



FEDERAL ELECTION COMMISSION
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March 3, 2009

MEMORANDUM

To: The Commission

Through: Joseph F. Stoltz *JFS*
Acting Staff Director

John D. Gibson *JDG*
Chief Compliance Officer

From: Wanda J. Thomas *WJT*
Acting Assistant Staff Director
Audit Division

Alex R. Boniewicz *ARB*
Audit Manager

Marty Kuest *MK*
Lead Auditor

Subject: Withdrawal and resubmission of the Report of the Audit Division on
League of Conservation Voters Action Fund (A07-41)

AGENDA ITEM
For Meeting of: 05-14-09

This document was originally circulated February 25, 2009. Information received subsequent to the original circulation indicated that a matter addressed in the report was not an issue. As a result, it was necessary to remove the corresponding finding from the report. Therefore, we are withdrawing the prior circulation of this document and simultaneously resubmitting the attached corrected document.

Recommendation

The Audit staff recommends that the report be approved.

This report is being circulated on a tally vote basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Marty Kuest or Alex Boniewicz at 694-1200.

Attachment:
Report of the Audit Division on League of Conservation Voters Action Fund.



Report of the Audit Division on League of Conservation Voters Action Fund

January 1, 2005 – December 31, 2006

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 Committee (p. 2)

League of Conservation Voters Action Fund (LCVAF) is the separate segregated fund of the League of Conservation Voters, Inc. (LCV), a non profit corporation organized under the provision of 501(c)(4) of the U.S. Tax Code. LCVAF qualified for multi-candidate status on April 22, 1992 and is headquartered in Washington, DC. For more information, see the chart on Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ From Individuals	\$ 1,042,346
○ From Political Committees	13,300
○ Refunds and Offsets	18,598
○ Other Receipts	2,984
○ Total Receipts	\$ 1,077,228
• Disbursements	
○ Operating Expenditures	\$ 369,270
○ Contributions to Federal Candidates	146,012
○ Independent Expenditures	723,586
○ Other Disbursements	10,431
○ Total Disbursements	\$ 1,249,299

Findings and Recommendations (p. 3)

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

¹ 2 U.S.C. §438(b).

Report of the Audit Division on League of Conservation Voters Action Fund

January 1, 2005 – December 31, 2006



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Part I

Background

Authority for Audit

This report is based on an audit of League of Conservation Voters Action Fund (LCVAF), 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 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. 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. 2 U.S.C. §438(b).

Scope of Audit

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

1. The disclosure of contributions received from individuals for occupation/name of employer.
2. The consistency between reported figures and bank records.
3. A review of independent expenditures.
4. Other committee operations necessary to the review.

Limitations

With the audit notification letter mailed on December 21, 2007, and fieldwork not beginning until May 19, 2008, LCVAF should have had adequate time to assemble the records requested and required for the audit. At the outset, the Audit staff determined that the disbursement records, contained in a single binder and covering only 2006, were insufficient to complete the audit. Work, to the extent possible, proceeded. When promised records did not materialize on May 23rd, the Audit staff notified LCVAF that they would withdraw from fieldwork. LCVAF was given two weeks to provide the missing documentation; fieldwork resumed on June 9th.

LCVAF in its response to the interim audit report stated its belief that the temporary delay in field work was a mutual decision of LCVAF and the auditors. LCVAF went on to say that this decision was necessitated by an ongoing independent audit of the connected organization's financial statements and LCV's chief financial officer's preoccupation with that endeavor.

Part II

Overview of Committee

Committee Organization

Important Dates	League of Conservation Voters Action Fund
• Date of Registration	July 18, 1991
• Audit Coverage	January 1, 2005 - December 31, 2006
Headquarters	Washington, DC
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Two Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Barbara Gonzalez-McIntosh Patrick Collins
• Treasurer During Period Covered by Audit	Gwendolyn M. Sommer (08/12/02 - 10/13/05) Mary Jane Gallagher (10/14/05 - 01/11/06) Barbara Gonzalez-McIntosh (01/12/06 - 07/20/08)
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2005	\$ 262,189
○ From Individuals	\$ 1,042,346
○ From Political Committees	13,300
○ Refunds and Offsets	18,598
○ Other Receipts	2,984
Total Receipts	\$ 1,077,228
○ Operating Expenditures	\$ 369,270
○ Contributions to Federal Candidates	146,012
○ Independent Expenditures	723,586
○ Other Disbursements	10,431
Total Disbursements	\$ 1,249,299
Cash on hand @ December 31, 2006	\$ 90,118

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of LCVAF's reported figures to its bank records revealed that receipts, disbursements and cash-on-hand balances had been materially misstated for calendar years 2005 and 2006. For 2005, LCVAF understated beginning cash on hand by \$10,585, overstated receipts by \$5,521, understated disbursements by \$2,590 and understated ending cash-on-hand by \$2,474. In 2006, receipts were overstated by \$9,109, disbursements understated by \$113,680 and the ending cash-on-hand was overstated by \$120,315. In response to the interim audit report recommendation, LCVAF noted that it had taken steps to improve its accounting and reporting system, identified reported contributions originally received by LCV for which the funds had not been transferred to LCVAF and filed amended reports to materially correct the misstatement. (For more detail, see p. 4)

Finding 2. Disclosure of Occupation/Name of Employer

For 26% of itemized contributions from individuals, LCVAF failed to adequately disclose the occupation and/or the name of the employer. In most instances, LCVAF disclosed "information requested" or "requested" for occupation and/or name of employer. While there was no documentation to support that LCVAF used best efforts to obtain, maintain and submit the missing contributor information, an LCVAF representative demonstrated that some missing information had been included on reports filed in the subsequent election cycle. In response to the interim audit report recommendation, LCVAF filed amendments, which disclosed additional occupation and/or name of employer information, materially correcting the public record. (For more detail, see p. 7)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

A comparison of LCVAF's reported figures to its bank records revealed that receipts, disbursements and cash-on-hand balances had been materially misstated for calendar years 2005 and 2006. For 2005, LCVAF understated beginning cash on hand by \$10,585, overstated receipts by \$5,521, understated disbursements by \$2,590 and understated ending cash-on-hand by \$2,474. In 2006, receipts were overstated by \$9,109, disbursements understated by \$113,680 and the ending cash-on-hand was overstated by \$120,315. In response to the interim audit report recommendation, LCVAF noted that it had taken steps to improve its accounting and reporting system, identified reported contributions originally received by LCV for which the funds had not been transferred to LCVAF and filed amended reports to materially correct the misstatements.

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 calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

The Audit staff reconciled reported activity to bank records for calendar years 2005 and 2006. The following charts outline the discrepancies for the beginning cash balances, receipts, disbursements, and the ending cash balances. The succeeding paragraphs explain why the differences occurred, if known.

2005 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2005	\$251,604	\$262,189 ²	\$10,585 ² Understated
Receipts	\$170,092	\$164,571	\$5,521 Overstated
Disbursements	\$304,486	\$307,076 ²	\$2,590 ² Understated
Ending Cash Balance @ December 31, 2005	\$117,210	\$119,684	\$2,474 Understated

² Subsequent to the issuance of the interim audit report, an LCVAF representative indicated that two unreported disbursements were, in fact, the reissue of voided checks. The voided checks represented previously unaccounted for outstanding checks at the beginning of 2005. This increase to outstanding checks at the beginning of 2005 effectively reduced beginning cash, disbursements and the related discrepancies, each by \$2,053.

The beginning cash was understated by \$10,585 and is unexplained, but is likely the result of prior period discrepancies.

The overstatement of receipts was the result of the following:

• Contributions and receipts not reported (consisting of \$4,655 itemizable, \$800 unitemizable contributions and a \$9,129 offset)	+\$ 14,584
• Receipts reported but no record of deposit identified (consisting of \$1,000 itemized and \$19,105 unitemized contributions)	- 20,105
Total Net Overstatement of Receipts	-\$ 5,521

The understatement of disbursements was the result of the following:

• Disbursements not reported	+\$ 4,655
• Disbursements reported unsupported by negotiated check or debit	- 1,987
• Over reporting of unitemized disbursements	- 78
Total Net Understatement of Disbursements	+\$ 2,590

The \$2,474 understatement of ending cash was the net result of the misstatements described above.

2006 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2006	\$117,210	\$119,684	\$2,474 Understated
Receipts	\$921,765	\$912,656	\$9,109 Overstated
Disbursements	\$828,542	\$942,222	\$113,680 Understated
Ending Cash Balance @ December 31, 2006	\$210,433	\$90,118	\$120,315 Overstated

The overstatement of receipts was the result of the following:

• Contribution and receipts not reported (consisting of \$21,000 itemizable, \$100 unitemizable contributions and offsets totaling \$9,468)	+\$ 30,568
• Earned interest not reported	+ 1,552
• Contribution reported but no record of deposit identified	- 5,000
• Unexplained difference (see explanation on following page)	- 36,229
Total Net Overstatement of Receipts	-\$ 9,109

The understatement of disbursements was the result of the following:

• Disbursements not reported	+\$ 113,678
• Unexplained difference	+ 2
Total Understatement of Disbursements	+\$ 113,680

The \$120,315 overstatement of ending cash was the result of the misstatements noted above.

The Audit staff was able to identify and materially explain differences arising from the reconciliation of the LCVAF's bank accounts to its reported activity except for the apparent overstatement of receipt activity for 2006.

The \$36,229 unexplained overstatement of 2006 receipts suggested that reported receipts exceeded the reconciled bank total by \$36,229. This difference remained a problem for LCVAF. It appeared likely that LCVAF reported and itemized receipts designated to it by contributors whose contributions were initially received by but not transferred from LCV.

LCV received numerous contributions which, in accordance with instructions from the contributors, transferred specified amounts to LCVAF. In addition to LCVAF, LCV maintains a 501(c)(3) entity, the League of Conservation Voters Education Fund (LCVEF) and a League of Conservation Voters 527 fund. Throughout the course of the audit, it became apparent to the Audit staff that the complexity of this organizational structure created some confusion when it came to correctly attributing transactions among the various entities.³

An LCVAF representative confirmed that a reported \$5,000 contribution, noted above in the explanation of differences for 2006 receipts, could not be traced to a deposit batch from either of LCVAF's bank accounts. Sufficient receipt records were not available to allow the Audit staff to trace all itemized receipts to deposit batches and then to the bank.

At the exit conference, the Audit staff presented this matter to LCVAF representatives and provided schedules to support the misstatement. LCVAF representatives acknowledged the misstatements and affirmed their willingness to cooperate to resolve this matter.

Interim Audit Report Recommendation

The Audit staff recommended that LCVAF:

- Provide any additional information or written comments that it considered relevant to the overstatement of receipt activity on its reports filed for 2005 and 2006;
- Explain any steps taken or procedures it had adopted to address the apparent problems arising from the complex multi-organizational structure to assure the accurate attribution of activity to the appropriate entity; and,
- Amend its reports for the misstatements detailed above for 2005 and 2006. In addition, LCVAF should have amended its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment. Further, LCVAF should have reconciled the cash balance of its most recent report to identify subsequent discrepancies that may have impacted the \$120,315 adjustment recommended by the Audit staff.

³ An LCVAF expenditure of \$110,000 to a media vendor was originally paid by LCV and then reimbursed. An independent expenditure of \$50,000 from LCV was incorrectly included on an LCVAF 24-hour notice though not otherwise reported. Contributions designated for LCVAF, but received by LCV were often transferred months after their having been received.

Committee Response to Recommendation and Audit Staff's Assessment

In response to the interim audit report, LCVAF explained that it had:

“...carefully reviewed the ‘unexplained difference’ of \$36,229 noted in the IAR (pages 5 and 6) which accounts for a portion of the net overstatement of receipts for 2006. Of this amount, \$27,500.00 has been identified as contributions from individuals intended as contributions to LCVAF which inadvertently were not transferred from the connected organization's accounts to LCVAF's account. LCVAF (sic) has transferred these contributions to the LCVAF account and will report this transfer as a memo entry on the monthly report for January, 2009 with an explanatory note stating that the transfer ‘per Audit represents the value of PAC contributions initially deposited into the account of the connected organization but intended for LCVAF, representing the names, dates and amounts of the contributions to LCVAF as originally reported.’⁴ The remaining \$8,729.00 [\$36,229 - \$27,500] of the ‘unexplained difference’ will be reported as a negative adjustment on Schedule A of the amended year end report for 2006 with an explanatory note stating that the adjustment is ‘to reduce total receipts for 2006 to account for an adjustment per Audit.’ We understand that [A]udit staff have (sic) approved both of these actions.”

To address the systemic problems that contributed to the misstatements, LCVAF's response stated that it has restructured its FEC accounting procedures to eliminate the kinds of record keeping and reporting difficulties experienced during the audit period. Included in the restructuring is:

- additional trained staff (who have or will soon have attended FEC training) to process contributions;
- the engagement of Aristotle, Inc. to manage financial activity (including the reconciliation of this activity to reported activity) and file disclosure reports; and,
- mandatory review of disclosure reports by the general counsel and Chief Financial Officer prior to their submission.

The Audit staff reviewed the amended disclosure reports filed by LCVAF for January 1, 2005, through December 31, 2006, and concluded that the public record had been materially corrected.

Finding 2. Disclosure of Occupation/Name of Employer

Summary

For 26% of itemized contributions from individuals, LCVAF failed to adequately disclose the occupation and/or the name of the employer. In most instances, LCVAF disclosed “information requested” or “requested” for occupation and/or name of employer. While there was no documentation to support that LCVAF used best efforts to obtain, maintain and submit the missing contributor information, an LCVAF representative demonstrated that some missing

⁴ Although the LCVAF will not file the February monthly report until 02/20/09, they have provided a copy of the documentation supporting the \$27,500 transfer.

information had been included on reports filed in the subsequent election cycle. In response to the interim audit report recommendation, LCVAF filed amendments, which disclosed additional occupation and/or name of employer information, materially correcting the public record.

Legal Standard

A. 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-to-date total of all contributions from the same individual. 2 U.S.C. §434(b)(3)(A) and 11 CFR §§100.12 and 104.3(a)(4).

B. Best Efforts Ensures 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. 2 U.S.C. §432(h)(2)(i).

C. Definition of Best Efforts. The treasurer and the committee will be considered to have used "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 after the receipt of the contribution not accompanied by complete information, the treasurer made at least one effort to obtain the missing information, via 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

Itemized contributions from individuals were reviewed for disclosure of occupation and/or name of employer. For itemized individual contributions totaling \$326,655 or approximately 26% of total contributions (\$1,261,433) itemized,⁵ LCVAF failed to adequately disclose occupation and/or name of employer (occ/noe). In most instances, LCVAF disclosed "information requested" or "requested" for occupation and/or name of employer.

During audit field work, LCVAF representatives maintained that the required follow up requests for missing information had been made. They were, however, unable to provide any copies of correspondence requesting the missing information, e-mails or logs of phone calls to document

⁵ LCVAF also functioned as a conduit. Included in the review total of \$1,261,433 was \$855,142 in itemized contributions to LCVAF and itemized memo entries for \$406,291 in non-deposited pass through earmarked contributions.

they made these requests.⁶ An LCVAF representative did review reports filed for the subsequent election cycle and found that a significant number of contributors, whose reported contributions had lacked adequate disclosure in the audit period, had reported contributions which included adequate or sufficient disclosure of occupation and/or name of employer in the subsequent election cycle. The representative further noted that had the reports for the audit period included the additional information, the deficiency would have been resolved.

The Audit staff presented this matter to LCVAF representatives at the exit conference explaining that without the documentation supporting best efforts, the matter would appear as a finding in the audit report. LCVAF representatives reiterated that documentation supporting follow up requests for missing information did exist and that it would be provided as soon as it could be found.

Interim Audit Report Recommendation

The Audit staff recommended that LCVAF take the following action:

- Provide documentation that it exercised best efforts to obtain, maintain and submit the required contributor information; or
- Make an effort to contact those individuals for whom the required information was not in LCVAF files and provide documentation of such efforts (such as copies of letters to the contributors and/or phone logs); and, file amended reports to disclose any information in LCVAF's possession as well as information obtained in response to this recommendation.

Committee Response to Recommendation and Audit Staff's Assessment

LCVAF responded by acknowledging the substance of the finding. The response indicated that contributions were received through the internet, through events, other high-donor solicitations and direct mail. The response pointed out that LCVAF provided documentation showing that all solicitations requested the donor's occupation and employer and stated such information was requested in accordance with FEC regulations. When necessary, LCVAF development staff would attempt to obtain missing information through phone calls, emails or other personal contacts. LCVAF also noted that "Unfortunately, the organization's donor database in use at the time did not accommodate the inputting of information about such contacts."

LCVAF believed that because of the procedures in place, most of the missing occ/noe information involved contributions received in response to direct mail solicitations which were processed by a caging firm it no longer retains. Although LCVAF required the caging firm to send an LCVAF prepared letter to all donors lacking occ/noe information, the caging firm "was unable to document that it had sent the letters in accordance with LCVAF's instructions." Lastly, evidence suggests "that the missing information was obtained for approximately one-third of the dollar value of the errors found by [A]udit staff because it appears in the LCVAF database in connection with contributions made in 2007-2008 by the same donors."

LCVAF's response further explained that:

⁶ A comparison of original and amended reports revealed no change (improvement) in the reporting of occupation and/or name of employer which could have indicated follow up requests had been sent.

“Although documentation maintained by the organization's vendor was not deemed adequate by the [A]udit staff, it is clear that the organization was aware of and tried in good faith to comply with the best efforts requirements, and that it believed these requirements were being met. In addition, LCVAF has spent significant time and effort reviewing its files to obtain the missing information for a large portion of the individual donors identified by the [A]udit staff. This information, which appears on the amended reports that LCVAF has filed in response to Finding 1, reduces the number of 2005-2006 contributions for which occ/noe information is missing from the 26% error rate noted in the IAR down to about 8 %.”

“...Furthermore, LCVAF's new caging firm is maintaining copies of all letters sent to obtain missing occ/noe information, as is LCVAF's development staff with respect to their own efforts, so that the documentation problem identified by the [A]udit staff should not recur.”

The absence of the documentation supporting subsequent requests to contributors for occ/noe prevented LCVAF from establishing “best efforts.” Establishing “best efforts” became unnecessary when a review of the amended reports for the audit period filed in response to the interim audit report revealed that LCVAF materially corrected the disclosure of occupation/name of employer using information disclosed in the subsequent election cycle.

CASE INDEX FORM

CASE NO. & NAME: A07-41 League of Conservation Voters Action Fund

STAFF ASSIGNED: Alex R. Boniewicz, Audit Manager
Marty Kuest, Lead Auditor

TELEPHONE: Audit – 202-694-1200

<u>DATE</u>	<u>DOCUMENT</u>
September 14, 2007	RAD Referral
October 30, 2008	Interim Audit Report
January 15, 2009	Response to Interim Audit Report ¹
March 3, 2009	Final Audit Report

The above documents can be found at the following server location:
\\Ntsrv1\ voting ballot matters\Audit\League of Conservation Voters Action Fund

For more information or to request any of the documents listed above, contact
Alex Boniewicz at 694-1200.

¹ In addition to the posted narrative, the Committee filed amended reports.