

earlier reports.¹⁵ Of the \$785,999.08 in debts and obligations disclosed in these amendments, the Party had paid \$630,000 within 30 days of receiving an invoice, and \$450,000 within ten days.¹⁶

II. Analysis

Neither alleged violation warrants further use of the Commission's resources. The Act requires committees to disclose, *inter alia*, their cash on hand at the beginning of each reporting period and receipts.¹⁷ Due to a miscommunication with the State of North Carolina, the Party misreported a single receipt and, thus, also misreported its cash on hand. Given the circumstances that gave rise to the mistake, it is unlikely the Party will repeat the error. Additionally, the Party has already taken corrective action to clarify its reports. For these reasons, this alleged violation does not warrant further use of Commission resources.

The Act also requires that committees report "the amount and nature of outstanding debts and obligations."¹⁸ The Commission's corresponding debt reporting regulations, however, are not the most intuitive. The regulations generally require that debts "which remain outstanding shall be continuously reported until extinguished."¹⁹ But for debts and obligations that do not exceed \$500, a committee need only report debts when payment is made, or "not later than 60 days after such obligation is incurred."²⁰ For debts and obligations over \$500, reporting requirements are more complex: Routine "regularly reoccurring administrative expense[s]," like rent or salary, are not reported as outstanding debt until after the payment due date.²¹ All other debts and obligations over \$500 "shall be reported as of the date on which the debt or obligation is incurred."²² Commission regulations do not define when a debt is considered "incurred."²³ And like all disbursements, payments towards a debt must be disclosed.²⁴

In response to the complaint, the Party "undertook an exhaustive review of all of its reporting practices" and amended fourteen reports covering thirteen months.²⁵ Those reports

¹⁵ FGCR at 4.

¹⁶ Resp. Ex. A.

¹⁷ 52 U.S.C. § 30104(b)(1)-(3).

¹⁸ 52 U.S.C. § 30104(b)(8).

¹⁹ 11 C.F.R. § 104.11(a).

²⁰ 11 C.F.R. § 104.11(b).

²¹ *Id.*

²² *Id.*

²³ Another complexity is that some uncertainty is built into the reporting regime. The regulation requires committees to report estimates if, at the reporting deadline, they do not know the final amount of an incurred debt. 11 C.F.R. § 104.11(b). Thus, committees' outstanding debts are often unclear until later reports are filed.

²⁴ 52 U.S.C. § 30104(b)(4)-(6); 11 C.F.R. § 104.3(b)(1), (3).

²⁵ Resp. at 2.

identified \$785,999.08 in additional debts that had been disclosed. The majority of these debts were invoiced at the end of each reporting period, that is, at the end of each month. The Party then paid most of these invoices within just 5 to 7 days of their receipt, and paid approximately 80% within 30 days of receiving the invoice.²⁶ It then disclosed its payments on the following month's report as disbursements. The Party's staff at the time had a good-faith belief that such promptly paid invoices did not constitute "outstanding debts" that must be disclosed, and, moreover, its prompt payment and disbursement reporting practices refute any attempt to conceal expenses.

Under these circumstances, seeking a civil penalty is not necessary.²⁷ Dismissal is also consistent with how the Commission has disposed of similar matters in the past²⁸ and the Commission's enforcement priorities for our limited resources.²⁹

²⁶ *Id.*, Ex. A.

²⁷ See *FEC v. Friends of Jane Harman*, 59 F. Supp. 2d 1046, 1059 (C.D. Cal. 1999) (rejecting civil penalty given "the nature of the violations involved in this case, [and] the absence of any showing . . . that defendants acted in bad faith"); *FEC v. Ted Haley Congressional Committee*, 852 F.2d 1111, 1116 (9th Cir. 1988) (affirming district court's holding that "the circumstances . . . and clear innocence of [appellees'] motives leaves no justifiable grounds for assessment of penalties").

²⁸ See MURs 6606, 6572, 6676 (Tarkanian for Congress) (dismissal of misreported debt in part due to remedial actions taken); MUR 6712 (Kreegel for Congress) (dismissal of failure to disclose disputed debt; reports amended after complaint filed); MURs 6636, 6629, 6626 (Mittman for Congress) (same); MUR 6605 (Gary Latanich for Congress) (same); MUR 6460 (Friends of Jim Bender/Bender for Senate) (dismissal of failure to disclose disputed debt; remedial action after complaint filed); MUR 6165 (Patriots for Crimmins) (same); see also .

²⁹ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

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