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AGENDA ITEM

For meeting of January 14, 2021



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 7, 2020

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Dayna C. Brown *DCB*
Acting Assistant Staff Director
Audit Division

Nicole Burgess *NB*
Audit Manager

By: Jonathan Fonseca *JF*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Van Drew for Congress
(A19-04)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Van Drew for Congress (VDFC) on June 29, 2020 (see attachment). VDFC did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

In response to the DFAR, VDFC did not provide any additional comments.

Finding 1. Receipt of Contributions in Excess of the Limit

The Audit staff recommends that the Commission find that VDFC received excessive contributions totaling \$45,600.

Finding 2. Receipt of Apparent Prohibited Contributions

The Audit staff recommends that the Commission find that VDFC received prohibited contributions totaling \$13,255.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

If this memorandum is approved, the Proposed Final Audit Report will be prepared and circulated within 30 days of the Commission's approval.

Given the Commission's lack of quorum to approve this Audit Division Recommendation Memorandum on a tally vote, the matter would be placed on an open session agenda in accordance with Directive No. 70, once a quorum is reestablished.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Jonathan Fonseca or Nicole Burgess at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Van Drew for Congress.

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Van Drew for Congress

(November 30, 2017 - December 31, 2018)

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)

Van Drew for Congress is the principal campaign committee for Jeff Van Drew, Democratic² candidate for the United States House of Representatives from the state of New Jersey, 2nd Congressional District, and is headquartered in Cape May Court House, New Jersey. For more information, see the Campaign Organization chart, p. 2.

Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 1,141,047
○ Contributions from Political Committees	\$ 688,876
○ Transfers from Authorized Committees	\$ 63,907
○ Offsets to Operating Expenditures	\$ 3,479
Total Receipts	\$ 1,897,309
• Disbursements	
○ Operating Expenditures	\$ 1,745,599
○ Other Disbursements	\$ 135,410
○ Contribution Refunds	\$ 12,099
Total Disbursements	\$ 1,893,108

Findings and Recommendations (p. 4)

- Receipt of Contributions in Excess of the Limit (Finding 1)
- Receipt of Apparent Prohibited Contributions (Finding 2)

¹ 52 U.S.C. §30111(b).

² On December 19, 2019, Jeff Van Drew filed a FEC Form 2 (Statement of Candidacy) which indicated his party affiliation as the Republican Party.



Draft Final Audit Report of the Audit Division on Van Drew for Congress

(November 30, 2017 - December 31, 2018)

Draft

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Part I

Background

Authority for Audit

This report is based on an audit of Van Drew for Congress (VDFC), 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 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. 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. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

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

Important Dates	
• Date of Registration	November 30, 2017
• Audit Coverage	November 30, 2017 ³ - December 31, 2018
Headquarters	
Cape May Court House, New Jersey	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Two checking accounts
Treasurer	
• Treasurer When Audit Was Conducted	Bradley Crate (12/19/19 - Present) Brendan Sciarra (05/16/18 - 12/18/19) Jennifer May (11/29/17 - 05/15/18)
• Treasurers During Period Covered by Audit	Jennifer May and Brendan Sciarra
Management Information	
• Attended FEC Campaign Finance Seminar ⁴	Not available
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

³ VDFC filed a Statement of Organization on November 30, 2017. Jeff Van Drew filed a Statement of Candidacy on November 29, 2017.

⁴ The Audit staff provided VDFC an Internal Control Questionnaire to complete, which included this question. To date, the questionnaire has not been returned.

Overview of Financial Activity (Audited Amounts)

Cash on hand @ November 30, 2017	\$ 0
Receipts	
○ Contributions from Individuals	\$ 1,141,047
○ Contributions from Political Committees	\$ 688,876
○ Transfers from Other Authorized Committees	\$ 63,907
○ Offsets to Operating Expenditures	\$ 3,479
Total Receipts	\$ 1,897,309
Disbursements	
○ Operating Expenditures	\$ 1,745,599
○ Other Disbursements	\$ 135,410
○ Contribution Refunds	\$ 12,099
Total Disbursements	\$ 1,893,108
Cash on hand @ December 31, 2018	\$ 4,201

Part III

Summaries

Findings and Recommendations

Finding 1. Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that VDFC received apparent excessive contributions totaling \$45,600. These errors occurred as a result of VDFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors or issuing refunds of the excessive portions of contributions in a timely manner. In response to the exit conference, VDFC resolved these excessive contributions, albeit untimely. VDFC did not provide any comments in response to the Interim Audit Report recommendation. (For more detail, see p. 5.)

Finding 2. Receipt of Apparent Prohibited Contributions

During audit fieldwork, a review of contributions revealed that VDFC received 13 contributions totaling \$13,255 from apparent prohibited sources. In response to the Interim Audit Report recommendation, VDFC provided copies of the front and back of ten negotiated refund checks totaling \$11,005. VDFC did not provide copies of the negotiated refund checks for three apparent prohibited contributions totaling \$2,250, nor any comments in response to the Interim Audit Report. (For more detail, see p. 8.)

Part IV

Findings and Recommendations

Finding 1. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that VDFC received apparent excessive contributions totaling \$45,600. These errors occurred as a result of VDFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors or issuing refunds of the excessive portions of contributions in a timely manner. In response to the exit conference, VDFC resolved these excessive contributions, albeit untimely. VDFC did not provide any comments in response to the Interim Audit Report recommendation.

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C §30116; 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 check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - 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 after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).
- 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, money order, or other negotiable instrument 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. The 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:

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

Within 60 days after 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 that was made on a written instrument that is imprinted with the names of more than one individual may be presumptively 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)(B).

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after 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).

Presumptive Redesignation - 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:

- 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. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor by any written method, including electronic mail, 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)(5) and (6).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff conducted a review of contributions to identify apparent excessive contributions from individuals, as noted below.

Excessive Contributions -Testing Method	
High Dollar/Other Review Contribution Error Amount	\$45,600
Total Amount of Excessive Contributions	\$45,600
Reason for Excessive Contributions	
Contributions not resolved via presumptive letter or refund	\$45,600
Total Amount of Excessive Contributions	\$45,600

B. Additional Information

VDFC did not maintain a separate account for questionable contributions. However, VDFC did maintain a sufficient balance to make refunds of the excessive contributions.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with VDFC representatives at the exit conference and provided schedules of the apparent excessive contributions. The Audit staff also explained that the presumptive letters sent in response to the exit conference would untimely resolve the excessive contributions of \$45,600. VDFC representatives did not provide any comments.

In response to the exit conference, VDFC submitted the following documentation:

Corrective Action Taken by Committee - Excessive Contributions	
Presumptive Letters Sent – <i>Untimely</i>	\$45,600
Amount of Excessive Contributions – <i>Not Resolved</i>	\$0

The Audit staff concluded that VDFC demonstrated that it resolved excessive contributions, totaling \$45,600, albeit in an untimely manner.

The Interim Audit Report recommended that VDFC provide any comments it deemed relevant to this matter.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, VDFC did not provide any comments.

Finding 2. Receipt of Apparent Prohibited Contributions

Summary

During audit fieldwork, a review of contributions revealed that VDFC received 13 contributions totaling \$13,255 from apparent prohibited sources. In response to the Interim Audit Report recommendation, VDFC provided copies of the front and back of ten negotiated refund checks totaling \$11,005. VDFC did not provide copies of the negotiated refund checks for three apparent prohibited contributions totaling \$2,250, nor any comments in response to the Interim Audit Report.

Legal Standard

A. Receipt of Prohibited Contributions General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 - Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign

political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b). 52 U.S.C. §§30118, 30119, 30121, and 30122.

B. Receipt of Prohibited Corporate Contributions. Political committees may not accept contributions from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, as incorporated membership organization, and an incorporated cooperative. 52 U.S.C. §30118.

C. Definition of Limited Liability Company. A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the State in which it was established. 11 CFR §110.1(g)(1).

D. Application of Limits and Prohibition to LLC Contributions. A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:

1. **LLC as Partnership.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status. A contribution by partnership is attributed to each partner by his or her share of the partnership profits. 11 CFR §110.1 (e)(1) and (g)(2).
2. **LLC as Corporation.** The contribution is considered a corporate contribution-and is barred under the Act-if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR § 110.1(g)(3).
3. **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1 (g)(4).

E. Limited Liability Company's Responsibility to Notify Recipient Committee. At the time it makes a contribution, an LLC must notify the recipient committee:

- That it is eligible to make the contribution; and
- In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

F. Questionable Contributions. It is the Treasurer's responsibility to ensure that all contributions are lawful. 11 CFR §103.3(b). If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain

- sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3 (b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
 4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
 5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified contributions that appeared to be from prohibited sources. The following chart details the source of these receipts.

Apparent Prohibited Contributions	
Type of Review	100%
Contributions from Corporations	\$7,380
Contributions from Professional Associations	\$3,700
Contributions from Limited Liability Companies	\$1,675
Contributions from Professional Corporations	\$500
Total of Prohibited Contributions	\$13,255

B. Additional Information

For contributions from corporations, professional associations and professional corporations, the Audit staff verified the corporate status of the entities, as of the date of the contribution, with the applicable Secretary of State offices. For contributions from Limited Liability Companies (LLCs), VDFC did not provide tax status information for contributions totaling \$1,675; however, VDFC did refund these contributions, along with all of the apparent prohibited contributions enumerated above.

VDFC did not maintain a separate account for questionable contributions. However, VDFC did maintain a sufficient balance to make refunds of the apparent prohibited contributions.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with VDFC representatives during the exit conference and provided a schedule of the apparent prohibited contributions identified above. In response to the exit conference, VDFC provided copies of the front of refund checks totaling \$13,255.

The Interim Audit Report recommended that VDFC provide copies of the front and back of the negotiated refund checks and any comments it deemed relevant to this matter.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, VDFC provided copies of the front and back of ten negotiated refund checks totaling \$11,005. VDFC did not provide copies of the negotiated refund checks for three apparent prohibited contributions totaling \$2,250, nor offer any other comments. VDFC materially resolved, albeit untimely, the apparent prohibited contributions.