



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

April 14, 2021

Via Email

Email: reiff@sandlerreiff.com

Neil P. Reiff, Esq.
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1090 Vermont Avenue, Suite 750
Washington, DC 20005

RE: MUR 7899
(formerly AR 19-11R)
Democratic Executive Committee of
Florida and Fran Garcia in her
official capacity as treasurer

Dear Mr. Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting that your client, Democratic Executive Committee of Florida and Fran Garcia in her official capacity as treasurer ("Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 4, 2019, the Commission notified the Committee that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 52 U.S.C. § 30109. On March 9, 2021, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b), 52 U.S.C. § 30104(e)(2), 52 U.S.C. § 30116(f) and 52 U.S.C. § 30118(a), provisions of the Act. The Factual and Legal Analysis approved by the Commission, which provides the basis for the Commission's findings, is enclosed for your information.

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter.¹ See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to resolve this matter

¹ See 18 U.S.C. § 1519.

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at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law. Enclosed is a conciliation agreement for your client's consideration,

If your client is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or drigsby@fec.gov, within seven days of receipt of this letter. During conciliation, your client may submit any factual or legal materials that are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days.² Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the Enforcement Process," which is available on the Commission's website at https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public. Please be advised that, although the Commission

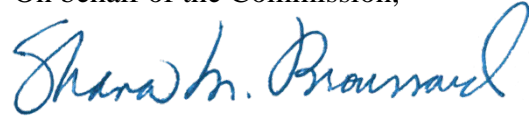
² See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A.).

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cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.³

We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis

³ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* 30107(a)(9).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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

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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

⁹ See RFAI for Committee Amended 2018 February Monthly Report (July 10, 2018).

¹⁰ 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).

¹¹ Committee Resp. at 2.

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 RFAs 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).

¹⁶ Committee Resp. at 2. *See also* Miscellaneous Electronic Submission to the Commission (Apr. 24, 2019).

¹⁷ Committee Resp. at 2.

payments on Schedule H4 for those monthly reports.¹⁸ The Committee received an RFAI for the 2018 October Monthly Report, which included a request for clarification concerning salary payments on Schedule H4, but the Committee did not file a Form 99 in response to that RFAI.¹⁹ Even though the Committee further amended its 2018 October Monthly Report in May and June 2019, the Committee has not addressed the issue of whether the \$278,714.49 in salary payments on Schedule H4 could be allocated between the federal and non-federal accounts. These funds from the non-federal account may contain contributions that are excessive or prohibited for a federal election.²⁰ Therefore, the Commission finds that there is 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. § 30104.²¹ These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required.²² A State, district or local committee of a political party that is a political committee

¹⁸ See Miscellaneous Electronic Submission to the Commission (Apr. 24, 2019); *see also* RFAs for Committee Amended 2018 August and September Monthly Reports both dated March 20, 2019.

¹⁹ See RFAI for Committee Amended 2018 October Monthly Report (Mar. 28, 2019).

²⁰ 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).

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

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

must report all receipts and disbursements made for Federal Election Activity aggregating more than \$5,000 in a calendar year.²³

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.²⁴ The Committee states that its failure to disclose these disbursements was inadvertent and that two large transactions accounted for \$250,000 of this amount.²⁵ Further, the Committee states that there was a large volume of activity to process during a short period to prepare the disclosure report, but it is working to improve its procedures to be accurate during high volume periods.²⁶

The Committee also disclosed additional Levin receipts and disbursements of \$230,000 and \$233,730.20, respectively, on its amended 2018 12-Day Pre-General Report dated February 26, 2019 that were not disclosed on its original report.²⁷ The Committee responds that the disclosure of additional Levin receipts and disbursements on its 2018 12-Day Pre-General Report was caused by a failure to check a box on its software to include Levin Schedules on its report, and it amended the report.²⁸

Because the Committee reported additional disbursements and additional Levin receipts 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.

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Commission finds that there is reason to believe that the Committee violated 52 U.S.C.

§§ 30104(b) and (e)(2).