



Final Audit Report of the Commission on the Tennessee Democratic Party

January 1, 2005 – December 31, 2006

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

Financial Activity (p. 2)

• Federal Receipts	
○ Contributions from Individuals	\$ 1,771,653
○ Contributions from Other Political Committees	234,775
○ Transfers from Affiliated Party Committees	3,022,463
○ Transfers from Non-federal and Levin Funds	797,430
○ Other Receipts	48,176
Total Federal Receipts	\$ 5,874,497
• Federal Disbursements	
○ Operating Disbursements	\$1,691,580
○ Transfers to Affiliated Committees	211,950
○ Independent Expenditures	912,496
○ Coordinated Party Expenditures	712,459
○ Federal Election Activity	2,237,958
○ Other Federal Disbursements	160,981
Total Federal Disbursements	\$5,927,424
• Levin Receipts	\$319,869
• Levin Disbursements	\$319,869

Commission Findings (p. 3)

- Non-allocable Federal Election Activity Disclosed on Schedule H6 (Finding 1)
- Disclosure of Disbursements (Finding 2)

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 Tennessee Democratic Party (TDP), 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 disclosure of expenses allocated between federal, non-federal, and Levin accounts.
6. The consistency between reported figures and bank records.
7. The completeness of records.
8. Other committee operations necessary to the review.

Audit Hearing

TDP requested a hearing before the Commission. The request was granted and the hearing was held on November 4, 2009. At the hearing, TDP only addressed issues relating to polls and campaign rallies.

Part II

Overview of Committee Committee Organization

Important Dates	
• Date of Registration	May 18, 1983
• Audit Coverage	January 1, 2005 - December 31, 2006
Headquarters	
Nashville, Tennessee	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Seven Federal, Three non-Federal, One Levin
Treasurer	
• Treasurer When Audit Was Conducted	Chip Forrester
• Treasurer During Period Covered by Audit	Robert Tuke & Delainia Davis
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Federal Cash on hand @ January 1, 2005	\$128,779
○ Contributions from Individuals	\$1,771,653
○ Contributions from Other Political Committees	234,775
○ Transfers from Affiliated Party Committees	3,022,463
○ Transfers from Non-federal and Levin Funds	797,430
○ Other Receipts	48,176
Total Federal Receipts	\$5,874,497
○ Operating Disbursements	\$1,691,580
○ Transfers to Affiliated Committees	211,950
○ Independent Expenditures	912,496
○ Coordinated Party Expenditures	712,459
○ Federal Election Activity	2,237,958
○ Other Federal Disbursements	160,981
Total Federal Disbursements	\$5,927,424
Federal Cash on hand @ December 31, 2006	\$75,852
Levin Cash on hand @ September 26, 2006	\$0
Total Levin Receipts	\$319,869
Total Levin Disbursements	\$319,869
Levin Cash on hand @ December 31, 2006	\$0

Part III

Summaries

Commission Findings

Finding 1. Non-allocable Federal Election Activity Disclosed on Schedule H6

During audit fieldwork, a review of disbursements identified what appeared to be non-allocable federal election activity that was reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). Payments, totaling \$98,321—for polls (\$24,500), automated phone banks (\$36,400), and campaign rallies (\$37,421, including \$900 for custom-labeled bottled water)—were reportedly allocated 21% federal and 79% Levin. However, the telephone scripts for the automated phone banks referred to a clearly identified candidate running for federal office, as did documentation associated with the other programs. In response to the Interim Audit Report, TDP agreed that the automated phone banks were not allocable federal election activity, but maintained that the rallies were correctly classified. TDP also amended its reports to reflect the cost of the polls as allocable operating costs. In addition to its response to the Interim Audit Report and the Draft Final Audit Report, TDP was granted a hearing for Commission consideration of the issues.

The Commission:

- approved the finding of the Audit Division with respect to automated phone banks and custom-labeled water bottles;
- concluded that the cost of the polls were properly reported on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity) as shared operating expenditures as TDP had done in response to the Interim Audit Report; and,
- concluded that, with the exception of the invoice for custom-labeled bottled water that identified a specific federal candidate, there was insufficient evidence regarding the rallies to determine that they were not allocable federal election activity. (For more detail, see p. 4)

Finding 2. Disclosure of Disbursements

During audit fieldwork, a sample review of itemized expenditures revealed that for approximately 18% of the items tested, TDP did not disclose the payee's address. In response to the Interim Audit Report, TDP filed amended reports that materially disclosed the missing information. The Commission approved this finding. (For more detail, see p. 11)

Part IV

Commission Findings

Finding 1. Non-allocable Federal Election Activity Disclosed on Schedule H6

Summary

During audit fieldwork, a review of disbursements identified what appeared to be non-allocable federal election activity that was reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). Payments, totaling \$98,321—for polls (\$24,500), automated phone banks (\$36,400), and campaign rallies (\$37,421, including \$900 for custom-labeled bottled water)—were reportedly allocated 21% federal and 79% Levin. However, the telephone scripts for the automated phone banks referred to a clearly identified candidate running for federal office, as did documentation associated with the other programs. In response to the Interim Audit Report, TDP agreed that the automated phone banks were not allocable federal election activity, but maintained that the rallies were correctly classified. TDP also amended its reports to reflect the cost of the polls as allocable operating costs. In addition to its response to the Interim Audit Report and the Draft Final Audit Report, TDP was granted a hearing for Commission consideration of the issues.

The Commission:

- approved the finding of the Audit Division with respect to automated phone banks and custom-labeled water bottles;
- concluded that the costs of the polls were properly reported on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity) as shared operating expenditures as TDP had done in response to the Interim Audit Report; and
- concluded that, with the exception of the invoice for custom-labeled bottled water that identified a specific federal candidate, there was insufficient evidence regarding the rallies to determine that they were not allocable federal election activity.

Legal Standard

- A. Categories of Allocable Federal Election Activity.** A State, district, or local political party committee may allocate disbursements between Federal funds and Levin funds for:
- Voter Registration Activity;
 - Voter Identification;
 - Get-Out-The-Vote Activity; and
 - Generic Campaign Activity. 11 CFR §300.33(a)(1) and (2).
- B. Categories of Non-Allocable Federal Election Activity.** Costs incurred by State, district, and local party committees and organizations for public communications that refer to a clearly identified candidate for federal office and that promote, attack,

support or oppose any such candidate for federal office must be paid only with federal funds. 11 CFR §300.33(c).

C. 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 a Cost of Living Adjustment 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.
- 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.
- A national or state party committee may assign all or part of its coordinated party spending authority to another party committee. 2 U.S.C. §441a(d) and 11 CFR §§109.32(b) and 109.33(a) and (b).

Facts and Analysis

A. Automated Phone Banks

1. Facts

TDP paid \$36,400 for two automated phone bank programs. The phone scripts for both programs refer to a clearly identified candidate running for federal office. The reported Levin share of this expense was \$28,756 ($\$36,400 \times 79\%$).

The first phone script was narrated by the Governor of Tennessee (Governor Script), who was running for re-election. He asked for “your support and your vote.” He also asked that “you support Harold Ford, Jr.,” and continued to speak on his behalf. He closed by stating, “vote for me, Harold Ford, Jr., and all of our great democratic candidates running for election.” The script concluded with a second speaker stating, “paid for by the Tennessee Democratic Party” and “approved and authorized by Harold Ford, Jr. for Tennessee.” The cost of the program was \$18,900.

The second phone bank script was narrated by former president Bill Clinton (Clinton Script). He asked that “everyone go to the polls and take someone with you who hasn’t voted.” He also stated that “Tennessee has an historic chance to send Harold Ford, Jr. to the United States Senate,” and continued talking on his behalf. He ended by telling “everyone to go to the polls and vote.” The script concluded with a second

speaker stating, "paid for by the Tennessee Democratic Party" and "approved and authorized by Harold Ford, Jr. for Tennessee." The cost of the program was \$17,500.

The contracts for each phone bank program were signed by Jim Hester, representing TDP, Hester's email addresses at both TDP and at the candidate's campaign headquarters were listed on one of the contracts, and prior to the date of each contract Mr. Hester was employed by the Ford Committee.

2. Interim Audit Report & Audit Division Recommendation

In the Interim Audit Report, the Audit staff questioned whether the cost of phone banks whose scripts referred to a clearly identified candidate running for federal office could be allocable federal election activity. The Audit staff also questioned whether the automated phone program was coordinated with Harold Ford, Jr. for Tennessee (the "Ford Committee"), because: (1) each script concluded with the statement that the call was paid for by the Tennessee Democratic Party, and approved and authorized by Harold Ford, Jr. for Tennessee, and (2) Mr. Hester's involvement.

As coordinated expenditures, the Audit staff allocated the cost of the Governor Script among candidates as follows: one-third Governor, one-third Harold Ford, Jr., and one-third to all other (unnamed) candidates running for election. On that basis, \$6,300 ($\$18,900 \times 33\%$) would represent a coordinated expenditure on behalf of Harold Ford, Jr. Further, since Harold Ford, Jr. is the only candidate named in the Clinton Script, the entire cost (\$17,500) would represent a coordinated expenditure on behalf of Harold Ford, Jr.

In 2006, TDP's coordinated expenditure limit for a United State Senate candidate was \$362,200. The national party committee had the same limit, which was assigned to TDP. Therefore, TDP could make coordinated expenditures on behalf of Harold Ford, Jr. in the amount of \$724,400.

TDP reported on Schedule F (Itemized Coordinated Party Expenditures) coordinated party expenditures on behalf of Harold Ford, Jr. totaling \$712,459. With the addition of the cost of the automated phone bank (\$23,800 [$\$6,300 + \$17,500$]) and bottled water (See section C. Campaign Rallies) \$900,² it appeared that TDP exceeded the limitation by \$12,759 ($\$737,159 - \$724,400$).

This matter was discussed at the exit conference. TDP's response to the exit conference did not address automated phone banks.

The Audit staff recommended that TDP demonstrate that the automated phone banks represent federal election activity, or file amended reports disclosing the expenditures as coordinated party expenditures on behalf of Harold Ford, Jr.

² TDP also agreed that the cost of bottled water labeled Ford for Tennessee represented a coordinated party expenditure.

3. Committee Response to Interim Audit Report

In response, Counsel for TDP (Counsel) acknowledged that the automated phone calls included advocacy for a Federal candidate and should not have been disclosed on Schedule H6. Accordingly, TDP filed amended reports to disclose 50% of the cost of the Governor Script on Schedule B (\$9,450) and 50% on Schedule F (Itemized Coordinated Party Expenditures). The entire cost of the Clinton Script was disclosed on Schedule F.

4. Draft Final Audit Report

The Audit staff and Counsel agreed that the expenditures were coordinated and reportable on Schedule F, although TDP has concluded that 50% of the cost of the Governor's Script represented coordinated spending, whereas, the Audit staff concluded a lesser percentage (33%). TDP's allocation was acceptable.

The normal remedy would have been for the Ford Committee to reimburse TDP \$12,759. However, since the Ford Committee transferred \$154,000 in excess campaign funds to TDP on November 6, 2006, the Audit staff considered this matter to have been timely resolved.

The Audit staff recommended that the Commission adopt the finding that TDP misreported expenditures for the automated phone banks and bottled water as allocable federal activity, rather than coordinated expenditures. Accordingly, the Audit staff recommended that the Commission further adopt the finding that these expenses resulted in TDP exceeding its coordinated party expenditure limit by \$12,759. However, as a result of a prior transfer from the Ford Committee to TDP, the Audit staff recommended that the Commission also adopt the finding that TDP is not required to take further corrective action with regards to these expenditures.

Commission Conclusion

The Commission approved the finding of the Audit Division with respect to automated phone banks and custom-labeled bottled water.

B. Polls

1. Facts

TDP paid \$24,500 for two statewide tracking polls conducted during the period October 14, 2006, through October 28, 2006. TDP reported allocating these costs as 21% federal and 79% Levin. The reported Levin share of this expense was \$19,355 (\$24,500 x 79%).

The poll program consisted of telephone interviews of 1,200 likely voters in October 2006. Poll questions related to candidates running for election to the United States Senate and candidates for Governor of Tennessee. Among the questions asked of callers were: if they favored either of the federal candidates; whether they would vote for a certain federal candidate if the election were held that day; their opinion of attack ads against one of the federal candidates; and, their opinions of various positions of each federal candidate.

2. Interim Audit Report & Audit Division Recommendation

The proper classification of the polling expenses was discussed at the exit conference. TDP's response to the exit conference did not address the polls.

In the Interim Audit Report, the Audit staff questioned whether TDP's expenditures for these polls should have been made entirely from the Federal account rather than being reported as allocable federal election activity.

The Interim Audit Report recommended that TDP demonstrate that each payment represented allocable federal election activity or file amended reports properly disclosing the payments.

3. Committee Response to Interim Audit Report

In response, Counsel acknowledged that the cost of the polls should not have been reported on Schedule H6 but indicated this cost should have been reported on Schedule H4 as a shared operating expenditure. Counsel further stated that, the tracking polls were conducted to get a sense of issues and voting trends based on general polling principles; the polls did not promote, support, attack or oppose any federal candidate; the polls did not constitute generic campaign activity; the polls did not constitute voter registration activity; the polls did not constitute get-out-the-vote activity; and, most importantly, the polls did not constitute voter identification activity.

TDP amended its reports to reflect the cost of the polls on Schedule H4; allocating \$5,145 (21%) to the federal account and \$19,355 (79%) to the non-federal account.

4. Draft Final Audit Report

In the Draft Final Audit Report, it remained the opinion of the Audit staff that the cost of the polls represented federal election activity that should have been paid solely by the federal account and not allocated as a shared activity. The Audit staff reasoned that the telephone interviews of 1,200 likely voters occurred within the FEA time frame, and represented a public communication that referred to clearly identified candidates for federal office that promoted, attacked, supported or opposed the candidates.

5. Audit Hearing

TDP requested a hearing before the Commission. The request was granted and the hearing was held on November 4, 2009. Counsel stated that no information obtained from the polls was posted to the party's voter files and that a legitimate survey poll with a limited number of respondents should not be considered a public communication and, therefore, federal election activity. Counsel stated that the purpose of these surveys was to test messages for future activities, not to persuade those contacted. He noted that contacting such small numbers of persons using an extensive list of questions is not an effective way to persuade voters.

Commission Conclusion

On April 29, 2010, the Commission considered the Audit staff's recommendation that the Commission adopt the finding that the cost of the polls represented federal election

activity and should have been disclosed on Schedule B, Line 21b as Other Federal Operating Expenditures.

The Commission concluded that the cost of the polls were properly reported on Schedule H4 as shared operating expenditures as TDP had done in response to the Interim Audit Report. Three Commissioners reasoned that legitimate survey polls do not constitute general public political advertising and, therefore, are not public communications. Three Commissioners reasoned that polls that test both positive and negative messages about the same candidate neither "promote" nor "support" nor "attack" nor "oppose" that candidate for the purposes of 2 U.S.C. 431(20)(A)(iii) (the definition of public communications that are federal election activity). Since the polls are not federal election activity in the view of these Commissioners, the polls cannot be non-allocable federal election activity under 2 U.S.C. 441i(b)(1) and 11 CFR 300.33(c).

C. Campaign Rallies

1. Facts

TDP reported as get-out-the-vote activity on Schedule H6 payments for 12 invoices totaling \$37,421 for campaign rallies.

The invoices were dated in October 2006, and were for items such as tents, staging, refreshments, audio, parking, and clean-up. The 12 invoices referenced the Harold Ford campaign. For example, the invoices denoted, "Bill to Harold Ford Jr." or "Prepared for Harold Ford for Senate Campaign" or "Sold to Harold Ford Jr. Campaign." One invoice described the event name as a "Political Rally for Harold Ford, Jr." Among these invoices is the \$900 invoice for custom-labeled bottled water discussed above – the label read "Ford for Tennessee Bottled Water."

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff questioned whether the payments were for get-out-the-vote activity because the rallies appeared to benefit Harold Ford, Jr. The Audit staff noted that the invoices contained notations indicating that they were either, billed to, prepared for, or sold to the Ford Committee, and appeared to represent expenditures for Ford Committee rallies. TDP representatives received copies of the documentation in order to further review the issues.

In response to the exit conference, TDP submitted a signed statement from the former director of Tennessee Victory 2006 (Randy Button) that addressed four campaign rally invoices, totaling \$17,401. With respect to each, he stated Tennessee Victory 2006 expenditures were incorrectly invoiced to the Harold Ford Jr. campaign, the expenditures were related to get-out-the-vote activities, the activities were not planned or conducted in coordination with any federal candidate, and no federal candidate attended these events.

In the Interim Audit Report, the Audit staff analyzed these disbarments as coordinated party expenditures on behalf of Harold Ford, Jr.

The Interim Audit Report recommended that TDP demonstrate that expenditures for campaign rallies represented allocable federal election activity and not coordinated party expenditures on behalf of Harold Ford, Jr.

3. Committee Response to Interim Audit Report

In response, Counsel stated that TDP believed the invoices represented generic campaign activity, that it was not uncommon for vendors to confuse a party organization with the campaign of a candidate, and that the invoices were incorrectly sent to the Harold Ford campaign. The response also included a second declaration from the Director of Tennessee Victory 2006, a project of the Tennessee Democratic Party. He stated that of the twelve invoices, eleven were incorrectly invoiced to the Harold Ford campaign. TDP agreed that the remaining invoice for custom-labeled bottled water was a coordinated expenditure and amended its reports to disclose this expense on Schedule F.

4. Draft Final Audit Report

After considering TDP's response, the Audit staff, based on the review of the invoices, did not accept that the vendors mistakenly invoiced the Ford Committee (instead of the TDP). The Audit staff, therefore, maintained that the payments for these events represented coordinated party expenditures.

5. Audit Hearing

TDP requested a hearing before the Commission. The request was granted and the hearing was held on November 4, 2009. At the hearing, Counsel reiterated that it is TDP's belief that all but one of the 12 invoices identified by the Audit staff erroneously identified the Ford campaign as having been involved in the transactions and argued that such mistakes are common. The invoices from the 11 vendors represent at least 5 separate events.

Counsel also objected to what he termed the cursory dismissal of Tennessee Victory 2006 Director's representations concerning the rallies. The Declaration of Tennessee Victory 2006's former director Randy Button generally explained his belief that the invoices were incorrectly invoiced to the Ford campaign. Mr. Button stated that in his experience it is common for vendors to make such mistakes, but did not indicate his personal knowledge concerning any of the activities that occurred at the events, if any of the materials displayed at the event mentioned Mr. Ford's campaign, or whether Mr. Ford was mentioned at the events. Counsel was unable to provide any further information at the hearing.

Commission Conclusion

On April 29, 2010, the Commission considered the Audit staff's recommendation that the Commission adopt the finding that the cost of the campaign rallies represented coordinated party expenditures and should have been disclosed on Schedule F as Itemized Coordinated Party Expenditures made on behalf of candidates for federal office.

The Commission concluded that, with the exception of custom-labeled bottled water that identified a specific federal candidate, there was insufficient evidence regarding the

rallies to determine whether or not they were allocable federal election activity. The Commission concluded that TDP is not required to take corrective action with respect to this issue.

Finding 2. Disclosure of Disbursements

Summary

During audit fieldwork, a sample review of itemized expenditures revealed that for approximately 18% of the items tested TDP did not disclose the payee's address. In response, TDP filed amended reports that materially disclosed the missing information. The Commission approved this finding.

Legal Standard

Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

Facts and Analysis

A. Facts

During audit fieldwork, a sample review of itemized expenditures revealed that for 18% of the items tested, TDP did not disclose the payee's address. The majority of the disbursements lacking addresses related to canvassers whose mailing address was noted in TDP's records.

B. Interim Audit Report & Audit Division's Recommendation

This matter was addressed during the exit conference. TDP representatives had no significant comments. Therefore, the Audit staff recommended that TDP file amended reports to disclose the missing information.

C. Committee Response to the Interim Audit Report

TDP's response explained that it had, "made extensive efforts to locate this missing information and will file amendments to its reports to include the addresses which it has located." TDP filed amended reports that materially disclosed the missing information.

D. Draft Final Audit Report

The Audit staff recommended that the Commission adopt the finding that TDP failed to disclose the payees' addresses for certain itemized expenditures, but that these disclosure errors were materially corrected by TDP's subsequent amendments of the reports at issue.

Commission Conclusion

The Commission approved the finding of the Audit Division with respect to disclosure of disbursements.