

SANDLER, REIFF, YOUNG & LAMB, P.C.

March 28, 2012

Mr. Thomas Hintermeister
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Hintermeister:

We are in receipt of the Draft Final Audit Report ("DFAR") regarding the Democratic Executive Committee of Florida ("DECF") for the 2007-2008 cycle. Although the DECF disagrees with some of the analysis put forth by the Office of General Counsel in connection with the DFAR, the merits of our objections are contained within Finding 3, for which the DFAR states that the DECF has materially complied with the Audit Division's recommendation in the Interim Audit Report, and the DFAR does not appear to take a specific position on the merits of our objections. Therefore, we do not deem it necessary to expend the DECF's nor the Commission's resources in connection with an oral hearing. However, the DECF, would like provide the following comments with respect to the DFAR:

- I. The Final Audit Report should note that the aggregate Coordinated Expenditure Limit was not exceeded for Annette Taddeo

Although the Final Audit Report accurately reflects the facts regarding the DECF's use of 441a(d) authority in the Taddeo congressional election, we believe it is important to note in the final report that the aggregate coordinated expenditure limit of \$82,400 (which was the combined limit for state and national parties committees in 2008) was not exceeded and that combined coordinated expenditures by all national and state party committees did not exceed this amount. Thus, although there may have been a paperwork error with respect to the transfer of this unused authority, the authority held by the DCCC was in fact, unused. Therefore, as a practical matter, the combined 441a(d), in total, had not been exceeded and thus, no unfair advantage had been conferred upon the DECF or the Taddeo campaign.

II. Use of Non-Federal Funds

Although the DFAR concludes that the DECF's response to the Interim Audit Report materially complies with the recommendations contained in the Interim Audit Report, the DFAR does not appear to take a position on two key substantive issues raised in the Interim Audit Report. Based upon the analysis provided by the Office of the General Counsel, we would ask that the Commission, to the extent it disagrees with the analysis of the Office of the General Counsel, modify the Final Report to indicate as such. Specifically, the DECF, in its response to the Interim Audit Report objected to two findings by the Audit Division.

First, the DECF objected to the characterization of rent paid on behalf of its legislative caucus activities as 100% non-federal. Of course, where regular state party employees utilize space to influence both federal and non-federal elections, it is appropriate for the Commission to require an allocation of such expenses in accordance with 11 C.F.R. § 106.7. However, in this instance, the space was used by an autonomous arm of the DECF that worked exclusively in connection with state legislative elections. Since the promulgation of the allocation regulations in 1990, the Commission has permitted state party committees to pay for expenses that were solely related to non-federal elections with 100% non-federal funds. Of course, for example, the Commission's current regulations for payroll clearly contemplate this fact. *See Explanation and Justification, State, District and Local Party Committee Payment of Certain Salaries and Wages, 70 Fed. Reg. 75379, 75382 (December 20, 2005)*. Parties do indeed have discreet projects that are exclusively related to non-federal elections and the Commission, in previous audits and in previous practice, has acknowledged this fact. There is no logical reason to prohibit a party committee from paying the office rent paid of a discrete, autonomous non-federal project of the party with 100% non-federal funds.

Second, the DECF objected to the characterization of translators as get-out-the-vote activities. Under the Interim Audit Report's interpretation, the DECF would have to either pay entirely federal or with a combination of federal and Levin funds for translators provided on a non-partisan basis to any voter, already at their polling place, who requested language translation assistance. In its response to the Interim Audit Report, the DECF objected to the characterization of this expense as a federal election activity but conceded that it was an administrative or voter drive expense that should have been paid on the DECF's regular administrative split. The concept of get-out-the-vote, as contemplated by the Office of General Counsel is completely contradictory of what was intended by Congress and the Commission in the passage and promulgation of the get-out-the-vote statute and regulations. As we stated in our response to the Interim Audit Report, the Commission promulgated regulations in 2002 (as amended in 2005) that were designed to urge, transport or facilitate voters to get to the polls not the non-partisan provision of assistance to voters once they were at a polling place. To be sure, national and state party committees engage in all types of protect the vote activities at polling places, which include information regarding voter identification and other information regarding voters rights, and to our knowledge, none of these activities are generally classified as get-out-the-vote by those committees.

The Commission must reject the General Counsel's construction of "individualized contact" and "assist" (See p. 6 of Memorandum to Tom Hintermeister, Draft Final Audit Report – Democratic Executive Committee of Florida) and confirm that the Commission's get-out-the-vote regulations in effect in 2008 only covered activities that ensured or attempted to increase voter turnout. Thus, the get-out-the-vote regulation that was in effect in 2008 was designed to cover those activities that inured out voters by either 1) providing information, through targeted communications on when and where to vote or 2) by transporting those voters to the polls or by engaging in absentee ballot or vote by mail activities. The translators did neither. They merely provided translation services to any voter that was already at the polling place that desired to speak with an election official or otherwise required translation services. The General Counsel's position on the terms "contact" or "assist" was certainly not what the Commission had in mind when it promulgated its regulations in 2002 (or when it amended the regulations in 2005).

Accordingly, we agree, with three exceptions, to the conclusions of the Draft Final Audit Report and would urge that the Commission amend the Final Report per our discussion above and approve the DFAR including our proposed modifications.

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,



Neil Reiff
Counsel to the Democratic Executive Central
Committee of Florida