

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 MUR: 7501
6 DATE COMPLAINT FILED: Sept. 17, 2018
7 DATE OF NOTIFICATION: Sept. 20, 2018
8 LAST RESPONSE RECEIVED: Dec. 11, 2018
9 DATE ACTIVATED: May 1, 2019

10
11 EXPIRATION OF SOL: June 15, 2023
12 ELECTION CYCLE: 2018

13
14 **COMPLAINANT:** Leslie Dougher

15
16 **RESPONDENTS:** Bill Nelson for U.S. Senate and Peggy Gagnon
17 in her official capacity as treasurer
18 Democratic Executive Committee of Florida and
19 Fran Garcia¹ in her official capacity as treasurer
20

21 **RELEVANT STATUTES AND**
22 **REGULATIONS:**

23 52 U.S.C. § 30104
24 52 U.S.C. § 30116

25
26 **INTERNAL REPORTS CHECKED:** FEC Disclosure Reports

27
28 **FEDERAL AGENCIES CHECKED:** None

29
30 **I. INTRODUCTION**

31 The Complaint alleges that information in the disclosure reports filed by the Democratic
32 Executive Committee of Florida and Fran Garcia in her official capacity as treasurer (“DECF”)
33 demonstrates that DECF made excessive in-kind contributions to Bill Nelson for U.S. Senate and
34 Peggy Gagnon in her official capacity as treasurer (the “Nelson Committee”) because the
35 purpose described for certain disbursements indicated they benefited Nelson.²

¹ See Democratic Executive Committee of Florida, FEC Form 1, *Statement of Organization*, amend. (Dec. 17, 2018). Garcia replaced Francesca Menes, treasurer at the time the Complaint was filed with the Commission.

² Compl. at 1-2 (Sept. 17, 2018).

1 DECF denies that it made excessive in-kind contributions to the Nelson Committee and
2 states that the reported purposes for the disbursements were an “administrative error.”³
3 However, DECF provides no information or explanation as to the circumstances surrounding the
4 error.⁴ The Nelson Committee denies that it received excessive in-kind contributions from
5 DECF and cites to public statements regarding the purported error in DECF’s disclosure
6 reports.⁵

7 Based on the available information, we recommend that the Commission find reason to
8 believe that the DECF violated the Federal Election Campaign Act of 1971, as amended (the
9 “Act”), by making and failing to accurately report excessive in-kind contributions in violation of
10 52 U.S.C. § 30116(a) and 30104(b). We also recommend that the Commission find reason to
11 believe that the Nelson Committee violated 52 U.S.C. § 30116(f) and 30104(b) by accepting and
12 failing to disclose these excessive contributions.

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 **A. Background**

15 Bill Nelson was a 2018 candidate in the general election for the U.S. Senate from
16 Florida.⁶ Bill Nelson for U.S. Senate is his authorized Committee.⁷ The Democratic Executive
17 Committee of Florida is registered with the Commission as a state party committee.⁸

³ DECF Resp. at 1 (Dec. 11, 2018).

⁴ *Id.*

⁵ Nelson Committee Resp. at 1 (Nov. 14, 2018); *see also* Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO (Sept. 12, 2018) .

⁶ *See* Bill Nelson, FEC Form 2, *Statement of Candidacy* (June 7, 2013).

⁷ *See* Bill Nelson for U.S. Senate, FEC Form 1, *Statement of Organization*, amended (Oct. 17, 2018).

⁸ *See* DECF *Statement of Organization*.

1 The Complaint states that beginning in June 2018, DECF disclosed 24 disbursements
2 primarily for salaries and personnel expenses totaling over \$58,700 with a reported purpose of
3 “Senate 18/Nelson,” along with additional descriptions of these disbursements as “cost of
4 campaign staff” and “campaign assistance.”⁹ The Complaint further states that some of the
5 disbursements were to “recipients who hold themselves out as employees of [the Nelson
6 Committee],” or that have connections to the Nelson Committee.¹⁰ The Complaint alleges that
7 these disbursements resulted in excessive in-kind contributions to the Nelson Committee and that
8 DECF and the Nelson Committee failed to disclose these transactions as contributions on the
9 proper schedules.¹¹

10 DECF denies that it made excessive in-kind contributions and maintains that the
11 Complaint contains no independent information, outside of its initial disclosure report entries, to
12 suggest that its staff was working for or on behalf of the Nelson Committee.¹² DECF asserts that
13 the purpose notations from its disclosure reports were erroneous because of miscommunication
14 between “lower level staff responsible for data entry for the Committee[‘s] reports and

⁹ Compl. at 1-2 (Sept. 17, 2018).

¹⁰ These payments include a July 11, 2018, \$5,000 payment made to Gregory Goddard, who the Complaint contends is the Nelson Committee’s finance director; a July 24, 2018, \$5,000 payment to Christina Diamond, owner of Diamond Strategies, which has received payments totaling over \$172,000 from the Nelson Committee during the 2018 election cycle; and a July 24, 2018, \$3,058 payment to Stephanie Sass, who the Complaint contends is the Nelson Committee’s Deputy Finance Director. The Complaint also alleges that the fact that these transactions were disclosed as “disbursements” on its FEC Form 3X, Schedule B (Itemized Disbursements) rather than as transactions on its Schedule F (Itemized Coordinated party Expenditures Made by Political Party Committees or Designated Agents on Behalf of Candidates for Federal Office), and were made over a “substantial period of time” further supports that these were contributions to the Committee. *Id.* at 3.

¹¹ *Id.* at 1-2.

¹² DECF Resp. at 2.

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1 Committee management.”¹³ DECF states that after it became aware of the misreported purposes,
2 it immediately and publicly acknowledged the errors and amended its disclosure reports.¹⁴
3 DECF further attributes the reporting errors to a “misunderstanding of the differences between
4 federal and state reporting requirements.”¹⁵ Although the response does not elaborate on this
5 statement, DECF Director Juan Peñalosa is quoted as saying “the reports were filled out as
6 though under state election law, which allows statewide political parties to give unlimited in-
7 kind contributions to candidates.”¹⁶ DECF’s Response asserts that at no time did its staff who
8 received the payments participate in activities that would be attributable to any specific
9 candidate, and therefore were not attributable as in-kind contributions.¹⁷ Instead, DECF asserts
10 that the payments were made for its own fundraising needs and for salary and benefits for DECF
11 staff working on activities that benefited DECF and candidates “up and down the ballot.”¹⁸
12 DECF, however, does not provide any statements from the personnel whose salaries and
13 expenses were initially reported as being for the benefit of the Nelson Committee or from the
14 personnel who made the purported reporting errors. A review of DECF disclosure reports
15 reveals that prior to and after its 2018 July and August Monthly disclosure reports, salary

¹³ *Id.*

¹⁴ *Id.*; see also Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO.

¹⁵ *Id.*

¹⁶ See Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO. Peñalosa further states that the expenses should never have been designated as being for Nelson’s campaign, and that the party has not actually surpassed the Act’s contribution limitation.

¹⁷ DECF Resp. at 2.

¹⁸ *Id.* at 2.

1 payments to these same individuals were not attributed to any candidates, but simply reported for
2 the purpose of “payroll.”

3 For its part, the Nelson Committee denies that it received in-kind contributions from
4 DECF and, relying on Peñalosa’s reported comments, attributes the reporting to a “bookkeeping
5 error.”¹⁹ The Nelson Committee also quotes Peñalosa’s statement that “the disbursements were
6 not provided as in-kind services to the Nelson campaign” and notes that the DECF amended its
7 disclosure reports to correct the error.²⁰ The Nelson Committee also states that payments for
8 personnel expenses are not in-kind contributions unless the expenditures are “made on behalf of
9 a clearly identified candidate” and states that the record does not support such a conclusion
10 because the Complaint offers no other information, besides DECF’s reports, to suggest that the
11 staff or consultants were performing services that were solely or primarily for the Nelson
12 Committee.²¹ The Nelson Committee acknowledges that some of the specific individuals
13 receiving the challenged payments from DECF also did work for the Nelson Committee, but
14 states that the Nelson Committee paid them for that work, and there is no prohibition on
15 employees working for both the DECF and the Nelson Committee.²²

¹⁹ Nelson Committee Resp. at 1.

²⁰ Nelson Committee Resp. at 1-2. Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO.

²¹ Nelson Committee Resp. at 1-2. Both DECF and Nelson Committee attempt to contrast the facts in this matter with the facts in MURs 5564/5575 (Alaska Democratic Party) which involved more available evidence of state party employees working for or on behalf of a single candidate. Respondents reliance on MURs 5564/5575 is misplaced because the record in this matter is not sufficiently developed to determine whether DECF’s alleged support of Nelson’s candidacy was more or less extensive as the campaign support activities in that matter.

²² *Id.* at 3.

1 **B. Legal Analysis**

2 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
3 value made by any person for the purpose of influencing any election for Federal office.²³ The
4 term “person” for purposes of the Act and Commission regulations includes partnerships,
5 corporations, and “any other organization or group of persons.”²⁴ During the 2018 election
6 cycle, the Act prohibited a state, district, or local party committee from making contributions to
7 any candidate and the candidate’s authorized political committee with respect to any election for
8 Federal office which, in the aggregate, exceeded \$5,000.²⁵ Any expenditure made by a political
9 committee on behalf of a candidate shall be reported as an in-kind contribution to the
10 candidate.²⁶ Exceptions include expenditures made for rent, personnel, overhead, general
11 administrative, fund-raising, and other day-to-day costs of political committees, which need not
12 be attributed to individual candidates, unless these expenditures are made on behalf of a clearly

²³ 52 U.S.C. § 30101(8)(A)(i).

²⁴ *Id.* § 30101(11); 11 C.F.R. § 100.10.

²⁵ See 52 U.S.C. § 30116(a)(2)(A) and (a)(4); Contribution Limits for 2017-2018, <https://www.fec.gov/updates/contribution-limits-2017-2018>. National and state party committees can also make expenditures on behalf of Senate and House nominees seeking election in the committee’s state. The limitations for these coordinated expenditures are separate from the national and state party committees’ normal contribution limits with respect to each federal candidate, and are based on a state’s voting age population and are adjusted each year in order to index the amounts for inflation. 11 C.F.R. § 109.30, 32-37. Florida’s limitation for the 2018 election cycle was \$1,668,600 for both the national and state party committees. While DECF reported no party coordinated expenditures on behalf of the Nelson Committee, the Democratic Senatorial Campaign Committee (“DSCC”) disclosed party coordinated expenditures totaling over \$3.3 million. Given this total, it appears that the DECF transferred its party coordinated expenditure authority to the DSCC.

²⁶ 11 C.F.R. § 106.1(a)(1).

1 identified candidate and the expenditure can be directly attributed to that candidate.²⁷ In
2 addition, the Act prohibits any candidate or political committee from knowingly accepting any
3 contribution or making any expenditure in violation of the provisions of Section 30116.²⁸
4 Finally, the Act requires committee treasurers to file reports in accordance with the provisions of
5 52 U.S.C. § 30104.²⁹ These reports must include, *inter alia*, the total amount of all receipts and
6 disbursements, including whether the disbursements were made under its coordinated
7 expenditure limit or constituted an in-kind contribution.³⁰ Political committees are prohibited
8 from knowingly accepting prohibited or excessive contributions.³¹

9 It is undisputed that DECF's original 2018 July and August Monthly disclosure reports
10 attributed certain salary and payroll expenses for the purpose of supporting candidate Bill
11 Nelson. The reported purposes in the reports leave no ambiguity—the payments benefited
12 Nelson and his campaign. Although DECF and the Committee argue that the disbursements in
13 question were made for the purpose of DECF salaries and personnel costs, and that the
14 attributions to Nelson's campaign were simply administrative reporting errors resulting from a
15 miscommunication, DECF offers no specific information about the nature of the
16 miscommunication. It is unclear as to why staff, without some information regarding the
17 activities performed by DECF staff, or without direction from DECF officials, would attribute
18 the salaries to Nelson and the Nelson Committee.

²⁷ 11 C.F.R. § 106.1(c).

²⁸ See 52 U.S.C. § 30104(a) and (b); 11 C.F.R. § 104.1(a) and (b).

²⁹ See 52 U.S.C. § 30104(a) and (b); 11 C.F.R. § 104.1(a) and (b).

³⁰ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

³¹ 52 U.S.C. § 30116(f).

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1 DECF's response asserts that the activities performed by DECF staff were for the benefit
2 of "candidates up and down the ballot," but do not specifically describe the activities. In fact,
3 some of the recipients were paid for services by both Nelson and DECF in the same reporting
4 period, but neither DECF nor the Nelson Committee offer information regarding the services
5 provided by those individuals on behalf of DECF or the Nelson Committee. Further, DECF is
6 quoted as saying that staff reported in error that Nelson benefited from DECF staff based on state
7 disclosure rules. However, it seems unlikely that the intended beneficiary of DECF efforts
8 would change based on the rules for state or federal disclosure.

9 The record in this matter is not clear. Respondents provide no information or affidavits
10 from staff that completed disclosure reports or from staff that received the payments from DECF.
11 Further, DECF provides no information regarding how the supposed disclosure errors occurred.
12 If the activities related to these disbursements were in support of Nelson and his campaign, as
13 initially reported, the disbursements are unreported excessive in-kind contributions made by
14 DECF to the Nelson Committee. In addition, if the Nelson Committee knew that DECF made
15 expenditures on its behalf, the Nelson Committee accepted excessive in-kind contributions and
16 should have reported those in-kind contributions in its disclosure reports.

17 Based on available information, including that the reports show a facial contribution to
18 Nelson, we recommend that the Commission find reason to believe that DECF made and failed
19 to disclose excessive in-kind contributions, in violation of 52 U.S.C. § 30116(a) and 30104(b).
20 We also recommend that the Commission find reason to believe that the Nelson Committee
21 violated 52 U.S.C. § 30116(f) and 30104(b) by accepting and failing to disclose the
22 contributions.

1 **III. PROPOSED INVESTIGATION**

2 We propose an investigation for this matter that focuses on determining the purpose of
3 the disbursements in question. We would seek clarification regarding the circumstances of the
4 purported administrative error. We would also seek information relevant to whether DECF's
5 expenditures were made on behalf of the Nelson Committee. Finally, we would determine what
6 the Nelson Committee knew of DECF's activities on its behalf. We recommend that the
7 Commission authorize the use of compulsory process in the event formal discovery is necessary
8 to complete the investigation.

9 **IV. RECOMMENDATIONS**

- 10 1. Find reason to believe that the Democratic Executive Committee of Florida and
11 Fran Garcia in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a)
12 and 30104(b) by making and failing to report excessive in-kind contributions;
13
14 2. Find reason to believe that Bill Nelson for U.S. Senate and Peggy Gagnon in her
15 official capacity as treasurer violated 52 U.S.C. §§ 30116(f) and 30104(b) by
16 accepting and failing to disclose excessive in-kind contributions;
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18 3. Approve the attached Factual and Legal Analyses;
19
20 4. Authorize the use of compulsory process; and
21

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1 5. Approve the appropriate letters.

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Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

August 29, 2019
Date

Peter G. Blumberg
Peter G. Blumberg
Acting Deputy Associate General Counsel
For Enforcement

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Wanda D. Brown
Wanda D. Brown
Attorney

Attachment:

1. Nelson Committee Factual and Legal Analysis
2. DECF Factual and Legal Analysis

30
31

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Bill Nelson for U.S. Senate and MUR 7501
Peggy Gagnon in her official
capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) by Leslie Dougher.¹ The Complaint alleges that information in the disclosure reports filed by the Democratic Executive Committee of Florida and Fran Garcia in her official capacity as treasurer (“DECF”) demonstrates that DECF made excessive in-kind contributions to Bill Nelson for U.S. Senate and Peggy Gagnon in her official capacity as treasurer (the “Nelson Committee”) because the purpose described for certain disbursements indicated they benefited Nelson.² The Nelson Committee denies that it received excessive in-kind contributions from DECF and cites to public statements regarding the purported error in DECF’s disclosure reports.³

Based on the available information, the Commission finds reason to believe that the Nelson Committee violated 52 U.S.C. § 30116(f) and 30104(b), provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), by accepting and failing to disclose these excessive contributions.

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. at 1-2 (Sept. 17, 2018).

³ Nelson Committee Resp. at 1 (Nov. 14, 2018); see also Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO (Sept. 12, 2018).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Bill Nelson was a 2018 candidate in the general election for the U.S. Senate from
4 Florida.⁴ Bill Nelson for U.S. Senate is his authorized Committee.⁵ The Democratic Executive
5 Committee of Florida is registered with the Commission as a state party committee.⁶

6 The Complaint states that beginning in June 2018, DECF disclosed 24 disbursements
7 primarily for salaries and personnel expenses totaling over \$58,700 with a reported purpose of
8 “Senate 18/Nelson,” along with additional descriptions of these disbursements as “cost of
9 campaign staff” and “campaign assistance.”⁷ The Complaint further states that some of the
10 disbursements were to “recipients who hold themselves out as employees of [the Nelson
11 Committee],” or that have connections to the Nelson Committee.⁸ The Complaint alleges that
12 these disbursements resulted in excessive in-kind contributions to the Nelson Committee and that
13 the Nelson Committee failed to disclose these contributions.⁹

4 ⁴ See Bill Nelson, FEC Form 2, *Statement of Candidacy* (June 7, 2013).

5 ⁵ See Bill Nelson for U.S. Senate, FEC Form 1, *Statement of Organization*, amended (Oct. 17, 2018).

6 ⁶ See DECF *Statement of Organization*.

7 ⁷ Compl. at 1-2 (Sept. 17, 2018).

8 ⁸ These payments include a July 11, 2018, \$5,000 payment made to Gregory Goddard, who the Complaint contends is the Nelson Committee’s finance director; a July 24, 2018, \$5,000 payment to Christina Diamond, owner of Diamond Strategies, which has received payments totaling over \$172,000 from the Nelson Committee during the 2018 election cycle; and a July 24, 2018, \$3,058 payment to Stephanie Sass, who the Complaint contends is the Nelson Committee’s Deputy Finance Director. The Complaint also alleges that the fact that these transactions were disclosed as “disbursements” on its FEC Form 3X, Schedule B (Itemized Disbursements) rather than as transactions on its Schedule F (Itemized Coordinated party Expenditures Made by Political Party Committees or Designated Agents on Behalf of Candidates for Federal Office), and were made over a “substantial period of time” further supports that these were contributions to the Committee. *Id.* at 3.

9 ⁹ *Id.* at 1-2.

1 For its part, the Nelson Committee denies that it received in-kind contributions from
2 DECF and rely on DECF Director Juan Peñalosa’s reported comments that attribute the reporting
3 to a “bookkeeping error.”¹⁰ The Nelson Committee also quotes Peñalosa’s statement that “the
4 disbursements were not provided as in-kind services to the Nelson campaign” and notes that the
5 DECF amended its disclosure reports to correct the error.¹¹ The Nelson Committee also states
6 that payments for personnel expenses are not in-kind contributions unless the expenditures are
7 “made on behalf of a clearly identified candidate” and states that the record does not support
8 such a conclusion because the Complaint offers no other information, besides DECF’s reports, to
9 suggest that the staff or consultants were performing services that were solely or primarily for
10 the Nelson Committee.¹² The Nelson Committee acknowledges that some of the specific
11 individuals receiving the challenged payments from DECF also did work for the Nelson
12 Committee, but states that the Nelson Committee paid them for that work, and there is no
13 prohibition on employees working for both the DECF and the Nelson Committee.¹³

14 **B. Legal Analysis**

15 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
16 value made by any person for the purpose of influencing any election for Federal office.¹⁴ The

¹⁰ Nelson Committee Resp. at 1.

¹¹ Nelson Committee Resp. at 1-2. Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO (Sept. 12, 2018).

¹² Nelson Committee Resp. at 1-2. Both DECF and Nelson Committee attempt to contrast the facts in this matter with the facts in MURs 5564/5575 (Alaska Democratic Party) which involved more available evidence of state party employees working for or on behalf of a single candidate. Respondents reliance on MURs 5564/5575 is misplaced because the record in this matter is not sufficiently developed to determine whether DECF’s alleged support of Nelson’s candidacy was more or less extensive as the campaign support activities in that matter.

¹³ *Id.* at 3.

¹⁴ 52 U.S.C. § 30101(8)(A)(i).

1 term “person” for purposes of the Act and Commission regulations includes partnerships,
2 corporations, and “any other organization or group of persons.”¹⁵ During the 2018 election
3 cycle, the Act prohibited a state, district, or local party committee from making contributions to
4 any candidate and the candidate’s authorized political committee with respect to any election for
5 Federal office which, in the aggregate, exceeded \$5,000.¹⁶ Any expenditure made by a political
6 committee on behalf of a candidate shall be reported as an in-kind contribution to the
7 candidate.¹⁷ Exceptions include expenditures made for rent, personnel, overhead, general
8 administrative, fund-raising, and other day-to-day costs of political committees, which need not
9 be attributed to individual candidates, unless these expenditures are made on behalf of a clearly
10 identified candidate and the expenditure can be directly attributed to that candidate.¹⁸ In
11 addition, the Act prohibits any candidate or political committee from knowingly accepting any
12 contribution or making any expenditure in violation of the provisions of Section 30116.¹⁹
13 Finally, the Act requires committee treasurers to file reports in accordance with the provisions of
14 52 U.S.C. § 30104.²⁰ These reports must include, *inter alia*, the total amount of all receipts and

¹⁵ *Id.* § 30101(11); 11 C.F.R. § 100.10.

¹⁶ *See* 52 U.S.C. § 30116(a)(2)(A) and (a)(4); Contribution Limits for 2017-2018, <https://www.fec.gov/updates/contribution-limits-2017-2018>. National and state party committees can also make expenditures on behalf of Senate and House nominees seeking election in the committee’s state. The limitations for these coordinated expenditures are separate from the national and state party committees’ normal contribution limits with respect to each federal candidate, and are based on a state’s voting age population and are adjusted each year in order to index the amounts for inflation. 11 C.F.R. § 109.30, 32-37. Florida’s limitation for the 2018 election cycle was \$1,668,600 for both the national and state party committees. While DECF reported no party coordinated expenditures on behalf of the Nelson Committee, the Democratic Senatorial Campaign Committee (“DSCC”) disclosed party coordinated expenditures totaling over \$3.3 million. Given this total, it appears that the DECF transferred its party coordinated expenditure authority to the DSCC.

¹⁷ 11 C.F.R. § 106.1(a)(1).

¹⁸ 11 C.F.R. § 106.1(c).

¹⁹ *See* 52 U.S.C. § 30104(a) and (b); 11 C.F.R. § 104.1(a) and (b).

²⁰ *See* 52 U.S.C. § 30104(a) and (b); 11 C.F.R. § 104.1(a) and (b).

1 disbursements, including whether the disbursements were made under its coordinated
2 expenditure limit or constituted an in-kind contribution.²¹ Political committees are prohibited
3 from knowingly accepting prohibited or excessive contributions.²²

4 It is undisputed that DECF's original 2018 July and August Monthly disclosure reports
5 attributed certain salary and payroll expenses for the purpose of supporting candidate Bill
6 Nelson. The reported purposes in the reports leave no ambiguity—the payments benefited
7 Nelson and his campaign. Although the Nelson Committee argues that the disbursements in
8 question were made for the purpose of DECF salaries and personnel costs, and that the
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10 information about the purported misreporting. It is unclear as to why staff, without some
11 information regarding the activities performed by DECF staff, or without direction from DECF
12 officials, would attribute the salaries to Nelson and the Nelson Committee.

13 The record in this matter is not clear. If the activities related to these disbursements were
14 in support of Nelson and his campaign, as initially reported, the disbursements are unreported
15 excessive in-kind contributions made by DECF to the Nelson Committee. In addition, if the
16 Nelson Committee knew that DECF made expenditures on its behalf, the Nelson Committee
17 accepted excessive in-kind contributions and should have reported those in-kind contributions in
18 its disclosure reports.

19 Based on available information, including that the reports show a facial contribution to
20 Nelson, the Commission finds reason to believe that the Nelson Committee violated 52 U.S.C.
21 § 30116(f) and 30104(b) by accepting and failing to disclose the contributions.

²¹ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

²² 52 U.S.C. § 30116(f).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Democratic Executive Committee of Florida **MUR 7501**
and Fran Garcia in her official capacity
as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the “Commission”) by Leslie Dougher.¹ The Complaint alleges that information in the disclosure reports filed by the Democratic Executive Committee of Florida and Fran Garcia in her official capacity as treasurer (“DECF”) demonstrates that DECF made excessive in-kind contributions to Bill Nelson for U.S. Senate and Peggy Gagnon in her official capacity as treasurer (the “Nelson Committee”) because the purpose described for certain disbursements indicated they benefited Nelson.²

DECF denies that it made excessive in-kind contributions to the Nelson Committee and states that the reported purposes for the disbursements were an “administrative error.”³ However, DECF provides no information or explanation as to the circumstances surrounding the error.⁴

Based on the available information, the Commission finds reason to believe that the DECF violated 52 U.S.C. § 30116(a) and 30104(b), provisions of the Federal Election Campaign

¹ See 52 U.S.C. § 30109(a)(1).

² Compl. at 1-2 (Sept. 17, 2018).

³ DECF Resp. at 1 (Dec. 11, 2018).

⁴ *Id.*

1 Act of 1971, as amended (the “Act”), by making and failing to accurately report excessive in-
2 kind contributions.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

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6 Florida.⁵ Bill Nelson for U.S. Senate is his authorized Committee.⁶ The Democratic Executive
7 Committee of Florida is registered with the Commission as a state party committee.⁷

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⁵ See Bill Nelson, FEC Form 2, *Statement of Candidacy* (June 7, 2013).

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1 these disbursements resulted in excessive in-kind contributions to the Nelson Committee and that
2 DECF failed to disclose these transactions as contributions on the proper schedules.¹⁰

3 DECF denies that it made excessive in-kind contributions and maintains that the
4 Complaint contains no independent information, outside of its initial disclosure report entries, to
5 suggest that its staff was working for or on behalf of the Nelson Committee.¹¹ DECF asserts that
6 the purpose notations from its disclosure reports were erroneous because of miscommunication
7 between “lower level staff responsible for data entry for the Committee[‘s] reports and
8 Committee management.”¹² DECF states that after it became aware of the misreported purposes,
9 it immediately and publicly acknowledged the errors and amended its disclosure reports.¹³
10 DECF further attributes the reporting errors to a “misunderstanding of the differences between
11 federal and state reporting requirements.”¹⁴ Although the response does not elaborate on this
12 statement, DECF Director Juan Peñalosa is quoted as saying “the reports were filled out as
13 though under state election law, which allows statewide political parties to give unlimited in-kind
14 contributions to candidates.”¹⁵ DECF’s Response asserts that at no time did its staff who
15 received the payments participate in activities that would be attributable to any specific

¹⁰ *Id.* at 1-2.

¹¹ DECF Resp. at 2.

¹² *Id.*

¹³ *Id.*; see also Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO.

¹⁴ *Id.*

¹⁵ See Matt Dixon, *Florida Democrats Report Above-Limit Nelson Contributions, Blame It On Bookkeeping Error*, POLITICO. Peñalosa further states that the expenses should never have been designated as being for Nelson’s campaign, and that the party has not actually surpassed the Act’s contribution limitation.

1 candidate, and therefore were not attributable as in-kind contributions.¹⁶ Instead, DECF asserts
2 that the payments were made for its own fundraising needs and for salary and benefits for DECF
3 staff working on activities that benefited DECF and candidates “up and down the ballot.”¹⁷
4 DECF, however, does not provide any statements from the personnel whose salaries and
5 expenses were initially reported as being for the benefit of the Nelson Committee or from the
6 personnel who made the purported reporting errors. A review of DECF disclosure reports
7 reveals that prior to and after its 2018 July and August Monthly disclosure reports, salary
8 payments to these same individuals were not attributed to any candidates, but simply reported for
9 the purpose of “payroll.”

10 **B. Legal Analysis**

11 A contribution is any gift, subscription, loan, advance, or deposit of money or anything of
12 value made by any person for the purpose of influencing any election for Federal office.¹⁸ The
13 term “person” for purposes of the Act and Commission regulations includes partnerships,
14 corporations, and “any other organization or group of persons.”¹⁹ During the 2018 election
15 cycle, the Act prohibited a state, district, or local party committee from making contributions to
16 any candidate and the candidate’s authorized political committee with respect to any election for

¹⁶ DECF Resp. at 2.

¹⁷ *Id.* at 2.

¹⁸ 52 U.S.C. § 30101(8)(A)(i).

¹⁹ *Id.* § 30101(11); 11 C.F.R. § 100.10.

1 Federal office which, in the aggregate, exceeded \$5,000.²⁰ Any expenditure made by a political
2 committee on behalf of a candidate shall be reported as an in-kind contribution to the
3 candidate.²¹ Exceptions include expenditures made for rent, personnel, overhead, general
4 administrative, fund-raising, and other day-to-day costs of political committees, which need not
5 be attributed to individual candidates, unless these expenditures are made on behalf of a clearly
6 identified candidate and the expenditure can be directly attributed to that candidate.²² In
7 addition, the Act prohibits any candidate or political committee from knowingly accepting any
8 contribution or making any expenditure in violation of the provisions of Section 30116.²³
9 Finally, the Act requires committee treasurers to file reports in accordance with the provisions of
10 52 U.S.C. § 30104.²⁴ These reports must include, *inter alia*, the total amount of all receipts and
11 disbursements, including whether the disbursements were made under its coordinated
12 expenditure limit or constituted an in-kind contribution.²⁵ Political committees are prohibited
13 from knowingly accepting prohibited or excessive contributions.²⁶

²⁰ See 52 U.S.C. § 30116(a)(2)(A) and (a)(4); Contribution Limits for 2017-2018, <https://www.fec.gov/updates/contribution-limits-2017-2018>. National and state party committees can also make expenditures on behalf of Senate and House nominees seeking election in the committee's state. The limitations for these coordinated expenditures are separate from the national and state party committees' normal contribution limits with respect to each federal candidate, and are based on a state's voting age population and are adjusted each year in order to index the amounts for inflation. 11 C.F.R. § 109.30, 32-37. Florida's limitation for the 2018 election cycle was \$1,668,600 for both the national and state party committees. While DECF reported no party coordinated expenditures on behalf of the Nelson Committee, the Democratic Senatorial Campaign Committee ("DSCC") disclosed party coordinated expenditures totaling over \$3.3 million. Given this total, it appears that the DECF transferred its party coordinated expenditure authority to the DSCC.

²¹ 11 C.F.R. § 106.1(a)(1).

²² 11 C.F.R. § 106.1(c).

²³ See 52 U.S.C. § 30104(a) and (b); 11 C.F.R. § 104.1(a) and (b).

²⁴ See 52 U.S.C. § 30104(a) and (b); 11 C.F.R. § 104.1(a) and (b).

²⁵ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

²⁶ 52 U.S.C. § 30116(f).

1 It is undisputed that DECF’s original 2018 July and August Monthly disclosure reports
2 attributed certain salary and payroll expenses for the purpose of supporting candidate Bill
3 Nelson. The reported purposes in the reports leave no ambiguity—the payments benefited
4 Nelson and his campaign. Although DECF and the Committee argue that the disbursements in
5 question were made for the purpose of DECF salaries and personnel costs, and that the
6 attributions to Nelson’s campaign were simply administrative reporting errors resulting from a
7 miscommunication, DECF offers no specific information about the nature of the
8 miscommunication. It is unclear as to why staff, without some information regarding the
9 activities performed by DECF staff, or without direction from DECF officials, would attribute
10 the salaries to Nelson and the Nelson Committee.

11 DECF’s response asserts that the activities performed by DECF staff were for the benefit
12 of “candidates up and down the ballot,” but do not specifically describe the activities. In fact,
13 some of the recipients were paid for services by both Nelson and DECF in the same reporting
14 period, but DECF offers no information regarding the services provided by those individuals on
15 behalf of DECF or the Nelson Committee. Further, DECF is quoted as saying that staff reported
16 in error that Nelson benefited from DECF staff based on state disclosure rules. However, it
17 seems unlikely that the intended beneficiary of DECF efforts would change based on the rules
18 for state or federal disclosure.

19 The record in this matter is not clear. Respondents provide no information or affidavits
20 from staff that completed disclosure reports or from staff that received the payments from DECF.
21 Further, DECF provides no information regarding how the supposed disclosure errors occurred.
22 If the activities related to these disbursements were in support of Nelson and his campaign, as
23 initially reported, the disbursements are unreported excessive in-kind contributions made by

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1 DECF to the Nelson Committee. In addition, if the Nelson Committee knew that DECF made
2 expenditures on its behalf, the Nelson Committee accepted excessive in-kind contributions and
3 should have reported those in-kind contributions in its disclosure reports.

4 Based on available information, including that the reports show a facial contribution to
5 Nelson, the Commission finds reason to believe that DECF made and failed to disclose excessive
6 in-kind contributions, in violation of 52 U.S.C. § 30116(a) and 30104(b).