

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7420) DISMISSAL AND
6 Gregory for Congress and Jeffrey Casale) CASE CLOSURE UNDER THE
7 in his official capacity as treasurer, and) ENFORCEMENT PRIORITY
8 Town of Babylon Democratic Committee) SYSTEM
9)

10
11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
13 basis to allocate its resources and decide which matters to pursue. These criteria include, without
14 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking
15 into account both the type of activity and the amount in violation; (2) the apparent impact the
16 alleged violation may have had on the electoral process; (3) the complexity of the legal issues
17 raised in the matter; and (4) recent trends in potential violations of the Federal Election
18 Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the
19 Commission's policy that pursuing relatively low-rated matters on the Enforcement docket
20 warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

21 The Office of General Counsel has scored MUR 7420 as a low-rated matter and has
22 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
23 reasons set forth below, we recommend that the Commission dismiss the allegations that
24 Gregory for Congress and Jeffrey Casale in his official capacity as treasurer ("the Committee")
25 violated 52 U.S.C. §§ 30104, 30125(e)(1) and the allegation that Town of Babylon Democratic
26 Committee ("Babylon") violated 52 U.S.C. § 30125(b)(1).

¹ The EPS rating information is as follows: . Complaint Filed: June 27, 2018. Babylon
Response Filed: July 26, 2018. No response was received from the Committee. The notification letter, mailed to
the address on the Committee's Statement of Organization and website, was returned as undeliverable.

1 The Complaint alleges that the Committee used space at Babylon's office but failed to
2 report in-kind contributions or expenditures for such use.² Babylon asserts that the Committee
3 subleased the space for \$500 a month, its fair market value, and provided copies of the sublease
4 agreement, and the rental invoices for April and May 2018.³

5 A federal candidate may not solicit, receive, direct, transfer or spend funds in connection
6 with a federal campaign unless the funds are subject to the limitations, prohibitions, and
7 reporting requirements of the Act.⁴ Similarly, amounts expended or disbursed by a state,
8 district, or local committee for Federal election activity must be from funds subject to the
9 limitations, prohibitions, and reporting requirements of the Act.⁵ A candidate's principal
10 committee is required to disclose the total amount of all contributions and disbursements made
11 during the reporting period,⁶ including the name and address of each person to whom an
12 expenditure in an aggregate amount or value in excess of \$200 within the election cycle is
13 made,⁷ and to report debts in excess of \$500 as of the date on which the debt is incurred.⁸

14 Babylon asserts that the Committee agreed to pay the fair market value of the office
15 space. Given the modest amount at issue and the lack of information concerning whether the

² Compl. at 1-2 (June 27, 2018).

³ Town of Babylon Democratic Committee Response at 1, Exhibits 1-3 (July 26, 2018).

⁴ 52 U.S.C. § 30125(e)(1).

⁵ 52 U.S.C. § 30125(b)(1).

⁶ 52 U.S.C. § 30104(b)(3)-(4); 11 C.F.R. § 104.3(a)(3), (b)(2). The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an in-kind contribution. 11 C.F.R. § 100.52(d).

⁷ 52 U.S.C. § 30104(b)(5); 11 C.F.R. 104.9(a).

⁸ With the exception that any obligation for rent, salary or other regularly reoccurring administrative expense shall not be reported until the payment due date. 11 C.F.R. § 104.11(b); *see also* 52 U.S.C. § 30104(b)(8).

1 debt is still outstanding, we recommend that the Commission exercise its prosecutorial
2 discretion and dismiss the allegations that Gregory for Congress and Jeffrey Casale in his
3 official capacity as treasurer violated 52 U.S.C. § 30125(e)(1) and that Town of Babylon
4 Democratic Committee violated 52 U.S.C. § 30125(b)(1).⁹

5 The Committee's disclosure reports reveal no payments or debts to Babylon, and
6 Babylon's response did not indicate it had been paid. The debts would have exceeded \$500 on
7 June 1, 2018, when both the April and May 2018 invoices were due, and should have been
8 reported on the Committee's 2018 July Quarterly Report. Conversely, if the Committee paid
9 Babylon, the payment should have been reported on its 2018 July Quarterly Report. In either
10 event, it appears that the Committee failed to report the transaction. However, given the modest
11 amounts likely at issue, we recommend that the Commission exercise its prosecutorial discretion
12 and dismiss the allegation that Gregory for Congress and Jeffrey Casale in his official capacity
13 as treasurer violated 52 U.S.C. § 30104, by not reporting either a debt or a disbursement.¹⁰ We
14 further recommend that the Commission remind the Committee to disclose debts and/or
15 disbursements in its reports to the Commission.

16 RECOMMENDATIONS

- 17
- 18 1. Dismiss the allegations that Gregory for Congress and Jeffrey Casale in his official
19 capacity as treasurer violated 52 U.S.C. §§ 30104, 30125(e)(1), pursuant to the
20 Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821
21 (1985);
 - 22 2. Dismiss the allegations that Town of Babylon Democratic Committee violated 52
23 U.S.C. § 30125(b)(1), pursuant to the Commission's prosecutorial discretion under
24 *Heckler v. Chaney*, 470 U.S. 821 (1985);
25
26

⁹ See *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

¹⁰ *Id.*


3. Remind Gregory for Congress and Jeffrey Casale in his official capacity as treasurer of the obligation to timely disclose debts and/or disbursements in Committee reports;
4. Approve the attached Factual and Legal Analysis and the appropriate letters; and
5. Close the file as to all Respondents.

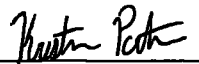
Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel

September 13, 2018
Date

BY: 
Stephen Gura
Deputy Associate General Counsel


Jeff S. Jordan
Assistant General Counsel


Kristina M. Portner
Attorney

Attachments:

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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2
3 RESPONDENTS: Gregory for Congress and MUR 7420
4 Jeffrey Casale in his official capacity
5 as treasurer, and
6 Town of Babylon Democratic Committee
7

8 This matter was generated by a Complaint alleging violations of the Federal Election
9 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Gregory for
10 Congress and Jeffrey Casale in his official capacity as treasurer (“the Committee”) and Town of
11 Babylon Democratic Committee. It was scored as a low-rated matter under the Enforcement
12 Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its
13 resources and decide which matters to pursue.

14 The Complaint alleges that the Committee used space at Babylon’s office but failed to
15 report in-kind contributions or expenditures for such use.¹ Babylon asserts that the Committee
16 subleased the space for \$500 a month, its fair market value, and provided copies of the sublease
17 agreement, and the rental invoices for April and May 2018.²

18 A federal candidate may not solicit, receive, direct, transfer or spend funds in connection
19 with a federal campaign unless the funds are subject to the limitations, prohibitions, and
20 reporting requirements of the Act.³ Similarly, amounts expended or disbursed by a state,
21 district, or local committee for Federal election activity must be from funds subject to the
22 limitations, prohibitions, and reporting requirements of the Act.⁴ A candidate’s principal

¹ Compl. at 1-2 (June 27, 2018).

² Town of Babylon Democratic Committee Response at 1, Exhibits 1-3 (July 26, 2018).

³ 52 U.S.C. § 30125(e)(1).

⁴ 52 U.S.C. § 30125(b)(1).

1 committee is required to disclose the total amount of all contributions and disbursements made
2 during the reporting period,⁵ including the name and address of each person to whom an
3 expenditure in an aggregate amount or value in excess of \$200 within the election cycle is
4 made,⁶ and to report debts in excess of \$500 as of the date on which the debt is incurred.⁷

5 Babylon asserts that the Committee agreed to pay the fair market value of the office
6 space. In furtherance of the Commission's priorities relative to other matters pending on the
7 Enforcement docket, the modest amounts at issue, and the lack of information concerning
8 whether the debt is still outstanding, the Commission exercises its prosecutorial discretion and
9 dismisses the allegations that Gregory for Congress and Jeffrey Casale in his official capacity as
10 treasurer violated 52 U.S.C. § 30125(e)(1) and that Town of Babylon Democratic Committee
11 violated 52 U.S.C. § 30125(b)(1). *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

12 The Committee's disclosure reports reveal no payments or debts to Babylon, and
13 Babylon's response did not indicate it had been paid. The debts would have exceeded \$500 on
14 June 1, 2018, when both the April and May 2018 invoices were due, and should have been
15 reported on the Committee's 2018 July Quarterly Report. Conversely, if the Committee paid
16 Babylon, the payment should have been reported on its 2018 July Quarterly Report. In either
17 event, it appears that the Committee failed to report the transaction.

18 In furtherance of the Commission's priorities relative to other matters pending on the
19 Enforcement docket and the modest amounts at issue, the Commission exercises its prosecutorial

⁵ 52 U.S.C. § 30104(b)(3)-(4); 11 C.F.R. § 104.3(a)(3), (b)(2). The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an in-kind contribution. 11 C.F.R. § 100.52(d).

⁶ 52 U.S.C. § 30104(b)(5); 11 C.F.R. 104.9(a).

⁷ With the exception that any obligation for rent, salary or other regularly reoccurring administrative expense shall not be reported until the payment due date. 11 C.F.R. § 104.11(b); *see also* 52 U.S.C. § 30104(b)(8).

- 1 discretion and dismisses the allegation that Gregory for Congress and Jeffrey Casale in his
- 2 official capacity as treasurer violated 52 U.S.C. § 30104, by not reporting either a debt or a
- 3 disbursement. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).