

1 **FEDERAL ELECTION COMMISSION**

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

4
5 **Audit Referral 22-05**

6 DATE REFERRED: Oct. 24, 2022

7 DATE OF NOTIFICATION: Oct. 26, 2022

8 DATE OF LAST RESPONSE: Aug. 29, 2023

9 DATE ACTIVATED: Sept. 8, 2023

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11 ELECTION CYCLE: 2020

12 EXPIRATION OF SOL: Dec. 5, 2025-Apr. 25,
13 2026¹

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15 **SOURCE:** Audit Referral

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17 **RESPONDENT:** Aníbal Comisionado 2020 and José Luis Mendoza
18 in his official capacity as treasurer

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20 **RELEVANT STATUTE**
21 **AND REGULATION:** 52 U.S.C. § 30104(b)
22 11 C.F.R. § 104.3(a)

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24 **INTERNAL REPORTS CHECKED:** Audit Documents
25 Disclosure Reports

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27 **FEDERAL AGENCIES CHECKED:** None

28 **I. INTRODUCTION**

29 This matter arises from an audit of the 2020 activity of Aníbal Comisionado 2020 and
30 José Luis Mendoza in his official capacity as treasurer (the "Committee"). On October 17, 2022,
31 the Commission approved the Proposed Final Audit Report, which included findings that the
32 Committee overstated reported receipts by \$44,455, disbursements by \$16,195, understated its
33 cash on hand by \$12,640 in calendar year 2020, and that it failed to disclose or inadequately

¹ This statute of limitations reflects that the Committee executed four agreements consenting to toll the statute of limitations ("SOL") in this matter by a total of 143 days. Without tolling, the SOL in this matter would be July 15, 2025-December 3, 2025.

1 disclosed occupation and employer information for 304 contributions totaling \$118,169.²
2 Pursuant to the 2019-2020 Cycle Materiality Thresholds for Authorized Committees, the Audit
3 Division referred the finding concerning the misstatement of receipts totaling \$44,455 to the
4 Office of General Counsel (“OGC”) for possible enforcement action.³

5 As described below, and consistent with the Commission’s finding in the Final Audit
6 Report (“FAR”), we recommend that the Commission open a Matter Under Review (“MUR”),
7 find reason to believe that the Committee violated 52 U.S.C. § 30104(b) of the Federal Election
8 Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 104.3(a) of the Commission’s
9 regulations, by overstating its receipts by \$44,455, and authorize entering into pre-probable
10 cause conciliation with the Committee.

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Factual Background**

13 Aníbal Comisionado 2020 is the principal campaign committee of Aníbal Acevedo-Vilá,
14 who was a candidate in the 2020 election cycle for Puerto Rico’s Resident Commissioner

² See Certification (Oct. 17, 2022), 2020 A21-03 (Proposed Final Audit Report on Aníbal Comisionado), https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_VotePFAR_2020.pdf and Final Audit Report of the Commission on Aníbal Comisionado 2020 (Oct. 31, 2022) https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_FARC_2020.pdf (“FAR”).

³ Referral at 1 (Oct. 24, 2022).

1 delegate to the House of Representatives.⁴ Acevedo-Vilá lost the 2020 general election.⁵ He
2 previously served as Resident Commissioner from 2001 through 2005.⁶

3 During an audit of the Committee's disclosure reports filed between February 10, 2020,
4 and December 31, 2020, Audit staff identified discrepancies in the Committee's receipts,
5 disbursements, and cash on hand during 2020.⁷ In response to the Audit Division's Interim
6 Audit Report ("IAR"), Committee staff stated that they believed the reporting discrepancies
7 identified by the Audit Division were the result of issues with third-party filing software,
8 explaining that the "principal reason for the differences is attributable to duplication of receipts
9 and disbursements in the reports filed by the committee" because of "problems with the
10 software."⁸ At that time, the Committee stated that it would conduct a detailed analysis of its
11 records and, if necessary, file appropriate amendments with the Commission or file supplemental
12 submissions.⁹ The Audit Division recommended that the Committee amend its disclosure
13 reports or file a miscellaneous text submission to correct its misstatements, but the Committee
14 did not do so at that time. Later, in response to the Audit Division's Draft Final Audit Report,

⁴ See Anibal Comisionado 2020, Amended Statement of Organization, (May 12, 2020), <https://docquery.fec.gov/pdf/400/202005129232671400/202005129232671400.pdf>.

⁵ FEC, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE, AND THE U.S. HOUSE OF REPRESENTATIVES at 160 (2022), <https://www.fec.gov/resources/cms-content/documents/federal-elections2020.pdf>.

⁶ *Acevedo Vilá, Anibal*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS <https://bioguide.congress.gov/search/bio/A000359> (last visited Oct. 24, 2023). Acevedo-Vilá served as governor of Puerto Rico from 2005 to 2009.

⁷ See FAR at 2.

⁸ Referral at 5; see Anibal Comisionado 2020, Miscellaneous Text Submission at 1 (May 17, 2022), https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_CmteResponseIAR_2020.pdf (containing the Committee's response to the Draft FAR).

⁹ Referral at 5.

1 the Committee filed submissions correcting the record regarding its disbursements and cash on
2 hand for calendar year 2020 but did not correct the misstatements concerning its receipts.¹⁰

3 At the time that the Commission published the FAR, the Committee had yet to address its
4 misstated receipts. In its initial response to the Referral notification, the Committee stated that
5 the Committee's treasurer was investigating "what exact information was submitted and filed
6 with the FEC" on the Committee's Miscellaneous Text Submissions from August 2022.¹¹
7 Subsequently, in August 2023, the Committee filed a submission addressing its misstated
8 receipts, explaining that it encountered technical issues relating to the file size of its August 2022
9 submissions; specifically, it "made an error while uploading documents and for Finding 1, we
10 only included the parts referring to the disbursements, and inadvertently did not include the parts
11 in reference to the receipts."¹² In a second response to the Referral, the Committee stated that it
12 filed a Miscellaneous Text Submission with the Commission on August 24, 2023, to correct the
13 public record regarding its receipts in 2020 and noted the Committee's "eventual compliance."¹³

¹⁰ *Id* at 6; *see* Anibal Comisionado 2020, Miscellaneous Text Submission (July 29, 2022), <https://docquery.fec.gov/pdf/762/202207299525086762/202207299525086762.pdf> (addressing missing or inaccurate disclosures of contributor occupation and employer information); Anibal Comisionado 2020, Miscellaneous Text Submission (July 29, 2022), <https://docquery.fec.gov/pdf/768/202207299525086768/202207299525086768.pdf> (addressing missing or inaccurate disclosures of contributor occupation and employer information). The Committee also made submissions to address corrections to its disbursements from 2020. *See* Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/472/202208129525374472/202208129525374472.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/487/202208129525374487/202208129525374487.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/502/202208129525374502/202208129525374502.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/519/202208129525374519/202208129525374519.pdf>; Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 12, 2022), <https://docquery.fec.gov/pdf/531/202208129525374531/202208129525374531.pdf>.

¹¹ Resp. at 1 (July 18, 2023).

¹² *See* Anibal Comisionado 2020, Miscellaneous Text Submission (Aug. 24, 2023), <https://docquery.fec.gov/pdf/926/202308249596775926/202308249596775926.pdf>.

¹³ Supp. Resp. at 1 (Aug. 29, 2023).

1 **B. Legal Analysis**

2 The Act requires committee treasurers to file reports of receipts and disbursements in
3 accordance with the provisions of 52 U.S.C. § 30104.¹⁴ These reports must include, among other
4 things, the total amount of receipts, including the appropriate itemizations, where required.¹⁵ As
5 found in the Commission's FAR and acknowledged in the Committee's responses during the
6 audit, the Committee overstated reported receipts by \$44,455 in calendar year 2020.¹⁶

7 Although it acknowledges the violation, the Committee states that the discrepancies
8 identified by Audit were the result of software issues, but does not specifically invoke the Act's
9 best efforts provision or explain how it met the elements of that provision.¹⁷ Under the Act's
10 best efforts provision, when a treasurer of a political committee shows that best efforts have been
11 used to obtain, maintain, and submit the information required by the Act, any report submitted by
12 the committee will be considered to be in compliance with the Act.¹⁸ The Commission has
13 explained that the best efforts provision is an affirmative defense that the respondent must
14 establish — the burden rests with the political committee and its treasurer to present evidence
15 sufficient to demonstrate that best efforts were exercised to obtain, maintain, and submit the
16 required information.¹⁹ The Commission has further explained that errors caused by a

¹⁴ See 52 U.S.C. § 30104(a)(1); *see also* 11 C.F.R. § 104.1.

¹⁵ See 52 U.S.C. § 30104(b)(2); *see also* 11 C.F.R. § 104.3(a).

¹⁶ FAR at 3.

¹⁷ See Anibal Comisionado 2020, Miscellaneous Text Submission at 1 (May 17, 2020), https://www.fec.gov/resources/cms-content/documents/AnibalAcevedoVila_CmteResponseIAR_2020.pdf (containing the Committee's response to the IAR).

¹⁸ See 52 U.S.C. § 30102(i); *see also* 11 C.F.R. § 104.7(a).

¹⁹ See, e.g., Factual & Legal Analysis ("F&LA") at 5, MUR 7043 (Put Alaska First) (reflecting that the Commission considers a committee's affirmative steps taken to keep adequate records and make accurate reports, but the defense excludes inexperience, negligence, or error of committee staff or agents.); *see also* Statement of

1 Committee's own negligence or errors, or a third party's delay, are generally insufficient to
2 establish this defense.²⁰ In other matters involving software issues which led to misstatements in
3 disclosures to the Commission, as is the case here, the Commission has found reason to believe
4 and authorized pre-probable cause conciliation.²¹ Accordingly, we conclude that the Committee
5 did not meet the best efforts provision.

6 Therefore, we recommend that the Commission open a MUR and find reason to believe
7 that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a).

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Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438, 31,440 (June 7, 2007) ("Best Efforts Policy") (indicating that the Commission does not consider the best efforts defense unless a respondent asserts the facts that form the basis of that defense).

²⁰ See Best Efforts Policy, 72 Fed. Reg. at 31,440.

²¹ See, e.g., F&LA at 5, MUR 7054 (Oakland County Democratic Party) (In a RAD referral, Respondent stated that the reporting errors were due to information not properly transferred from QuickBooks to their reporting software, NGP VAN, and requested that the Commission take no action. The Commission found reason to believe and authorized pre-probable cause conciliation.); see also F&LA at 5-6, MUR 7603 (Wyoming Republican Party, Inc.) (In a RAD referral, Respondent stated that the reporting errors were due to miscommunications between two vendors and requested that the matter be transferred to ADRO. The Commission found reason to believe and authorized pre-probable cause conciliation.).

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8 IV. RECOMMENDATIONS

9 1. Open a MUR;

10 2. Find reason to believe that Aníbal Comisionado 2020 and José Luis Mendoza in
11 his official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R.
12 § 104.3(a) by misstating receipts;

13 3. Authorize pre-probable cause conciliation with Aníbal Comisionado 2020 and
14 José Luis Mendoza in his official capacity as treasurer;

15 4. Approve the attached proposed Factual and Legal Analysis;

16 5. Approve the attached proposed Conciliation Agreement; and

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6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for
Enforcement

Date: 11/21/2023

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