

November 13, 2018



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Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination & Legal Administration
1050 First Street, NE
Washington, DC 20463

Re: MUR 7501

Dear Mr. Jordan:

We write as counsel to Bill Nelson for U.S. Senate (the “Committee”), and Peggy Gagnon in her official capacity as Treasurer to the Committee, (collectively, “Respondents”), in response to the complaint filed by Leslie Dougher dated September 10, 2018 (the “Complaint”).

The Complaint alleges that the Committee “accepted over \$58,000 in in-kind contributions from the Florida Democratic Party” and “failed to report these contributions”¹ in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”), 52 U.S.C. § 30101, *et seq.* and Federal Election Commission (“FEC” or “Commission”) regulations. These claims are erroneous and the FEC should dismiss this matter immediately. There is no basis to find any reason to believe that the Florida Democratic Party made any unreported or excessive contributions to the Committee nor that the Respondents violated the Act in any way.

I. Factual and Legal Argument

The Complainant claims that “[p]ublic filings make clear that [the Committee] has illegally accepted excessive contributions from the Florida Democratic Party and failed to report these contributions.”² This is simply incorrect. At issue are some disbursements for staff and consultant salaries and related healthcare expenses.³ However, all of these payments were for staff and consultants performing work for the Florida Democratic Party. The Complaint fails to cite to a single aspect of these individuals’ job responsibilities or activities to suggest that they were actually performing services exclusively or even primarily for the Committee such that their salaries must be treated as contributions to the Committee. Conversely, the sole basis for the Complaint appears to be an administrative oversight and reporting error by the Florida

¹ Complaint at 1.

² *Id.*

³ *Id.* at 2-3.

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Democratic Party that was immediately and publicly acknowledged. Moreover, this error has already been corrected on much of the Florida Democratic Party FEC reporting.

The supposed support for the Complaint is that the Florida Democratic Party incorrectly included the notation “Nelson” and either “USS” or “Senate18” on several disbursements for staff and consultants.⁴ However, according to public reports, the Party’s notation was simply the result of a “bookkeeping error.”⁵ As reported in *Politico*, the Florida Democratic Party Executive Director Juan Peñalosa said that the reporting was a mistake and that “[t]he disbursements are not provided as in-kind services to the Nelson campaign.”⁶ Moreover, Mr. Peñalosa confirmed that the Party’s FEC reports would be amended and the references to the Committee did not “imply that the [P]arty has provided any in-kind services to the Nelson campaign.”⁷ The Complaint does not include a single additional fact about what these individuals were actually doing or any other specific information to suggest that they were doing work for the Committee as opposed to simply being paid by the Florida Democratic Party for doing bona fide work for the Party in the ordinary course.

Of course, as a general matter, party payments for personnel expenses are **not** ordinary treated as in-kind contributions or coordinated party expenditures under longstanding Commission regulations. Pursuant to 11 CFR § 106.1(c)(1), “[e]xpenditures for rent, **personnel**, overhead, general administrative, fund-raising, and other day-to-day costs of political committees need not be attributed to individual candidates, **unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate**.”⁸ Apart from the bookkeeping and reporting error, the Complaint fails to provide any facts to suggest that these normal personnel expenses should be attributed to the Committee. To the best of the Committee’s knowledge, **none** of the disbursements were made for the exclusive benefit of the Committee or on the Committee’s behalf. In fact, it is the Committee’s understanding that the disbursements were made for fundraising personnel to raise funds for the

⁴ One disbursement at issue in the Complaint also refers to “Printing Signs/USSS/Nelson/N.” Respondents are not aware what this disbursement was for, but including extraneous information in a purpose description for printing costs is not enough to sustain a finding of “reason to believe” given that there are many different types of printing costs, even if they were related to Senator Nelson’s campaign, that would not constitute contributions or coordinated party expenditures. For example, the printed materials could have failed to meet the definition of “public communications,” could have been for volunteer exempt materials pursuant to 11 C.F.R. § 100.87, may have been for slate cards under 11 C.F.R. § 100.80, or for any number of other expenses that would not count as a contribution to the Committee. The Complaint’s accusations about this expenditure is nothing more than wild speculation without any real basis in fact.

⁵ Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO (Sept 12, 2018), <https://www.politico.com/states/florida/story/2018/09/12/florida-democrats-report-above-limit-nelson-contributions-blame-it-on-bookkeeping-error-608386>.

⁶ *Id.*

⁷ *Id.*

⁸ 11 C.F.R. § 106.1(c)(1) (emphasis added).

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Florida Democratic Party or for staff working to support the Party and Florida candidates up and down the ballot. Even if some of the staff spent some portion of their time on some work that had some relationship to the Party's support for Senator Nelson, the costs of their salary or other benefits payments would not be attributable to Respondents under Section 106.1(c)(1).⁹ The Complaint includes no facts to support such a conclusion.

This naked speculation in the Complaint is in stark contrast to FEC enforcement matters where the Commission found that certain party staff expenditures could be allocable to a specific campaign. For example, in MUR 5564/5575, the Alaska Democratic Party, in full coordination with a federal candidate's committee, opened field offices and hired hundreds of staff members throughout the state to work "almost exclusively on the candidate's behalf."¹⁰ There, "party staff . . . spent more than three-fourths of their time, and some . . . spent all of their time, working for the single federal candidate's campaign."¹¹ Even the campaign manager for the federal candidate was paid by the Alaska Democratic Party.¹² There is no suggestion of any activity of this nature here.

Apart from the erroneous report descriptions, the only other purported basis for the Complaint is that some individuals who received payments from the Florida Democratic Party were also described elsewhere as working for the Committee or received payments from the Committee (i.e., Greg Goddard was listed as "Finance Director" for the Committee, Christina Diamond was paid by the Florida Democratic Party and Diamond Strategies was paid by the Committee, and Stephanie Sass was listed as "Deputy Finance Director" for the Committee).¹³ But these Committee payments only prove that Respondents were following the law, not breaking it.

All three of these individuals did do work for the Committee, as political fundraisers, and were also paid for that work **by the Committee**.¹⁴ Separately, when they raised funds for the Florida Democratic Party, they were paid for that work **by the Party**. There is nothing inappropriate about this arrangement, and indeed, campaign finance laws require it. Each political committee must bear its own fundraising costs, and if some other entity paid for those expenses, then that would be an in-kind contribution. Rather than catching Respondents skirting the law, the Complaint has caught Respondents and the Florida Democratic Party red handed in ensuring that

⁹ See Adv. Op. 1978-50 (Michigan Democratic Party), 2 (Sept. 17, 1978), <https://www.fec.gov/files/legal/aos/1978-50/1978-50.pdf> (confirming that "The expenditures . . . would not, however, need to be allocated as expenditures on behalf of specific candidates for Federal office if the [activity] is not conducted on behalf of clearly identified candidates for Federal office to whom the expenditure can be directly attributed.").

¹⁰ MUR 5564 (Alaska Democratic Party), Statement of Reasons of Vice Chairman David M. Mason and Commissioner Hans A. VonSpakovsky, 2 (Dec. 21, 2007), <https://www.fec.gov/files/legal/murs/current/94573.pdf>.

¹¹ *Id.*

¹² MURs 5564/5575 (Alaska Democratic Party), First General Counsel's Report, 14 (March 1, 2008), <https://www.fec.gov/files/legal/murs/5564/10044282075.pdf>.

¹³ See Complaint at Exhibit B.

¹⁴ See Exhibit A.

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each political committee pays for its own fundraising expenses when personnel performed separate services for separate political committees. This is simply not a violation of the Act and the Complaint includes no facts, specific allegations, or statements of law to suggest otherwise.

II. Conclusion

As described herein, the Complaint does not state any facts, which, if proven true, would constitute a violation of the Act. Accordingly, the Commission should reject the Complaint's request for an investigation, find no reason to believe that a violation of the Act or Commission regulations has occurred, and immediately dismiss this matter.

Very truly yours,



Graham M. Wilson
Emma Olson Sharkey
Counsel to Respondents

EXHIBIT A**Gregory Goddard**

Payments to Mr. Goddard by the Committee:

10/31/2018 - \$4,751.13
10/15/2018 - \$4,751.13
9/30/2018 - \$4,751.13,
9/17/2018 - \$4,751.13
8/31/2018 - \$4,751.13
8/15/2018 - \$4,751.13
7/31/2018 - \$4,751.13
7/20/2018 - \$2,389.69
7/15/2018 - \$4,751.13
7/2/2018 - \$7,855
6/1/2018 - \$12,855
5/1/2018 - \$6,855
4/2/2018 - \$18,855
3/1/2018 - \$18,855
2/1/2018 - \$12,855
1/2/2018 - \$12,855

Payments to Mr. Goddard by the Florida Democratic Party:

7/23/2018 - \$3,000

Christina Diamond, Diamond Strategies LLC

Payments to Ms. Diamond by the Committee:

11/1/2018 - \$5,400
10/1/2018 - \$5,400
9/1/2018 - \$5,400
8/1/2018 - \$5,400
7/20/2018 - \$1,500
7/2/2018 - \$5,400
6/1/2018 - \$9,000
5/1/2018 - \$6,750
4/2/2018 - \$11,250
3/1/2018 - \$11,250
2/1/2018 - \$9,000
1/2/2018 - \$9,000

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Payments to Ms. Diamond by the Florida Democratic Party:

10/31/2018 - \$3,600
7/12/2018 - \$3,600
7/24/2018 - \$3,600
10/9/2018 - \$3,600
8/30/2018 - \$3,600

Stefanie Sass

Payments to Ms. Sass by the Committee:

11/1/2018 - \$4,942
10/1/2018 - \$4,942
9/1/2018 - \$4,942
8/1/2018 - \$4,942
7/20/2018 - \$2,000
7/2/2018 - \$4,942
6/1/2018 - \$8,000
5/1/2018 - \$5,500
4/2/2018 - \$10,500
3/1/2018 - \$10,500
2/1/2018 - \$8,000
1/2/2018 - \$8,000

Payments to Ms. Sass by the Florida Democratic Party:

10/31/2018 - \$3,058
7/11/2018 - \$3,058
7/24/2018 - \$3,058
10/9/2018 - \$3,058
8/30/2018 - \$3,058