

**FEDERAL ELECTION COMMISSION**

Washington, D.C. 20463

March 21, 2022

Via Email

Neil P. Reiff, Esq.
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.
1090 Vermont Avenue, Suite 750
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RE: MUR 7899
Democratic Executive Committee of
Florida and Fran Garcia in her
official capacity as treasurer

Dear Mr. Reiff:

On April 14, 2021, the Federal Election Commission (the "Commission") notified you that it had found reason to believe in this matter that your client, the Democratic Executive Committee of Florida and Fran Garcia in her official capacity as treasurer (the "Committee"), violated 52 U.S.C. §§ 30104(b), 30104(e)(2), 30116(f) and 30118(a), provisions of the Federal Election Campaign Act of 1971, as amended. The Commission also determined to enter into pre-probable cause conciliation and a conciliation agreement was sent to you at that time.

Based on information provided by the Committee, on March 8, 2022, the Commission found reason to believe that the Committee violated 11 C.F.R. § 106.7(d)(1), a provision of the Commission's regulations. The Factual and Legal Analysis, which provides the basis for that finding, is enclosed for your information.

The Commission also approved the enclosed, revised conciliation agreement addressing all the violations in this matter for your client's consideration, which includes a civil penalty of \$56,000. The Commission's civil penalty is calculated as follows.

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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.¹ 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 cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.² Please note that your client has a

¹ See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A.).

² 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).

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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.³

We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson", written over a horizontal line.

Allen Dickerson
Chairman

Enclosures
Factual and Legal Analysis

³

See 18 U.S.C. § 1519.

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 Commission determined that the Committee was not able to provide monthly payroll logs of employees whose salaries may have been allocated between the Committee’s federal and non-federal accounts that appeared on Schedule H4 of the Committee’s amended 2018 October Monthly Report. Accordingly, the Commission finds that there is reason to believe that the Committee violated 11 C.F.R. § 106.7(d)(1).

II. FACTUAL AND LEGAL ANALYSIS

Commission regulations provide that State, district, and local party committees must maintain employee payroll logs. Salaries, wages, and fringe benefits “[paid] to State, district, or local party committee employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activity in connection with a Federal election” may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds from the committee’s federal and non-federal accounts.² If employees spend more than 25% of their

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

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

compensated time on Federal Election Activity, the payments must be made only from the federal account.³ Commission regulations also provide that when allocating salary, wage, and fringe benefit payments, political party committees are required to “keep a monthly log of the percentage of time each employee spends in connection with a Federal election.”⁴

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, 2019.⁵ 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.⁶ 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.⁷ 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 RAD Requests for Additional Information (“RFAIs”) to which it is responding, it clarifies five items “for the month of August

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.

2018” and six items “for the month of September 2018,” which correspond to items raised on the RFAIs for the 2018 August and September Monthly Reports, respectively, including salary payments on Schedule H4 for those monthly reports.⁸ The Committee received an RFAI for the 2018 October Monthly Report on March 28, 2019, which included a request for clarification concerning salary payments on Schedule H4, but the Committee did not at that time file a Form 99 in response to that RFAI.⁹

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

⁸ See Form 99 (Apr. 24, 2019); *see also* RFAIs 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).

maintained those payroll logs in 2018.¹² Tyler, who conducted a search for the documentation, declared that the monthly payroll logs for 2018 had been misplaced or discarded during the archiving process in 2019.¹³ Peñalosa declared that it was his recollection that the employees listed on Exhibit A, which were employees who worked in September 2018, did not spend more than 25% of their time on federal election activity or in connection with federal elections.¹⁴

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