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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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For the meeting of September 29, 2022

August 25, 2022

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

Dayna C. Brown *DCB*
Assistant Staff Director
Audit Division

Zuzana O. Pacious *ZP*
Audit Manager

By: Scott Dickens *SD*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Aníbal Comisionado 2020 (A21-03)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Aníbal Comisionado 2020 (AC2020) on July 15, 2022 (see attachment). AC2020 did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

In response to the DFAR, AC2020 filed Form 99s (Miscellaneous Electronic Submissions) and provided additional comments, as noted below.

Finding 1. Misstatement of Financial Activity

In response to the DFAR, AC2020 reiterated its earlier response and stated that it experienced problems with its software. The misstated activity, according to AC2020, was not due to AC2020's "negligence or intentional disregard of FEC's requirements." AC2020 subsequently filed Form 99s that materially corrected the public record for the disbursements. However, AC2020 did not file a Form 99 to

correct the public record for its misstated receipts. Lastly, AC2020 corrected its ending cash on hand balance when it filed the 2021 April Quarterly disclosure report.¹

The Audit staff recommends that the Commission find that AC2020 overstated its reported receipts and disbursements by \$44,455 and \$16,195, respectively, and understated its ending cash on hand by \$12,640 in calendar year 2020.

Finding 2. Disclosure of Occupation and/or Name of Employer

In response to the DFAR, AC2020 filed Form 99s that materially corrected the public record.

The Audit staff recommends that the Commission find that AC2020 failed to disclose or inadequately disclosed occupation and/or name of employer information for 304 contributions, from individuals, totaling \$118,169.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

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

If this Audit Division Recommendation Memorandum is not approved on a tally vote, Directive No. 70 states that the matter 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 Scott Dickens or Zuzana Pacious at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Aníbal Comisionado 2020

cc: Office of General Counsel

¹ On April 15, 2021, AC2020 filed the 2021 April Quarterly disclosure report. This report reflected a January 1, 2021, beginning cash balance which was in material agreement with the audited, December 31, 2020, ending cash balance.



Draft Final Audit Report of the Audit Division on Aníbal Comisionado 2020

(February 10, 2020 - December 31, 2020)

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 Act¹. 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 Committee (p. 2)

Aníbal Comisionado 2020 is the principal campaign committee for Aníbal Acevedo-Vilá, Democratic candidate for the United States House of Representatives from the territory of Puerto Rico, and is headquartered in San Juan, Puerto Rico. For more information, see the Campaign Organization chart, p. 2.

Financial Activity (p. 2)

• Receipts

○ Contributions from Individuals	\$ 707,566
○ Transfers from Affiliated/Other Party Committees	52,181
○ Other Federal Receipts	299

Total Receipts **\$ 760,046**

• Disbursements

○ Operating Expenditures	\$ 759,675
○ Other Disbursements	50

Total Disbursements **\$ 759,725**

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation and/or Name of Employer (Finding 2)

¹ 52 U.S.C. §30111(b).



Draft Final Audit Report of the Audit Division on Aníbal Comisionado 2020

(February 10, 2020 - December 31, 2020)

DRAFT

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Part I

Background

Authority for Audit

This report is based on an audit of Aníbal Comisionado 2020 (AC2020), 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 shall 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 review of contributions from individuals;
2. the disclosure of contributions received;
3. the disclosure of individual contributors' occupation and name of employer;
4. the consistency between reported figures and bank records;
5. the review of personal use of funds;
6. the review of operating expenditures;
7. the completeness of records; and
8. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	February 14, 2020
• Audit Coverage	February 10, 2020 ² - December 31, 2020
Headquarters	San Juan, Puerto Rico
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Two checking
Treasurer	
• Treasurer When Audit Was Conducted	José Luis Mendoza
• Treasurer During Period Covered by Audit	José Luis Mendoza
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ February 10, 2020	\$ 0
Receipts	
○ Contributions from Individuals	707,566
○ Transfers from Affiliated/Other Party Committees	52,181
○ Other Federal Receipts	299
Total Receipts	\$ 760,046
Disbursements	
○ Operating Expenditures	759,675
○ Other Disbursements	50
Total Disbursements	\$ 759,725
Cash on hand @ December 31, 2020	\$ 321

² AC2020 opened its bank account on February 10, 2020.

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of AC2020's reported financial activity with its bank records revealed a misstatement of receipts, disbursements, and the ending cash balance for calendar year 2020. AC2020 overstated its receipts and disbursements by \$44,455 and \$16,195, respectively, and understated its ending cash balance by \$12,640. In response to the Interim Audit Report recommendation, the AC2020 representatives explained that they experienced problems with their third-party filing software and attributed the misstatements to their "limited knowledge in dealing with computer softwares." However, the representatives stated that adequate accounting records were maintained, and provided the summary of AC2020's financial activity for calendar year 2020. The AC2020 representatives advised the Audit staff of their intent to file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements, however, have not done so, to date. Absent the filing of amended reports or a Form 99, AC2020's receipts, disbursements and ending cash balance remain misstated. (For more detail, see p. 4.)

Finding 2. Disclosure of Occupation and/or Name of Employer

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 304 contributions, totaling \$118,169, lacked or inadequately disclosed the required occupation and/or name of employer information. AC2020 did not sufficiently demonstrate "best efforts" to obtain, maintain and submit the required information. In response to the Interim Audit Report recommendation, the AC2020 representatives explained that the majority of AC2020's contributions were from contributors "who made contributions of \$500 or less by mail or by electronic transfers." The AC2020 representatives provided a list of contributors for whom they obtained the occupation and/or name of employer information, in response to the audit. The AC2020 representatives advised the Audit staff of their intent to file a Form 99 (Miscellaneous Electronic Submission) to correct the public record, however, have not done so, to date. Absent the filing of amended reports or a Form 99, AC2020 did not correct the public record for 304 contributions totaling \$118,169 that lacked or inadequately disclosed the required occupation and/or name of employer information. (For more detail, see p. 6.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of AC2020's reported financial activity with its bank records revealed a misstatement of receipts, disbursements, and the ending cash balance for calendar year 2020. AC2020 overstated its receipts and disbursements by \$44,455 and \$16,195, respectively, and understated its ending cash balance by \$12,640. In response to the Interim Audit Report recommendation, the AC2020 representatives explained that they experienced problems with their third-party filing software and attributed the misstatements to their "limited knowledge in dealing with computer softwares." However, the representatives stated that adequate accounting records were maintained, and provided the summary of AC2020's financial activity for calendar year 2020. The AC2020 representatives advised the Audit staff of their intent to file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements, however, have not done so, to date. Absent the filing of amended reports or a Form 99, AC2020's receipts, disbursements and ending cash balance remain misstated.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash on hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the election cycle;
- the total amount of disbursements for the reporting period and for the election cycle; and
- transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4), and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled AC2020's reported financial activity with its bank records for calendar year 2020. The reconciliation determined that AC2020 misstated receipts, disbursements, and the ending cash balance for 2020. The following chart details the discrepancies between AC2020's disclosure reports and its bank activity. The succeeding paragraphs explains why the discrepancies occurred.

2020 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2020	\$0	\$0	\$0
Receipts	\$804,501	\$760,046	\$44,455 Overstated
Disbursements	\$775,920	\$759,725	\$16,195 Overstated
Ending Cash on hand @ December 31, 2020	(\$12,319) ³	\$321	(\$12,640) Understated

The overstatement of receipts resulted from the following differences:

• Returned contributions, not reported or incorrectly reported	-	4,540
• Receipts reported, but did not clear the bank	-	55,960
• Unexplained differences	+	16,045
Net Overstatement of Receipts		<u>\$ 44,455</u>

The overstatement of disbursements resulted from the following differences:

• Disbursements that cleared the bank, not reported	+	322,070
• Disbursements reported, but did not clear the bank	-	336,859
• Disbursements reported with incorrect amount	-	154
• Unexplained differences	-	1,252
Net Overstatement of Disbursements		<u>\$ 16,195</u>

The \$12,640 understatement of the ending cash balance was a result of the reporting discrepancies noted above, as well as mathematical reporting errors.

Regarding the overstatement for disbursements, the Audit staff identified seven disbursements, to three vendors, totaling \$336,859 that were reported by AC2020, however, they did not clear AC2020's bank account. Additionally, the Audit staff identified 276 disbursements, totaling \$322,070, that cleared AC2020's bank account but were not reported.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter during the exit conference with the AC2020 representatives and provided the relevant schedules. The AC2020 representatives stated that they believed the misstatements were the result of duplicate and reverse entry errors caused by its third-party filing software.⁴

³ The reported ending cash on hand does not equal \$28,581, calculated as the reported beginning cash on hand (\$0) plus reported receipts (\$804,501) minus reported disbursements (\$775,920). This was due to mathematical discrepancies between the reported beginning cash on hand of reporting periods not equaling the ending cash on hand of prior reporting periods.

⁴ AC2020 purchased and used third-party software to prepare and file its disclosure reports.

In response to the exit conference, the AC2020 representatives stated that they would analyze the difference between bank records and the information included in the reports in order to reconcile the differences for receipts, disbursements and cash. They explained that the “principal reason for the differences is attributable to duplication of receipts and disbursements in the reports filed by the committee” due to “problems with the software.” The AC2020 representatives further stated that they were preparing a detailed analysis of transactions to determine the exact amounts of deposits and disbursements in order to correct the reported amounts and, if necessary, would file a Form 99 to disclose the missing information. AC2020 has not amended its reports or filed a Form 99 (Miscellaneous Electronic Submission) to correct these misstatements.

The Interim Audit Report recommended that AC2020 amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)⁵ to correct the misstatements noted above. In addition, the Interim Audit Report recommended that AC2020 reconcile the cash balance on its most recently filed report and correct any subsequent discrepancies.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the AC2020 representatives explained that they experienced problems with the recording of transactions in their third-party filing software and, in most reports, they were unable to reconcile the amounts reflected on the disclosure reports with the bank amounts. The AC2020 representatives further stated that they maintained adequate accounting records for their receipts and disbursements, and provided an internally prepared schedule of cash flow, reflecting the beginning cash balance at inception; the amounts of contributions received; the amounts paid for various expenses; and the ending cash balance as of December 31, 2020. Additionally, they provided bank statements, which were also provided prior to audit fieldwork, reflecting the beginning and ending cash balances for calendar year 2020.

The AC2020 representatives advised the Audit staff of their intent to file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements, however, they have not done so, to date. Absent the filing of amended reports or a Form 99, AC2020’s receipts, disbursements and ending cash balance remain misstated.

Finding 2. Disclosure of Occupation and/or Name of Employer

Summary

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 304 contributions, totaling \$118,169, lacked or inadequately disclosed the required occupation and/or name of employer information. AC2020 did not sufficiently demonstrate “best efforts” to obtain, maintain and submit the required

⁵ AC2020 was advised by the Audit staff that if it chose to file a Form 99, instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

information. In response to the Interim Audit Report recommendation, the AC2020 representatives explained that the majority of AC2020's contributions were from contributors "who made contributions of \$500 or less by mail or by electronic transfers." The AC2020 representatives provided a list of contributors for whom they obtained the occupation and/or name of employer information, in response to the audit. The AC2020 representatives advised the Audit staff of their intent to file a Form 99 (Miscellaneous Electronic Submission) to correct the public record, however, have not done so, to date. Absent the filing of amended reports or a Form 99, AC2020 did not correct the public record for 304 contributions totaling \$118,169 that lacked or inadequately disclosed the required occupation and/or name of employer information.

Legal Standard

- A. Itemization Required for Contributions from Individuals.** An authorized candidate committee must itemize any contribution from an individual if it exceeds \$200 per election cycle, either by itself or when combined with other contributions from the same contributor. 52 U.S.C. §30104(b)(3)(A).
- B. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:
- The contributor's full name and address (including zip code);
 - The contributor's occupation and the name of his or her employer;
 - The date of receipt (the date the committee received the contribution);
 - The amount of the contribution; and
 - The election cycle year-to-date total of all contributions from the same individual. 52 U.S.C. §30104(b)(3)(A) and 11 CFR §§100.12 and 104.3(a)(4)(i).
- C. Best Efforts Ensure Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i) and 11 CFR §104.7(a).
- D. Definition of Best Efforts.** The treasurer and the committee will only be deemed to have exercised "best efforts" if the committee satisfied all of the following criteria:
- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
 - Within 30 days of receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
 - The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A. Facts

AC2020 did not disclose or inadequately disclosed the required occupation and/or name of employer information for contributions requiring itemization on its FEC reports, as of the date of the audit notification letter.

Contributions Requiring Itemization – Missing or Inadequate Occupation and/or Name of Employer	
Number of Contributions	304
Dollar Value of Contributions	\$118,169
Percent of Contributions	23%

1. Contributor Information Provided but Amendments Not Filed:

During audit fieldwork, AC2020 provided the Audit staff with the required contributor occupation and/or name of employer information; however, AC2020 did not file the required amendments for the following:

Contributor Information Provided but Amendments Not Filed	
Number of Contributions	197 ⁶
Dollar Value of Contributions	\$63,189

2. Best Efforts Documentation Not Provided:

AC2020 did not provide the Audit staff records to document “best efforts” for the following:

Best Efforts Documentation Not Provided by Committee	
Number of Contributions	107
Dollar Value of Contributions	\$54,980

3. Additional Information:

AC2020 disclosed the following on Schedule A (Itemized Receipts):

⁶ AC2020’s updated documentation, provided to the Audit staff during fieldwork, contained the occupation and/or name of employer information.

- “Information Requested” or “N/A” for 282 contributions totaling \$109,264, and
- Inadequate occupation and/or name of employer for 22 contributions totaling \$8,905.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the AC2020 representatives during audit fieldwork and at the exit conference and provided a schedule detailing these disclosure errors. The AC2020 representatives stated that there were many duplicate transactions on the disclosure reports and asked if the Audit staff’s schedule detailing the disclosure errors contained any duplicate transactions. The Audit staff advised that duplicate transactions were not included on the schedule. The AC2020 representatives stated that they would work to obtain the “best efforts” information.

In response to the exit conference, AC2020 stated that it would file a Form 99 to include information obtained from contributors. AC2020 was also in process of obtaining the remaining contributor information related to occupation and/or name of employer.

In response to the exit conference, AC2020 submitted the following:

Corrective Action Taken in Response to the Exit Conference	
Number of Best Efforts Letters sent to Contributors - <i>Untimely</i>	57
Dollar Value of Best Efforts Letters sent to Contributors - <i>Untimely</i>	\$23,050
Number of Contributor Responses Received from Best Efforts Letters	1 ⁷
Dollar Value of Contributor Response from Best Efforts Letter	\$2,800
Number of Contributors’ Occupation and Name of Employer Information Provided after Exit Conference	31
Dollar Value of Contributors’ Occupation and Name of Employer Information Provided after Exit Conference	\$27,300
Dollar Value of Amendments filed	\$0
Dollar Value of Amendments Still Required to be filed with Best Efforts Information	\$93,289⁸

The Interim Audit Report recommended that AC2020 amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)⁵ to disclose the occupation and/or name of employer information relating to the 229⁹ contributions, totaling \$93,289, received from its contributors.

⁷ AC2020 received four responses from its contributors, however, two of the responses were previously provided during audit fieldwork and one response did not include the required disclosure information.

⁸ \$93,289 = \$2,800 + \$27,300 + \$63,189 (see Section A.1).

⁹ 229 = 1 + 31 + 197 (see Section A.1)

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the AC2020 representatives explained that the majority of AC2020's contributions were from contributors who "made contributions of \$500 or less by mail or by electronic transfers" and were received without contributor contact information. In such instances, AC2020 would follow up "through other venues" by sending letters and/or emails requesting the missing occupation and/or name of employer information. The AC2020 representatives provided a list of contributors for whom they obtained the occupation and/or name of employer information, in response to the audit. The Audit staff reviewed the list and determined that corrected information was obtained for an additional 13 contributions totaling \$3,500, as follows:

Corrective Action Taken in Response to the Interim Audit Report	
Number of Contributors' Occupation and Name of Employer Information Provided after Interim Audit Report	13
Dollar Value of Contributors' Occupation and Name of Employer Information Provided after Interim Audit Report	\$3,500
Dollar Value of Amendments filed	\$0
Dollar Value of Amendments Still Required to be filed with Best Efforts Information	\$96,789¹⁰

The AC2020 representatives demonstrated that they obtained and maintained the occupation and/or name of employer information for 242¹¹ contributions, totaling \$96,789. They advised the Audit staff of their intent to file a Form 99 (Miscellaneous Electronic Submission) to disclose the required information and correct the public record, however, they have not done so, to date. Absent the filing of amended reports or a Form 99, AC2020 did not correct the public record for 304 contributions totaling \$118,169, that lacked or inadequately disclosed the required occupation and/or name of employer information.

¹⁰ \$96,789 = \$3,500 + \$93,289 (see Section B).

¹¹ 242 = 13 + 229 (see Section B)