

For meeting of February 21, 2019

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2018 DEC 18 PM 2:49



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 18, 2018

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP* by *HAH*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director *TH*
Audit Division

Nicole Burgess *NB*
Audit Manager

By: Robert Morcomb *NB* for RM
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Hall for Congress
(A17-07)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Hall for Congress (HFC) on November 6, 2018 (see attachment). HFC did not respond to the DFAR. HFC did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR. The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

Finding 1. Receipt of Contributions in Excess of the Limit

In response to the Interim Audit Report, HFC stated it did not send presumptive redesignation letters when contributions were received; however, it has done so in response to the audit. HFC stated that it reviewed regulations with fundraisers as they were hired, and instructed them about the rules and regulations. As such, HFC has provided copies of redesignation letters to materially resolve, albeit untimely, excessive contributions identified by the Audit staff totaling \$44,500. HFC did not respond to the DFAR.

The Audit staff recommends that the Commission find that HFC received excessive contributions totaling \$61,683.

Finding 2. Use of General Election Contributions for Primary Expenditures

In response to the Interim Audit Report, HFC stated that from the start of the campaign, the candidates in the 2016 election knew they would be facing each other in both the primary and general elections. HFC stated that many decisions were made including, to order signs and literature that were placed throughout the district for the entire campaign for what it expected to be a very costly and contested election. HFC maintained its position that these expenditures paid during the primary election were used for both the primary and general elections. HFC did not provide documentation which demonstrated that the general election contributions were not used for primary election expenditures. HFC did not respond to the DFAR.

The Audit staff recommends that the Commission find that HFC spent general election contributions totaling \$71,407 on primary election expenses.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Robert Morcomb or Nicole Burgess at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Hall for Congress

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Hall for Congress

(January 1, 2015 – December 31, 2016)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Hall for Congress is the principal campaign committee for Isadore Hall, III, Democratic candidate for the United States House of Representatives from the state of California, 44th District, and is headquartered in Long Beach, California. For more information, see the Campaign Organization chart, p.2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 1,144,755
○ Contributions from Political Committees	734,986
○ Offsets to Operating Expenditures	1,643
Total Receipts	\$ 1,881,384
• Disbursements	
○ Operating Expenditures	\$ 1,913,514
○ Contribution Refunds	25,155
○ Other Disbursements	2,950
Total Disbursements	\$ 1,941,619

Findings and Recommendations (p. 3)

- Receipt of Contributions in Excess of the Limit (Finding 1)
- Use of General Election Contributions for Primary Expenditures (Finding 2)

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on Hall for Congress

(January 1, 2015 – December 31, 2016)



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Part I

Background

Authority for Audit

This report is based on an audit of Hall for Congress (HFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration ²	June 21, 2011
• Audit Coverage	January 1, 2015 - December 31, 2016
Headquarters	
Long Beach, California	
Bank Information	
• Bank Depositories	One
• Bank Accounts	One Checking
Treasurer	
• Treasurer When Audit Was Conducted	David Gould
• Treasurer During Period Covered by Audit	David Gould
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2015	\$ 67,109
Receipts	
○ Contributions from Individuals	1,144,755
○ Contributions from Political Committees	734,986
○ Offsets to Operating Expenditures	1,643
Total Receipts	\$ 1,881,384
Disbursements	
○ Operating Expenditures	1,913,514
○ Contribution Refunds	25,155
○ Other Disbursements	2,950
Total Disbursements	\$ 1,941,619
Cash-on-hand @ December 31, 2016	\$ 6,874

² The committee changed its name from Hall for Congress Exploratory Committee to Hall for Congress on January 14, 2016.

Part III Summaries

Findings and Recommendations

Finding 1. Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that HFC received apparent excessive contributions totaling \$61,683. These errors occurred as a result of HFC not resolving the excessive portions of contributions by forwarding presumptive redesignation letters to its contributors in a timely manner. In response to the exit conference, HFC untimely resolved excessive contributions from individuals totaling \$44,500. In response to the Interim Audit Report recommendation, HFC stated it did not send presumptive redesignation letters when contributions were received; however, it has done so in response to the audit. (For more detail, see p.4.)

Finding 2. Use of General Election Contributions for Primary Expenditures

During audit fieldwork, a review of contributions received before the primary election held on June 7, 2016, identified that HFC spent general election contributions totaling \$71,407 on primary election expenses. As such, HFC did not meet the requirements that general election contributions not be used for primary election expenses. In response to the exit conference, HFC stated that the cost of fundraising and compliance should be attributed to the daily cash analysis calculation. Further, HFC provided a list of expenses that they believe should be attributed to the general election. In response to the Interim Audit Report recommendation, HFC stated that from the start of the campaign, the candidates in the 2016 election knew they would be facing each other in both the primary and general elections. Further HFC expected both elections to be very costly and contested and, as such; the costs of setting up campaign offices with equipment and supplies was greater than the amount identified by the Audit staff or at least equal to the amount in question. (For more detail, see p.7.)

Part IV

Findings and Recommendations

Finding 1. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that HFC received apparent excessive contributions totaling \$61,683. These errors occurred as a result of HFC not resolving the excessive portions of contributions by forwarding presumptive redesignation letters to its contributors in a timely manner. In response to the exit conference, HFC untimely resolved excessive contributions from individuals totaling \$44,500. In response to the Interim Audit Report recommendation, HFC stated it did not send presumptive redesignation letters when contributions were received; however, it has done so in response to the audit.

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multi-candidate political committee. 52 U.S.C §30116(a)(1)(A); 11 CFR §§110.1(a) and (b) and 110.9.
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Joint Contributions. Any contribution made by more than one person, except for a contribution made by a partnership, must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask contributors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be presumptively attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(B).

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR

§§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

F. Presumptive Redesignation- When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor by any written method including electronic mail, of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 11 CFR §110.1(b)(5)(ii)(B)(5) and (6).

Facts and Analysis

A. Facts

The Audit staff utilized sample testing and a review of other contributions not included in the sample population to identify apparent excessive contributions from individuals.

Excessive Contributions-Testing Method	
Sample Projection Amount ³	\$61,683
Total Amount of Excessive Contributions	\$61,683
Reasons for Excessive Contributions	
Excessive Contributions not resolved via presumptive notification or refund	\$61,683
Total Amount of Excessive Contributions	\$61,683

B. Additional Information

HFC did not maintain a separate account for questionable contributions. Based on its cash-on-hand at the end of the audit period (\$6,874), it appears that HFC did not maintain sufficient funds to make refunds of the apparent excessive contributions.

C. Interim Audit Report & Audit Division Recommendation

During fieldwork, the Audit staff discussed this matter with HFC. At the exit conference schedules of the apparent excessive contributions were provided. HFC asked if presumptive reattribution/redesignation letters could still be issued. The Audit staff

³ The sample error amount (\$61,683) was projected using a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$35,479 or as high as \$87,887.

stated that any presumptive letters sent in response to the exit conference would resolve the excessive contributions, albeit untimely.

In response to the exit conference, HFC submitted the following documentation:

Corrective Action Taken in Response to the Exit Conference	
Presumptive Letters Sent- <i>Untimely</i>	\$44,500

In response to the exit conference, the Audit staff concludes of the \$61,683 in excessive contributions, HFC demonstrated that it resolved contributions totaling \$44,500 in an untimely manner. As such, HFC has materially resolved the excessive contributions, albeit untimely.

The Interim Audit Report recommended that HFC provide any comments it deemed relevant to this matter.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, HFC stated it did not send presumptive redesignation letters when contributions were received. HFC stated that it reviewed regulations with fundraisers as they were hired, and instructed them about the rules and regulations. HFC required the fundraisers to contact contributors to verify information for all questionable contributions. In response to the audit, HFC and its fundraisers have obtained such letters.

The Audit staff concluded, HFC has materially resolved the excessive contributions, albeit untimely.

Finding 2. Use of General Election Contributions for Primary Expenditures

Summary

During audit fieldwork, a review of contributions received before the primary election held on June 7, 2016, identified that HFC spent general election contributions totaling \$71,407 on primary election expenses. As such, HFC did not meet the requirements that general election contributions not be used for primary election expenses. In response to the exit conference, HFC stated that the cost of fundraising and compliance should be attributed to the daily cash analysis calculation. Further, HFC provided a list of expenses that they believe should be attributed to the general election. In response to the Interim Audit Report recommendation, HFC stated that from the start of the campaign, the candidates in the 2016 election knew they would be facing each other in both the primary and general elections. Further, HFC expected both elections to be very costly and contested and, as such; the costs of setting up campaign offices with equipment and

supplies was greater than the amount identified by the Audit staff or at least equal to the amount in question.

Legal Standard

- A. Accounting for Contributions and Expenditures.** If a candidate, or his or her authorized committee(s), receives contributions that are designated for use in connection with the general election pursuant to 11 CFR §110.1(b) prior to the date of the primary election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable accounting methods include, but are not limited to:
1. The designation of separate accounts for each election, caucus or convention; or
 2. The establishment of separate books and records for each election. 11 CFR 102.9(e).
- B. Limitations, Contributions, and Expenditures.** The contribution limits are applied separately with respect to each election. 52 U.S.C. §30116(a)(6); 11 CFR. §§100.2 and 110.1(j).
- C. Limitations, Contributions, and Expenditures.** Under the Act, an individual may not make a contribution to a candidate with respect to any election in excess of the limit, which was \$2,700 per election during the 2016 election cycle. 52 U.S.C. §30116(a)(1)(A), and 11 CFR §110.1(b)(1).
- D. Definition of Election.** A primary election and general election are each considered a separate “election” under the Act. 52 U.S.C. §30101(1).
- E. Prohibited Contributions and Expenditures.** Candidates and political committees are prohibited from knowingly accepting excessive contributions. 52 U.S.C. §30116(f).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff calculated the daily cash balance to determine if general election contributions were used by HFC to pay primary election expenses. The primary election for the state of California was held on June 7, 2016. The amount of primary election contributions HFC raised prior to the primary election was \$902,925 and the amount of general election contributions raised was \$155,358.⁴ The Audit staff identified that HFC spent \$71,407⁵ of general election contributions on primary election expenditures. HFC began spending general election contributions on primary election expenditures on April 21, 2016 and for 48 days, continued through the primary election on June 7, 2016. On May 27, 2016, HFC’s running balance of general contributions spent on primary expenditures, reached the highest amount, \$109,083.

⁴ These amounts are net of contribution refunds.

⁵ This amount does not include \$32,854 in general election expenses provided by the committee in response to the exit conference.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with HFC at the exit conference and provided schedules detailing the use of general election contributions used for primary election expenses. In response to the exit conference, HFC stated that the cost of fundraising and compliance should be attributed to the daily cash analysis calculation. Further, HFC provided a list of expenses that it believes should be attributed to the general election.

The Interim Audit Report recommended that HFC provide documentation to demonstrate that general election contributions totaling \$71,407 were not used to fund primary election activity and provide any additional comments it considered necessary with respect to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, HFC stated that from the start of the campaign, the candidates in the 2016 election knew they would be facing each other in both the primary and general elections. HFC stated that many decisions were made including, to order signs and literature that were placed throughout the district for the entire campaign for what it expected to be a very costly and contested election. HFC reiterated that the cost of setting up campaign offices with equipment and supplies for both elections was greater than the amount identified by the Audit staff or at least equal to the amount in question.

HFC did not provide documentation which demonstrated that the general election contributions were not used to fund primary election activity. As such, the Audit staff concluded that HFC spent general election contributions totaling \$71,407 on primary election expenses.