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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 07-05
DATE REFERRED: July 27, 2007
DATE ACTIVATED: August 7, 2007

STATUTE OF LIMITATIONS: March 3, 2008

SOURCE: AUDIT REFERRAL

RESPONDENTS: DeMint for Senate Committee, Inc. and Sunny Philips, in her official capacity as treasurer

RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 434(a)(6)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 104.5(f)
11 C.F.R. § 110.1(b)(5)

INTERNAL REPORTS CHECKED: Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter was generated by a Commission audit, pursuant to 2 U.S.C. § 438(b) of DeMint for Senate Committee, Inc. ("DFS") covering the period of January 14, 2003 through December 31, 2004. The Commission approved the Final Audit Report (Attachment 1) and two of the findings in the Report were referred to the Office of the General Counsel. Based on the information set forth in the Final Audit Report, we recommend that the Commission make reason to believe findings as follows:

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- DFS accepted 42 contributions that were \$68,106 in excess of the limitations of the Federal Election Campaign Act of 1971, as amended ("the Act"), in violation of 2 U.S.C. § 441a(f). (Finding 1; Attachment 1 at 6-8).¹
- DFS did not file 23 48-hour notices for "last minute" contributions in violation of 2 U.S.C. § 434(a)(6)(A). (Finding 2; Attachment 1 at 8-9).²

¹ Of these excessive contributions, \$63,106 (93%) were eligible for presumptive redesignation under 11 C.F.R. § 101(b)(5). The remaining \$5,000 could not be resolved through redesignation or reattribution. The redesignations totaling \$63,106 were untimely, as DFS did not send the required notices to contributors to redesignate the excessive contributions within 60 days of the DFS's receipt of the excessive contributions. See 11 C.F.R. § 110.1(b)(5). In the Martinez for Senate audit (AR 07-02), the Commission decided to permit redesignation of excessive contributions outside the 60-day window. In light of that decision, in the instant matter, DFS was allowed to send redesignation notices to contributors in response to the Interim Audit Report, and DFS provided copies of notices sent to contributors that were eligible for presumptive redesignation. In addition, in response to requests from contributors following receipt of these notices, the Committee refunded \$4,000 to contributors and provided the Audit Division with copies of \$4,000 in negotiated refund checks. See Attachment 1 at 8.

² In Finding Two, Audit staff initially concluded that DFS did not file 48-hour notices for 84 contributions totaling \$174,772. See Attachment 1 at 8. DFS did not file notices for contributions totaling \$6,626 for the primary election, \$123,646 for the run-off election following the primary, and \$44,500 for the general election. The Interim Audit Report noted that 48-hour notices were required for all of these contributions. In response, DFS contended that 17 contributions totaling \$59,580, received on June 7 and 8, 2004, should be removed from the audit findings because DeMint was not a run-off candidate when these contributions were received. The 17 contributions were received after the 48-hour reporting period for the primary election and after the beginning of the run-off election notice period. See Attachment 1 at 9. The Commission concluded that DFS was not required to file 48-hour notices for the 17 contributions received on June 7 and 8, 2004. As a result, the Final Audit Report concluded that DFS did not file 23 notices for 67 contributions totaling \$115,272.

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III. RECOMMENDATIONS

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1. Open a MUR in AR 07-05;

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2. Find reason to believe that DeMint for Senate Committee, Inc. and Sunny Philips, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f);

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3. Find reason to believe that DeMint for Senate Committee, Inc. and Sunny Philips, in her official capacity as treasurer, violated 2 U.S.C. § 434(a)(6)(A);

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6. Approve as Factual and Legal Analyses the Report of the Audit Division on DeMint for Senate Committee, Inc., dated July 9, 2007; and

7. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

11/30/07
Date

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement


Cynthia E. Tompkins
Assistant General Counsel


Kasey Morgenheim
Law Clerk

Attachments:

1. Final Report of the Audit Division on DeMint for Senate Committee, Inc.

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Report of the Audit Division on DeMint for Senate Committee, Inc. January 14, 2003– December 31, 2004

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 Campaign (p. 2)

DeMint for Senate Committee, Inc. is the principal campaign committee for James W. DeMint, Republican candidate for the U.S. Senate from the state of South Carolina, and is headquartered in Columbia, SC. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
o From Individuals	\$ 6,322,367
o From Political Committees	2,441,988
o Transfers from Affiliated/Other Party Committees	268,827
o Other Receipts	34,064
o Total Receipts	\$ 9,067,246
• Disbursements	
o Operating Expenditures	\$ 9,024,878
o Contribution Refunds	45,500
o Total Disbursements	\$ 9,070,378

Findings and Recommendations (p. 3)

- Receipt of Contributions that Exceed Limits (Finding 1)
- Failure to File 48-Hour Notices (Finding 2)
- Failure to Itemize Contributions from Individuals (Finding 3)
- Failure to Itemize Other Receipts (Finding 4)
- Documentation for Receipts (Finding 5)

¹ 2 U.S.C. §438(b)

**Report of the Audit
Division on DeMint for Senate
Committee, Inc.**

January 14, 2003 – December 31, 2004



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Part I Background

Authority for Audit

This report is based on an audit of DeMint for Senate Committee, Inc. (DFS), 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

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Part II Overview of Campaign

Campaign Organization

Important Dates	DeMint for Senate Committee, Inc.
• Date of Registration	January 31, 2003
• Audit Coverage	January 14, 2003 through December 31, 2004
Headquarters	Columbia, South Carolina
Bank Information	
• Bank Depositories	2
• Bank Accounts	1 Business Checking 2 Money Market Accounts 1 Certificate of Deposit
Treasurer	
• Treasurer When Audit Was Conducted	Ms. Sunny Philips
• Treasurer During Period Covered by Audit	Mr. Jeffrey Parker 01/31/2003 – 9/23/2004 Mr. Thaddeus Barber 09/24/2004 – 8/04/2005
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting, Recordkeeping Tasks and Other Day-to-Day Operations	Paid and Volunteer Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 14, 2003	\$	0
Receipts		
o From Individuals	\$	6,322,367
o From Political Committees		2,441,988
o Transfers from Affiliated/Other Party Committees		268,827
o Other Receipts		34,064
o Total Receipts	\$	9,067,246
Disbursements		
o Operating Expenditures	\$	9,024,878
o Contribution Refunds		45,500
o Total Disbursements	\$	9,070,378
Cash on hand @ December 31, 2004		\$ (3,132)²

² DFS bank statements did not show a negative balance because of a large amount of outstanding checks as of December 31, 2004.

Part III Summaries

Findings and Recommendations

Finding 1. Receipt of Contributions that Exceed Limits

DFS accepted 42 contributions from individuals that exceeded the limit by \$68,106. Of these excessive contributions, \$63,106 (93%) was eligible for presumptive redesignation. The remaining excessive contributions totaling \$9,000 exceeded the limit per election and could not be resolved through redesignation and/or reattribution based upon available documentation. In response to the interim audit report recommendation, DFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. In addition, DFS provided copies of six refund checks. (For more detail, see page 4.)

Finding 2. Failure to File 48-Hour Notices

It appeared that DFS had not file 48-hour notices for 84 contributions totaling \$174,772 prior to the primary, run-off, and general elections. In response to the interim audit report recommendation, DFS argued that contributions totaling \$59,500 received after the end of the primary 48 hour notice period but before the Candidates participation in the run-off election was assured, did not require notices. In view the circumstances, it was determined that 48 hour notices for the referenced period were not required. Therefore, DFS did not file notices for 67 contributions totaling \$115,272. (For more detail, see page 6.)

Finding 3. Failure to Itemize Contributions from Individuals

A sample review of contributions from individuals indicated DFS did not itemize approximately 21% of such receipts as required. In response to the interim audit report recommendation, DFS filed amended reports correcting the deficiencies. (For more detail, see page 8.)

Finding 4. Failure to Itemize Other Receipts

DFS failed to itemize \$28,676 in interest income and refunds/offsets on Schedule A (Itemized Receipts) as required. In response to the interim audit report recommendation, DFS amended its reports to disclose these receipts. (For more detail, see page 9.)

Finding 5. Documentation for Receipts

A sample review of contributions from individuals indicated that 18% of such receipts were not properly documented. Those errors represented contributions in excess of \$50 for which a copy of the contributor's check or other written instrument was not retained. In response to the interim audit report recommendation, DFS supplied additional information for credit card contributions received over the Internet that materially completed the contribution records. (For more detail, see page 9.)

Part IV

Findings and Recommendations

Finding 1. Receipt of Contributions that Exceed Limits

Summary

DFS accepted 42 contributions from individuals that exceeded the limit by \$68,106. Of these excessive contributions, \$63,106 (93%) was eligible for presumptive redesignation. The remaining excessive contributions totaling \$5,000 exceeded the limit per election and could not be removed through redesignation and/or reattribution based upon available documentation. In response to the interim audit report recommendation, DFR provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. In addition, DFS provided copies of six refund checks.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. Increased contribution limits are provided for candidates facing self-financed candidates once the self-financed candidates make expenditures from their personal funds that exceed a specific amount. 2 U.S.C. §441a(a)(1)(A) and 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 either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;

- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing 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. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee should either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

DFS qualified for increased limits afforded candidates opposing self-financed candidates. DFS' limitation was increased threefold (\$6,000) on July 1, 2003 and subsequently six fold (\$12,000) on May 6, 2004. The increased limitation period ended on June 8, 2004, the date of the primary election.

The Audit staff reviewed all contributions from individuals to determine if excessive contributions were received. The Audit staff identified 42 contributions from individuals that exceeded the limit by \$68,106.

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Of these excessive contributions, \$63,106 (93%) was eligible for presumptive redesignation. These could be earned by notifying the contributors of DFS's action and offering a refund as provided under 11 CFR §110.1(k)(3)(ii)(B). The remaining excessive contributions totaling \$5,000 exceeded the limit per election cycle and could not be resolved through redesignation and/or reattribution based upon available documentation.

At the exit conference, the Audit staff provided the DFS representative with schedules of the excessive contributions. The representatives stated that they would provide supporting documents for the excessive contribution during the 10-day response period provided after the exit conference. No additional documentation was received.

Interim Audit Report Recommendation and Committee Response
The Audit staff recommended that DFS:

- Send notices to those contributors that were eligible for presumptive redesignation and/or reattributions (\$63,106) notifying them of DFS's action and offering contributors the option of receiving a refund. DFS was to provide evidence to the Audit staff that the notices were sent and if any refunds were requested; and
- Provide evidence demonstrating that the remaining contributions totaling \$5,000 were not excessive. Absent such evidence, refund \$5,000 to the contributors, or the United States Treasury, and provide evidence of such refunds (copies of the front and back of negotiated refund checks); or
- If funds were not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds became available to make such refunds.

In response to the interim audit report recommendation, DFS provided copies of notices sent to contributors that were eligible for presumptive redesignation and/or reattribution. DFS also provided copies of three negotiated refund checks (\$4,000) and of three refund checks prepared but not negotiated totaling \$4,800. Until copies of the negotiated refund checks are submitted, the \$4,800 is considered unrescinded.

Finding 2. Failure to File 48-Hour Notices

Summary

It appeared that DFS had not file 48-hour notices for 84 contributions totaling \$174,772 prior to the primary, run-off, and general elections. In response to the interim audit report recommendation, DFS argued that contributions totaling \$59,500 received after the end of the primary 48 hour notice period but before the Candidates participation in the run-off election was assured, did not require notices. In view the circumstances, it was determined that 48 hour notices for the referenced period were not required. Therefore, DFS did not file notices for 67 contributions totaling \$115,272.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 931 contributions, totaling \$1,616,430, which were greater than or equal to \$1,000 and received during the 48-hour notice filing periods of the primary, run-off, and general elections. It appeared that DFS did not file 48-hour notices for 84 contributions totaling \$174,772 (\$6,826 for the primary, \$123,646 for the run-off, and \$44,500 for the general elections).

At the exit conference, the DFS representative was provided schedules of the 48-hour notices not filed. The representative stated that these schedules would be reviewed and any comments or corrections would be submitted in writing. Nothing was received in response to the exit conference.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DFS provide:

- Documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- Documentation establishing the contributions were not subject to 48-hour notification; and/or,
- Any written comments it considered relevant.

In response to the interim audit report recommendation, DFS contended that 17 contributions, totaling \$59,900, received on June 7 and 8, 2004, the date of the primary and the preceding day, should be removed from the audit finding because the Candidate was not a run-off candidate when these contributions were received. Those days were after the expiration of the primary election 48-hour notice period, after the beginning of the run-off election 48-hour notice period, but before the run-off was a certainty. DFS explained that the Candidate was not capable of ascertaining whether there would be a run-off election and, if there was one, whether he would be participating in the election. DFS' response does not address the remaining notices.

The Audit staff acknowledges that a run-off election was not a certainty and, neither was the Candidate's participation if it was held. Given the circumstances, it was determined that the 48 notices were not required for contributions received on the primary date and the preceding day. As a result, DFS did not file notices for 67 contributions totaling \$115,272.

Finding 3. Failure to Itemize Contributions from Individuals

Summary

A sample review of contributions from individuals indicated DFS did not itemize approximately 21% of such receipts as required. In response to the interim audit report recommendation, DFS filed amended reports correcting the deficiencies.

Legal Standard

A. When to Itemize. Authorized candidate committees must itemize any contribution from an individual if it exceeds \$200 per election cycle either by itself or when aggregated with other contributions from the same contributor; 2 U.S.C. §434(b)(3)(A).

B. Election Cycle. The election cycle begins on the first day following the date of the previous general election and ends on the date of the next general election. 11 CFR §100.3(b).

C. Definition of Itemization. Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer; and
- The election cycle-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

Facts and Analysis

Based on a sample review of contributions from individuals, the Audit staff determined that DFS did not itemize approximately 21% of such contributions on Schedules A (Itemized Receipts) as required. The majority of these errors resulted from DFS's inadequate aggregation system. When individual contributions aggregated greater than \$200 for an election cycle, and the contribution was less than \$200 per transaction, DFS's accounting system failed to itemize the amount.

At the exit conference, the Audit staff presented this matter to DFS representatives who admitted the errors did in fact exist and had switched to more reliable accounting software to remedy the situation.

Interim Audit Report Recommendation and Committee Response

In response to the interim audit report recommendation, DFS filed amended reports correcting the deficiencies detailed above.

Finding 4. Failure to Itemize Other Receipts

Summary

DFS failed to itemize \$28,676 in interest income and refunds/offsets on Schedule A (Itemized Receipts) as required. In response to the interim audit report recommendation, DFS amended its reports to disclose these receipts.

Legal Standard

Itemization of Other Receipts. A committee must disclose, on a separate schedule, the full name and address of each person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value of \$200 within the calendar (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt. 2 U.S.C. §434(b)(3)(G).

Facts and Analysis

DFS received approximately \$34,064 in interest and other income during the audit period, of which, interest and refunds/offsets totaling \$28,676 was not itemized on Schedule A (Itemized Receipts) as required.

This matter was discussed at the exit conference and, subsequently, a listing of the deficiencies was given to DFS representatives.

Interim Audit Report Recommendation and Committee Response

In response to the interim audit report recommendation, DFS amended its reports to disclose these receipts.

Finding 5. Documentation for Receipts

Summary

A sample review of contributions from individuals indicated that 18% of such receipts were not properly documented. These errors represented contributions in excess of \$50 for which a copy of the contributor's check or other written instrument was not retained. In response to the interim audit report recommendation, DFS supplied additional information for credit card contributions received over the Internet that materially completed the contribution records.

Legal Standard

A. Retention of Check Copies. For contributions in excess of \$50, committees must maintain a photocopy or digital image of the check or written instrument. 11 CFR §102.9(a)(4).

B. Preserving Documents. Committees must preserve these records for 3 years after a report is filed. 2 U.S.C. §432(d).

Facts and Analysis

The Audit staff reviewed contributions from individuals on a sample basis and determined that almost 18% of the items tested lacked a copy of the contributor's check or other written instrument as required for contributions in the amounts greater than \$50. Most of the errors occurred in 2004; about one-third of them in June 2004. Many appeared to be contributions made by credit card via the Internet but were lacking documentation from the credit card processor.

The Audit staff discussed this matter with DFS representatives at the exit conference who indicated they were surprised that some of the contribution documentation could not be located.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DFS provide any additional records that it is able to locate and provide any other information that it believes relevant.

In response to the audit report recommendation, DFS stated that "while contributions made via check are organized in chronological order and are readily found, credit card contributions are located across multiple files and are not as centralized." While DFS regrets any difficulties encountered by the Audit staff in finding such documentation, it believes all records have been maintained and is willing to assist in locating any particular records the Audit staff would like to review.

In addition, DFS stated that many of these were online credit card contributions and the supporting documentation would be the vendor source data file. DFS provided a copy of that data file. The Audit staff acknowledges difficulty in locating credit card documents in DFS files; however, review of the data submitted supports that an electronic record was contained in the vendor source data file for many of the credit card contribution errors noted above. With the submission of the additional data, the contribution records are materially complete.