

1 **FEDERAL ELECTION COMMISSION**

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

4
5 RAD REFERRAL: 19L-07
6 DATE REFERRED: April 2, 2019
7 SUPPLEMENT REFERRAL: March 16, 2020
8 DATE OF NOTIFICATIONS: April 8, 2019 and
9 March 23, 2020
10 RESPONSES RECEIVED: June 29, 2019 and
11 April 10, 2020
12 DATE ACTIVATED: July 9, 2020
13 EPS: 70
14 ELECTION CYCLE: 2016
15 EXPIRATION OF SOL:
16 Earliest: July 14, 2021
17 Latest: October 15, 2021
18

19 **SOURCE:** Internally Generated

20
21 **RESPONDENTS:** Committee to Elect Alan Grayson and
22 Star Grayson in her official capacity as treasurer
23

24 **RELEVANT STATUTES**
25 **AND REGULATIONS:** 52 U.S.C. § 30104(b)
26 52 U.S.C. § 30116(f)
27 11 C.F.R. § 102.9(e)
28 11 C.F.R. § 110.1(b)(3)
29 11 C.F.R. § 110.2(b)(3)
30

31 **INTERNAL REPORTS CHECKED:** Disclosure Reports
32 Reports Analysis Division Referral Materials
33

34 **AGENCIES CHECKED:** None
35

36 **I. INTRODUCTION**

37
38 The Reports Analysis Division (“RAD”) referred the Committee to Elect Alan Grayson
39 and Star Grayson in her official capacity as treasurer (the “Committee”) to the Office of General
40 Counsel (“OGC”) for potential violations of the Federal Election Campaign Act of 1971, as
41 amended (the “Act”), arising from its failure to timely and accurately disclose \$2,781,157.75 in
42 receipts and disbursements, and for accepting \$164,331.29 in excessive contributions when it
43 failed to timely refund or redesignate contributions from Florida’s 2016 primary election.

1 The Committee does not deny the errors in its 2016 July Quarterly Report. The
2 Committee explains that its inaccurate reports were the result of the Committee bookkeeper's
3 health issues, and when it learned of the issues with its reports, it hired a new compliance advisor
4 and devoted substantial resources, time, and effort to addressing the resulting reporting errors.

5 Based on available information, we recommend that the Commission open a Matter
6 Under Review ("MUR") and find reason to believe that the Committee to Elect Alan Grayson
7 and Star Grayson in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and
8 30116(f) and 11 C.F.R. §§ 102.9(e), 110.1(b)(3), and 110.2(b)(3) by failing to accurately and
9 timely report receipts and disbursements, and by accepting and failing to remedy excessive
10 contributions. Because the record regarding the violations is complete, we also recommend that
11 the Commission enter into pre-probable cause conciliation with the Committee.

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 **A. Background**

14 Alan Grayson was a 2016 Senate candidate from Florida.¹ His authorized Committee has
15 been registered with the Commission since May 2006.² This matter was referred to OGC for its
16 failure to accurately and timely report receipts and disbursements.³ Specifically, the Committee
17 amended its 2016 July Quarterly Report to disclose additional receipts totaling \$969,568.35 and

¹ Grayson was also a 2020 candidate for Florida's 9th Congressional District, but withdrew prior to the August Democratic Primary. He then ran as a write-in candidate for U.S. Representative from Florida's 6th Congressional District, but lost in the November 3, 2020, general election. Grayson served as the U.S. Representative from Florida's 8th Congressional District from 2009-2011 and 2013-2017.

² See Committee to Elect Alan Grayson, FEC Form 1, Statement of Organization, May 24, 2006 (amend. Apr. 14, 2018). During the 2016 election cycle, the Committee's receipts totaled \$5,107,800 and disbursements totaled \$4,850,626. The Committee recently disclosed that it has \$719,629.96 cash on hand and \$2,541,930.05 in debt. See Committee to Elect Alan Grayson, Financial Summary of 2015-2016 Election Cycle covering activity from Jan. 1, 2015 to Dec. 31, 2016 at <https://www.fec.gov/data/committee/C00424713/?cycle=2016>.

³ RAD Referral, Committee to Elect Alan Grayson at 1 (April 2, 2019); see also *2015-2016 RAD Review and Referral Procedures*, Standards 5 and 7.

1 additional disbursements totaling \$965,737.39.⁴ The Committee also amended its 2016 12-Day
2 Pre-Primary Election Report to disclose additional disbursements totaling \$766,205.28.⁵ Finally,
3 the Committee accepted excessive contributions totaling \$125,890.97 for the 2016 Primary
4 Election and failed to timely refund or redesignate those contributions within the permissible
5 timeframe, and received \$38,440.32 in contributions designated for the 2016 General Election
6 but failed to timely refund or redesignate when Grayson lost the 2016 Florida Primary Election.⁶

7 On March 16, 2020, RAD supplemented its referral to include an amendment to the
8 Committee's 2016 Pre-Primary Report which disclosed an additional \$79,646.73 in
9 disbursements.⁷

10 The Committee does not deny the errors in its 2016 July Quarterly Report.⁸ The
11 Committee explains that Grayson's Senatorial campaign was substantially larger than his
12 Congressional campaigns, and that the complexity of the campaign made it difficult to accurately
13 track its contributions and disbursements.⁹ Further, the Committee states that its original report
14 was substantially incomplete when it was submitted to the Commission because the Committee's
15 bookkeeper was hospitalized but did not notify the Committee of his health issues.¹⁰ The
16 Committee further asserts that when it learned that its reports were not accurate or complete, it

⁴ RAD Referral at 5.

⁵ *Id.* at 5-6.

⁶ *Id.* at 6.

⁷ Supp. to RAD Referral, Committee to Election Alan Grayson at 1(Mar. 16, 2020).

⁸ Resp. at 1 (Jul. 29, 2019). Although not entirely clear, it appears that the Committee's explanations for errors on the 2016 July Quarterly Report described in this paragraph also apply to the 2016 12-Day Pre-Primary Report. *See id.*

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

1 hired a compliance company to amend its reports.¹¹ According to the Committee, the first
2 compliance company was unable to resolve the Committee's reporting violations, so it hired a
3 second company to help correct the Committee's disclosure reports.¹² The Committee also
4 asserts that it mistakenly believed its original bookkeeper was using FECFile, the Commission's
5 filing software, and to amend Committee reports, data needed to be migrated from another
6 software program to FECFile, which took several weeks.¹³ In response to the supplement to the
7 referral, the Committee states that it has "devoted substantial resources, time and effort to
8 addressing the resulting issues, and it stands ready to continue to do so."¹⁴ Despite
9 communications with and assistance from RAD, at the time of this report, the Committee has not
10 refunded or redesignated the excessive contributions identified in the Referral.

11 **B. Legal Analysis**

12 The Act requires political committee treasurers to file reports of receipts and
13 disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁵ Under the Act, an
14 individual may not make a contribution to a candidate with respect to any election in excess of
15 the legal limit, which was \$2,700 per election during the 2016 election cycle.¹⁶ A multicandidate
16 political action committee may not make contributions to a candidate in excess of \$5,000 per
17 election.¹⁷ A primary election and a general election are each considered a separate "election"

¹¹ *Id.* at 4.

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ Resp.to Supp. at 1 (Apr. 22, 2020).

¹⁵ *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁶ 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

¹⁷ 52 U.S.C. § 30116(a)(2)(A) and 11 C.F.R. § 110.2(b)(1).

1 under the Act, and the contribution limits are applied separately with respect to each election.¹⁸
2 Candidates and political committees are prohibited from knowingly accepting excessive
3 contributions.¹⁹

4 The Commission's regulations permit a candidate's committee to receive contributions
5 for the general election prior to the primary election.²⁰ However, the committee must use an
6 acceptable accounting method to distinguish between primary and general election
7 contributions.²¹ The committee's records must demonstrate that prior to the primary election,
8 the committee's recorded cash on hand was at all times equal to or in excess of the sum of
9 general election contributions received less the sum of general election disbursements made.²²

10 Furthermore, if the candidate ultimately does not become a candidate for the general
11 election, the committee must refund, redesignate, or reattribute any general election contributions
12 in accordance with applicable Commission regulations.²³ The committee must do so within 60
13 days of the date that the committee has actual notice of the need to redesignate, reattribute, or
14 refund the contributions.²⁴ A committee cannot redesignate general election funds to the primary
15 election if doing so would cause the contributor to exceed the maximum allowable contribution

¹⁸ 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

¹⁹ 52 U.S.C. § 30116(f).

²⁰ 11 C.F.R. § 102.9(e)(1).

²¹ *Id.*

²² *Id.* § 102.9(e)(2).

²³ *Id.* § 102.9(e)(3).

²⁴ *See* Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).

1 for that election.²⁵ Likewise, reattribution of a general election contribution may only occur to
2 the extent that such attribution does not exceed the contributor's contribution limits.²⁶

3 The Committee, on its own initiative, amended its 2016 July Quarterly Report and its
4 2016 Pre-Primary Election Report to disclose additional receipts and disbursements totaling
5 almost \$2.8 million, resulting in a substantial increase in financial activity that was not timely
6 disclosed. Further, the Committee accepted excessive contributions totaling almost \$165,000
7 and failed to refund or redesignate those contributions within the Act's timeframe. To date,
8 despite assistance from RAD, the Committee has failed to remedy these excessive contributions.

9 The Committee violated the Act when it failed to timely and accurately disclose receipts
10 and disbursements, and by accepting and failing to timely remedy excessive contributions.

11 Therefore, based on available information, we recommend that the Commission open a Matter
12 Under Review ("MUR") and find reason to believe that the Committee to Elect Alan Grayson
13 and Star Grayson in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and
14 30116(f) and 11 C.F.R. §§ 102.9(e), 110.1(b)(3), and 110.2(b)(3).

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²⁵ 11 C.F.R. §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii). Furthermore, amounts redesignated may not exceed the net debts outstanding from the primary. *Id.*

²⁶ *Id.* § 110.1(k)(3)(ii)(B)(1).

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2 **IV. RECOMMENDATIONS**

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4 1. Open a Matter Under Review;

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6 2. Find reason to believe that the Committee to Elect Alan Grayson and Star
7 Grayson in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and
8 30116(f) and 11 C.F.R. §§ 102.9(e), 110.1(b)(3), and 110.2(b)(3) by failing to
9 accurately disclose receipts and disbursements and by accepting and failing to
10 remedy excessive contributions;

11

12 3. Approve the attached Factual and Legal Analysis;

13

14 4. Enter into conciliation with the Committee to Elect Alan Grayson and Star
15 Grayson in her official capacity as treasurer prior to a finding of probable cause to
16 believe;

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18 5. Approve the attached conciliation agreement; and

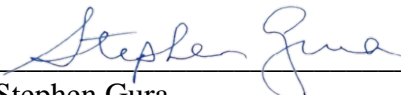
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6. Approve the appropriate letters.

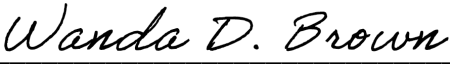
Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel
for Enforcement

12.02.20
Date


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Mark Shonkwiler
Assistant General Counsel


Wanda D. Brown
Attorney

Attachments:
1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Committee to Elect Alan Grayson and MUR
Star Grayson in her official capacity
as treasurer

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the “Commission”) in the normal course of carrying out its supervisory responsibilities.¹ The Reports Analysis Division (“RAD”) referred the Committee to Elect Alan Grayson and Star Grayson in her official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for potential violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), arising from its failure to timely and accurately disclose \$2,781,157.75 in receipts and disbursements, and for accepting \$164,331.29 in excessive contributions when it failed to timely refund, reattribute, or redesignate contributions from Florida’s 2016 primary election.

The Committee does not deny the errors in its 2016 July Quarterly Report. The Committee explains that its inaccurate reports were the result of the Committee bookkeeper’s health issues, and when it learned of the issues with its reports, it hired a new compliance advisor and devoted substantial resources, time, and effort to addressing the resulting reporting errors.

Based on available information, the Commission finds reason to believe that the Committee to Elect Alan Grayson and Star Grayson in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b) and 30116(f) and 11 C.F.R. §§ 102.9(e), 110.1(b)(3), and 110.2(b)(3) by

¹ See 52 U.S.C. § 30109(a)(2).

1 failing to accurately and timely report receipts and disbursements, and by accepting and failing
2 to remedy excessive contributions.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

5 Alan Grayson was a 2016 Senate candidate from Florida.² His authorized Committee has
6 been registered with the Commission since May 2006.³ This matter was referred to OGC for its
7 failure to accurately and timely report receipts and disbursements.⁴ Specifically, the Committee
8 amended its 2016 July Quarterly Report to disclose additional receipts totaling \$969,568.35 and
9 additional disbursements totaling \$965,737.39.⁵ The Committee also amended its 2016 12-Day
10 Pre-Primary Election Report to disclose additional disbursements totaling \$766,205.28.⁶ Finally,
11 the Committee accepted excessive contributions totaling \$125,890.97 for the 2016 Primary
12 Election but failed to timely refund or redesignate those contributions within the permissible
13 timeframe, and received \$38,440.32 in contributions designated for the 2016 General Election
14 and failed to timely refund or redesignate when Grayson lost the 2016 Florida Primary Election.⁷

² Grayson was also a 2020 candidate for Florida's 9th Congressional District, but withdrew prior to the August Democratic Primary. He is now running as a write-in candidate for U.S. Representative from Florida's 6th Congressional District. Grayson served as the U.S. Representative from Florida's 8th Congressional District from 2009-2011 and 2013-2017.

³ See Committee to Elect Alan Grayson, FEC Form 1, Statement of Organization, May 24, 2006 (amend. Apr. 14, 2018). During the 2016 election cycle, the Committee's receipts totaled \$5,107,800 and disbursements totaled \$4,850,626. The Committee recently disclosed that it has \$716,230.17 cash on hand and \$2,541,722.56 in debt. See Committee to Elect Alan Grayson, Financial Summary of 2015-2016 Election Cycle covering activity from Jan. 1, 2015 to Dec. 31, 2016 at <https://www.fec.gov/data/committee/C00424713/?cycle=2016>.

⁴ RAD Referral, Committee to Elect Alan Grayson at 1 (April 2, 2019); see also *2015-2016 RAD Review and Referral Procedures*, Standards 5 and 7.

⁵ RAD Referral at 5.

⁶ *Id.* at 5-6.

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1 On March 16, 2020, RAD supplemented its referral to include an amendment to the
2 Committee's 2016 Pre-Primary Report which disclosed an additional \$79,646.73 in
3 disbursements.⁸

4 The Committee does not deny the errors in its 2016 July Quarterly Report.⁹ The
5 Committee explains that Grayson's Senatorial campaign was substantially larger than his
6 Congressional campaigns, and that the complexity of the campaign made it difficult to accurately
7 track its contributions and disbursements.¹⁰ Further, the Committee states that its original report
8 was substantially incomplete when it was submitted to the Commission because the Committee's
9 bookkeeper was hospitalized but did not notify the Committee of his health issues.¹¹ The
10 Committee further asserts that when it learned that its reports were not accurate or complete, it
11 hired a compliance company to amend its reports.¹² According to the Committee, the first
12 compliance company was unable to resolve the Committee's reporting violations, so it hired a
13 second company to help correct the Committee's disclosure reports.¹³ The Committee also
14 asserts that it mistakenly believed its original bookkeeper was using FECFile, the Commission's
15 filing software, and to amend Committee reports, data needed to be migrated from another

⁸ Supp. to RAD Referral, Committee to Election Alan Grayson at 1(Mar. 16, 2020).

⁹ Resp. at 1 (Jul. 29, 2019). Although not entirely clear, it appears that the Committee's explanations for errors on the 2016 July Quarterly Report described in this paragraph also apply to the 2016 12-Day Pre-Primary Report. *See id.*

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3.

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¹³ *Id.*

1 software program to FECFile, which took several weeks.¹⁴ In response to the supplement to the
2 Referral, the Committee states that it has “devoted substantial resources, time and effort to
3 addressing the resulting issues, and it stands ready to continue to do so.”¹⁵ Despite
4 communications with and assistance from RAD, at the time of these findings, the Committee has
5 not refunded or redesignated the excessive contributions identified in the Referral.

6 **B. Legal Analysis**

7 The Act requires political committee treasurers to file reports of receipts and
8 disbursements in accordance with the provisions of 52 U.S.C. § 30104.¹⁶ Under the Act, an
9 individual may not make a contribution to a candidate with respect to any election in excess of
10 the legal limit, which was \$2,700 per election during the 2016 election cycle.¹⁷ A multicandidate
11 political action committee may not make contributions to a candidate in excess of \$5,000 per
12 election.¹⁸ A primary election and a general election are each considered a separate “election”
13 under the Act, and the contribution limits are applied separately with respect to each election.¹⁹
14 Candidates and political committees are prohibited from knowingly accepting excessive
15 contributions.²⁰

¹⁴ *Id.* at 2.

¹⁵ Resp.to Supp. at 1 (Apr. 22, 2020).

¹⁶ *See* 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁷ 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

¹⁸ 52 U.S.C. § 30116(a)(2)(A) and 11 C.F.R. § 110.2(b)(1).

¹⁹ 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

²⁰ 52 U.S.C. § 30116(f).

1 The Commission's regulations permit a candidate's committee to receive contributions
2 for the general election prior to the primary election.²¹ However, the committee must use an
3 acceptable accounting method to distinguish between primary and general election
4 contributions.²² The committee's records must demonstrate that prior to the primary election,
5 the committee's recorded cash on hand was at all times equal to or in excess of the sum of
6 general election contributions received less the sum of general election disbursements made.²³

7 Furthermore, if the candidate ultimately does not become a candidate for the general
8 election, the committee must refund, redesignate, or reattribute any general election contributions
9 in accordance with applicable Commission regulations.²⁴ The committee must do so within 60
10 days of the date that the committee has actual notice of the need to redesignate, reattribute, or
11 refund the contributions.²⁵ A committee cannot redesignate general election funds to the primary
12 election if doing so would cause the contributor to exceed the maximum allowable contribution
13 for that election.²⁶ Likewise, reattribution of a general election contribution may only occur to
14 the extent that such attribution does not exceed the contributor's contribution limits.²⁷

15 The Committee, on its own initiative, amended its 2016 July Quarterly Report and its
16 2016 Pre-Primary Election Report to disclose additional receipts and disbursements totaling

²¹ 11 C.F.R. § 102.9(e)(1).

²² *Id.*

²³ *Id.* § 102.9(e)(2).

²⁴ *Id.* § 102.9(e)(3).

²⁵ *See* Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).

²⁶ 11 C.F.R. §§ 110.1(b)(5)(iii), 110.2(b)(5)(iii). Furthermore, amounts redesignated may not exceed the net debts outstanding from the primary. *Id.*

²⁷ *Id.* § 110.1(k)(3)(ii)(B)(1).

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2 disclosed. Further, the Committee accepted excessive contributions totaling almost \$165,000
3 and failed to refund or redesignate those contributions within the Act's timeframe. To date,
4 despite assistance from RAD, the Committee has failed to remedy these excessive contributions.

5 The Committee violated the Act when it failed to timely and accurately disclose receipts
6 and disbursements, and by accepting and failing to timely remedy excessive contributions.

7 Therefore, based on available information, the Commission finds reason to believe that the
8 Committee to Elect Alan Grayson and Star Grayson in her official capacity as treasurer violated
9 52 U.S.C. §§ 30104(b) and 30116(f) and 11 C.F.R. §§ 102.9(e), 110.1(b)(3), and 110.2(b)(3).