 Committee accurately disclosed the amounts of the loans during the periods in which they were
7 originally incurred, misreported the loan as an operating expenditure due to an inadvertent error,
8 and amended its reports to correct its errors, the pursuit of these violations does not merit further
9 use of Commission resources. *See Statement of Policy Regarding Commission Action in*
10 *Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12,545, 12,545-46 (Mar.
11 16, 2007). Accordingly, the Commission exercises its prosecutorial discretion to dismiss these
12 allegations, and reminds the Committee to disclose accurately to the Commission candidate
13 loans made to the Committee. *See Heckler*, 470 U.S. at 831.

14 **B. Tarkanian Forgave \$250,000 Loan and Made Additional \$40,000 Loan**

15
16 The Complaint in MUR 6676 questions whether Tarkanian was permitted under Section
17 441a of the Act to loan an additional \$40,000 to the Committee, and to forgive his \$250,000.⁰⁷
18 loan to the Committee in June 2012. *Compl. at 3, MUR 6676*. Specifically, the Complaint
19 alleges that both the additional loan and forgiveness of the \$250,000 loan were impermissible
20 because “[o]n May 22, 2012, before Mr. Tarkanian forgave the \$250,000.⁰⁷ loan and made the
21 additional \$40,000 loan, the FDIC obtained a judgment against Mr. Tarkanian in the United
22 States District Court for the Southern District of California in the amount of \$16,995,005.¹⁷”

⁶ On June 3, 2013, the Committee also filed an Amended 2012 July Quarterly Report, and a Second Amended 2012 October Quarterly Report to address the errors relating to the overreporting of operating expenditures.

1 *Id.* The Complaint reasons that if Tarkanian “did not have sufficient funds to pay the FDIC
2 judgment, then it is by no means clear that Mr. Tarkanian had title or an equitable interest in the
3 funds at issue under Nevada law.”⁷ *Id.* If Tarkanian did not have title to the funds, the
4 Complaint alleges, “then federal law would have barred him from forgiving the \$250,000.07 loan
5 or making the additional \$40,000 loan.” *Id.*

6 The Committee responds that Tarkanian loaned his U.S. Senate campaign \$250,000
7 before any lawsuit was ever filed, and at the time of the forgiveness the lawsuit was still in
8 progress. Comm. Resp. at 2, MUR 6676. The Committee’s disclosure reports corroborate that
9 assertion. *See, e.g.*, 2010 July Quarterly Report at 3 (July 15, 2010) (disclosing loan from the
10 candidate of \$66,127.12 during the period covered by the report and a total of \$283,547.89 of
11 loans from the candidate during the election cycle to-date).

12 The Act permits candidates to loan personal funds to their campaigns and to forgive those
13 loans. *See, e.g.*, 2 U.S.C. § 434(b)(2)(G) (requiring disclosure of loans made by a candidate);
14 11 C.F.R. § 116.8 (regulations applicable to forgiving debts). The Act and Commission
15 regulations define a candidate’s “personal funds” to include “any asset that, under applicable
16 State law . . . the candidate had legal right of access to or control over, and with respect to which
17 the candidate had . . . legal and rightful title[.]” 2 U.S.C. § 431(26)(A); 11 C.F.R. § 100.33(a).

⁷ The Complaint cites Nev. Rev. Stat. 112.190(1), which provides that:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

1 The record establishes that Tarkanian permissibly loaned personal funds from his
2 account, under his control, to the Committee and forgave that debt. In June 2012, the funds
3 whose repayment Tarkanian forgave and the additional loan he made to the Committee were
4 Tarkanian's "personal funds," as defined by the Act and Commission regulations. At the time
5 that Tarkanian forgave the original loan and made the additional loan, the May 22, 2012
6 judgment issued by the U.S. District Court for the Southern District of California in favor of the
7 FDIC against Tarkanian did not vitiate Tarkanian's title and control over the personal funds that
8 he contributed to his campaign. Tarkanian could thereby forgive in June 2012 the repayment of
9 the \$250,000.07 loan, and the Committee could accept the \$40,000 additional loan from the
10 candidate without violating the Act.⁸ Accordingly, the Commission finds no reason to believe
11 that the Committee accepted a prohibited or excessive contribution in violation of 2 U.S.C.
12 §§ 441a(f) or 441b(a) with respect to these two transactions.

13 **C. The Committee's Attributions for LLC and Partnership Contributions**

14 The Complaint in MUR 6572 alleges that the Committee failed to include the necessary
15 attributions for contributions from a number of LLCs and TLC, a California partnership. Compl.
16 at 2, MUR 6572.

17 Under Commission regulations, LLCs are treated consistently with their tax treatment,
18 and therefore if the LLC elects to be treated for federal tax purposes as a partnership rather than
19 as a corporation, it may make contributions to political committees within the limits of the Act.
20 See 11 C.F.R. §§ 110.1(e), (g). When a partnership or a multi-member LLC that elects to be
21 taxed as a partnership (or makes no election) contributes to a federal committee, it must provide
22

⁸ The Commission opines only on the legality of Tarkanian's actions as they relate to the Act. The Commission takes no position on bankruptcy law or any other body of law.

1 Decl. ¶¶ 16-17; Comm. Resp. at 3, MUR 6572. The Committee also stated in its Response that
2 all of the contributions at issue complied with the Act's limits and requirement that each
3 contributing LLC is taxed as a partnership.⁹ Comm. Resp. at 3-4, MUR 6572. In addition, TLC
4 verified in its Response that its contribution was permissibly made by the partnership through its
5 managing partner. TLC Resp., MUR 6572 (May 18, 2012).

6 Because the Committee timely reported the contributions, and amended its reports to
7 include the appropriate attributions for the contributions from LLCs and partnerships, the
8 Commission concludes that the scope of this violation would not merit the further use of
9 Commission resources. *See* 72 Fed. Reg. at 12,545-46. Accordingly, the Commission exercises
10 its prosecutorial discretion to dismiss these allegations with respect to the Committee, but
11 reminds the Committee about the Act's reporting requirements for LLC and partnership
12 contributions. *See Heckler*, 470 U.S. at 831. Also, because TLC's contribution appears to have
13 been permissibly made through a partnership, the Commission finds no reason to believe that
14 TLC violated 11 C.F.R. § 110.1(e).

15 **D. The Committee Erroneously Reported Contributions from Political**
16 **Committees and Persons Other than Political Committees**

17 The Complaint in MUR 6676 alleges that the Committee violated 11 C.F.R.
18 § 104.3(a)(3)(i), (iv)¹⁰ when, in its 2012 October Quarterly Report, it reported contributions from
19

⁹ As a result of the Complaint's allegations in MUR 6572, the Committee adopted policies and procedures to prevent future violations, including procedures for vetting all contributions from businesses or organizations and reviewing draft disclosure reports. Comm. Resp. at 7-8 (MUR 6572); Tarkanian Decl. Ex. A (revised contribution form, which includes statement that contributions by corporations are prohibited and requests occupation and employer information), Ex. B (first page of new contribution screening policy), and Ex. C (report completion checklist).

¹⁰ The Complaint cites to 11 C.F.R. § 104.3(a)(2)(i), (ii), but this provision applies to "[c]ategories of receipts for all political committees other than authorized committees." Because the Committee is Tarkanian's principal campaign committee, the operative provision is 11 C.F.R. § 104.3(a)(3), which applies to "[c]ategories of receipts for authorized committees."

1 Porter Resp., MUR 6572 (June 13, 2012) (though account bears the name “B.I. Porter
2 Commercial and Residential Properties,” it is a personal account containing personal funds for
3 personal use, not the funds of a corporation, LLC, or partnership); Contractors Resp., MUR 6572
4 (June 4, 2012) (donation lawfully made by corporation’s PAC); Nostrebor Resp., MUR 6572
5 (June 1, 2012) (contribution from sole proprietorship); Fine Properties Resp., MUR 6676 (Mar.
6 7, 2013) (entity is treated as a partnership for federal tax purposes); Herbert’s Resp., MUR 6676
7 (Nov. 11, 2013) (entity is a sole proprietorship, not a corporation); Comm. Resp. at 5-6, MUR
8 6572 (Contractors’ donation was from its PAC, not the corporation; Committee report noted that
9 BI Porter was not a corporation; Nostrebor is a sole proprietorship); Flynn Decl. ¶ 12; Comm.
10 Resp. at 3-4, MUR 6676 (Fine and Prem are LLCs that elected to be taxed as partnerships;
11 Herbert’s is a sole proprietorship). In addition, the record includes no information to corroborate
12 the allegation that Prem may be an LLC taxed as a corporation.¹¹ Lastly, although the
13 Committee initially accepted a prohibited corporate contribution of \$500 from Haig’s, it
14 subsequently refunded the contribution. Comm. Resp. at 5, MUR 6572; Haig’s Resp., MUR
15 6572 (May 29, 2012).

16 Based on the information from the Responses and the Committee’s amendments, the
17 Commission finds no reason to believe that BI Porter, Contractors, Nostrebor, Fine Properties,
18 Herbert’s, or Prem violated 2 U.S.C. § 441b(a). In addition, although it appears that Haig’s
19 made, and the Committee accepted a prohibited corporate contribution of \$500 in violation of
20 2 U.S.C. §§ 441b(a) and 441a(f), respectively, due to the amount in violation, pursuit of these

¹¹ Because Prem did not submit a Response, the Committee’s claim in its Response that Prem elected to be treated as a partnership for federal tax purposes was unable to be verified. See Comm. Resp. at 3-4, MUR 6676. But the Commission is not aware of any conflicting information. Although Prem is listed in the Nevada Secretary of State’s business registry (<https://nvsos.gov/sosentitysearch/>) as a domestic limited liability company incorporated in 2009, no documents are available regarding its tax treatment.

1 Consultants received a contribution refund from the Committee. *Id.* at 2.) Rogich admits that it
2 inadvertently issued a corporate check for a contribution rather than drawing the contribution
3 from Mr. Rogich's personal account, as he requested. Rogich Resp. at 1, MUR 6606 (July 31,
4 2012). Haig's acknowledges that it used a corporate check to effect a personal contribution from
5 its owner, but notes that the funds had been treated as the owner's draw and not a corporate
6 expense. Haig's Supp. Resp. at 1, MUR 6606 (July 25, 2012). Without acknowledging that AM
7 Power was incorporated, AM Power responds that a personal contribution was made using the
8 business account in ignorance that the transaction was prohibited. AM Power Resp., MUR 6606
9 (Aug. 10, 2012).

10 The Committee refunded all of these contributions between 31 and 49 days after it
11 received them. The Committee asserts in its Response in MUR 6572 that these contributions
12 were timely refunded because they were refunded within 30 days of the Committee's initiation of
13 its review process. *See* Comm. Resp. at 7, MUR 6572; Tarkanian Decl. ¶ 12; Flynn Decl. ¶ 10;
14 Comm. Resp. at 1, MUR 6606.

15 Under 11 C.F.R. § 103.3(b)(2), which applies to contributions that "did not appear to be
16 made by a corporation . . . , but [are] later discover[ed] [to be] illegal based on new evidence not
17 available at the time of receipt," the Committee would have timely made its refunds. Section
18 103.3(b)(2) may not be applicable here. Rather, 11 C.F.R. § 103.3(b)(1) likely applies because
19 the contributions were made in the names of businesses or through checks bearing business
20 names and thereby raised a genuine issue as to whether they were prohibited corporate
21 contributions.¹³ Assuming this was the case, the Committee had ten days to make a refund, or

¹³ The Committee asserts that the contributions from AM Power Systems, Cholakian Investments, Inc., and The Rogich Communications Group bore no indicia of corporate status, and the \$10 contribution from Investigative

1 thirty days to ascertain the legality of the contribution, from the date of the treasurer's receipt.
2 11 C.F.R. § 103.3(b)(1). Thus, the Committee's refunds to Haig's, AM Power, Cholakian, and
3 Rogich made between 31 and 49 days of receipt may have been untimely.

4 Because of the small amounts of the contributions and the fact that the Committee has
5 refunded those contributions, the further use of Commission resources is not warranted here. *See*
6 72 Fed. Reg. at 12,545-46. Accordingly, the Commission exercises its prosecutorial discretion to
7 dismiss this allegation, and reminds the Committee and Haig's, AM Power, Cholakian, and
8 Rogich regarding the Act's prohibition on accepting or receiving and making corporate
9 contributions. *See Heckler*, 470 U.S. at 831.

10 The Commission also finds no reason to believe that Investigative Consultants made or
11 the Committee accepted or received from Investigative Consultants a prohibited corporate
12 contribution of \$10 in violation of 2 U.S.C. § 441b(a) because Investigative Consultants is not a
13 corporation and therefore its contribution to the Committee was permissible under the Act.

Consultants fell below the itemization threshold, and therefore none of the contributions was subject to review. Comm. Resp. at 7, MUR 6572. (The Committee does not claim that Haig's Quality Printing bore no indicium of corporate status.) The Committee's assertion that the legality of these contributions came into question only based on the facts presented in the complaint in MUR 6572 is at odds with the record. Cholakian is incorporated, and AM Power, Haig's and Rogich each are clearly business names, which should have triggered the Committee's treasurer to request confirmation that the contributors are not corporations, which would render the contributions illegal. Yet the Committee makes no claim that its treasurer discharged her responsibility to use best efforts to confirm that each contribution was legal. The Committee's assertion that it failed to investigate these contributions because they did not meet the \$200 itemization threshold is unavailing; the regulations do not exempt from the legality determination contributions that fall below the \$200 itemization threshold. *See* 11 C.F.R. § 103.3(b).

"To avoid accepting corporate contributions," the Committee implemented new procedures to screen all contributions. Comm. Resp. at 7-8, MUR 6572; Tarkanian Decl. ¶ 14, Ex. B. The Committee also reported that its review yielded four additional corporate contributions, totaling \$2,350, from Primary Care, Inc. (\$500), Rick Schneider Insurance (\$750), Howard K. Ekerling, Inc. (\$100), and The Rogich Communications Group (\$1,000), which the Committee refunded. Comm. Resp. at 6-7, MUR 6572.

1 Based on the record here, the alleged excessive contribution of DeWayne S. Zinkin was
2 not excessive because the third contribution that allegedly rendered his contributions excessive
3 was in fact made by another person, his father, DeWayne Zinkin. The Commission therefore
4 finds no reason to believe that DeWayne Zinkin and Zinkin Entertainment made excessive
5 contributions in violation of 2 U.S.C. § 441a(a) or that the Committee accepted an excessive
6 contribution in violation of 2 U.S.C. § 441a(f).

7 Second, the Complaint in MUR 6676 alleges that the Committee accepted an excessive
8 contribution of \$25,000 from Bill Carlson on September 5, 2012. Compl. at 4-5, MUR 6676.
9 The Committee's Response states that due to a typographical error in the Committee's original
10 2012 October Quarterly Report, Carlson's contribution of \$2,500 was erroneously reported as
11 \$25,000. Comm. Resp. at 3, MUR 6676. According to Carlson, however, his contribution was
12 actually \$250. *See* Carlson Resp., MUR 6676 (Mar. 11, 2013). The alleged excessive
13 contribution from Carlson was within the contribution limit, but due to a typographical error, the
14 Committee misreported the contribution as 100 times greater than the amount actually
15 contributed. The Commission therefore finds no reason to believe that Carlson made an
16 excessive contribution in violation of 2 U.S.C. § 441a(a), or that the Committee accepted an
17 excessive contribution in violation of 2 U.S.C. § 441a(f).

18 Third, the Complaint in MUR 6676 alleges that the Committee accepted \$8,050 in
19 primary-after-primary impermissible contributions from four individuals. Compl. at 5, MUR
20 6676. According to the Complaint, the contributions were excessive — and therefore the
21 Committee's receipt of them violated 2 U.S.C. § 441a(f) — because the Committee received the
22 contributions well after the Nevada primary election occurred on June 12, 2012, and the
23 contributions specifically designated for the primary exceeded the Committee's net debts

1 outstanding from that election. *Id.* at 5-6; 11 C.F.R. § 110.1(b)(3). The Complaint avers that the
2 “only primary election debts that the committee reported were the \$53,755.83 loan from Mr.
3 Tarkanian that the committee repaid on July 11, 2012 and a \$900 debt to JAMD that remains
4 unpaid.” Compl. at 5, MUR 6676 (citing 2012 July Quarterly Report).

5 The Committee contends that it had primary debt in excess of the contributions received
6 to retire that debt, but the Committee’s bookkeeper during the primary inadvertently omitted this
7 debt from the 2012 July Quarterly Report. Comm. Resp. at 3, MUR 6676. Specifically, the
8 Committee’s primary debt totaled \$10,948, all owed to one debtor. The Committee included this
9 debt in its Amended 2012 July Quarterly Report, filed with the Commission on June 3, 2013.
10 Amended 2012 July Quarterly Report at 25 (June 3, 2013). The Committee also asserts that the
11 four contributions for the primary election identified in the Complaint were appropriately
12 designated as contributions for the primary election, and that the memo descriptions included in
13 the Amended 2012 July Quarterly Report indicate that they were to retire primary debt. Comm.
14 Resp. at 3, MUR 6676.

15 While committees are permitted to receive contributions designated for a particular
16 election after that election, the contribution must not exceed the net debts outstanding from that
17 election. 11 C.F.R. § 110.1(b)(3)(i). A review of the record here reveals that these contributions
18 relating to the Committee’s primary debt did not exceed the Committee’s net debts outstanding
19 from the primary. Because the Committee received no excessive contributions, the Commission
20 finds no reason to believe that the Committee violated 2 U.S.C. § 441a(f) in relation to these
21 allegations. Also, the Committee acknowledges in its Response that it initially failed to report
22 accurately its debt from the primary election, which violates 2 U.S.C. § 434(b)(8) and 11 C.F.R.
23 §§ 104.3(d), 104.11(a). *See* Comm. Resp. at 3, MUR 6676. Yet, the relatively low amounts of

1 primary debt do not merit further use of Commission resources, *see* 72 Fed. Reg. at 12,545-46,
2 and the Commission therefore exercises its prosecutorial discretion to dismiss this violation
3 under *Heckler*, 470 U.S. 831, and reminds the Committee regarding the Act's requirements for
4 disclosing its primary debt.

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