

October 25, 2021

Ms. Dayna C. Brown
Acting Assistant Staff Director
Audit Division
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20463

Dear Ms. Brown:

The Connecticut Democratic State Central Committee ("CDSCC") is in receipt of the Draft Final Audit Report ("DFAR") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the CDSCC's financial activities for 2017 and 2018. While the CDSCC does not request a formal hearing it has serious concerns about some of the Audit Division's analysis and conclusions as discussed below.

Finding #2

The Audit Division's Interim Audit Report's ("IAR") second finding involved recordkeeping for payroll. The Audit Division has acknowledged that, in response to the Audit Division's inquiries regarding this issue, the CDSCC has instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds.

However, the DFAR has failed to address the CDSCC's concern that the finding includes amounts for employees who were paid exclusively with non-federal funds.

In previous audits, several Commissioners determined that the recordkeeping requirements for payroll paid exclusively with non-federal funds were outside the scope of the Commission's jurisdiction. Thus, in several previous state party audits, a finding related to recordkeeping specifically excluded payroll paid exclusively with non-federal funds. See e.g. Final Audit Report of the Commission on the Democratic Party of Wisconsin (2012 Cycle) at p.p. 13-16; Final Audit Report of the Commission on the Kentucky State Democratic Central Executive Committee (2012 Cycle), p. 9.; Final Audit Report of the Commission on the Utah Republican Party (2012) Cycle, p. 26-27.

In reliance of these actions, state parties generally do not keep payroll records for employees that are paid exclusively from the non-federal account. As the Commission can clearly

see from the audit process, the recordkeeping requirement for payroll presents a significant burden for state parties and the Commission should carefully consider this issue and make a clear pronouncement that provides sufficient notice and guidance to the regulated community regarding whether such recordkeeping is required for payroll paid exclusively with non-federal funds.

Finding #4

The IAR's fourth finding involves the apparent failure to file 24/48 hour reports for transactions totaling \$140,259.39 that were made in connection with the general election for United States Senate in 2018. As a threshold matter, the CDSCC objected to the characterization of these expenditures as independent expenditures. These expenditures were properly made as volunteer exempt activities and were fully coordinated with the Senate candidate. With respect to the door hanger, it is the CDSCC's understanding that since these activities were not public communications, they cannot be considered coordinated communications regardless of whether it was distributed by volunteers and no further action would be necessary regarding these expenditures.

With respect to the mailing, in response to the IAR, the CDSCC provided a sworn declaration from the mail house production manager who personally oversaw production of the CDSCC volunteer exempt mail.

Both the IAR and DFAR acknowledge that there is considerable uncertainty of the amount of volunteer involvement required to satisfy the exemption. In prior enforcement actions, the Commission has relied upon declarations to determine that there was sufficient volunteer activity and should do so in this instance. See MUR 5837 and MUR 6691. Despite no clear guidance in Commission regulations, the Audit Division has demurred as to whether the sworn declaration is sufficient to determine whether the CDSCC has complied with the volunteer exemption. The Commission has generally deferred to respondents in the enforcement process that provide sworn affidavits and should do so in the Audit process as well. See "Guidebook for Complainants and Respondents on the FEC Enforcement Process", Federal Election Commission, May 2012, p. 10. Thus, the Commission should determine that the CDSCC complied with the requirements for volunteer exempt mail with.

It appears that the Audit Division, for the first time that we can determine, is requiring some level of documentation for volunteer exempt canvassing activities. This is unprecedented and unnecessary as canvassing activity cannot result in a coordinated expenditure as it is not a public communication. See 11 C.F.R. §§ 100.26 & 109.37. Even assuming *arguendo* that volunteer participation is required, the need to create and maintain documentation would be a severe burden on state parties as the canvassing process is quite diffuse. To my knowledge and recollection, the Audit Division has never required a state party in past audits or enforcement actions to demonstrate through documentation that volunteers were used for exempt canvassing activities nor has the Audit Division raised the issue of the requirement of volunteers or its documentation for a state party audit. It is unclear why they continue to do so in this instance.

Finally, the CDSCC objects to the Audit Division's continued assertion that these activities may be subject to independent expenditure reporting. The CDSCC has consistently acknowledged and communicated to the Audit Division that the activity was coordinated with its candidate. To file a report with the Commission that these activities were independent would constitute a false statement under 18 U.S.C. § 1001 as Schedule E of the Commission's disclosure forms require that the Treasurer certify, under penalty of perjury, that the activity was not coordinated with any candidate. The Audit Division's approach is confusing and unnecessary.

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

Sincerely,

Neil Reiff
Counsel to the Connecticut Democratic State
Central Committee