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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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**MEMORANDUM**

TO: The Commission

FROM: Steven T. Walther *STW by [Signature]*  
Commissioner

DATE: January 20, 2011

SUBJECT: Proposed Final Audit Report on the Tennessee Democratic Party (A07-07)

Attached please find my proposed revisions to the descriptions of certain Commission Conclusions reflected in Agenda Document No. 10-76.

I request that these proposed revisions be placed on the agenda for January 20, 2011.

Attachment



## **Proposed Final Audit Report on the Tennessee Democratic Party**

January 1, 2005 – December 31, 2006

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### **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.<sup>1</sup> 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)

The Tennessee Democratic Party is a state party committee headquartered in Nashville, TN. For more information, see the chart on the Committee Organization, p. 2.

### **Financial Activity** (p. 2)

• <b>Federal Receipts</b>	
○ Contributions from Individuals	\$ 1,771,653
○ Contributions from Other Political Committees	234,775
○ Transfers from Affiliated Party Committees	3,022,463
○ Transfers from Non-federal and Levin Funds	797,430
○ Other Receipts	48,176
<b>Total Federal Receipts</b>	<b>\$ 5,874,497</b>
• <b>Federal Disbursements</b>	
○ Operating Disbursements	\$1,691,580
○ Transfers to Affiliated Committees	211,950
○ Independent Expenditures	912,496
○ Coordinated Party Expenditures	712,459
○ Federal Election Activity	2,237,958
○ Other Disbursements	160,981
<b>Total Federal Disbursements</b>	<b>\$5,927,424</b>
• <b>Levin Receipts</b>	<b>\$319,869</b>
• <b>Levin Disbursements</b>	<b>\$319,869</b>

### **Commission Findings** (p. 3)

- Non-allocable Federal Election Activity Disclosed on Schedule H6 (Finding 1)
- Disclosure of Disbursements (Finding 2)

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<sup>1</sup> 2 U.S.C. §438(b).

# **Proposed Final Audit Report on the Tennessee Democratic Party**

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January 1, 2005 – December 31, 2006



## **Table of Contents**

	<b>Page</b>
<b>Part I. Background</b>	
Authority for Audit	1
Scope of Audit	1
<b>Part II. Overview of Committee</b>	
Committee Organization	2
Overview of Financial Activity	2
<b>Part III. Summaries</b>	
Commission Findings	3
<b>Part IV. Commission Findings</b>	
Finding 1. Non-allocable Federal Election Activity Disclosed on Schedule H6	4
Finding 2. Disclosure of Disbursements	10

## **Part I Background**

### **Authority for Audit**

This report is based on an audit of the Tennessee Democratic Party (TDP), 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**

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The disclosure of expenses allocated between federal, non-federal, and Levin accounts.
6. The consistency between reported figures and bank records.
7. The completeness of records.
8. Other committee operations necessary to the review.

## Part II

### Overview of Committee Committee Organization

<b>Important Dates</b>	<b>Tennessee Democratic Party</b>
• Date of Registration	May 18, 1983
• Audit Coverage	January 1, 2005 - December 31, 2006
<b>Headquarters</b>	Nashville, Tennessee
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	Seven Federal, Three non-Federal, One Levin
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Chip Forrester
• Treasurer During Period Covered by Audit	Robert Tuke & Delainia Davis
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Software	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

### Overview of Financial Activity (Audited Amounts)

<b>Federal Cash on hand @ January 1, 2005</b>	<b>\$128,779</b>
○ Contributions from Individuals	\$1,771,653
○ Contributions from Other Political Committees	234,775
○ Transfers from Affiliated Party Committees	3,022,463
○ Transfers from Non-federal and Levin Funds	797,430
○ Other Receipts	48,176
<b>Total Federal Receipts</b>	<b>\$5,874,497</b>
○ Operating Disbursements	\$1,691,580
○ Transfers to Affiliated Committees	211,950
○ Independent Expenditures	912,496
○ Coordinated Party Expenditures	712,459
○ Federal Election Activity	2,237,958
○ Other Federal Disbursements	160,981
<b>Total Federal Disbursements</b>	<b>\$5,927,424</b>
<b>Federal Cash on hand @ December 31, 2006</b>	<b>\$75,852</b>
<b>Levin Cash on hand @ September 26, 2006</b>	<b>\$0</b>
<b>Total Levin Receipts</b>	<b>\$319,869</b>
<b>Total Levin Disbursements</b>	<b>\$319,869</b>
<b>Levin Cash on hand @ December 31, 2006</b>	<b>\$0</b>

## Part III

### Summaries

#### Commission Findings

#### **Finding 1. Non-allocable Federal Election Activity Disclosed on Schedule H6**

A review of disbursements suggested that non-allocable federal election activity was reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). Payments, totaling \$98,321, for polls, automated phone banks, and campaign rallies were reportedly allocated 21% federal and 79% Levin. However, a clearly identified candidate running for federal office was identified in each of the above activities/programs. TDP agreed that the automated phone banks and polls were not allocable federal election activity, but maintained that the rallies were correctly classified. In addition to its response to the interim audit report and the draft final audit report, TDP was granted a hearing for Commission consideration of the issues.

Subsequently the Commission:

- Approved the finding of the Audit Division with respect to automated phone banks.
- Reached the unanimous conclusion that the cost of the polls were properly reported on Schedule H4 as shared operating expenditures as TDP had done in response to the interim audit report. The Commissioners differed, however, on the rationale for this conclusion. Three Commissioners reasoned that legitimate survey polls do not constitute general public political advertising and therefore are not public communications. Three Commissioners reasoned that message testing polls that both promote or support a candidate, and attack or oppose the same candidate are not public communications.
- Concluded that, with the exception of custom labeled bottled water that identified a specific federal candidate, there was not enough evidence regarding the rallies to determine that they were not allocable federal election activity. (For more detail, see p. 4)

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#### **Finding 2. Disclosure of Disbursements**

A sample review of itemized expenditures revealed that for approximately 18% of the items tested TDP did not disclose the payees' address. In response, TDP filed amended reports that materially disclosed the missing information. The Commission approved this finding. (For more detail, see p. 10)

## Part IV

### Commission Findings

#### Finding 1. Non-allocable Federal Election Activity Disclosed on Schedule H6

##### Summary

A review of disbursements suggested that non-allocable federal election activity was reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). Payments, totaling \$98,321, for polls, automated phone banks, and campaign rallies were reportedly allocated 21% federal and 79% Levin. However, a clearly identified candidate running for federal office was identified in each of the above activities/programs. TDP agreed that the automated phone banks and polls were not allocable federal election activity, but maintained that the rallies were correctly classified. In addition to its response to the interim audit report and the draft final audit report, TDP was granted a hearing for Commission consideration of the issues.

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- Approved the finding of the Audit Division with respect to automated phone banks.
- Reached the unanimous conclusion that the cost of the polls were properly reported on Schedule H4 as shared operating expenditures as TDP had done in response to the interim audit report. The Commissioners differed, however, on the rationale for this conclusion. Three Commissioners reasoned that legitimate survey polls do not constitute general public political advertising and therefore are not public communications. Three Commissioners concluded that message testing polls that both promote or support a candidate, and attack or oppose the same candidate are not public communications.
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##### Legal Standard

**A. Categories of Allocable Federal Election Activity.** A State, district, or local political party committee may allocate disbursements between Federal funds and Levin funds for:

- Voter Registration Activity;
- Voter Identification;
- Get-Out-The-Vote Activity; and
- Generic Campaign Activity. 11 CFR §300.33(a)(1) and (2).

**B. Categories of Non-Allocable Federal Election Activity.** Costs incurred by State, district, and local party committees and organizations for public communications that refer to a clearly identified candidate for federal office and that promote, attack, support or oppose any such candidate for federal office must be paid only with federal funds. 11 CFR §300.33(c).

**C. Coordinated Party Expenditures.** National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits. Such purchases are referred to as “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment and the voting age population.
- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits.
- A national or state party committee may assign all or part of its coordinated party spending authority to another party committee. 2 U.S.C. §441a(d) and 11 CFR §§109.32(b) and 109.33(a) and (b).

#### **Facts and Analysis**

The Audit staff identified payments, totaling \$98,321, for polls, automated phone banks, and campaign rallies. TDP considered these expenditures to be allocable federal election activity and on its reports allocated each payment 21% federal and 79% Levin.

#### **A - Automated Phone Banks – 11 CFR §§109.32(b) and 109.33(a)**

TDP paid \$36,400 for two automated phone bank programs. The phone scripts for both programs refer to a clearly identified candidate running for federal office. As such, this cost cannot be considered allocable federal election activity and paid for, in part, with Levin funds. The reported Levin share of this expense was \$28,756 (\$36,400 x 79%).

The cost of this program represents a coordinated party expenditure on behalf of Harold Ford, Jr., candidate for the United States Senate. The first phone script was narrated by the Governor of Tennessee (Governor Script), who was running for re-election. He asked for “your support and your vote.” He also asked that “you support Harold Ford, Jr.,” and continued to speak on his behalf. He closes by stating, “vote for me, Harold Ford, Jr., and all of our great democratic candidates running for election.” The script concluded with a second speaker stating, “paid for by the Tennessee Democratic Party” and “approved and authorized by Harold Ford, Jr. for Tennessee.”

The second phone bank script was narrated by former president Bill Clinton (Clinton Script). He asked that “everyone go to the polls and take someone with you who hasn’t voted.” He also stated that “Tennessee has an historic chance to send Harold Ford, Jr. to the United States Senate,” and continued talking on his behalf. He ended by telling “everyone to go to the polls and vote.” The script concluded with a second speaker stating, “paid for by the Tennessee Democratic Party” and “approved and authorized by Harold Ford, Jr. for Tennessee.”

The automated phone program was coordinated with Harold Ford, Jr. for Tennessee (Ford Committee) since the caller stated that the candidate approved and authorized each phone script. Further, the contracts for each phone bank program were signed by Jim Hester, representing TDP. His email addresses at both TDP and at the candidate's campaign headquarters were listed on one of the contracts. Finally, prior to the date of each contract, Mr. Hester was employed by the Ford Committee.

The Audit staff allocated the cost of the Governor Script one-third (Governor), one-third (Harold Ford, Jr.), and one-third to all other (unnamed) candidates running for election. Therefore, \$6,300 ( $\$18,900 \times 33\%$ ) represented a coordinated expenditure on behalf of Harold Ford, Jr. Further, since Harold Ford, Jr. is the only candidate named in the Clinton Script, the entire cost (\$17,500) represents a coordinated expenditure on behalf of Harold Ford, Jr.

TDP's coordinated expenditure limit for a United State Senate candidate was \$362,200. The national party committee has the same limit; which was assigned to TDP. Therefore, TDP could make coordinated expenditures of behalf of Harold Ford, Jr. in the amount of \$724,400.

TDP reported on Schedule F (Itemized Coordinated Party Expenditures) coordinated party expenditures on behalf of Harold Ford, Jr. totaling \$712,459. With the addition of the cost of the automated phone bank (\$23,800 [ $\$6,300 + \$17,500$ ]) and bottled water (See section C. Campaign Rallies \$900),<sup>2</sup> it appeared that TDP exceeded the limitation by \$12,759 ( $\$737,159 - \$724,400$ ).

This matter was discussed at the exit conference. TDP's response did not address automated phone banks.

#### **Interim Audit Report Recommendation**

The Audit staff recommended that TDP demonstrate that the automated phone banks represent federal election activity, or file amended reports disclosing the expenditures (\$23,800 ( $\$6,300 + \$17,500$ )) as coordinated party expenditures on behalf of Harold Ford, Jr.

#### **Committee Response to Recommendation and Audit Staff's Assessment**

In response, Counsel for TDP (Counsel) acknowledged that the automated phone calls included advocacy for a Federal candidate and should not have been disclosed on Schedule H6. TDP filed amended reports to disclose 50% of the cost of the Governor Script on Schedule B (\$9,450) and 50% on Schedule F. The entire cost of the Clinton Script was disclosed on Schedule F.

The Audit staff and Counsel agree that the expenditures were coordinated and reportable on Schedule F, although TDP has concluded that 50% of the cost of the Governor's

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<sup>2</sup> The Committee also agreed that the cost of bottled water labeled Ford for Tennessee represents a coordinated party expenditure.

Script represents coordinated spending, whereas, the Audit staff concluded a lesser percentage (33%). TDP's allocation is also acceptable.

The normal remedy would have been for the Ford Committee to reimburse TDP \$12,759. However, since the Ford Committee transferred \$154,000 in excess campaign funds to TDP on November 6, 2006, the Audit staff considered this matter to be timely resolved; requiring no further action.

### **Commission Conclusion**

The Commission approved the finding of the Audit Division with respect to automated phone banks and custom-labeled bottled water.

### **B - Polls – 11 CFR §300.33(a)(1) and (2) and (c)**

TDP paid \$24,500 for two statewide tracking polls conducted during the period October 14, 2006, through October 28, 2006. Poll questions related to candidates running for election to the United States Senate and candidates for the Governor of Tennessee. The majority of the questions related to the Senate election. The cost of the polls cannot be allocated between the federal account and Levin fund since both polls refer to a clearly identified candidate running for federal office. The reported Levin share of this expense was \$19,355 (\$24,500 x 79%).

This matter was discussed at the exit conference. TDP's response did not address the polls.

### **Interim Audit Report Recommendation**

The Audit staff recommended that TDP demonstrate that expenditures for polls represented allocable federal election activity.

### **Committee Response to Recommendation and Audit Staff's Assessment**

In response, Counsel acknowledged that the cost of the polls should not have been reported on Schedule H6 but indicated this cost should have been reported on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity); as a shared operating expenditure. Counsel further stated, the tracking polls were conducted to get a sense of issues and voting trends based on general polling principals; the polls did not promote, support, attack or oppose any federal candidate; the polls did not constitute generic campaign activity; the polls did not constitute voter registration activity; the polls did not constitute get-out-the-vote activity; and, most importantly the polls did not constitute voter identification activity. TDP amended its reports to reflect the cost of the polls on Schedule H4; allocating \$5,145 (21%) to the federal account and \$19,355 (79%) to the non-federal account.

The Audit staff concluded that the cost of the polls represented federal election activity that should have been paid solely by the federal account and not allocated as a shared activity. This conclusion was based on the view that the telephone interviews of 1,200 likely voters in October 2006 represented a public communication that referred to clearly identified candidates for federal office that promoted, attacked, supported or opposed the candidates.

Both polls referred to clearly identified candidates running for federal office. Among the questions asked of callers were: if they favored either of the federal candidates; whether they would vote for a certain federal candidate if the election were held that day; their opinion of attack ads against one of the federal candidates; and, their opinions of various positions of each federal candidate.

### **Audit Hearing**

TDP requested a hearing before the Commission. The request was granted and the hearing was held on November 4, 2009. Counsel stated that no information obtained from the polls was posted to the party's voter files and that a legitimate survey poll with a limited number of respondents should not be considered a public communication and therefore federal election activity. Counsel stated that the purpose of these surveys was to test messages for future activities, not to persuade those contacted. He noted that such small numbers of persons contacted using an extensive list of questions is not an effective way to persuade voters.

### **Commission Conclusion**

The Commission reached the unanimous conclusion that the cost of the polls were properly reported on Schedule H4 as shared operating expenditures as TDP had done in response to the interim audit report. The Commissioners differed, however, on the rationale for this conclusion. Three Commissioners reasoned that legitimate survey polls do not constitute general public political advertising and therefore are not public communications. Three Commissioners reasoned that message testing polls that both promote or support a candidate, and attack or oppose the same candidate are not public communications.

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### **C - Campaign Rallies - 11 CFR §300.33(a)(1) and (2)**

The Audit staff identified payments, associated with 12 invoices, totaling \$37,421, which were dated in October 2006 and addressed to Harold Ford's campaign. The invoices denoted, "Bill to Harold Ford Jr." or "Prepared for Harold Ford for Senate Campaign" or "Sold to Harold Ford Jr. Campaign." Each disbursement was reported as get-out-the-vote activity and disclosed on Schedule H6 as allocable federal election activity.

These payments could not represent get-out-the-vote activities if the rallies were for the benefit of Harold Ford, Jr. The Audit staff concluded that the cost of this activity should have been paid entirely by the federal account.

Further, the Audit staff concluded that the disbursements represent coordinated party expenditures on behalf of Harold Ford, Jr. As previously stated, the invoices contained notations indicating that they were either, billed to, prepared for, or sold to the Ford Committee. The invoices appeared to represent expenditures for Ford Committee rallies. One invoice was for custom labeled bottled water – the label read "Ford for Tennessee Bottled Water." Another invoice described the event name as a "Political Rally for Harold Ford, Jr."

This matter was discussed at the exit conference. TDP representatives received copies of the documentation in order to further review the issues.

In response to the exit conference, the former director of Tennessee Victory 2006 submitted a signed statement that addressed four campaign rally invoices, totaling \$17,401. With respect to each, he stated Tennessee Victory 2006 expenditures were incorrectly invoiced to the Harold Ford Jr. campaign; the expenditures were related to get-out-the-vote activities; the activities were not planned or conducted in coordination with any federal candidate; and, no federal candidate attended these events.

#### **Interim Audit Report Recommendation**

The Audit staff recommended that TDP demonstrate that expenditures for campaign rallies represent allocable federal election activity and not coordinated party expenditures on behalf of Harold Ford, Jr.

#### **Committee Response to Recommendation and Audit Staff's Assessment**

In response, Counsel stated that TDP believed the invoices represented generic campaign activity; that it was not uncommon for vendors to confuse a party organization with the campaign of a candidate; and that the invoices were incorrectly sent to the Harold Ford campaign. The response also included a second declaration from the Director of Tennessee Victory 2006, a project of the Tennessee Democratic Party. He stated that of the twelve invoices, eleven were incorrectly invoiced to the Harold Ford campaign. TDP agreed that the remaining invoice for custom-labeled bottled water was a coordinated expenditure and amended its reports to disclose this expense on Schedule F.

As noted above, based on the review of the invoices, it did not appear that the vendors mistakenly invoiced the Ford Committee (instead of the TDP). Therefore, the Audit staff concluded that the payments, for these events, by TDP represented coordinated party expenditures that should have been disclosed on Schedule F.

#### **Audit Hearing**

Counsel reiterated that it is TDP's belief that all of the invoices identified by the Audit staff erroneously identified the Ford campaign as having been involved in the transactions and argued that such mistakes are common. Counsel also objected to what he termed the cursory dismissal of Tennessee Victory 2006 Director's representations concerning the rallies.

The invoices from the 11 vendors represent at least 5 separate events. No explanation was provided of how all 11 vendors mistakenly invoiced the Ford Committee (instead of TDP).<sup>3</sup>

The Declaration, likewise does not explain how such a wide-spread misunderstanding could have occurred. Rather, it makes general statements such as it is his belief that the invoices were incorrectly invoiced to the Ford campaign. He states that in his experience it is common for vendors to make such mistakes, but does not indicate his personal knowledge concerning any of the activities that occurred at the events, if any of the materials displayed at the event mentioned Mr. Ford's campaign, or whether the Mr. Ford

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<sup>3</sup> It is noted that there were only two statewide offices being contested in Tennessee in the 2006 election; Governor and U.S. Senator. The Democratic candidate for Governor won easily, while Mr. Ford lost the Senatorial contest by a narrow margin.

was mentioned at the events. Counsel was unable to provide any further information at the hearing.

### **Commission Conclusion**

The Commission concluded that, with the exception of custom labeled bottled water that identified a specific federal candidate, there was insufficient evidence regarding the rallies to determine that they were not allocable federal election activity.

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## **Finding 2. Disclosure of Disbursements**

### **Summary**

A sample review of itemized expenditures revealed that for approximately 18% of the items tested TDP did not disclose the payees' address. In response, TDP filed amended reports that materially disclosed the missing information. The Commission approved this finding.

### **Legal Standard**

**Reporting Operating Expenditures.** When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

### **Facts and Analysis**

A sample review of itemized expenditures revealed that for 18% of the items tested, TDP did not disclose the payees' address. The majority of the disbursements lacking addresses related to canvassers whose mailing address was noted in TDP's records. This issue was discussed during the exit conference. TDP representatives had no significant comments.

### **Interim Audit Report Recommendation and Committee's Response**

The Audit staff recommended that TDP file amended reports to disclose the missing information. In response, Counsel wrote that they have, "engaged extensive efforts to locate the missing information and will file amendments to include the address[es] which it has located." TDP filed amended reports that materially disclosed the missing information.

### **Commission Conclusion**

The Commission approved the finding of the Audit Division with respect to disclosure of disbursements.