

# SANDLER REIFF

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February 10, 2022

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 Democratic Party of Arkansas (“DPA”) is in receipt of the Audit Division’s Draft Final Audit Report (“DFAR”).

The DPA does not request a hearing related to the DFAR and it provides the following comments:

## Finding #2

As acknowledged by the DFAR, the DPA has instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds and also plans to create a procedure for recordkeeping for employees paid exclusively with non-federal funds, pending the outcome of the Final Audit Report. The DPA reiterates that the finding’s inclusion of payroll records for those employees who are paid exclusively with non-federal funds were previously determined by some Commissioners to be outside the scope of the Commission’s jurisdiction and, in our view, should not have been included in the finding. 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.

The DPA notes that those Commissioners who voted to determine that such recordkeeping is outside the scope of regulation are no longer members of the Commission. However, in response to the lack of four Commissioners to determine that such recordkeeping is required, many party committees have been under the belief that such recordkeeping is not required. If the Commission decides to reverse course and determine by at least four votes that recordkeeping for non-federal payroll is, in fact, required, the DPA requests that the regulated community be given

sufficient notice that there are now sufficient votes to require recordkeeping in such instances. In our view, a quiet vote to approve this finding as it is currently constituted is not sufficient notice.

Finding #3

The IAR's third finding involves the apparent failure to file 24/48 hour reports for transactions totaling \$22,802.50 that were made in connection with the general election on behalf of Clarke Tucker, the Democratic nominee for the United States House of Representatives in 2018 for the Second Congressional District. In its response to the Interim Audit report, the DPA objected to the characterization of these expenditures as independent expenditures. The DPA contended that these expenditures were properly made as exempt activities and were fully coordinated with the candidate. In support of its contention, the DPA provided a declaration from its Director of Operations to confirm that volunteers were used for both the distribution of mailings and other activities that were distributed by hand.

The DPA notes that the DFAR acknowledges that the activities described in this finding are not independent expenditures. In addition, the attached memorandum from the Office of General Counsel indicates that the distribution of the door hangers cannot be considered a "public communication." Therefore, the participation of volunteers would be irrelevant to any consideration of their distribution. Memorandum of the Office of General Counsel, p.3.

With respect to volunteer mailings, both the DFAR and OGC Memorandum defers to a Commission finding as to whether the DPA has provided sufficient documentation to determine that the mailings were conducted with the participation of volunteers. In the recent consideration of the Draft Final Audit Report of the Connecticut Democratic State Central Committee (Agenda Document 21-44-A for Open Meeting of December 16, 2021), the Commission found that the state party had provided sufficient documentation related to volunteer mailings based solely upon the declarations provided by the committee. It must do so here as well.

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 Party of Arkansas