



# Interim Audit Report of the Audit Division on John Kennedy for U.S. Senate, Inc.

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.<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 the matter discussed in this report.

## About the Campaign (p. 2)

John Kennedy for U.S. Senate, Inc. (JKFS) is the principal campaign committee for John Neely Kennedy, Republican candidate for the United States Senate from Louisiana. JKFS is headquartered in Baton Rouge, Louisiana. For more information, see chart on the Campaign Organization, p. 2.

## Financial Activity (p. 2)

• <b>Receipts</b>	
○ From Individuals	\$ 3,550,103
○ From Political Party Committees	35,750
○ From Other Political Committees	474,177
○ From Other Authorized Committees	691,263
○ Offsets to Operating Expenditures	18,488
○ Other Receipts	23,677
<b>Total Receipts</b>	<b>\$ 4,793,458</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 4,587,927
○ Loan Repayments	37,500
○ Contribution Refunds	138,925
○ Other Disbursements	440
<b>Total Disbursements</b>	<b>\$ 4,764,792</b>

## Finding and Recommendation (p. 3)

- Receipt of Contributions that Exceed Limits

<sup>1</sup> 2 U.S.C. §438(b).

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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of John Kennedy for U.S. Senate, Inc. (JKFS), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### **Scope of Audit**

Following Commission-approved procedures, the Audit staff evaluated various factors and as a result, the scope of this audit was limited to the following:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	
• Date of Registration	February 9, 2004
• Audit Coverage	January 1, 2007 - December 31, 2008
<b>Headquarters</b>	
Baton Rouge, Louisiana	
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	Two savings and two checking accounts
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Keith Davis
• Treasurer During Period Covered by Audit	William Potter (January 1, 2007 to May 5, 2008) Keith Davis (May 6, 2008 to Present)
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2007	\$ 5,820
<b>Receipts:</b>	
o From Individuals	3,550,103
o From Political Party Committees	35,750
o From Other Political Committees	474,177
o From Authorized Committees	691,263
o Offsets to Operating Expenditures	18,488
o Other Receipts	23,677
<b>Total Receipts</b>	<b>\$ 4,793,458</b>
<b>Disbursements:</b>	
o Operating Expenditures	4,587,927
o Loan Repayments	37,500
o Contribution Refunds	138,925
o Other Disbursements	440
<b>Total Disbursements</b>	<b>\$ 4,764,792</b>
Cash on hand @ December 31, 2008	\$ 34,486

## **Part III Summary**

### **Finding and Recommendation**

#### **Receipt of Contributions that Exceed Limits**

A review of contributions from individuals indicated that JKFS received excessive contributions totaling \$224,722 that were not timely resolved. This amount includes contributions for which an untimely contribution refund has been made and contributions that could still be resolved via presumptive reattribution or redesignation letters.

The Audit staff recommends that JKFS provide evidence demonstrating that these contributions were not excessive or were resolved in a timely manner. Absent such a demonstration, JKFS should send notices to those contributors whose contributions are eligible for presumptive redesignation and/or reattribution, or refund any remaining excessive amounts. (For more detail, see p. 4)

## Part IV

# Finding and Recommendation

### Receipt of Contributions that Exceed Limits

#### Summary

A review of contributions from individuals indicated that JKFS received excessive contributions totaling \$224,722 that were not timely resolved. This amount includes contributions for which an untimely contribution refund has been made and contributions that could still be resolved via presumptive reattribution or redesignation letters.

The Audit staff recommends that JKFS provide evidence demonstrating that these contributions were not excessive or were resolved in a timely manner. Absent such a demonstration, JKFS should send notices to those contributors whose contributions are eligible for presumptive redesignation and/or reattribution, or refund any remaining excessive amounts.

#### Legal Standard

**A. Authorized Committee Limits.** For the 2008 election, an authorized committee may not receive more than a total of \$2,300 per election from any one person. 2 U.S.C. §441a(a)(1)(A), and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must:

- return the check to the donor; or
- deposit the contribution and maintain sufficient funds to make potential refunds until the legality of the contribution is established; or
- seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation), and, if the committee does not receive a proper reattribution or redesignation within 60 days of receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §103.3(b)(3), (4) and (5).

**C. Joint Contributions.** Any contribution made by more than one person (except for a contribution made by a partnership) must include the signature of each contributor on the check or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

**D. Reattribution of Excessive Contributions.** Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a

joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

1. the reattribution must be signed by both contributors;
2. the reattribution must be received by the committee within 60 days after the committee received the original contribution; and
3. the contributor instead may request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days of receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless the contributor(s) instruct otherwise. The committee must inform each contributor how the contribution was attributed and that the contributor instead may request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

**E. Redesignation of Excessive Contributions.** The committee may ask the contributor to redesignate the excessive portion of the contribution for use in another election. The committee must inform the contributor that:

1. the redesignation must be signed by the contributor;
2. the redesignation must be received by the committee within 60 days of the committee's receipt of the original contribution; and
3. the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5)(ii)(A).

Within 60 days of receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

1. is made before that candidate's primary election;
2. is not designated in writing for a particular election;
3. would be excessive if treated as a primary election contribution; and
4. as redesignated, does not cause the contributor to exceed any other contribution limit.

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 11 CFR 110.1(b)(5)(ii)(B).

## **Facts and Analysis**

### **A. Facts**

A review of contributions from individuals indicated that JKFS received excessive contributions totaling \$224,722 that were resolved, but not in a timely manner, or that could still be resolved via presumptive reattribution or redesignation letters.<sup>2</sup> Of these, JKFS untimely refunded \$30,900 and provided untimely reattribution/redesignations letters totaling \$62,700.

Among the excessive contributions that JKFS untimely resolved are 12 contribution checks totaling \$36,800 written on a bank account of a limited liability company (LLC). Each check was signed by one of three individuals associated with the LLC. JKFS attributed these contributions to the eight individuals whose names were imprinted on the 12 checks. The contribution checks are computer-generated and sequentially numbered (except for one missing check number). Five of the 12 checks, totaling \$9,200, were dated December 20, 2007, and were signed by one individual. Three checks, totaling \$13,800, were dated March 13, 2008 and were signed by a second individual. The remaining four checks, totaling \$13,800, were also dated March 13, 2008 and were signed by a third individual. JKFS attributed \$4,600 to each of the eight individuals, \$2,300 each to the primary<sup>3</sup> and general elections. The Audit staff attributed these contributions to the three check-signers, resulting in excessive contributions to the primary election.

For these 12 checks, JKFS provided photocopies of untimely presumptive redesignation letters, relating to the \$18,400 in excessive contributions from the eight individuals. Also, the eight individuals associated with the LLC affirmed that the contributions were from their personal funds and not from the funds of the LLC or any other entity. The letters from the three individuals also affirmed that the LLC was not an incorporated entity and did not file its tax return as a corporation.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff informed JKFS representatives of this matter at the exit conference held at the close of audit fieldwork and in subsequent discussions. The Audit staff provided schedules of the contributions in question. The representatives stated that they would take the necessary actions. In addition, JKFS representatives pointed out that the solicitation devices (reply cards) used during the campaign had specific instructions on the contribution limits for the primary and general elections and were filled out by the contributor. They added that these response devices included lines for spousal information. The Audit staff reviewed the solicitation devices and noted that, although they provided space for contributor information from more than one contributor, there is no evidence that more than one contributor completed the form(s).

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<sup>2</sup> The \$224,722 is comprised of \$175,422, the projected dollar value of errors in the population, and \$49,900 from a focused review of contributions not included in the sample population. The sample projection was made using a Monetary Unit Sample program with a 95 percent confidence level. The sample estimate of \$175,422 could be as low as \$119,124 or as high as \$231,723.

<sup>3</sup> Date of the primary election was October 4, 2008.

JKFS also provided evidence that of the \$224,722 identified by the Audit staff, untimely reattribution/redesignation letters were sent to contributors (\$62,700) or untimely refunds were made to contributors (\$30,900). The remaining contributions totaling \$131,122 have not been addressed by JKFS.

The Audit staff recommends that, within 30 calendar days of service of this report, JKFS:

- Provide evidence demonstrating that the contributions totaling \$224,722 were not excessive or were timely resolved. Such documentation should include copies of the front and back of timely negotiated refund checks, timely signed/dated reattribution/redesignation letters or presumptive reattribution/redesignation letters for those eligible for that treatment. Should evidence be presented that demonstrates any sample exceptions are not excessive contributions, the Audit staff will calculate a revised projected error amount.
- Absent evidence that the contributions were not excessive or were timely resolved, JKFS should review its contributions to determine which are excessive and how each can be resolved. For any excessive contributions that JKFS could have resolved by sending presumptive redesignation and/or reattribution notification, it may now send letters to inform the contributors how the committee designated and/or reattributed the contribution and offer a refund. For a reattribution, both the contributor and the individual to whom a contribution was reattributed must be notified. Absent a request for a refund, these letters will obviate the need for contribution refunds or payments to the U.S. Treasury. For notifications sent to contributors, JKFS must provide a copy of each notification and evidence that it was sent. After a review of any additional letters provided, the appropriate reduction to the \$131,122 in excessive contributions not yet addressed will be made. JKFS should refund any contributions that are not eligible for presumptive redesignation or reattribution. JKFS should make a payment to the U.S. Treasury to account for all refund checks that are not negotiated or for any contributor who cannot be located.
- If funds are not available to make the necessary refunds, JKFS should disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make the refunds.