

SANDLER, REIFF, YOUNG & LAMB, P.C.

September 23, 2011

Mr. Thomas Hintermeister
Acting Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Hintermeister:

This letter, and attached exhibits will serve as the response of the Democratic Executive Committee of Florida ("DECF") to the Interim Audit Report ("Audit Report") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the DECF's financial activities for 2007 and 2008.

The response to each of the Audit Division's three findings is as follows:

Finding #1

The Audit Division's first finding relates to an apparent excessive coordinated party expenditure on behalf of Annette Taddeo. The Audit report correctly states that the DECF reported coordinated expenditures of \$95,108 on behalf of Annette Taddeo, candidate for Congress in 2008. This amount is broken out into two parts. First, the DECF reported making coordinated expenditures of \$82,400 for media on behalf of Annette Taddeo. This amount was reported on Line 25 and the committee utilized its own coordinated expenditure limit of \$42,100, as well as a portion of the coordinated expenditure limit that was assigned by the Democratic National Committee to the Democratic Congressional Campaign Committee ("DCCC"). Prior to making these expenditures, the DCCC sent a letter to the DECF assigning \$17,900 of the coordinated expenditure limit to the DECF. According to the records of the DCCC and DECF, no additional letter assigning authority to the DECF can be found. However, it is our understanding that the DCCC had intended to assign additional authority to the DECF to make additional expenditures. This belief is reinforced by the fact that the DCCC made no additional coordinated expenditures on behalf of Annette Taddeo. Thus, total expenditures on behalf of Annette Taddeo did not exceed the combined limit of \$84,200 for both the DECF and DCCC. Attached as Exhibit A, please find a letter from Brian Svoboda, counsel to the DCCC that acknowledges that the DCCC did not use this authority and that it is his belief that it was the DCCC's intent that the authority be transferred to the DECF.



With respect to the two mail pieces discussed by the Interim Audit report, these pieces were actually prepared with substantial volunteer participation. Therefore, the mailings were covered under the volunteer activities exemption pursuant to 2 U.S.C. §§ 431(8)(B)(ix) & (9)(B)(viii). Attached as Exhibit B, please find a picture provided to the party from Matt Blizek, who was present at the mailing.¹ In the picture you can see a copy of one of the mailings reviewed by the Audit Division. In the background of the picture, you can see several volunteers working on sorting and bundling of the mail. Although this is the only documentary evidence that the DECF was able to locate, it is our understanding that, for each mailing identified by the Audit Division, that sufficient volunteer activity occurred, including the bundling and sorting of the mail and placing the mail in trays for delivery to the post office. Under the most recent enforcement matters considered by the Commission, this is sufficient substantial volunteer activity to meet the requirements of the volunteer exemption. See Matters Under Review 5824 and 5825; MUR 5841. Notwithstanding the above, it is our understanding that the Commission has indicated that it will, in the future, provide more clear guidance as to the necessary level of volunteer activity in exempt mailings. See Final Audit Report of the Washington State Democratic State Central Committee, 2004 Election Cycle, p. 12.²

Finding #2

In this finding, the Audit Division noted that the DECF had made certain reporting errors with respect to the reporting of coordinated expenditures for federal candidates. The report notes that the DECF has already filed amendments that materially correct these errors.

Finding #3

Finding 3 questions whether several aspects of allocation of certain expenditures by the DECF were properly paid for or overpaid with non-federal funds. We address each portion of the Audit Report's finding below:

- 1) Overpayment of the non-federal share of allocable expenses – The Audit Report states that the DECF has over-transferred \$20,260 in non-federal funds during the two-year period covered by the election cycle in connection with allocable activities undertaken in accordance with 11 C.F.R. § 106.7. Although the committee's practice was to make transfers related only to actual expenditures, it cannot locate any documentation to refute the Audit Report's claim of this over-transfer. The committee has transferred this amount from its federal account to its non-federal account.
- 2) Absentee Chase Ballot – The Audit Report claims that the DECF made a payment of \$3,745 from non-federal funds for an absentee-chase ballot. The DECF does not dispute this finding. The committee has transferred this amount from its federal account to its non-federal account.

¹ Although only one picture was provided by Mr. Blizek, the attached email indicates that several other pictures were lost when he switched cell phones.

² It should be noted that, in March of 2010, the Commission failed to reach a consensus on a proposed policy relating to the volunteer materials exemption. See FEC Agenda Document No. 10-16

- 3) Creole Translators – The Audit states that a payment for to Alix Desulme & Associates for Creole and Haitian translators should have been paid for with federal funds and not directly from a non-federal account. Although the DECF agrees that this expense should not have been paid exclusively with non-federal funds, it believes the appropriate federal allocation should have been only 28% of the total amount of \$17,240, or \$4,827. Although the DECF acknowledges that this expense should not have been paid for from its non-federal account, the DECF believes that this expenditure was not a get-out-the-vote (“GOTV”) activity as defined by the definition that was in place during the 2008 election cycle.

11 C.F.R. § 100.24(a)(3) stated:

Get-out-the-vote activity means contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. Get-out-the-vote activity includes, but is not limited to: (i) Providing to individual voters information such as the date of the election, the times when polling places are open, and the location of particular polling places; and (ii) Offering to transport or actually transporting voters to the polls.

In this instance, the translators were sent to polling places to provide non-partisan translation assistance to Creole and Haitian speaking voters who were already at the polling place and required English translation services. Thus the translators were there merely as a bridge between voters already present at the polls that needed a translator to understand voting procedures and voting rights, or to interact with voting officials.

Thus, it is our view that the GOTV definition does not cover such translation services, but rather, is an ordinary operating expense of the DECF subject to the committee’s 28%/72% allocation ratio.

The Commission explained in its initial definition of get-out-the-vote that the rule had a very specific purpose:

GOTV has a very particular purpose: assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means provided by law. 67 Fed. Reg. 49067 (July 29, 2002) (emphasis added).

Therefore, it is clear that the GOTV definition that was contemplated by the Commission in 2002 (amendments to the definition in 2006 did not change this overarching goal) was not intended to cover such non-partisan services provided to individual voters who had already arrived at the poll, but rather, targeted attempts to provide voting information to the potential voter or physical transportation to the polls that would make it more likely for an individual voter to send back an absentee ballot or make it more likely that the voter will travel to their polling place to cast a

vote. Accordingly, the DECF has transferred 28% of the amount cited in the Audit Report (\$4,827) from its federal account to its non-federal account.

- 4) Rent Payments – The Audit Report concludes that a portion of rent paid by the DECF that was paid for by the non-federal account should have been paid as an allocable expense. The DECF disagrees with this characterization and believes that it paid for the rent appropriately with non-federal funds. The DECF has, for several years, served as the fiscal agent for both the State House Caucus and State Senate Caucus organizations.³ These Caucus Committees serve as the campaign arm of the Democratic legislators for both the Florida State House and Senate. Due to requirements of state law, the state party was required to serve as fiscal agent for both the House and Senate Democratic Caucus committees. Each Caucus committee is responsible for raising its own funds and administering its own budget, established in consultation with the DECF, which can only be utilized for state elections to the Florida House of Representatives and the Florida Senate. Although each staff member for each Caucus Committee is an employee of the DECF, they are employed in consultation with the leaders of each respective caucus. In this circumstance, the DECF believes that the Commission's allocation regulations should not apply to the payment of rent for the share of space utilized by the Caucus committees.

Although the Audit Report argues that the full rent should be subject to the Commission's allocation regulations, such an application should only be appropriate when the space is used by ordinary staff of the DECF. To be sure, the regular DECF staff work on both federal and non-federal elections and the allocation ratios established by the Commission were intended to cover those activities undertaken by party staff, and not those undertaken by any autonomous units of the party whose sole purpose is to influence non-federal elections.

As a matter of law, the Federal Election Campaign Act and Commission regulations do not consider a caucus committee as a party committee. Furthermore, Congress, during its 2002 amendments, amended the FECA to specifically cover Caucus committees separately in certain circumstances. None of the provisions added to the FECA or the Commission's regulations cover the ordinary administrative expenses of a Caucus committee. For example, the Commission's regulations, at 11 C.F.R. § 300.2, specifically require a caucus committee to pay for certain activities that qualify as a Federal Election Activity with funds that meet the prohibitions and limitations of the Federal Election Campaign Act (implementing 2 U.S.C. § 441i(b)(1)).⁴ Of course, the Audit Report does not allege that the rent payments are Federal Election Activity, but rather, should be considered regular allocable activity under 11 C.F.R. § 106.7. However, § 106.7 does not require the allocation of

³ The DECF's role as fiscal agent was not a choice by the House and Senate Caucus committees, but rather, mandated by Florida state law, which, until 2011, did not permit a Caucus committee to have a separate legal existence. See Ch. 2011-6, Council Substitute for Committee Substitute for House Bill No. 12017, Laws of Florida.

⁴ The Caucus committees are presumably included in the term "association or similar group of state or local candidates or of individuals holding state or local office."

ordinary expenses incurred by a Caucus committee and that conclusion should not change merely because the Caucus committee uses the DECF as a financial agent. It would be patently unfair to the House and Senate Caucus committees and the DECF to treat them in a disparate manner as other Caucus Committees merely because the Caucus committees were required, under state law, to maintain a direct fiscal arrangement with the DECF.

- 5) Employee Time Logs – The Audit Report claims that the Commission was unable to locate or the DECF was unable to produce time logs for six employees⁵ that would document that those employees did not spend in excess of 25% of their time on federal activity during certain months covered by the Audit Report. Attached as Exhibit C, please find both logs and declarations by the covered employees that demonstrate that none of the employees spent in excess of 25% of their time on federal activity or activities in connection with a federal election.
- 6) Fundraising Expenses – The Audit Report states that the DECF may have transferred an excessive amount of non-federal funds in connection with shared fundraising activity. This determination was based upon allocation ratios provided by the DECF and actual splits based upon the Audit Division's review. The DECF does not dispute this finding. The DECF has transferred \$14,637 to comply with the Audit Report's recommendation.

Based upon the above, the DECF concedes that it is required to transfer \$43,469 from its federal account to its non-federal account. The DECF has provided sufficient documentation to demonstrate that the \$23,172 was properly paid for with non-federal funds. The DECF disputes the remaining portion of the Commission's findings totaling \$40,895.

Findings #4 & #5

The DECF has amended its reports to correct reporting errors identified in the Audit Report for these findings.

⁵ The Interim Audit Report states that the committee lacked documentation for six employees. However, based upon the documentation provided to the committee during the Exit Conference Interview, it appears that nine employees were included in the Audit Division's analysis. Therefore, the committee has provided declaration six employees and time logs for two others. Please note that for a ninth employee, Christopher Harris, payroll was reported on Schedule H4, but was voided. No transfer of non-federal funds was made for this employee.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil Reiff', written over a horizontal line.

Neil Reiff
Counsel to the Democratic Executive
Committee of Florida