



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

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)

- **Federal Receipts**
 - 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
 - Total Federal Receipts \$ 5,874,497**
- **Federal Disbursements**
 - 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
 - Total Federal Disbursements \$5,927,424**
- **Levin Receipts \$319,869**
- **Levin Disbursements \$319,869**

Commission Findings (p. 3)

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

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This final audit report, which reflects the conclusions of the Federal Election Commission (the Commission) pursuant to Directive 70,² is based on an audit of the Tennessee Democratic Party (TDP), undertaken by the Commission's Audit Division 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.

² Available at http://www.fec.gov/directives/directive_70.pdf.

Part II

Overview of Committee Committee Organization

Important Dates	Tennessee Democratic Party
• Date of Registration	May 18, 1983
• Audit Coverage	January 1, 2005 - December 31, 2006
Headquarters	Nashville, Tennessee
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Seven Federal, Three non-Federal. One Levin
Treasurer	
• Treasurer When Audit Was Conducted	Chip Forrester
• Treasurer During Period Covered by Audit	Robert Tuke & Delainia Davis
Management Information	
• 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)

Federal Cash on hand @ January 1, 2005	\$128,779
○ 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
Total Federal Receipts	\$5,874,497
○ 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
Total Federal Disbursements	\$5,927,424
Federal Cash on hand @ December 31, 2006	\$75,852
Levin Cash on hand @ September 26, 2006	\$0
Total Levin Receipts	\$319,869
Total Levin Disbursements	\$319,869
Levin Cash on hand @ December 31, 2006	\$0

Part III

Summaries

Commission Findings

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

TDP 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, which were allocated 21% federal and 79% Levin. In response to the Interim Audit Report, TDP amended its reports to identify \$36,400 in payments for phone banks as disbursements on Schedule B (Itemized Disbursements) and coordinated party expenditures on Schedule F (Itemized Coordinated Expenditures). Furthermore, TDP amended its reports to identify \$24,500 in payments for polls as a shared operating expenditure on Schedule H4 (Payments for Allocated Federal/Non-Federal Expenses). The Commission determined no further corrective action is necessary. Finally, of the payments totaling \$37,421 for campaign rallies, the Commission found that \$900.15 was allocated improperly. Since TDP correctly amended its reports to identify this cost as a party coordinated expenditure on Schedule F (Itemized Coordinated Expenditures), the Commission determined no further corrective action is necessary. (For more detail, see p. X)

Finding 2. Disclosure of Disbursements

A sample review of itemized expenditures showed that TDP did not disclose the payees' address for approximately 18% of the items tested. In response to the Interim Audit Report, TDP filed amended reports that materially disclosed the missing information. The Commission determined no further corrective action is necessary. (For more detail, see p. 10)

Part IV

Commission Findings

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

Summary

TDP reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity) payments totaling \$98,321 for automated phone banks (\$36,400), polls (\$24,500), and campaign rallies (\$37,421, including \$900.15 for custom-labeled water bottles). TDP allocated these costs 21% federal and 79% Levin. The issue raised by the Audit staff whether these payments were properly reported as allocable federal election activity.

Following the Interim Audit Report, TDP amended its reports to reflect the costs of the polls as a shared operating expenditure on Schedule H4 (Payments for Allocated Federal/Non-Federal Expenses). TDP also amended its reports to disclose the costs of the phone banks on Schedules B (Itemized Disbursements) and F (Itemized Coordinated Party Expenditures). However, TDP maintained that the costs of the rallies were correctly classified as allocable federal election activity (with the exception of the payment for one invoice for custom-labeled water bottles, which TDP acknowledged should have been reported as a coordinated expenditure, and amended its reports to disclose this expense on Schedule F (Itemized Coordinated Party Expenditures)).

The Commission concluded that no further corrective action was required regarding TDP's expenses for the automated phone banks, the polls, or the campaign rallies.

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

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

1. Facts

TDP paid \$36,400 for two automated phone bank programs, and reported these payments on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). TDP allocated these costs 21% federal and 79% Levin. The reported Levin share of this expense was \$28,756 ($\$36,400 \times 79\%$).

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 cost of the program was \$18,900.

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 cost of the program was \$17,500.

The contracts for each phone bank program were signed by Jim Hester, representing TDP, Hester’s email addresses at both TDP and at the candidate’s campaign headquarters were listed on one of the contracts, and prior to the date of each contract Mr. Hester was employed by the Ford Committee.

2. Interim Audit Report & Audit Division Recommendation

In the Interim Audit Report, the Audit staff questioned whether, because the phone scripts refer to a clearly identified candidate running for federal office, the costs of the phone bank program could be allocable federal election activity. In the Interim Audit Report, the Audit staff also questioned whether the automated phone program was coordinated with Harold Ford, Jr. for Tennessee (the "Ford Committee"), because: (1) each script concluded with a the statement that the call was paid for by the Tennessee Democratic Party, and approved and authorized by Harold Ford, Jr. for Tennessee, and (2) the nature of Mr. Hester's involvement. The Audit staff recommended that TDP demonstrate that the automated phone banks represented federal election activity and not coordinated party expenditures.

If the costs were coordinated expenditures, the Audit staff recommended an allocation of the cost of the Governor Script among candidates as follows: one-third (Governor), one-third (Harold Ford, Jr.), and one-third to all other (unnamed) candidates running for election. On that basis, \$6,300 ($\$18,900 \times 33\%$) would represent 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 ($\$17,500$) would represent a coordinated expenditure on behalf of Harold Ford, Jr.

In 2006, TDP's coordinated expenditure limit for contributions to Harold Ford Jr. was \$724,400 (TDP's coordinated expenditure limit, plus the national party committee's coordinated expenditure limit which was assigned to TDP). TDP reported on Schedule F (Itemized Coordinated Party Expenditures) coordinated party expenditures on behalf of Harold Ford, Jr. totaling \$712,459. Thus, if the phone bank programs were coordinated, to the extent that the costs of the phone bank program exceeded TDP's unspent coordinated limit, those costs would constitute an excessive contribution.³

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report, TDP acknowledged that the automated phone calls included advocacy for a Federal candidate and should not have been disclosed on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). Accordingly, TDP amended its reports to disclose the costs of the phone banks on Schedules B (Itemized Disbursements) and F (Itemized Coordinated Party Expenditures). Specifically, instead of adopting the Audit staff's recommended allocation, TDP filed amended reports to disclose 50% of the cost of the Governor Script on Schedule B (Itemized Disbursements) and 50% on Schedule F (Itemized Coordinated Party Expenditures). The entire cost of the Clinton Script was disclosed on Schedule F (Itemized Coordinated Party Expenditures).

Commission Conclusion

³ According to the Audit staff, if the phone banks were coordinated, TDP exceeded the limitation by \$12,759. This figure represents the TDP's coordinated spending limit minus their reported coordinated spending ($\$737,159 - \$724,400$), plus the additional cost of the automated phone bank ($\$23,800 [\$6,300 + \$17,500]$) and bottled water ($\900.15, see section C. Campaign Rallies).

The Commission concluded that TDP's allocation is acceptable. No further corrective action is required.

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

1. Facts

TDP paid \$24,500 for two statewide tracking polls conducted during the period October 14, 2006, through October 28, 2006. TDP allocated these costs 21% federal and 79% Levin. The reported Levin share of this expense was \$19,355 (\$24,500 x 79%).

The telephone poll program consisted of telephone interviews of 1,200 likely voters in October 2006. Poll questions related to candidates running for election to the United States Senate and candidates for the Governor of Tennessee. 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.

2. Interim Audit Report & Audit Division Recommendation

In the Interim Audit Report, the Audit staff raised the issue of whether TDP's expenditures for these polls were allocable federal election activity, and recommended that TDP demonstrate that each payment represents allocable federal election activity.

3. Committee Response to the Interim Audit Report

The Committee responded that, because the polls were not federal election activity, they should not have been allocated between federal and Levin accounts or reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity).

TDP stated that 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 maintained, however, that these costs were shared operating expenses reportable on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity), and amended its reports to reflect the cost of the polls on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity), allocating \$5,145 (21%) to the federal account and \$19,355 (79%) to the non-federal account.

4. Draft Final Audit Report

In the Draft Final Audit Report, it remained the opinion of the Audit staff that the cost of the polls represented federal election activity that should have been paid solely by the

federal account and not allocable as shared activity. The Audit staff reasoned that the polls were federal election activity because the telephone interviews of 1,000 likely voters occurred (in October 2006) within the FEA time frame; represented a public communication that referred to a clearly identified candidate for federal office that promotes, attacks, supports, or opposes such candidates. Both polls referred to clearly identified candidates running for federal office.

5. Audit Hearing

TDP requested a hearing before the Commission. The request was granted and the hearing was held on November 4, 2009.

TDP 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. TDP also stated that the purpose of these surveys was to test messages for future activities, not to persuade those contacted, noting 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 unanimously concluded that the costs of the polls were properly reported on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity) 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 concluded 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.

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

1. Facts

TDP reported as get-out-the-vote activity on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity) payments for 12 invoices totaling \$37,421 for campaign rallies.

The invoices were dated in October 2006, and were for items such as tents, staging, refreshments, audio, parking, and clean-up. The 12 invoices appeared to be addressed to Harold Ford's campaign. For example, the invoices denoted, "Bill to Harold Ford Jr." or "Prepared for Harold Ford for Senate Campaign" or "Sold to Harold Ford Jr. Campaign." One invoice described the event name as a "Political Rally for Harold Ford, Jr." Another invoice, for \$900.15, was for custom-labeled bottled water – the label read "Ford for Tennessee Bottled Water."

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff questioned whether the payments were for generic get-out-the-vote activity because the rallies appeared to benefit Harold Ford, Jr. The Audit staff noted that the invoices contained notations suggesting that they were either billed to, prepared for, or sold to the Ford Committee, and appeared to represent expenditures for Ford Committee rallies. TDP representatives received copies of the documentation in order to further review the issues.

In response to the exit conference, TDP submitted a signed statement from the former director of Tennessee Victory 2006 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.

In the Interim Audit Report, the Audit staff expressed its belief that the disbursements represent coordinated party expenditures on behalf of Harold Ford, Jr., and recommended that TDP demonstrate that the payments do not represent coordinated party expenditures on behalf of Harold Ford, Jr.

3. Committee's Response to the Interim Audit Report

In response to the Interim Audit Report, TDP stated that 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.

TDP subsequently submitted a second declaration from the Director of Tennessee Victory 2006, who stated that in his experience it is common for vendors to make such mistakes. The declaration 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 was mentioned at the events. The declaration also 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 (Itemized Coordinated Expenditures)).

4. Draft Final Audit Report

After considering TDP's response, the Audit staff, based on its review of the invoices, disagreed with TDP's argument that the vendors mistakenly invoiced the Ford Committee (instead of the TDP). Audit staff therefore maintained the opinion that the payments for these events by TDP represented coordinated party expenditures.

5. Audit Hearing

TDP requested a hearing before the Commission. The request was granted and the hearing was held on November 4, 2009.

At the hearing, TDP reiterated its belief that all but one of the 11 invoices erroneously identified the Ford campaign as having been involved in the transactions and argued that such mistakes are common. TDP also reiterated its assertion that it is not uncommon for vendors to confuse or merge a party organization with the campaign of a candidate, or for vendors not to understand the legal significance of addressing an invoice to a candidate versus a party committee. TDP also objected to what he characterized as the cursory dismissal of Tennessee Victory 2006 Director's representations concerning the rallies. However, TDP was unable to provide any further specific factual information at the hearing.

Commission Conclusion

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

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).

1. Facts

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.

2. Interim Audit Report & Audit Division Recommendation

This issue was discussed during the exit conference.

In the Interim Audit Report, the Audit staff recommended that TDP file amended reports to disclose the missing information.

3. Committee's Response to the Interim Audit Report

In response to the Interim Audit Report, 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 subsequently 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.