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MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

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Assistant Staff Director
Audit Division

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By: Alex R. Boniewicz *AB*
Audit Manager

For Meeting of 2-14-13

SUBMITTED LATE

Subject: Proposed Final Audit Report on the Maine Republican Party (A09-09)

Attached for your approval is the subject report with Commission edits.

Attachment:
Proposed Final Audit Report on the Maine Republican Party



Proposed Final Audit Report on the Maine Republican Party

January 1, 2007 – December 31, 2008

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 Maine Republican Party is a state party committee headquartered in Augusta, Maine. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

| | |
|---|---------------------|
| • Receipts | |
| ○ Contributions from Individuals | \$ 422,772 |
| ○ Contributions from Political Party Committees | 778,500 |
| ○ Contributions from Other Political Committees | 172,044 |
| ○ Transfers from Non-federal Account | 48,381 |
| ○ All Other Receipts | 887 |
| Total Receipts | \$ 1,422,584 |
| • Disbursements | |
| ○ Operating Disbursements | \$ 806,455 |
| ○ Coordinated Party Expenditures | 12,500 |
| ○ Federal Election Activity | 519,305 |
| ○ Independent Expenditures | 56,601 |
| Total Disbursements | \$ 1,394,861 |

Commission Findings (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Debts and Obligations (Finding 2)
- Disclosure of Disbursements (Finding 3)
- Failure to File Notices and Properly Disclose Independent Expenditures (Finding 4)

Additional Issue (p. 4)

- Reporting Payments from Non-federal Accounts

¹ 2 U.S.C. §438(b).

Proposed Final Audit Report on the Maine Republican Party

January 1, 2007 – December 31, 2008



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Part I

Background

Authority for Audit

This report is based on an audit of the Maine Republican Party (MRP), 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 whether 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 disbursements, debts and obligations;
2. the disclosure of expenses allocated between federal and non-federal accounts;
3. the disclosure of individual contributors' occupation and name of employer;
4. the consistency between reported figures and bank records;
5. the completeness of records; and
6. other committee operations necessary to the review.

Audit Hearing

MRP declined the opportunity for an audit hearing before the Commission.

Part II

Overview of Committee

Committee Organization

| | |
|--|--|
| Important Dates | |
| • Date of Registration | April 19, 1976 |
| • Audit Coverage | January 1, 2007 - December 31, 2008 |
| Headquarters | |
| | Augusta, Maine |
| Bank Information | |
| • Bank Depositories | One |
| • Bank Accounts | Two federal and four non-federal |
| Treasurer | |
| • Treasurer When Audit Was Conducted | William Logan |
| • Treasurer During Period Covered by Audit | Phillip Roy |
| Management Information | |
| • Attended Commission Campaign Finance Seminar | Yes |
| • Who Handled Accounting and Recordkeeping Tasks | Paid/volunteer staff and accounting firm |

Overview of Financial Activity (Audited Amounts)

| | |
|---|---------------------|
| Cash-on-hand @ January 1, 2007 | \$ 1,888 |
| Receipts | |
| ○ Contributions from Individuals | 422,772 |
| ○ Contributions from Political Party Committees | 778,500 |
| ○ Contributions from Other Political Committees | 172,044 |
| ○ Transfers from Non-federal Account | 48,381 |
| ○ All Other Receipts | 887 |
| Total Receipts | \$ 1,422,584 |
| Disbursements | |
| ○ Operating Disbursements | 806,455 |
| ○ Coordinated Party Expenditures | 12,500 |
| ○ Federal Election Activity | 519,305 |
| ○ Independent Expenditures | 56,601 |
| Total Disbursements | \$ 1,394,861 |
| Cash-on-hand @ December 31, 2008 | \$ 29,611 |

Part III Summaries

Commission Findings

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of MRP's reported figures with bank records revealed a misstatement of receipts, disbursements and cash-on-hand in both 2007 and 2008. For 2007, MRP overstated beginning cash-on-hand by \$5,636, understated receipts by \$22,461, understated disbursements by \$29,346 and overstated ending cash-on-hand by \$12,521. For 2008, MRP overstated receipts, disbursements and ending cash-on-hand by \$53,727, \$46,985 and \$19,263, respectively. In its response to the Interim Audit Report, MRP stated that it had amended its reports as requested. However, those amendments did not materially correct the misstatements.

In response to the Draft Final Audit Report, MRP filed amended reports that were materially misstated. MRP indicated that the remaining misstatements will be corrected and amended reports will be filed. MRP subsequently filed additional amendments that materially corrected the misstatements.

The Commission approved a finding that MRP misstated its financial activity for calendar years 2007 and 2008. (For more detail, see p. 5.)

Finding 2. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that MRP failed to report debts and obligations totaling \$103,721. In response to the Interim Audit Report, MRP amended its reports to materially correct the disclosure of these debts.

The Commission approved a finding that MRP improperly disclosed debts and obligations totaling \$103,721. (For more detail, see p. 8.)

Finding 3. Disclosure of Disbursements

During audit fieldwork, the Audit staff identified disbursements, totaling \$625,824, which appeared to be improperly disclosed. Audit staff opined that \$94,019 in disbursements made by MRP from a non-federal account were federal in nature. In addition, Audit staff opined that coordinated expenditures on behalf of a federal candidate (\$12,500) and payments for federal election activity (\$519,305) were improperly disclosed. In its response to the Interim Audit Report, MRP cited difficulties in locating documentation to clarify the non-federal nature of some expenses, but it filed amended reports disclosing disbursements according to the schedules provided by the Audit staff.

In response to the Draft Final Audit Report, MRP provided documentation to demonstrate that a \$200 payment for administrative costs was non-federal in nature.

The Commission approved a finding that, MRP failed to disclose \$19,000 in disbursements from its non-federal account for voter identification and improperly disclosed \$531,805 in payments from its federal account. (For more detail, see p. 9.)

Finding 4. Failure to File Notices and Properly Disclose Independent Expenditures

During audit fieldwork, the Audit staff reviewed disbursements and noted expenditures for printed materials totaling \$56,601, which appeared to be independent expenditures that MRP disclosed as operating expenditures. In its response to the Interim Audit Report, MRP agreed that these are independent expenditures. However, due to software issues, MRP was only partially able to correct the disclosure of these payments.

In response to the Draft Final Audit Report, MRP complied with the Audit staff's recommendation by filing amended reports that disclosed the remaining \$28,300 as independent expenditures.

The Commission approved a finding that MRP improperly disclosed independent expenditures totaling \$56,601. (For more detail, see p. 15.)

Additional Issue

Reporting Payments from Non-federal Accounts

The Audit staff initially identified \$94,019 in payments from non-federal accounts that could have been federal in nature and required disclosure by MRP. For \$74,819 of the \$94,019 in expenditures, the Audit staff did not have sufficient information to be able to conclude that the expenditures included a federal component and therefore required reporting. The Commission could not reach a consensus on whether payments for administrative costs (\$48,320), payroll and associated costs (\$14,999) and printed materials (\$11,500) were potentially federal or allocable expenses that required disclosure. Thus, the Commission did not approve by the required four votes the Audit staff's recommended finding that these disbursements, totaling \$74,819, did not require reporting.

Pursuant to Commission Directive 70,² this matter is discussed in the "Additional Issue" section. (For more detail, see p. 18.)

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

Part IV

Commission Findings

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of MRP's reported figures with bank records revealed a misstatement of receipts, disbursements and cash-on-hand in both 2007 and 2008. For 2007, MRP overstated beginning cash-on-hand by \$5,636, understated receipts by \$22,461, understated disbursements by \$29,346 and overstated ending cash-on-hand by \$12,521. For 2008, MRP overstated receipts, disbursements and ending cash-on-hand by \$53,727, \$46,985 and \$19,263, respectively. In its response to the Interim Audit Report, MRP stated that it had amended its reports as requested. However, those amendments did not materially correct the misstatements.

In response to the Draft Final Audit Report, MRP filed amended reports that were materially misstated. MRP indicated that the remaining misstatements will be corrected and amended reports will be filed. MRP subsequently filed additional amendments that materially corrected the misstatements.

The Commission approved a finding that MRP misstated its financial activity for calendar years 2007 and 2008.

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

A. Facts

During audit fieldwork, the Audit staff reconciled MRP's reported activity with bank records for calendar years 2007 and 2008. The following charts outline the discrepancies for the beginning cash balances, receipts, disbursements and ending cash balances for each year. Succeeding paragraphs address the reasons for the misstatements.

| 2007 Committee Activity | | | |
|---|-----------------|---------------------|-------------------------|
| | Reported | Bank Records | Discrepancy |
| Beginning Cash Balance @ January 1, 2007 | \$7,524 | \$1,888 | \$5,636 Overstated |
| Receipts | \$223,515 | \$245,976 | \$22,461 Understated |
| Disbursements | \$209,782 | \$239,128 | \$29,346 Understated |
| Ending Cash Balance @ December 31, 2007 | \$21,257 | \$8,736 | \$12,521 Overstated |

MRP overstated beginning cash-on-hand by \$5,636. This overstatement is unexplained but it likely resulted from prior-period discrepancies.

The understatement of receipts was the result of the following:

| | |
|---|-------------------------|
| • Receipts reported, not supported by a credit or deposit | \$ (186) |
| • Deposited receipts, not reported | 22,533 |
| • Interest from non-federal account reported | (28) |
| • Unexplained difference | <u>142</u> |
| Net Understatement of Receipts | <u>\$ 22,461</u> |

The understatement of disbursements was the result of the following:

| | |
|---|-------------------------|
| • Disbursements not reported | \$ 36,506 |
| • Disbursements reported, not supported by check or debit | (4,006) |
| • Disbursement from non-federal account reported in error | (3,165) |
| • Disbursement amounts incorrectly reported | 227 |
| • Unexplained difference | <u>(216)</u> |
| Net Understatement of Disbursements | <u>\$ 29,346</u> |

The \$12,521 overstatement of the ending cash-on-hand was the result of the misstatements described above.

| 2008 Committee Activity | | | |
|--|-----------------|---------------------|------------------------|
| | Reported | Bank Records | Discrepancy |
| Beginning Cash Balance @ January 1, 2008 | \$21,257 | \$8,736 | \$12,521 Overstated |
| Receipts | \$1,230,335 | \$1,176,608 | \$53,727 Overstated |
| Disbursements | \$1,202,718 | \$1,155,733 | \$46,985 Overstated |
| Ending Cash Balance @ December 31, 2008 | \$48,874 | \$29,611 | \$19,263 Overstated |

MRP overstated beginning cash-on-hand by \$12,521, a carryover of the misstatement of ending cash-on-hand for 2007.

The overstatement of receipts resulted from the following:

| | |
|--|-------------------------|
| • Receipts reported but deposited in non-federal account | \$ 52,353 |
| • Unexplained difference | <u>1,374</u> |
| Overstatement of Receipts | <u>\$ 53,727</u> |

The overstatement of disbursements resulted from the following:

| | |
|---|-------------------------|
| • Disbursements reported, not supported by check or debit | \$ (32,736) |
| • Disbursements not reported | 26,881 |
| • Disbursement from non-federal account reported in error | (42,916) |
| • Debit to reverse deposited contribution reported | (5,000) |
| • Disbursement reported twice | (56) |
| • Disbursement amount incorrectly reported | (1,200) |
| • Unexplained difference | <u>8,042</u> |
| Net Overstatement of Disbursements | <u>\$ 46,985</u> |

The \$19,263 overstatement of the ending cash-on-hand resulted from the misstatements described above.

Prior to the audit, MRP made the Commission aware that an employee of the accounting firm it used had embezzled \$48,000. The individual, who had kept MRP's books for both its federal and non-federal accounts and prepared the reports to the Commission, pleaded guilty to the embezzlement. As of the time of the audit, the individual had paid restitution of \$39,531 and MRP had filed reports disclosing the embezzlement. MRP conducted a full audit of its books and internal controls and, as recommended by its auditor, has instituted improved internal controls. In addition, MRP has hired a different accounting firm.

The Audit staff's 2008 reconciliation included adjustments related to the embezzlement. Specifically, the adjustment for unreported disbursements of \$26,881 includes \$5,997 in disbursements that were associated with the embezzlement and not reported by MRP. In addition, the adjustment for disbursements reported that were not supported by a check or debit (\$32,736) includes disbursements of \$14,316 that were associated with the embezzlement.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with MRP representatives during the exit conference and provided copies of relevant work papers detailing the misstatements. The MRP representatives stated that necessary amended reports would be filed.

The Interim Audit Report recommended that MRP:

- amend its reports to correct the misstatements for 2007 and 2008 as noted above; and,
- amend 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, MRP should have reconciled the cash balance of its most recent report to identify any subsequent discrepancies that may have affected the adjustment recommended by the Audit staff.

C. Committee Response to Interim Audit Report

In its response to the Interim Audit Report, MRP stated it had amended its reports as requested. However, those amendments did not materially correct the misstatements. The Audit staff advised MRP of the additional corrections that needed to be made.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that MRP filed amended reports to correct the misstatements. Those amendments, however, did not materially correct the misstatements.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP filed amended reports that were materially misstated. MRP indicated that the remaining misstatements would be corrected and amended reports would be filed. MRP subsequently filed additional amendments that materially corrected the misstatements.

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that MRP misstated its financial activity for calendar years 2007 and 2008.

The Commission approved the Audit staff's recommendation.

Finding 2. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that MRP failed to report debts and obligations totaling \$103,721. In response to the Interim Audit Report, MRP amended its reports to materially correct the disclosure of these debts.

The Commission approved a finding that MRP improperly disclosed debts and obligations totaling \$103,721.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified debts owed to four vendors totaling \$103,721³ that MRP did not report on Schedule D (Debts & Obligations).

Although MRP reported debt totaling \$45,669 relative to three of the four vendors during the audit period, the reported amounts did not accurately reflect the outstanding debt. Beginning with the 2008 July Quarterly Report, the debt reporting for these three vendors continued to be inaccurate for the remainder of 2008. MRP did not report debt with respect to the fourth vendor.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter during the exit conference to MRP's representatives and provided them with workpapers detailing the debts. The representatives indicated that MRP would file the necessary amended reports.

³ Each debt in this amount was counted once, even if it required disclosure over multiple reporting periods. In order for MRP to file amended reports correctly, the schedule provided included the amount of each debt required to be reported for each reporting period.

The Interim Audit Report recommended that MRP file amended reports to disclose these debts and obligations on Schedule D.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, MRP amended its reports to materially correct the disclosure of these debts.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that MRP filed amended reports to materially correct the disclosure of these debts.

E. Committee Response to the Draft Final Audit Report

MRP's response to the Draft Final Audit Report did not address this finding.

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that MRP improperly disclosed debts and obligations totaling \$103,721.

The Commission approved the Audit staff's recommendation.

Finding 3. Disclosure of Disbursements

Summary

During audit fieldwork, the Audit staff identified disbursements, totaling \$625,824, which appeared to be improperly disclosed. Audit staff opined that \$94,019 in disbursements made by MRP from a non-federal account were federal in nature. In addition, Audit staff opined that coordinated expenditures on behalf of a federal candidate (\$12,500) and payments for federal election activity (\$519,305) were improperly disclosed. In its response to the Interim Audit Report, MRP cited difficulties in locating documentation to clarify the non-federal nature of some expenses, but it filed amended reports disclosing disbursements according to the schedules provided by the Audit staff.

In response to the Draft Final Audit Report, MRP provided documentation to demonstrate that a \$200 payment for administrative costs was non-federal in nature.

The Commission approved a finding that MRP failed to disclose \$19,000 in disbursements from its non-federal account for voter identification and improperly disclosed \$531,805 in payments from its federal account.

Legal Standard

A. Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H-4 (Joint Federal/Non-federal Activity Schedule).

11 CFR §104.17(b)(3).

B. Allocation Ratio for Administrative & Non-Candidate Specific Voter Drive Costs. State and local party committees must allocate their administrative expenses and non-candidate specific voter drive costs according to the fixed percentage ratio. Under this method, if a Presidential candidate and Senate candidate appear on the ballot, the committees must allocate at least 36 percent of expenses to their federal funds. 11 CFR §106.7(d)(2)(ii) and (3)(ii).

C. Coordinated Party Expenditures. A political committee that coordinates expenditures on behalf of a federal candidate must report the name, address, date, amount and purpose, as well as the name of the candidate for which the expenditure is made. 2 U.S.C. §434(b)(6)(B)(iv).

D. Federal Election Activity Expenditures. For each such disbursement, the committee must report the full name and address, date, amount and purpose of the disbursement. Committees report these kinds of disbursements on Schedule B (Itemized Disbursements), which provides space for the disclosure of the candidate's name to which the activity relates, if applicable. 11 CFR §300.36(b)(2).

E. Salaries and Wages. Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activities in connection with a Federal election must either be paid only from the Federal account or have their salaries allocated as an administrative cost. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Payments from Non-federal Accounts

1. Facts

MRP made payments, totaling \$94,019 (see Chart A), from its non-federal accounts for activity that Audit staff identified as potentially federal in nature. Payments totaling \$48,520 from MRP's non-federal accounts appeared to the Audit staff to be for allocable administrative expenses that should have been paid from a federal account. Also, payments totaling \$45,499 were made from the non-federal account and sufficient records were not available to clarify the nature of the expense or to demonstrate that the expense was solely non-federal. Below is a discussion of these expenses. As calculated at the end of the two-year audit period, MRP did not fund federal activity with non-federal funds.

- **Administrative Costs:** MRP paid expenses totaling \$48,520 from a non-federal account for postage, consulting, travel reimbursements, printing, and accounting fees that appear to be allocable administrative costs. Available documentation does not indicate that any of these payments were solely for non-federal activities. Since Audit staff identified these as allocable administrative expenses, Audit staff recommended that MRP pay these from a federal account and reported on Schedule H-4 using an allocation ratio of at least 36 percent federal and 64 percent non-federal in accordance with 11 CFR §106.7(d)(2)(ii) and (3)(ii). Audit staff recommended that MRP should provide documentation to demonstrate that these were solely non-federal expenses.

- **Payroll and Associated Costs:** MRP paid expenses totaling \$14,999 from a non-federal account for payroll and associated costs. MRP did not provide monthly logs, timesheets or affidavits demonstrating that costs were solely non-federal in nature. It is noted that MRP did provide affidavits for some employees indicating no time was spent relative to federal activity. Audit staff excluded payroll and related costs associated with those employees from payroll costs in the amounts presented above. Audit staff recommended that MRP should provide documentation to demonstrate that the payroll and associated expenses of \$14,999 were solely non-federal.
- **Voter Identification:** MRP's database described a \$19,000 payment to "National Republican" on April 25, 2008, as made for Voter ID, and the available invoice noted "volunteer connect." Audit staff advised that unless MRP provides documentation to indicate that these expenditures are solely non-federal in nature, MRP should disclose these transactions on its federal disclosure reports.
- **Printed Materials:** MRP disbursed \$11,500 from a non-federal account for printed materials; copies of these records were not available to assess the nature of these expenditures or to demonstrate that these payments were solely for non-federal activities. Audit staff recommended that MRP should provide sufficient documentation to clarify the nature of these expenses.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff addressed this matter and provided a schedule identifying the transactions in question to MRP representatives. MRP representatives stated that they would look into these items and send documentation to try to resolve the proper classification of the transactions. MRP representatives subsequently provided materials, including affidavits addressing time employees spent on non-federal election activity, that resolved some of the items that the Audit staff considered in its analysis.

The Interim Audit Report recommended that MRP demonstrate that the identified disbursements paid from the non-federal account were solely non-federal expenses. Audit staff recommended that MRP provide monthly logs, timesheets or affidavits demonstrating that payroll costs were solely non-federal in nature. In addition, Audit staff recommended that MRP obtain and provide samples of printed materials (\$11,500). The Audit staff further recommended that, As necessary, MRP amend its reports to disclose, as memo entries, the above disbursements on Schedules B or H-4.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report, MRP amended its reports to disclose one of the identified payments from its non-federal account. In the response, MRP stated that it was unable to locate documentation to demonstrate any of these expenditures were solely non-federal in nature, to include the one payment for voter identification that was disclosed in its amended reports. With respect to payroll and associated costs paid from non-federal accounts, MRP explained that no federal candidates were on the ballot in 2007 and therefore, MRP paid the payroll and associated costs properly as non-federal disbursements. As a result, MRP did not amend its reports to disclose these transactions.

4. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged MRP's response and noted that it had amended its reports to disclose the \$19,000 disbursement for voter identification.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP submitted documentation supporting the non-federal nature of one \$200 expenditure included above as an administrative cost. Further, an affidavit submitted by MRP addressed individuals already considered non-federal by the Audit staff, but clarified that none were involved with federal election-related activities. MRP did not disclose the remaining administrative costs (\$48,320), the payroll expenditures (\$14,999) or printed materials (\$11,500) on the amended reports filed in response to the DFAR.

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum, in which the Audit Division recommended that for \$75,019 of the \$94,019 in expenditures above, it did not have sufficient information to conclude that the expenditures, paid entirely with non-federal funds, included a federal component and therefore required reporting. However, the Audit staff maintained that MRP should provide the records necessary to verify whether these transactions required reporting. Given the lack of sufficient information for these expenditures, the Audit staff recommended that the Commission find these expenditures not be included in the disclosure finding. With respect to the voter identification expense noted above, the Audit staff recommended that the Commission find that MRP did not disclose the \$19,000 expenditure for voter identification.

The Commission approved this finding with respect to the payment of \$19,000 for voter identification. (*See Additional Issue below*).

B. Payments from the Federal Account

1. Facts

MRP incorrectly disclosed payments, totaling \$531,805 (See Chart B, Page 1), made from its federal account. MRP disclosed these payments on FEC reports but they appeared to have been reported on the incorrect line number and itemized on the wrong schedule. These payments were for apparent non-allocable FEA (\$519,305) or apparent coordinated party expenditures (\$12,500). As indicated below, in some cases, the Audit staff did not have sufficient records to determine the proper classification. For approximately \$330,000 of these disbursements, MRP coded the disbursements on its database as FEA.

- **Possible Federal Election Activity:** MRP reported payments totaling \$326,688 as federal operating expenditures, but they appeared to have been made for non-allocable FEA, which should have been reported on Schedule B for Line 30(b). A discussion of these expenditures by category follows:

Get-Out-the-Vote (GOTV)/Public Communications: MRP made payments totaling \$183,747 for printed materials, of which MRP coded \$88,241 on its database as FEA. The remaining \$95,506 was not coded on MRP's database as FEA. However, an MRP representative stated during field work that all activity

with this vendor was FEA on behalf of the Republican presidential candidate. In addition, copies of the printed materials support that they were for GOTV activity or were public communications in support of a clearly identified federal candidate. As such, the Audit staff considered all these payments FEA. (See Chart B, Page 1, A.)

Payroll Expenses: MRP made expenditures for payroll expenses totaling \$142,941 from its federal account. Documentation detailing the percentage of the individual's time that related to federal activity was not available; however, MRP submitted affidavits indicating that the individuals worked solely in connection with federal elections during 2008. In addition, these individuals received at least one payment that MRP coded on its database as FEA. As such, the Audit staff classified these expenditures as FEA. Audit staff recommended that MRP should explain the discrepancy between its reports and its internal records. (See Chart B, Page 1, B.)

- **Documentation Insufficient to Determine Nature of Expense:** MRP reported payments totaling \$192,617 as federal operating expenditures, but documentation was insufficient to determine the nature of these expenses. Most of these expenditures were coded on MRP's database as FEA.

Consulting Expenses: Although MRP coded consulting expenses (\$20,000) FEA on its database, MRP has not provided any affidavit or other documentation. The Audit staff classified these expenditures as potential FEA since MRP coded these expenditures on its database as FEA. Audit staff recommended that MRP should explain the discrepancy between its reports and its internal records. (See Chart B, Page 1, B.)

Travel and Per Diem Expenses: MRP made expenditures for travel (\$38,192) and per diem (\$3,050). Documentation was not available to detail the activities the individuals were involved with and whether these activities were related to a clearly identified federal candidate. The Audit staff classified these expenditures as potential FEA since MRP coded these expenditures as such on its database. Audit staff recommended that MRP should clarify the discrepancy between its reports and its internal records. (See Chart B, Page 2, A. & B.)

Equipment and Miscellaneous Costs: MRP made expenditures for equipment (\$36,933) and miscellaneous costs (\$3,702). MRP's records detailed that, for the most part, the equipment consisted of computers and phone equipment, as well as copier rental. Documentation detailing how the equipment was used was not available. Most of the miscellaneous costs were for shipping, with no indication of what was shipped. However, MRP coded these expenditures as FEA in its database. The Audit staff considered these potential FEA expenses, and recommended that MRP clarify the discrepancy between its reports and its internal records. (See Chart B, Page 2, C. & D.)

Printed Materials, Copies Not Available: MRP made payments totaling \$67,711 for printed materials. Copies of these printed materials were not available for review by the Audit staff. Of these payments, MRP coded \$24,417 as FEA, and

these payments were for such purposes as Voter ID (\$11,228) and GOTV (\$13,189). The remaining \$43,294 in payments were for apparent GOTV-related activities, although none of them were coded FEA. (See Chart B, Page 2, E.)

Telemarketing Expenses: MRP made expenditures to FLS Connect for telemarketing totaling \$23,029, none of which were coded on MRP's database as FEA. MRP disclosed the purpose for these expenditures as: GOTV (\$6,097), Voter ID (\$3,117), state campaign activity (\$4,460), and telemarketing (\$9,355). Although MRP made invoices available to the Audit staff, copies of scripts/printed materials that would help determine the nature of these expenditures were not available. (See Chart B, Page 2, F.)

- **Payment of Apparent Coordinated Party Expenditures:** MRP made payments totaling \$12,500 during the period October 30-31, 2008, for a television advertisement for Charlie Summers for Congress. The advertisement appears to be a public communication that refers to a clearly identified House candidate and was publicly disseminated in the candidate's jurisdiction within 90 days of the election. The candidate appears in the advertisement and the advertisement states that it was approved by the candidate. MRP reported these payments on Schedule B (Itemized Disbursements) as other federal operating expenditures rather than on Schedule F (Itemized Coordinated Party Expenditures) as coordinated party expenditures. (See Chart B, Page 3.)

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff addressed this matter and provided a schedule identifying the transactions in question to MRP representatives. MRP representatives stated that they would look into these items and send documentation to try to resolve the proper classification of the transactions. MRP representatives subsequently provided materials, including affidavits addressing time employees spent on federal election activity, which resolved some of the items that the Audit staff considered in its analysis above.

The Interim Audit Report recommended that MRP demonstrate that it had correctly reported the payments from the federal account as federal operating expenditures. Further information was needed for the Audit staff to verify the classification of disbursements totaling \$192,617. MRP should have explained the discrepancies between expenditures coded on its database as FEA and its reporting of those expenditures as operating expenditures. In addition, MRP should have obtained and provided monthly logs, timesheets or affidavits (\$20,000), samples of printed materials (\$67,711) and telemarketing scripts (\$23,029). MRP should have amended its reports to disclose the noted disbursements on Schedule B or Schedule F, as necessary.

3. Committee Response to Interim Audit Report

For payments from its federal account (Part B above), MRP filed amended reports disclosing disbursements as FEA or coordinated party expenditures according to the schedules provided by the Audit staff. Although MRP has amended its reports, the nature of some disbursements remains unclear because of a lack of documentation. As a result, the Audit staff does not have a basis for determining whether either the audited reports or the amended reports filed are correct.

4. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that MRP filed amended reports to materially correct the disclosure of these disbursements.

5. Committee Response to the Draft Final Audit Report

MRP's response to the Draft Final Audit Report did not address this finding.

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that MRP improperly disclosed disbursements totaling \$531,805.

The Commission approved the Audit staff's recommendation.

Finding 4. Failure to File Notices and Properly Disclose Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed disbursements and noted expenditures for printed materials totaling \$56,601, which appeared to be independent expenditures that MRP disclosed as operating expenditures. In its response to the Interim Audit Report, MRP agreed that these are independent expenditures. However, due to software issues, MRP was able to correct the disclosure of these payments only partially.

In response to the Draft Final Audit Report, MRP complied with the Audit staff's recommendation by filing amended reports that disclosed the remaining \$28,300 as independent expenditures.

The Commission approved a finding that MRP improperly disclosed independent expenditures totaling \$56,601.

Legal Standard

A. Definition of Independent Expenditures. The term "independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. 11 CFR §100.16.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E (Itemized Independent Expenditures) if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as "memo" entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Notices). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour notice is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Last-Minute Independent Expenditure Reports (48-Hour Notices). Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The notices must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

E. Allocation of Expenses Between Candidates. Expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit expected to be derived. In the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to all candidates. This method shall be used to allocate payments involving both clearly identified federal candidates and one or more clearly identified non-federal candidates. 11 CFR §106.1(a).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed MRP's disbursements and identified a payment of \$84,902 for printed materials reported as an operating expenditure. Of this amount, it was calculated that \$56,601 appeared to be apparent independent expenditures. A review of the printed materials revealed the following:

- The "Absentee Ballot Application Self Mailer" invoice billed MRP for two mailers. Both mailers pictured Presidential candidate Senator John McCain and Vice-Presidential candidate Governor Sarah Palin on a sample absentee ballot with checked boxes below their pictures, advocating their election.
- In addition, one sample mailer also pictured Susan Collins, candidate for the U. S. Senate and Charlie Summers, candidate for the U. S. House of Representatives. The other sample provided a picture only of Susan Collins, but provided space for a congressional candidate.
- Both mailers had space provided for a state senate candidate and a state house candidate.
- Above the pictures of the candidates, both samples state "Good Jobs. A Strong Economy. Independence from Foreign Oil." In addition, the mailers state, "Help Team Maine Today by Signing Up to...Canvass a local precinct door to door."

Since the documents contain a statement of the candidates' positions on several issues and include the solicitation of volunteer canvassing, they go beyond the limitations of the slate card exemption⁴. As a result, the Audit staff concluded that a portion of each mailer was an

⁴ See 11 C.F.R. §§ 100.80, 100.140, Advisory Opinions 2008-06 (Democratic Party of Virginia), 1978-89 (Withers for Congress), 1978-9 (Republican State Central Committee of Iowa).

independent expenditure that should have been reported as such and that appropriate 24/48-hour notices should have been filed. The amount of independent expenditures (\$56,601) was determined by the space allotted to federal candidates versus non-federal candidates on the mailers. The remaining \$28,301 (\$84,902 - \$56,601) should have been reported as FEA.

B. Interim Audit Report & Audit Division Recommendation

At an exit conference, the Audit staff addressed this matter, having previously provided MRP with the materials for discussion. MRP representatives stated that they would look into this matter, examine the materials, and address the “slate card” exemption. In response to the exit conference, MRP’s Treasurer stated that the materials in question were slate cards and, as such, were exempt from independent expenditure rules.

The Interim Audit Report recommended that MRP take the following action:

- Provide evidence that would demonstrate that these disbursements were not independent expenditures and therefore did not require disclosure as such.
- Absent such a demonstration, MRP should have amended its reports to disclose disbursements of \$56,601 as independent expenditures on Schedule E; and, disclosed the remaining \$28,301 on Schedule B as FEA; and
- Submit and implement revised procedures for recognizing and reporting independent expenditures, to allow for timely filing of 24/48-hour reporting notices, as required.

C. Committee Response to Interim Audit Report

In its response to the Interim Audit Report, MRP stated that the expenditure in question was an “Absentee Ballot Application Self Mailer,” which included at least three federal and non-federal candidates, and that the previous treasurer apparently believed this qualified for the “slate card” exemption. After review of these materials, MRP agreed that the “slate card” exemption did not apply. MRP amended its reports to disclose part of these independent expenditures. MRP cited its software’s inability to process the required disclosure information for the remaining independent expenditures. MRP data staff were working on the problem.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that MRP filed amended reports to partially disclose these independent expenditures and that it was still working to disclose the remaining independent expenditures.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP materially complied with the Audit staff’s recommendation by filing amended reports that disclosed the remaining \$28,300 as independent expenditures.

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that MRP improperly disclosed independent expenditures totaling \$56,601.

The Commission approved the Audit staff’s recommendation.

Part V

Additional Issue

Reporting Payments from Non-federal Accounts

Summary

As detailed in Finding 3, Section A above, the Audit staff initially identified \$94,019 in payments from non-federal accounts that could be federal in nature and require disclosure by MRP. For \$74,819 of the \$94,019 in expenditures, the Audit staff did not have sufficient information to be able to conclude that the expenditures included a federal component and therefore required reporting. The Commission could not reach a consensus on whether payments for administrative costs (\$48,320), payroll and associated costs (\$14,999) and printed materials (\$11,500) were potentially federal or allocable expenses that required disclosure. Thus, the Commission did not approve by the required four votes the Audit staff's recommended finding that these disbursements, totaling \$74,819, did not require reporting.

Pursuant to Commission Directive 70,⁵ this matter is discussed in the "Additional Issue" section.

Legal Standard

A. Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H-4 (Joint Federal/Non-federal Activity Schedule). 11 CFR §104.17(b)(3).

B. Allocation Ratio for Administrative & Non-Candidate Specific Voter Drive Costs. State and local party committees must allocate their administrative expenses and non-candidate specific voter drive costs according to the fixed percentage ratio. Under this method, if a Presidential candidate and Senate candidate appear on the ballot, the committees must allocate at least 36 percent of expenses to their federal funds. 11 CFR §106.7(d)(2)(ii) and (3)(ii).

C. Federal Election Activity Expenditures. For each such disbursement, the committee must report the full name and address, date, amount and purpose of the disbursement. Committees report these kinds of disbursements on Schedule B (Itemized Disbursements), which provides space for the disclosure of the candidate's name to which the activity relates, if applicable. 11 CFR §300.36(b)(2).

D. Salaries and Wages. Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Employees who spend 25 percent or less of their compensated time in a given month on Federal election activity or on activities in connection with a Federal election must either be paid only from the Federal account or have their salaries allocated as an administrative cost. 11 CFR §106.7(d)(1).

⁵ Available at http://www.fec.gov/directives/directive_70.pdf.

Facts and Analysis

A. Facts

As detailed in Finding 3, Section A above, the Audit staff initially identified \$94,019 in payments from non-federal accounts that could have been federal in nature and required disclosure by MRP.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff addressed this matter and provided a schedule identifying the transactions in question to MRP representatives. MRP representatives stated that they would look into these items and send documentation to try to resolve the proper classification of the transactions. MRP representatives subsequently provided materials, including affidavits addressing the amount of time employees spent on non-federal election activity, that resolved some of the items that the Audit staff considered in its analysis.

The Interim Audit Report recommended that MRP demonstrate that the identified disbursements paid from the non-federal account were solely non-federal expenses. The Audit staff recommended that MRP provide monthly logs, timesheets or affidavits demonstrating that payroll costs were solely non-federal in nature. In addition, the Audit staff recommended that MRP obtain and provide samples of printed materials (\$11,500). The Audit staff further recommended that, as necessary, MRP amend its reports to disclose, as memo entries, the above disbursements on Schedules B or H-4.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report, MRP amended its reports to disclose one of the payments from its non-federal account identified by the Audit staff. MRP's response stated that it was unable to locate documentation to demonstrate any of these expenditures were solely non-federal in nature, to include the one payment for voter id that was disclosed in its amended reports. With respect to payroll and associated costs paid from non-federal accounts, MRP explained that no federal candidates were on the ballot in 2007 and therefore the payroll and associated costs were properly paid as non-federal disbursements; as a result, MRP did not amend its reports to disclose these transactions.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged MRP's response.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP submitted documentation supporting the non-federal nature of one \$200 expenditure included above as an administrative cost. MRP did not disclose the remaining administrative costs (\$48,320) on amended reports filed in response to the Draft Final Audit Report. Those amended reports did not disclose the payroll expenditures (\$14,999). Further, an affidavit submitted by MRP addressed individuals already considered non-federal by the Audit staff, but clarified that none were involved with federal election-related activities. Finally, MRP's response did not address the payments for printed materials (\$11,500).

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding

that expenditures totaling \$74,819, paid entirely from the non-federal account, not be included in Finding 3. Disclosure of Disbursements.

The Commission did not approve by the required four votes the Audit staff's recommended finding that these expenditures did not require reporting. Some Commissioners voted to approve the finding, consistent with the Commission's failure to reach a consensus in a previous audit of a state party that made similar payments from its non-federal account. *See infra* note 6.

Other Commissioners, however, supported a finding that for the Administrative Costs (\$48,520), Payroll & Associated Costs (\$14,999), and Printed Materials (\$11,500), the Maine Republican Party made potentially federal or allocable expenses from a non-federal account in the amount of \$75,019 which required reporting. In the view of these Commissioners, this determination is consistent with the approach recommended by the Audit staff and supported by those Commissioners in a recent audit where a state party committee made similar payments from the non-federal account and for which available documentation was limited.⁶ The Commission could not reach a consensus on whether these payments required disclosure as potentially federal or allocable expenses.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issue" section.

⁶ *See* Final Audit Report of the Commission on the Kansas Republican Party, Additional Issue 3. The Commission failed to reach a consensus regarding the aforementioned proposed finding.