



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2 **MEMORANDUM**
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4 **TO:** The Commission
5

6 **FROM:** Lisa J. Stevenson
7 Acting General Counsel
8

9 Charles Kitcher
10 Associate General Counsel for Enforcement
11

12 **BY:** Peter G. Blumberg *PGB*
13 Acting Deputy Associate General Counsel for Enforcement
14

15 Mark Allen *MA*
16 Assistant General Counsel
17

18 Delbert K. Rigsby *DKR*
19 Attorney
20

21 **SUBJECT:** MUR 7899 (Democratic Executive Committee of Florida) – Memorandum to the
22 Commission Recommending a New Reason to Believe Finding in Place of the
23 Findings Related to the Non-Federal Account Transfer; Revised Pre-Probable
24 Cause Conciliation Agreement
25
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27 **I. Background**
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29 Based on information referred by the Reports Analysis Division, the Commission found
30 reason to believe that the Democratic Executive Committee of Florida and Fran Garcia in her
31 official capacity as treasurer (“Committee”) violated 52 U.S.C. §§ 30104(b), 30104(e)(2),
32 30116(f) and 30118(a) and approved pre-probable cause conciliation with the Committee
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35 The Committee’s violation of sections 30116(f) and 30118(a) was based, in part, on
36 accepting excessive and prohibitive contributions through the transfer of \$278,714.49 from its
37

1 Certification (“Cert.”) ¶¶ 2.b and 2.d (Apr. 9, 2021).

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1 non-federal account to its federal account for salary payments to employees listed on
 2 Schedule H4 of an amended 2018 October Monthly Report.² Contributing to the referral was the
 3 Committee's failure to respond to a RAD Request for Additional Information ("RFAI") seeking
 4 clarification about this Monthly Report. In the First General Counsel's Report and during the
 5 Executive Session in which the Commission made its reason to believe findings, we informed
 6 the Commission that if during pre-probable cause conciliation the Committee provided
 7 documentation that these disbursements could have been permissibly paid from its non-federal
 8 account, we would adjust the agreement language and civil penalty.³ As discussed below, we
 9 now recommend the Commission adjust the agreement and civil penalty in recognition of the
 10 Committee's submission.

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 12 Although the Committee could not provide the monthly log of the percentage of time
 13 each employee spent in connection with a federal election related to the relevant Schedule H4,
 14 the Committee did provide sworn declarations from Committee personnel attesting that it had
 15 maintained the monthly logs in 2018, but the monthly logs were misplaced or mistakenly
 16 discarded. Under these circumstances, and consistent with several recent matters involving
 17 similarly missing logs, we recommend that the Commission find reason to believe that the
 18 Committee violated 11 C.F.R. § 106.7(d)(1) by failing to maintain the monthly log of the
 19 percentage of time that employees spent in connection with a federal election who were listed on
 20 Schedule H4 of the amended 2018 October Monthly Report,⁴ and not further pursue the section
 21 30116(f) and 30118(a) violations and civil penalty related to the \$278,714.49 transfer.

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 23 **II. Conciliation with the Committee**

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 25 After receiving the notification of the reason to believe findings, the Committee filed a
 26 Miscellaneous Report ("Form 99") with the Commission responding to the RFAI dated
 27 March 28, 2019, including information that the disbursements for payroll reported on
 28 Schedule H4 of the 2018 October Monthly Report were for employees who did not spend more
 29 than 25% of their time on federal election activity or activities in connection with a federal
 30 election.⁵ We requested that the Committee submit documentation supporting the statement

² See Factual and Legal Analysis at 3-5; *see also* Democratic Executive Committee of Florida Amended 2018 October Quarterly Report at 475-569 (Jan. 6, 2019).

³ See First Gen. Counsel's Rept. at 8, n.30 & Cert. (Apr. 9, 2021) (March 9, 2021 executive session).

⁴ The Commission's initial reason to believe findings were within three years of the Committee's September 2018 activity disclosed on its 2018 October Quarterly Report. See 52 U.S.C. § 30102(d) and 11 C.F.R. § 102.9(c) (three-year recordkeeping requirement); *see also* Factual & Legal Analysis at 2-3, MUR 7258 (Kansas Democratic Party) (finding reason to believe that the committee violated 11 C.F.R. § 106.7(d)(1) for failing to maintain monthly logs for employees listed on Schedule H4 after audit in which in response to the exit conference the committee submitted affidavits stating that none of its employees whose payroll was reported on Schedule H4 spent more than 25% of their time working on federal election activity). See Final Audit Report at 14 (Attach. 1 to First Gen. Counsel's Rpt., MUR 7258).

⁵ See Democratic Executive Committee of Florida Form 99 (Apr. 23, 2021); Factual and Legal Analysis at 3-5.

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1 made in the Form 99. The Committee informed us that after a search, it could not find
 2 documentation from 2018 of the timesheets showing the percentage of time spent by employees
 3 in connection with a federal election, but offered to provide sworn declarations that it kept such
 4 records in that time period.

5
 6 The Committee submitted sworn declarations from three individuals, Brandon
 7 Philipczyk, Benjamin Turner and John “Juan” Peñalosa. Philipczyk was the Chief Operating
 8 Officer of the Committee during 2018. He states that he “was aware of the collection of time
 9 sheets for employees” and it is his “recollection that in 2018, the [Committee] required all
 10 employees to turn in a monthly log of their time spent on federal and non-federal activities” and
 11 the Committee “had a complete set or near complete set of time sheets for each month in 2018.”⁶
 12 Further, Philipczyk states the employees submitted the time sheets to him and he placed them in
 13 a file, and that “some time after 2018, the [Committee] digitized the monthly log process and
 14 placed all prior logs from 2018 into storage.”⁷ Benjamin Tyler is the General Counsel to the
 15 Committee. Tyler states that in June 2021 he “conducted a comprehensive search of archived
 16 documents of the [Committee] at its storage facility” to “locate time logs maintained by the
 17 [Committee] in connection with its activities in 2018.”⁸ Although he found a handful of
 18 timesheets from 2018, Tyler states that he was “unable to locate any substantial amount of such
 19 records” and believes that these documents were “misplaced or mistakenly discarded during the
 20 archiving process some time in 2019.”⁹ Finally, John “Juan” Peñalosa was Executive Director of
 21 the Committee during the majority of 2018 and oversaw the Committee’s political and
 22 administrative operations.¹⁰ Peñalosa provides a list of Committee employees and states that it is
 23 his recollection that the employees did not spend more than 25% of the month working in
 24 connection with federal elections or federal election activities.¹¹ The Committee employees on
 25 Peñalosa’s list appear on the Committee’s Schedule H4 of the amended 2018 October Monthly
 26 Report dated January 6, 2019.¹² For each of the employees listed on the Schedule H4, the
 27 amount of the federal share of their salary represents 21% and the amount of the nonfederal share
 28 of their salary represents 79%.¹³

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 30 Commission regulations provide that salaries, wages, and fringe benefits paid to State,
 31 District or local party committee employees who spend 25% or less of their time in a given
 32 month on Federal election activity or on activity in connection with a federal election may be

⁶ See Brandon Philipczyk Decl. ¶ 2 (Sept. 28, 2021).

⁷ *Id.* ¶¶ 2-3.

⁸ See Benjamin Tyler Decl. ¶ 2 (Sept. 28, 2021).

⁹ *Id.*

¹⁰ See John “Juan” Peñalosa Decl. ¶ 1 (Dec. 18, 2021).

¹¹ *Id.* ¶ 3, Ex. A.

¹² Committee Amended 2018 October Monthly Report at 475-569 (Jan. 6, 2019).

¹³ *Id.*

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1 allocated as administrative costs, *i.e.*, may be paid with a combination of funds from the
2 committee's federal and non-federal accounts.¹⁴ Committee regulations also provide that when
3 allocating salary, wage and fringe benefits payments, political party committees are required to
4 "keep a monthly log of the percentage of time each employee spends in connection with a federal
5 election."¹⁵

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7 Because the Committee does not have the monthly log for the payroll disbursements on
8 Schedule H4 of the amended 2018 October Monthly Report, we recommend that the
9 Commission find reason to believe the Committee violated 11 C.F.R. § 106.7(d)(1). In previous
10 matters, the Commission has found reason to believe as to state party committees for failure to
11 maintain monthly payroll logs.¹⁶

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¹⁴ 11 C.F.R. § 106.7(c)(1) and (d).

¹⁵ 11 C.F.R. § 106.7(d)(1).

¹⁶ See, e.g. Factual and Legal Analysis at 4, MUR 7877 (Tennessee Democratic Party); Factual and Legal Analysis at 2-3, MUR 7258 (Kansas Democratic Party).

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5 **IV. Recommendations**

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7 1. Find reason to believe that the Democratic Executive Committee of Florida and Fran
8 Garcia in her official capacity as treasurer violated 11 C.F.R. 106.7(d)(1);
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10 2. Approve the attached Factual and Legal Analysis;
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12 3. Approve the attached Conciliation Agreement; and
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14 4. Approve the appropriate letter.
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1 Attachments

2 1. Factual and Legal Analysis

3 2. Conciliation Agreement

4 3. Redline of Conciliation Agreement from Commission's original offer

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

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

MUR 7899

I. INTRODUCTION

9 This matter was generated by a Reports Analysis Division (“RAD”) Audit Referral
10 concerning disclosure reports filed by the Democratic Executive Committee of Florida and Fran
11 Garcia in her official capacity as treasurer (“Committee”), a state party committee of the
12 Democratic party,¹ during the 2018 election cycle. The Commission determined that the
13 Committee was not able to provide monthly payroll logs of employees whose salaries may have
14 been allocated between the Committee’s federal and non-federal accounts that appeared on
15 Schedule H4 of the Committee’s amended 2018 October Monthly Report. Accordingly, the
16 Commission finds that there is reason to believe that the Committee violated 11 C.F.R.
17 § 106.7(d)(1).

18 II. FACTUAL AND LEGAL ANALYSIS

19 Commission regulations provide that State, district, and local party committees must
20 maintain employee payroll logs. Salaries, wages, and fringe benefits “[paid] to State, district, or
21 local party committee employees who spend 25 percent or less of their compensated time in a
22 given month on Federal election activity or on activity in connection with a Federal election”
23 may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds from the

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

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1 committee's federal and non-federal accounts.² If employees spend more than 25% of their
 2 compensated time on Federal Election Activity, the payments must be made only from the
 3 federal account.³ Commission regulations also provide that when allocating salary, wage, and
 4 fringe benefit payments, political party committees are required to "keep a monthly log of the
 5 percentage of time each employee spends in connection with a Federal election."⁴

6 The Committee made an apparently impermissible transfer of \$278,714.49 from its non-
 7 federal account to pay for salary, wages, and/or fringe benefits of employees who engaged in
 8 Federal Election Activity, as disclosed on Schedule H4 of its amended 2018 October Monthly
 9 Report dated January 6, 2019.⁵ The Committee asserts that it filed a Miscellaneous Electronic
 10 Submission to the Commission ("Form 99") on April 24, 2019, that clarified that the
 11 disbursement of \$278,714.49 for salaries was for employees who spent less than 25% of their
 12 compensated time on Federal Election Activity, which would permit salary payments to be
 13 allocated between the federal and non-federal account.⁶ The Committee claims that the Form 99
 14 contains information on activity occurring "for the month of September 2018," which is referring
 15 to activity reported on its 2018 October Monthly Report.⁷ The Form 99, however, clarifies
 16 activity on the Committee's 2018 August and September Monthly Reports, not the relevant 2018

² 11 C.F.R. §§ 106.7(c)(1), (d)(1)(i), (d)(2) and 300.33(d)(1).

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

⁴ 11 C.F.R. § 106.7(d)(1).

⁵ *See* Notification letter from Jeff S. Jordan, FEC, to Fran Garcia, Treasurer, Democratic Executive Committee of Florida, at 1 (Oct. 4, 2019), AR 19-11R (MUR 7899).

⁶ Committee Resp. to Notification of Referral at 2. *See also* Miscellaneous Electronic Submission to the Commission (Apr. 24, 2019).

⁷ Committee Resp. to Notification of Referral at 2.

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1 October Monthly Report. While the Form 99 does not specify the RAD Requests for Additional
 2 Information (“RFAs”) to which it is responding, it clarifies five items “for the month of August
 3 2018” and six items “for the month of September 2018,” which correspond to items raised on the
 4 RFAs for the 2018 August and September Monthly Reports, respectively, including salary
 5 payments on Schedule H4 for those monthly reports.⁸ The Committee received an RFAI for the
 6 2018 October Monthly Report on March 28, 2019, which included a request for clarification
 7 concerning salary payments on Schedule H4, but the Committee did not at that time file a Form
 8 99 in response to that RFAI.⁹

9 Subsequently, on April 23, 2021, after notification of the Commission’s initial reason to
 10 believe findings in this matter,¹⁰ the Committee filed a Form 99 responding to the Commission’s
 11 RFAI dated March 28, 2019.¹¹ The Committee’s Form 99 states that the disbursements for
 12 payroll and payroll taxes reported on Schedule H4 for Line 21(a) of the Detailed Summary Page
 13 are for “individuals who did not spend more than 25% of their compensated time, in a given
 14 month on Federal Election Activity, or activities in connection with a Federal election.” In
 15 response, the Commission requested that the Committee provide documentation for this
 16 statement, such as the monthly payroll logs. The Committee determined that it could not find the
 17 monthly payroll logs for the relevant month. It provided sworn declarations from Brandon
 18 Phillipczyk, Chief Operating Officer in 2018, Benjamin Tyler, General Counsel to the

⁸ See Form 99 (Apr. 24, 2019); *see also* RFAs for Committee Amended 2018 August and September Monthly Reports both dated March 20, 2019.

⁹ See RFAI for Committee Amended 2018 October Monthly Report (Mar. 28, 2019).

¹⁰ Letter from Shana M. Broussard, Chair, FEC, to Neil P. Reiff, Esq., counsel, Democratic Executive Committee of Florida (Apr. 14, 2021).

¹¹ Form 99 (Apr. 23, 2021).

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1 Committee, and John “Juan” Peñalosa, former Executive Director of the Committee. Phillipczyk
2 declared that the Committee required employees to complete monthly payroll logs and
3 maintained those payroll logs in 2018.¹² Tyler, who conducted a search for the documentation,
4 declared that the monthly payroll logs for 2018 had been misplaced or discarded during the
5 archiving process in 2019.¹³ Peñalosa declared that it was his recollection that the employees
6 listed on Exhibit A, which were employees who worked in September 2018, did not spend more
7 than 25% of their time on federal election activity or in connection with federal elections.¹⁴

8 The Committee failed to maintain the monthly payroll log for employees who were
9 disclosed on Schedule H4 of the amended 2018 October Monthly Report as required by
10 11 C.F.R. § 106.7(d)(1). Accordingly, the Commission finds that there is reason to believe that
11 the Committee violated 11 C.F.R. § 106.7(d)(1).

¹² Declaration of Brandon Phillipczyk, ¶ 2 (Sept. 28, 2021).

¹³ Declaration of Benjamin Tyler, ¶ 2 (Sept. 28, 2021).

¹⁴ Declaration of John “Juan” Peñalosa, ¶ 3 (Dec. 18, 2021).