



Interim Audit Report of the Audit Division on the Nebraska Democratic Party

(January 1, 2009 - December 31, 2010)

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 Nebraska Democratic Party is a state party committee headquartered in Lincoln, Nebraska. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 218,270
○ Contributions from Political Committees	24,202
○ Transfers from Affiliates	1,682,699
○ Transfers from Non-federal Accounts	344,901
○ Other Receipts	185,066
Total Receipts	\$ 2,455,138
• Disbursements	
○ Operating Expenditures	\$ 540,126
○ Other Federal Expenditures	129,323
○ Federal Election Activity	1,490,477
○ Transfers to Affiliates	138,967
○ Coordinated Expenditures	114,788
○ Independent Expenditures	12,475
○ Other Disbursements	35,174
Total Disbursements	\$ 2,461,330

Findings and Recommendations (p. 3)

- Recordkeeping for Employees (Finding 1)
- Reporting of Debts and Obligations (Finding 2)
- Excessive Coordinated Party Expenditures (Finding 3)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of the Nebraska Democratic Party² (NDP), 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 individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the disclosure of independent and coordinated expenditures;
6. the completeness of records; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," NDP requested early consideration of a question raised during the audit. NDP questioned whether the monthly time logs required under 11 CFR § 106.7(d)(1) applied to employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR § 106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed NDP Counsel of the Commission's decision on NDP's request. This audit report does not include any finding or recommendation with respect to NDP's employees paid with 100 percent federal funds and reported as such.

² The committee's name during the audit period was the Nebraska Democratic State Central Committee and was changed subsequently on April 4, 2012.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	December 3, 1975
• Audit Coverage	January 1, 2009 - December 31, 2010
Headquarters	
Lincoln, Nebraska	
Bank Information	
• Bank Depositories	One
• Bank Accounts	Five Federal and Two Non-federal Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Gerry Finnegan
• Treasurer During Period Covered by Audit	Gerry Finnegan
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 63,195
Receipts	
o Contributions from Individuals	218,270
o Contributions from Political Committees	24,202
o Transfers from Affiliates	1,682,699
o Transfers from Non-federal Accounts	344,901
o Other Receipts	185,066
Total Receipts	\$ 2,455,138
Disbursements	
o Operating Expenditures	540,126
o Other Federal Expenditures	129,323
o Federal Election Activity	1,490,477
o Transfers to Affiliates	138,967
o Coordinated Expenditures	114,788
o Independent Expenditures	12,475
o Other Disbursements	35,174
Total Disbursements	\$ 2,461,330
Cash-on-hand @ December 31, 2010	\$ 57,003

Part III

Summaries

Findings and Recommendations

Finding 1. Recordkeeping for Employees

During audit fieldwork, the Audit staff noted that NDP did not maintain any monthly payroll logs, as required, for the percentage of time each employee spent on federal election activity. For 2009 and 2010, the amount of payroll for which logs were required, was \$293,439. This consisted of \$282,882, for which payroll was allocated between federal and non-federal funds, and \$10,557 that was paid exclusively with non-federal funds. For NDP employees paid with an allocation of federal and non-federal funds and/or non-federal funds, the Audit staff recommends that NDP implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

(For more detail, see p. 4.)

Finding 2. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that NDP had failed to correctly disclose debts and obligations totaling \$120,447. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D (Debts and Obligations), NDP amend its disclosure reports to disclose these debts properly.

(For more detail, see p. 5.)

Finding 3. Excessive Coordinated Party Expenditures

During audit fieldwork, the Audit staff identified coordinated party expenditures made by NDP for a House candidate that appear to exceed the 2010 coordinated party expenditure limitation by \$34,789. The Audit staff recommends that NDP provide evidence demonstrating it did not exceed the coordinated party expenditure limit.

(For more detail, see p. 7.)

Part IV

Findings and Recommendations

Finding 1. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff noted that NDP did not maintain any monthly payroll logs, as required, for the percentage of time each employee spent on federal election activity. For 2009 and 2010, the amount of payroll for which logs were required, was \$293,439. This consisted of \$282,882, for which payroll was allocated between federal and non-federal funds, and \$10,557 that was paid exclusively with non-federal funds. For NDP employees paid with an allocation of federal and non-federal funds and/or non-federal funds, the Audit staff recommends that NDP implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- Employees who spend 25% or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs.
- Employees who spend more than 25% of their compensated time in a given month on federal election must be paid only from a federal account.
- Employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements NDP made to employees, totaling \$293,439³ for which monthly logs were not provided to document the percentage of time the employee spent in connection with federal election activity.⁴ These logs are required to document proper allocation of federal and non-federal funds used to pay these workers. The total of \$293,439 consisted of \$282,882, for which payroll was allocated between federal and non-federal funds, and \$10,557 that was paid exclusively with non-federal funds.

³ Payroll is stated net of taxes.

⁴ Payments to NDP employees paid with 100 percent federal funds and reported as such are not included in this finding. (See Background Section – Request for Early Consideration of a Legal Question.)

As part of fieldwork, the Audit staff provided NDP with a schedule of employees with an allocation of federal and non-federal funds for which a log was required. An NDP representative completed this schedule by inserting the percentage of time each employee spent in connection with federal election activity and provided a signed affidavit in which a NDP representative attested to the accuracy of the information provided.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the recordkeeping issue with NDP representatives. They asked whether the schedule and the affidavit they had provided would resolve the recordkeeping finding. The Audit staff explained that because NDP did not create and maintain these documents prior to the audit notification letter, but instead prepared them during fieldwork, the issue would be included in the interim audit report.

For NDP employees that were paid exclusively with non-federal funds or with an allocation of federal and non-federal funds, the Audit staff recommends that, within 30 calendar days of service of this report, NDP:

- provide evidence that it maintained monthly time logs to document how much time the employee spent on federal election activity; or
- implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

Finding 2. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that NDP had failed to correctly disclose debts and obligations totaling \$120,447. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D (Debts and Obligations), NDP amend its disclosure reports to disclose these debts properly.

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. Separate Schedules. A political committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- Once it has been outstanding 60 days from the date incurred, a debt of \$500 or less must be reported 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, except reoccurring administrative expenses (such as

rent) shall not be reported as a debt before the payment due date.
11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts⁵ of NDP's 11 largest vendors. These vendors provided NDP mainly with services such as office space, phone bank, printing, and compliance services.

The Audit staff reviewed the vendors' invoiced amounts and identified unreported debts and obligations, totaling \$105,447, owed to 10 of its vendors. Included in this balance were payments totaling \$4,500 for office space that NDP made more than 30 days late throughout the audit period. Regularly reoccurring administrative expenses such as rent are reportable as debts if payment is not made by the due date.

In addition to the unreported debts discussed above, NDP incorrectly reported debt amounts owed to one vendor. The under-reported debts total \$19,500⁶ for the audit period.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter to NDP representatives at the exit conference and provided schedules detailing the unreported and under-reported debts for each reporting period for the audited cycle. NDP representatives objected to the inclusion of rent, a regularly recurring obligation, appearing on the debt schedule. The Audit staff acknowledged that regularly occurring administrative expenses are not debt reportable as long as they are paid by the due date; however, NDP had consistently paid its rent more than 30 days after the payment was due.

The Audit staff recommends that, within 30 calendar days of service of this report, NDP provide documentation demonstrating that these expenditures did not require reporting on Schedule D. Absent such documentation, the Audit staff recommends that NDP amend its reports to disclose the outstanding debts.

Finding 3. Excessive Coordinated Party Expenditures

Summary

During audit fieldwork, the Audit staff identified coordinated party expenditures made by NDP for a House candidate that appear to exceed the 2010 coordinated party expenditure

⁵ The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2009-2010 campaign cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

⁶ The total amount of reportable debt to this vendor was \$34,500. NDP reported only \$15,000 on its 2009 and 2010 disclosure reports. The underpayment was calculated as follows: \$34,500 - \$15,000 = \$19,500.

limitation by \$34,789. The Audit staff recommends that NDP provide evidence demonstrating it did not exceed the coordinated party expenditure limit.

Legal Standard

A. 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 (COLA) 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; and
- 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. 2 U.S.C. §441a(d) and 11 CFR §§109.30 and 109.32.

B. Assignment of Coordinated Party Expenditure Limit. A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

C. Volunteer Activity. The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

1. Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for Federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.

5. If made by a political committee, such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

D. Limits on Contributions Made by State and Local Party Committees.

State and local party committees must comply with the contribution limits below:

- \$5,000 per election to a Federal campaign if the contributing committee has qualified as a multicandidate committee (see below);
- \$2,400 per election to a Federal campaign if the contributing committee has not qualified as a multicandidate committee;
- \$5,000 per year to a separate segregated fund (corporate or labor political action committee) or a non-connected committee; and
- unlimited transfers to other party committees. 2 U.S.C. §441a(a).

Facts and Analysis

A. Facts

The coordinated expenditure limit for the 2010 election cycle for a House candidate in the state of Nebraska was \$43,500 each for the state and national party committees. During audit fieldwork, the Audit staff reviewed the correspondence between NDP and the Democratic Congressional Campaign Committee (DCCC) that addressed the coordinated expenditures. On May 25, 2010, NDP transferred its entire coordinated spending limit to DCCC. This permitted DCCC to make coordinated expenditures of \$87,000 on behalf of Tom White, Democratic candidate for the United States House of Representatives from Nebraska's 2nd Congressional District (the candidate). Additional documentation indicated that DCCC authorized NDP to spend no more than \$80,000 of its coordinated party spending limit on behalf of the candidate.⁷

The Audit staff's review of disbursements indicated that NDP appeared to make coordinated expenditures on behalf of the Candidate that totaled \$114,789, as outlined below.

- NDP reported three media-related expenditures totaling \$85,174 as coordinated expenditures on behalf of the candidate. Specifically, NDP spent \$80,000 on a media ad in opposition to the candidate's opponent, \$4,596 on production of a candidate postcard, and \$578 for campaign signage.
- After the coordinated spending limit was established, NDP reported two additional disbursements, totaling \$29,615, for "generic GOTV ("Get Out the Vote") calls" as federal election activity on its disclosure reports. The scripts provided by the vendor seem to indicate there was possible coordination with the candidate's committee since the scripts contained the message to vote for the

⁷ DCCC filings disclosed additional candidate expenditure in the amount of \$353, leaving DCCC with an unused coordinated limit of \$6,647; (\$87,000 - \$80,000 - \$353.)

candidate and included a disclaimer that the message was paid for by NDP and authorized by the candidate.

In addition to the expenditures discussed above, NDP spent \$94,610 to produce a single mailer on behalf of the candidate. This amount consisted of the following components: layout and production (\$92,610) and postage (\$2,000). NDP considered the cost of the entire mailer to be an exempt activity under the volunteer materials exemption. To support its assertion, NDP provided vendor statements and invoices along with photographs of the volunteers participating in various duties such as reviewing, sorting, and packing the direct mail pieces.

The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Democratic Executive Committee of Florida and the Tennessee Republican Party. In these reports, the Commission recognized a lack of clarity regarding the application of the volunteer materials exemption. In recognizing the lack of clarity, the Commission has attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption.⁸

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures for the mailer totaling \$94,610 have not been attributed to NDP's coordinated expenditure limit.

In conclusion, the Audit staff determined that NDP spent \$114,789 on coordinated expenditures and exceeded its authorized coordinated party expenditure limit by \$34,789.⁹ As a result, these expenditures are considered an excessive in-kind contribution to the candidate.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided schedules detailing the possible excessive in-kind contributions NDP made on behalf of the candidate. In response, NDP representatives stated their belief that some of the amounts reported on Schedule F (Itemized Coordinated Party Expenditures) might not actually have been coordinated expenditures.

The Audit staff recommends that, within 30 calendar days of service of this report, NDP provide additional documentation demonstrating that it did not exceed the coordinated party expenditure limitation for the candidate.¹⁰

⁸ Proposed Interim Enforcement Policy, Open Session Agenda document No. 10-16 dated March 10, 2010, Drafts A through D.

⁹ The amount over the limit was calculated as follows: Total spent by NDP less amount authorized by DCCC: \$114,789 - \$80,000=\$34,789. NDP made and reported the maximum allowable contribution to the candidate during the 2010 election cycle.

¹⁰ The authorized committee of Tom White was approved for administrative termination on May 10, 2011. Therefore, a recommendation to seek refund from the candidate committee is not warranted.