

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL’S REPORT

AR 19-11R

DATE FILED: October 2, 2019

DATE OF NOTIFICATION: October 4, 2019

LAST RESPONSE RECEIVED: December 2, 2019

DATE ACTIVATED: February 3, 2020

EXPIRATION OF SOL:

January 4, 2023 (earliest)

February 26, 2024 (latest)

ELECTION CYCLE: 2018**INTERNALLY GENERATED:**

RAD Audit Referral

RESPONDENTS:

Democratic Executive Committee of Florida

Fran Garcia in her official capacity as treasurer

RELEVANT STATUTES**AND REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30104(e)(2)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a Reports Analysis Division (“RAD”) Audit Referral concerning disclosure reports filed by the Democratic Executive Committee of Florida and Fran Garcia in her official capacity as treasurer (“Committee”), a state party committee of the Democratic party,¹ during the 2018 election cycle.² The Referral is based on the Committee’s

¹ See Committee Amended Statement of Organization at 2 (Mar. 25, 2020).

² RAD initially referred the Committee to the Audit Division but the Commission transferred the matter to the Office of General Counsel (“OGC”) for possible enforcement action. Certification ¶ 1, 2017-2018 RAD Audit Referrals – Unauthorized Committees (Sept. 30, 2019).

acceptance of excessive and prohibited contributions, an impermissible transfer of funds from its non-federal account, and amended disclosure reports showing previously unreported activity. The Committee responds to the referral by stating that the Commission should take no further action or, in the alternative, refer the matter to ADRO.³ For the reasons set forth below, we recommend that the Commission open a MUR, find reason to believe that the Committee violated 52 U.S.C. §§ 30104(b), 30104(e)(2), 30116(f), and 30118(a), and enter into pre-probable cause conciliation with the Committee with an opening settlement offer of \$144,000.

II. FACTUAL AND LEGAL ANALYSIS

A. Acceptance of Excessive and Prohibited Contributions

The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that no person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed \$10,000.⁴ With the exception of a committee established and maintained by a national political party, no multicandidate committee shall make contributions to any other political committee in any calendar year which in the aggregate exceed \$5,000.⁵ Further, the Act provides that no political committee shall knowingly accept any contribution that violates 52 U.S.C. § 30116.⁶ Corporations are prohibited from making contributions to political committees other than independent expenditure-only political committees (“IEOPCs”) in connection with a Federal

³ Committee Resp. at 1 (Dec. 2, 2019).

⁴ 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. § 110.1(c)(5).

⁵ 52 U.S.C. § 30116(a)(2)(C); 11 C.F.R. § 110.1(d).

⁶ 52 U.S.C. § 30116(f).

election, and political committees other than IEOPCs are prohibited from knowingly receiving such contributions.⁷

The Committee accepted excessive and prohibited contributions totaling \$58,750 during the 2018 calendar year that it failed to fully refund and transfer out.⁸ The Committee received excessive contributions totaling \$20,000 from three individuals and two multicandidate committees and prohibited contributions totaling of \$10,750 from two corporations, as disclosed on the amended 2018 12-Day Pre-General Report dated February 26, 2019.⁹ The Committee also disclosed receiving a \$10,000 prohibited contribution from a corporation on the amended 2018 September Monthly Report dated December 10, 2018. Further, the Committee deposited a contribution for \$18,000 from a corporation that was intended for its non-federal account into its federal account and reported it on the amended 2018 February Monthly Report dated May 15, 2018.¹⁰ The Committee stated in response to the referral that it had already refunded some contributions,¹¹ and intended to refund or transfer out the remaining excessive and prohibited contributions by the end of 2019.¹² However, through the end of March 2020 the Committee has

⁷ 52 U.S.C. § 30118(a). Advisory Opinion 2010-11. (Commonsense Ten) at 2-3.

⁸ Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019); RAD Audit Referral at 7 (July 12, 2019) (non-public).

⁹ See Request for Additional Information ("RFAI") for Committee Amended 2018 Pre-General Report at 6 (Apr. 18, 2019) which includes most of the excessive and prohibited contributions that are included in the referral.

¹⁰ See RFAI for Committee Amended 2018 February Monthly Report (July 10, 2018).

¹¹ Committee Resp. at 1-2. The Committee refunded a \$10,000 prohibited contribution from Bonar Engineering, Inc. on April 24, 2019. See 2019 May Monthly Report at 59 (May 20, 2019).

¹² Committee Resp. at 2.

only refunded contributions from Bonar Engineering and Woodbury Payton LLC totaling \$10,750.¹³

Because the Committee has accepted excessive and prohibited contributions including the transfer into its federal account of a contribution from a corporation that was intended for its non-federal account, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. §§ 30116(f) and 30118(a).

B. Impermissible Transfer of Funds from the Non-Federal Account

For state party committees, salaries, wages and fringe benefits paid for employees that spend 25% or less of their compensated time in a given month on Federal Election Activity or on activity in connection with a Federal election must either be paid only from the federal account or be allocated as administrative costs (i.e., allocated between the federal and non-federal accounts).¹⁴ If employees spend more than 25% of their compensated time on Federal Election Activity, the payments must be made only from the federal account.¹⁵

The Committee made an apparently impermissible transfer of \$278,714.49 from its non-federal account to pay for salary, wages, and/or fringe benefits of employees who engaged in Federal Election Activity, as disclosed on Schedule H4 of its amended 2018 October Monthly Report dated January 6, 2019.¹⁶ The Committee asserts that it filed a Miscellaneous Electronic

¹³ The Committee reports debt with the purpose as "refund" totaling \$25,750 that represent excessive and prohibited contributions from the referral. *See* 2020 April Monthly Report at 114-115, 117-118 (Apr. 20, 2020). The \$750 debt owed to Woodbury Payton LLC is included in this figure. However, the Committee's 2020 February Monthly Report disclosed on Schedule B that the debt to Woodbury Payton was paid, but did not disclose it as paid during this period on Schedule D. *See* 2020 February Monthly Report at 88, 101 (Feb. 20, 2020).

¹⁴ 52 U.S.C. § 30101(20)(A)(iv); *see also* 11 C.F.R. § 300.33(d)(1).

¹⁵ 52 U.S.C. § 30101(20)(A)(iv); *see also* 11 C.F.R. § 300.33(d)(2).

¹⁶ *See* Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019).

1 Submission to the Commission (“Form 99”) on April 24, 2019, that clarified that the
2 disbursement of \$278,714.49 for salaries was for employees who spent less than 25% of their
3 compensated time on Federal Election Activity, which would permit salary payments to be
4 allocated between the federal and non-federal account.¹⁷ The Committee claims that the Form
5 99 contains information on activity occurring “for the month of September 2018,” which is
6 referring to activity reported on its 2018 October Monthly Report.¹⁸

7 The Form 99, however, clarifies activity on the Committee’s 2018 August and September
8 Monthly Reports, not the relevant 2018 October Monthly Report. While the Form 99 does not
9 specify the RFAI to which it is responding, it clarifies five items “for the month of August 2018”
10 and six items “for the month of September 2018,” which correspond to items raised on the
11 RFAIs for the 2018 August and September Monthly Reports, respectively, including salary
12 payments on Schedule H4 for those monthly reports.¹⁹ The Committee received an RFAI for
13 the 2018 October Monthly Report, which included a request for clarification concerning salary
14 payments on Schedule H4, but the Committee did not file a Form 99 in response to that RFAI.²⁰
15 Even though the Committee further amended its 2018 October Monthly Report in May and June
16 2019, the Committee has not addressed the issue of whether the \$278,714.49 in salary payments
17 on Schedule H4 could be allocated between the federal and non-federal accounts. These funds
18 from the non-federal account may contain contributions that are excessive or prohibited for a

¹⁷ Committee Resp. at 2. *See also* Miscellaneous Electronic Submission to the Commission (Apr. 24, 2019).

¹⁸ Committee Resp. at 2.

¹⁹ *See* Miscellaneous Electronic Submission to the Commission (Apr. 24, 2019); *see also* RFAIs for Committee Amended 2018 August and September Monthly Reports both dated March 20, 2019.

²⁰ *See* RFAI for Committee Amended 2018 October Monthly Report (Mar. 28, 2019).

federal election.²¹ Therefore, we recommend that the Commission find reason to believe that the Committee violated 52 U.S.C. §§ 30116(f) and 30118(a) by accepting excessive and prohibited contributions.

C. Increased Financial Activity

The Act requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.²² These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required.²³ A State, district or local committee of a political party that is a political committee must report all receipts and disbursements made for Federal Election Activity aggregating more than \$5,000 in a calendar year.²⁴

The Committee disclosed additional disbursements of \$304,851.11 on its amended 2018 12-Day Pre-General Report dated February 26, 2019, that were not disclosed on its original report.²⁵ The Committee states that its failure to disclose these disbursements was inadvertent and that two large transactions accounted for \$250,000 of this amount.²⁶ Further, the Committee states that there was a large volume of activity to process during a short period to prepare the

²¹ In Florida, corporations are permitted to make contributions in state elections, and individuals and corporations may contribute a limit of \$3,000 to statewide candidates, and an unlimited amount of contributions to party committees. *See* Florida Statutes, Title IX, Section 106.8 (2014).

²² 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

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

²⁴ 52 U.S.C. § 30104(e)(2); 11 C.F.R. § 300.36(b)(2).

²⁵ *See* Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019). The reporting of additional disbursements of \$304,851.11 met the threshold for referral to the Office of Alternative Dispute Resolution. *See* RAD Audit Referral at 7 (July 12, 2019) (non-public). For purposes of efficiency, this violation will be handled by OGC.

²⁶ Committee Resp. at 3.

1 disclosure report, but it is working to improve its procedures to be accurate during high volume
2 periods.²⁷

3 The Committee also disclosed additional Levin receipts and disbursements of \$230,000
4 and \$233,730.20, respectively, on its amended 2018 12-Day Pre-General Report dated
5 February 26, 2019 that were not disclosed on its original report.²⁸ The Committee responds that
6 the disclosure of additional Levin receipts and disbursements on its 2018 12-Day Pre-General
7 Report was caused by a failure to check a box on its software to include Levin Schedules on its
8 report, and it amended the report.²⁹

9 Because the Committee reported additional disbursements and additional Levin receipts
10 and disbursements that did not appear on its original 2018 12-Day Pre-General Report, we
11 recommend that the Commission find reason to believe that the Committee violated 52 U.S.C.
12 §§ 30104(b) and (e)(2).

²⁷ *Id.*

²⁸ *See* Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019).

²⁹ Committee Resp. at 2.

AR 19-11R (Democratic Executive Committee of Florida)
First General Counsel's Report
Page 8 of 10

1

2 **IV. RECOMMENDATIONS**

3 1. Open a MUR;

4

5 2. Find reason to believe that the Democratic Executive Committee of Florida and
6 Fran Garcia in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b),
7 30104(e)(2), 30116(f) and 30118(a);

8

9 3. Approve the attached Factual and Legal Analysis;

10

11 4. Enter into conciliation with the Democratic Executive Committee of Florida and
12 Fran Garcia in her official capacity as treasurer prior to a finding of probable cause;

13

14 5. Approve the attached Conciliation Agreement; and

6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

May 1, 2020
Date

Peter J. Blumberg
Peter Blumberg
Acting Deputy Associate General Counsel for
Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Delbert K. Rigsby
Delbert K. Rigsby
Attorney

Attachments

1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: Democratic Executive Committee of Florida
and Fran Garcia in her official capacity as
treasurer

MUR_____

I. INTRODUCTION

This matter was generated by a Reports Analysis Division (“RAD”) Audit Referral concerning disclosure reports filed by the Democratic Executive Committee of Florida and Fran Garcia in her official capacity as treasurer (“Committee”), a state party committee of the Democratic party,¹ during the 2018 election cycle. The Referral is based on the Committee’s acceptance of excessive and prohibited contributions, an impermissible transfer of funds from its non-federal account, and amended disclosure reports showing previously unreported activity. The Committee responds to the referral by stating that the Commission should take no further action or, in the alternative, refer the matter to ADRO.² For the reasons set forth below, the Commission finds that there is reason to believe that the Committee violated 52 U.S.C. §§ 30104(b), 30104(e)(2), 30116(f), and 30118(a).

II. FACTUAL AND LEGAL ANALYSIS

A. Acceptance of Excessive and Prohibited Contributions

The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that no person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed \$10,000.³ With

¹ See Committee Amended Statement of Organization at 2 (Mar. 25, 2020).

² Committee Resp. at 1 (Dec. 2, 2019).

³ 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. §110.1(c)(5).

the exception of a committee established and maintained by a national political party, no multicandidate committee shall make contributions to any other political committee in any calendar year which in the aggregate exceed \$5,000.⁴ Further, the Act provides that no political committee shall knowingly accept any contribution that violates 52 U.S.C. § 30116.⁵ Corporations are prohibited from making contributions to political committees other than independent expenditure-only political committees (“IEOPCs”) in connection with a Federal election, and political committees other than IEOPCs are prohibited from knowingly receiving such contributions.⁶

The Committee accepted excessive and prohibited contributions totaling \$58,750 during the 2018 calendar year that it failed to fully refund and transfer out.⁷ The Committee received excessive contributions totaling \$20,000 from three individuals and two multicandidate committees and prohibited contributions totaling \$10,750 from two corporations as disclosed on the amended 2018 12-Day Pre-General Report dated February 26, 2019.⁸ The Committee also disclosed receiving a \$10,000 prohibited contribution from a corporation on the amended 2018 September Monthly Report dated December 10, 2018. Further, the Committee deposited a contribution for \$18,000 from a corporation that was intended for its non-federal account into its federal account and reported it on the amended 2018 February Monthly Report dated May 15,

⁴ 52 U.S.C. § 30116(a)(2)(C); 11 C.F.R. § 110.1(d).

⁵ 52 U.S.C. § 30116(f).

⁶ 52 U.S.C. § 30118(a). Advisory Opinion 2010-11. (Commonsense Ten) at 2-3.

⁷ Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019).

⁸ See Request for Additional Information (“RFAI”) for Committee Amended 2018 Pre-General Report at 6 (Apr. 18, 2019) which includes most of the excessive and prohibited contributions that are included in the referral.

2018.⁹ The Committee stated in response to the referral that it had already refunded some contributions,¹⁰ and intended to refund or transfer out the remaining excessive and prohibited contributions by the end of 2019.¹¹ However, through the end of March 2020 the Committee has only refunded contributions from Bonar Engineering and Woodbury Payton LLC totaling \$10,750.¹²

Because the Committee has accepted excessive and prohibited contributions including the transfer into its federal account of a contribution from a corporation that was intended for its non-federal account, the Commission finds that there is reason to believe that the Committee violated 52 U.S.C. §§ 30116(f) and 30118(a).

B. Impermissible Transfer of Funds from the Non-Federal Account

For state party committees, salaries, wages and fringe benefits paid for employees that spend 25% or less of their compensated time in a given month on Federal Election Activity or on activity in connection with a Federal election must either be paid only from the federal account or be allocated as administrative costs (i.e., allocated between the federal and non-federal

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¹² The Committee reports debt with the purpose as “refund” totaling \$25,750 that represent excessive and prohibited contributions from the referral. See 2020 April Monthly Report at 114-115, 117-118 (Apr. 20, 2020). The \$750 debt owed to Woodbury Payton LLC is included in this figure. However, the Committee’s 2020 February Monthly Report disclosed on Schedule B that the debt to Woodbury Payton was paid, but did not disclose it as paid during this period on Schedule D. See 2020 February Monthly Report at 88, 101 (Feb. 20, 2020).

accounts).¹³ If employees spend more than 25% of their compensated time on Federal Election Activity, the payments must be made only from the federal account.¹⁴

The Committee made an apparently impermissible transfer of \$278,714.49 from its non-federal account to pay for salary, wages, and/or fringe benefits of employees who engaged in Federal Election Activity, as disclosed on Schedule H4 of its amended 2018 October Monthly Report dated January 6, 2019.¹⁵ The Committee asserts that it filed a Miscellaneous Electronic Submission to the Commission (“Form 99”) on April 24, 2019, that clarified that the disbursement of \$278,714.49 for salaries was for employees who spent less than 25% of their compensated time on Federal Election Activity, which would permit salary payments to be allocated between the federal and non-federal account.¹⁶ The Committee claims that the Form 99 contains information on activity occurring “for the month of September 2018,” which is referring to activity reported on its 2018 October Monthly Report.¹⁷

The Form 99, however, clarifies activity on the Committee’s 2018 August and September Monthly Reports, not the relevant 2018 October Monthly Report. While the Form 99 does not specify the RFAI to which it is responding, it clarifies five items “for the month of August 2018” and six items “for the month of September 2018,” which correspond to items raised on the RFAIs for the 2018 August and September Monthly Reports, respectively, including salary

¹³ 52 U.S.C. § 30101(20)(A)(iv); *see also* 11 C.F.R. § 300.33(d)(1).

¹⁴ 52 U.S.C. § 30101(20)(A)(iv); *see also* 11 C.F.R. § 300.33(d)(2).

¹⁵ *See* Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019).

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 7 from the non-federal account may contain contributions that are excessive or prohibited for a
 8 federal election.²⁰ Therefore, the Commission finds that there is reason to believe that the
 9 Committee violated 52 U.S.C. §§ 30116(f) and 30118(a) by accepting excessive and prohibited
 10 contributions.

11 **C. Increased Financial Activity**

12 The Act requires committee treasurers to file reports of receipts and disbursements in
 13 accordance with the provisions of 52 U.S.C. § 30104.²¹ These reports must include, *inter alia*,
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2 than \$5,000 in a calendar year.²³

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15 report, and it amended the report.²⁸

16 Because the Committee reported additional disbursements and additional Levin receipts
17 and disbursements that did not appear on its original 2018 12-Day Pre-General Report, the

²³ 52 U.S.C. § 30104(e)(2); 11 C.F.R. § 300.36(b)(2).

²⁴ See Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019).

²⁵ Committee Resp. at 3.

²⁶ *Id.*

²⁷ See Letter from Jeff S. Jordan, FEC to Fran Garcia, Treasurer, Committee at 1 (Oct. 4, 2019).

²⁸ Committee Resp. at 2.

MUR_____ (Democratic Executive Committee of Florida)
Factual and Legal Analysis
Page 7 of 7

- 1 Commission finds that there is reason to believe that the Committee violated 52 U.S.C.
- 2 §§ 30104(b) and (e)(2).