

1 **FEDERAL ELECTION COMMISSION**

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

4
5 AUDIT REFERRAL: 19-02
6 DATE RECEIVED: May 8, 2019
7 DATE OF NOTIFICATION: May 13, 2019
8 DATE OF RESPONSE: no response received
9 DATE ACTIVATED: August 6, 2019

10
11 EARLIEST SOL: 2/17/2020
12 LATEST SOL: 9/12/2021
13 ELECTION CYCLE: 2016

14
15 **SOURCE:** Internally Generated

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17 **RESPONDENT:** Hall for Congress and
18 David Gould, in his official capacity as Treasurer

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20 **RELEVANT STATUTES AND** 52 U.S.C. § 30101(1)(A)
21 **REGULATIONS:** 52 U.S.C. § 30116
22 11 C.F.R. § 100.2
23 11 C.F.R. § 102.9(e)
24 11 C.F.R. § 103.3(b)(3)
25 11 C.F.R. § 110.1(b), (k)
26 11 C.F.R. § 110.2(b)
27 11 C.F.R. § 110.9

28
29 **INTERNAL REPORTS CHECKED:** Disclosure Reports
30 Audit Documents

31
32 **FEDERAL AGENCIES CHECKED:** None

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34 **I. INTRODUCTION**

35 The Audit Division referred Hall for Congress and David Gould in his official capacity as
36 treasurer (“the Committee”)¹ to the Office of the General Counsel for possible enforcement
37 action stemming from an audit of the Committee’s activities between January 1, 2015, and

¹ The Committee is the principal campaign committee for Isadore Hall, III, who sought election in 2016 to the U.S. House of Representatives for California’s Forty-fourth Congressional District. *See* Statement of Candidacy, Hall for Congress (Jan. 14, 2016).

1 December 31, 2016. On April 24, 2019, the Commission approved the Proposed Final Audit
2 Report finding that the Committee received excessive contributions totaling \$61,683 and that the
3 Committee spent general election contributions totaling \$71,407 on primary election expenses.²

4 Based on the available information, we recommend that the Commission open a matter
5 under review (“MUR”), find reason to believe that the Committee violated 52 U.S.C. § 30116(f)
6 and 11 C.F.R. § 102.9, authorize pre-probable cause conciliation, and approve the attached
7 conciliation agreement.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. There is Reason to Believe that the Committee Accepted Excessive** 10 **Contributions**

11 During the 2016 election cycle, an authorized committee was limited to accepting a total
12 of \$2,700 per election from an individual and \$5,000 from a multicandidate committee.³ A
13 primary election and a general election are each considered a separate election, and the
14 individual contribution limits are applied separately with respect to each election.⁴ Candidates
15 and political committees are prohibited from knowingly accepting excessive contributions.⁵

16 Commission regulations provide that if an authorized committee receives a contribution
17 that appears to exceed the contribution limits, the committee must either refund the contribution
18 to the donor or deposit the contribution into its federal account and seek a reattribution or a

² Final Audit Report of the Commission on Hall for Congress, https://transition.fec.gov/audits/2016/Hall_for_Congress/IsadoreHall_FARC_2016.pdf at 3 (hereinafter, “Audit Report”).

³ 52 U.S.C. § 30116(a)(1)(A), (a)(2)(A); 11 C.F.R. §§ 110.1(b)(1), 110.2(b)(1).

⁴ 52 U.S.C. §§ 30101(1)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1(b), 110.2(b).

⁵ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

1 redesignation of the excessive portion.⁶ For example, a joint contribution may be attributed
2 equally to each signatory on a negotiable instrument, and a committee may reattribute a portion
3 of a joint contribution to another person on the negotiable instrument to avoid the contribution
4 being excessive.⁷ Similarly, a committee may ask a contributor to redesignate the contribution to
5 another election to avoid it being excessive.⁸ If, however, the authorized committee did not
6 receive a proper reattribution or redesignation within 60 days after receiving the contribution, it
7 must refund the excessive portion to the donor.⁹

8 Commission regulations further provide that when an individual makes an excessive
9 contribution to an authorized committee before the primary, the committee may presumptively
10 redesignate the excessive portion to the general election if the contribution is not designated in
11 writing for a particular election and does not cause the contributor to exceed any other
12 contribution limits as redesignated.¹⁰ Similarly, when an individual makes an excessive
13 contribution to an authorized committee after the primary and before the general election, the
14 committee may presumptively redesignate the excessive portion to the primary election if the
15 contribution is not designated in writing for a particular election, the redesignation does not
16 cause the contributor to exceed any other contribution limits, and the contribution does not
17 exceed the committee's net debts outstanding for the primary election.¹¹ If a committee

⁶ 11 C.F.R. § 103.3(b)(3).

⁷ 11 C.F.R. § 110.1(k)(3).

⁸ 11 C.F.R. § 110.1(b)(2), (3), (5).

⁹ 11 C.F.R. § 103.3(b)(3).

¹⁰ 11 C.F.R. § 110.1(b)(5)(ii)(B).

¹¹ 11 C.F.R. § 111.1(b)(5)(ii)(C).

1 presumptively redesignates an excessive contribution, it must notify the contributor within sixty
2 days after receipt of the contribution, and inform the contributor of the amount of the
3 contribution that was redesignated and that the contributor may request a refund of the
4 contribution.¹²

5 The audit revealed that the Committee received \$61,683 in excessive contributions.¹³
6 The Audit staff informed the Committee that the excessive contributions could be resolved with
7 presumptive redesignation letters, albeit untimely.¹⁴ In response, the Committee sent
8 presumptive redesignation letters untimely resolving \$44,500 in excessive contributions.¹⁵ The
9 remaining \$17,183 in excessive contributions was not resolved.

10 Therefore, we recommend that the Commission open a MUR and find reason to believe
11 that Hall for Congress and David Gould in his official capacity as treasurer violated 52 U.S.C.
12 § 30116(f) by accepting excessive contributions.

13 **B. There is Reason to Believe that the Committee Used General Election Funds**
14 **for Primary Election Expenses**

15 Commission regulations permit a candidate's authorized committee to receive
16 contributions for the general election prior to the primary election provided the committee
17 employs an acceptable accounting method to distinguish between primary and general election
18 contributions.¹⁶ Committees are permitted to use general election contributions to make advance

¹² 11 C.F.R. § 110.1(b)(5)(ii)(B)(5)-(6), (C)(5)-(6).

¹³ Audit Report at 5.

¹⁴ *Id.*

¹⁵ *Id.* The Commission's database shows no corresponding amendments to the Committee's 2015 and 2016 reports.

¹⁶ 11 C.F.R. § 102.9(e)(1).

1 payments for general election purposes.¹⁷ The committee's records must demonstrate that prior
2 to the primary election, the committee's recorded cash-on-hand was at all times equal to or in
3 excess of the sum of general election contributions received less the sum of general election
4 disbursements made.¹⁸ These regulations are designed to ensure that candidates do not use
5 general election contributions for the primary election.¹⁹

6 The audit revealed that the Committee spent general election contributions totaling
7 \$71,407 on primary election expenses.²⁰ The Audit division determined that the Committee
8 received \$155,358 in general election contributions prior to the primary election, and that it
9 began spending general election contributions on primary election expenditures on April 21,
10 2016, and continued through the primary election on June 7, 2016.²¹ As a result, the Committee
11 did not meet the requirement that the committee's cash-on-hand was at all times prior to the
12 primary election equal to or in excess of the sum of general election contributions received less
13 the sum of general election disbursements made.²²

¹⁷ See Advisory Op. 1986-17 (Friends of Mark Green) at 4 (concluding that the Act did not prohibit a committee from using general election contributions to make expenditures for the general election before the primary election, such as advance payments or deposits in connection with the general election).

¹⁸ 11 C.F.R. § 102.9(e)(2).

¹⁹ See Advisory Opinion 1992-15 (Russo for Congress) at 2.

²⁰ Audit Report at 7. In response to the audit exit conference, the Committee submitted expenses for fundraising and compliance that were to be allocated between the primary and general election. *Id.* at 8. The \$32,854 of such expenses which were attributed to the general election are not reflected in the \$71,407. *Id.*

²¹ *Id.* at 8.

²² For example, the Committee reported a cash on hand balance of \$38,182.11 in its 2016 Pre-Primary Report, which was less than the total amount of general election contributions made at that time. See Hall for Congress, Am. 2016 Pre-Primary Report (Jan. 23, 2017).

1 In response to the Interim Audit Report, the Committee argued that the cost of setting up
2 campaign offices for both the primary and general elections were higher than the amount
3 identified by the Audit Division, and were at least equal to the \$71,407 at issue.²³ However, the
4 Committee failed to provide any documentation during the audit demonstrating that the general
5 election contributions were not used to fund primary election activity and did not respond to the
6 referral.²⁴

7 Therefore, we recommend that the Commission find reason to believe that Hall for
8 Congress and David Gould in his official capacity as treasurer violated 11 C.F.R. § 102.9(e) by
9 using general election contributions for primary election expenses.

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²³ Audit Report at 8.

²⁴ *Id.*

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1 **IV. RECOMMENDATIONS**

- 2 1. Open a MUR;
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- 4 2. Find reason to believe that Hall for Congress and David Gould in his official
- 5 capacity as treasurer violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9;
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- 7 3. Enter into conciliation with Hall for Congress and David Gould in his official
- 8 capacity as treasurer prior to a finding of probable cause to believe;
- 9
- 10 4. Approve the attached Factual and Legal Analysis;
- 11
- 12 5. Approve the attached Conciliation Agreement; and
- 13
- 14 6. Approve the appropriate letter.

15
16 Lisa J. Stevenson
17 Acting General Counsel

18
19
20 Charles Kitcher
21 Acting Associate General Counsel for Enforcement

22
23
24 *Stephen Gura/ms*

25 09/06/2019
26 Date

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28 Stephen Gura
29 Deputy Associate General Counsel for Enforcement

30
31 *Mark Shonkwiler*

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33 Mark Shonkwiler
34 Assistant General Counsel

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36
37 *Kristina Portner*

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39 Kristina M. Portner
40 Attorney

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42 Attachment:
43 Factual and Legal Analysis
44 Conciliation Agreement
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individual contribution limits are applied separately with respect to each election.⁴ Candidates and political committees are prohibited from knowingly accepting excessive contributions.⁵

Commission regulations provide that if an authorized committee receives a contribution that appears to exceed the contribution limits, the committee must either refund the contribution to the donor or deposit the contribution into its federal account and seek a reattribution or a redesignation of the excessive portion.⁶ For example, a joint contribution may be attributed equally to each signatory on a negotiable instrument, and a committee may reattribute a portion of a joint contribution to another person on the negotiable instrument to avoid the contribution being excessive.⁷ Similarly, a committee may ask a contributor to redesignate the contribution to another election to avoid it being excessive.⁸ If, however, the authorized committee did not receive a proper reattribution or redesignation within 60 days after receiving the contribution, it must refund the excessive portion to the donor.⁹

Commission regulations further provide that when an individual makes an excessive contribution to an authorized committee before the primary, the committee may presumptively redesignate the excessive portion to the general election if the contribution is not designated in writing for a particular election and does not cause the contributor to exceed any other contribution limits as redesignated.¹⁰ Similarly, when an individual makes an excessive

⁴ 52 U.S.C. §§ 30101(1)(A), 30116(a)(6); 11 C.F.R. §§ 100.2, 110.1(b), 110.2(b).

⁵ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

⁶ 11 C.F.R. § 103.3(b)(3).

⁷ 11 C.F.R. § 110.1(k)(3).

⁸ 11 C.F.R. § 110.1(b)(2), (3), (5).

⁹ 11 C.F.R. § 103.3(b)(3).

¹⁰ 11 C.F.R. § 110.1(b)(5)(ii)(B).

contribution to an authorized committee after the primary and before the general election, the committee may presumptively redesignate the excessive portion to the primary election if the contribution is not designated in writing for a particular election, the redesignation does not cause the contributor to exceed any other contribution limits, and the contribution does not exceed the committee's net debts outstanding for the primary election.¹¹ If a committee presumptively redesignates an excessive contribution, it must notify the contributor within sixty days after receipt of the contribution, and inform the contributor of the amount of the contribution that was redesignated and that the contributor may request a refund of the contribution.¹²

The audit revealed that the Committee received \$61,683 in excessive contributions.¹³ The Audit staff informed the Committee that the excessive contributions could be resolved with presumptive redesignation letters, albeit untimely.¹⁴ In response, the Committee sent presumptive redesignation letters untimely resolving \$44,500 in excessive contributions.¹⁵ The remaining \$17,183 in excessive contributions was not resolved.

Therefore, the Commission finds reason to believe that Hall for Congress and David Gould in his official capacity as treasurer violated 52 U.S.C. § 30116(f) by accepting excessive contributions.

¹¹ 11 C.F.R. § 111.1(b)(5)(ii)(C).

¹² 11 C.F.R. § 110.1(b)(5)(ii)(B)(5)-(6), (C)(5)-(6).

¹³ Audit Report at 5.

¹⁴ *Id.*

¹⁵ *Id.* The Commission's database shows no corresponding amendments to the Committee's 2015 and 2016 reports.

B. There is Reason to Believe that the Committee Used General Election Funds for Primary Election Expenses

Commission regulations permit a candidate's authorized committee to receive contributions for the general election prior to the primary election provided the committee employs an acceptable accounting method to distinguish between primary and general election contributions.¹⁶ Committees are permitted to use general election contributions to make advance payments for general election purposes.¹⁷ The committee's records must demonstrate that prior to the primary election, the committee's recorded cash-on-hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.¹⁸ These regulations are designed to ensure that candidates do not use general election contributions for the primary election.¹⁹

The audit revealed that the Committee spent general election contributions totaling \$71,407 on primary election expenses.²⁰ The Audit division determined that the Committee received \$155,358 in general election contributions prior to the primary election, and that it began spending general election contributions on primary election expenditures on April 21, 2016, and continued through the primary election on June 7, 2016.²¹ As a result, the Committee

¹⁶ 11 C.F.R. § 102.9(e)(1).

¹⁷ See Advisory Op. 1986-17 (Friends of Mark Green) at 4 (concluding that the Act did not prohibit a committee from using general election contributions to make expenditures for the general election before the primary election, such as advance payments or deposits in connection with the general election).

¹⁸ 11 C.F.R. § 102.9(e)(2).

¹⁹ See Advisory Opinion 1992-15 (Russo for Congress) at 2.

²⁰ Audit Report at 7. In response to the audit exit conference, the Committee submitted expenses for fundraising and compliance that were to be allocated between the primary and general election. *Id.* at 8. The \$32,854 of such expenses which were attributed to the general election are not reflected in the \$71,407. *Id.*

²¹ *Id.* at 8.

did not meet the requirement that the committee's cash-on-hand was at all times prior to the primary election equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.²²

In response to the Interim Audit Report, the Committee argued that the cost of setting up campaign offices for both the primary and general elections were higher than the amount identified by the Audit Division, and were at least equal to the \$71,407 at issue.²³ However, the Committee failed to provide any documentation during the audit demonstrating that the general election contributions were not used to fund primary election activity and did not respond to the referral.²⁴

Therefore, the Commission finds reason to believe that Hall for Congress and David Gould in his official capacity as treasurer violated 11 C.F.R. § 102.9(e) by using general election contributions for primary election expenses.

²² For example, the Committee reported a cash on hand balance of \$38,182.11 in its 2016 Pre-Primary Report, which was less than the total amount of general election contributions made at that time. *See* Hall for Congress, Am. 2016 Pre-Primary Report (Jan. 23, 2017).

²³ Audit Report at 8.

²⁴ *Id.*

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR ____
 Hall for Congress and)
 David Gould in his official)
 capacity as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (“Commission”), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Hall for Congress and David Gould in his official capacity as treasurer (“Respondents”) violated 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9.

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Hall for Congress is the principal campaign committee for Isadore Hall, III, a 2016 candidate to the U.S. House of Representatives for California’s Forty-fourth Congressional District. David Gould is the committee’s treasurer.

2. During the 2016 election cycle, an authorized committee was limited to receiving a total of \$2,700 per election from any one person and \$5,000 from a multicandidate committee. *See* 52 U.S.C. §30116(a)(1)(A).
3. No candidate or political committee shall knowingly accept any contribution that is in excess of the Act's contribution limits. *See* 52 U.S.C. § 30116(f).
4. If a committee receives a contribution that appears to exceed the contribution limits, the committee must either return the contribution to the donor or deposit the contribution into its federal account and seek a reattribution or a redesignation of the excessive portion within 60 days. *See* 11 C.F.R. §§ 103.3(b)(3), 110.1(k).
5. If an individual makes an excessive contribution to an authorized committee before the primary, the committee may presumptively redesignate the excessive portion to the general election if the contribution is not designated in writing for a particular election and does not cause the contributor to exceed any other contribution limits as redesignated. *See* 11 C.F.R. § 110.1(b)(5)(ii)(B). When an individual makes an excessive contribution to an authorized committee after the primary and before the general election, the committee may presumptively redesignate the excessive portion to the primary election if the contribution is not designated in writing for a particular election, the redesignation does not cause the contributor to exceed any other contribution limits, and the contribution does not exceed the committee's net debts outstanding for the primary election. *See* 11 C.F.R. § 111.1(b)(5)(ii)(C).
6. When a committee presumptively redesignates an excessive contribution, it must notify the contributor within sixty days after receipt of the contribution, and inform the

contributor of the amount of the contribution that was redesignated and that the contributor may request a refund of the contribution. *See* 11 C.F.R. § 110.1(b)(5)(ii)(B)(5)-(6), (C)(5)-(6).

7. A committee is required to refund or disgorge excessive contributions that cannot be reattributed or redesignated. *See* 11 C.F.R. § 103.3(b)(3).

8. Commission regulations permit a candidate's authorized committee to receive contributions for the general election prior to the primary election provided the committee employs an acceptable accounting method to distinguish between primary and general election contributions. *See* 11 C.F.R. § 102.9(e)(1).

9. The committee's records must demonstrate that prior to the primary election, the committee's recorded cash-on-hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. *See* 11 C.F.R. § 102.9(e)(2).

10. Respondents received \$61,683 in excessive contributions during the 2016 election cycle.

11. Respondents untimely presumptively redesignated \$44,500 of the excessive contributions.

12. Respondents failed to refund or disgorge the remaining \$17,183 of the excessive contributions.

13. Respondents received \$155,358 in general election contributions prior to the primary election, and spent general election contributions totaling \$71,407 on primary election expenses.

V. Respondents violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions and violated 11 C.F.R. § 102.9(e) by using general election contributions for primary election expenses.

VI. Respondents will take the following actions:

1. Respondents will pay a civil penalty to the Commission in the amount of twenty-four thousand dollars (\$24,000) pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondents will refund or disgorge to the U.S. Treasury the \$17,183 in excessive contributions the Committee received in violation of 52 U.S.C. § 30116(f) that have not been untimely presumptively redesignated, and provide evidence of the refunds or disgorgement.

3. Respondents will cease and desist from violating 52 U.S.C. § 30116(f) and 11 C.F.R. § 102.9(e).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

MUR ____ (Hall for Congress)
Conciliation Agreement
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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: _____
Charles Kitcher
Acting Associate General Counsel
for Enforcement

Date

FOR THE RESPONDENTS:

(Name)
(Position)

Date