



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 26, 2012

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director

From: Patricia Carmona *PC*
Chief Compliance Officer

Tom Hintermister *TH*
Assistant Staff Director
Audit Division

Martin Favin *MLF*
Audit Manager

By: Camilla Remiński *CR*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the National Right to Life Political Action Committee (NRLPAC) (A09-19)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations *butw* and discusses the findings in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

NRLPAC submitted its response to the DFAR and requested an audit hearing on December 21, 2011. On February 15, 2012, NRLPAC presented certain matters at an audit hearing before the Commission.

Finding 1. Misstatement of Financial Activity

The Audit staff recommends that the Commission find that NRLPAC misstated its financial activity for calendar years 2007 and 2008.

NRLPAC stated that the misstatement was the result of a bookkeeping error and explained that it became aware of this reporting error due to a negative cash-on-hand balance on the FEC reports. NRLPAC discovered the cause of the error shortly before it received the Audit Notification Letter. The Audit staff

recommends that the Commission approve inclusion of NRLPAC's explanation in the "Audit Hearing" section of the Proposed Final Audit Report (PFAR).

Finding 2. Disclosure of Occupation and Name of Employer

The Audit staff recommends that the Commission remove this finding from the PFAR.

During the audit hearing, NRLPAC provided clarification with respect to its best efforts in obtaining contributor occupation and/or name of employer information. More specifically, NRLPAC explained how its contributor database recorded whether NRLPAC had sent a follow-up letter to contributors requesting the missing information. This information, in addition to the significant number of follow-up letters sent by NRLPAC, sufficiently demonstrated that NRLPAC complied with the best efforts requirements at 11 CFR §104.7(b).

Scope Limitation.

The Audit staff recommends that the Commission approve the following revised scope limitation in the PFAR:

NRLPAC satisfied the minimum recordkeeping requirements for 11 CFR §102.9 concerning disbursements. However, some of the disbursement records did not contain information necessary to verify the reporting of certain information pertaining to independent expenditures pursuant to 11 CFR §104.4 or the reporting of debts and obligations pursuant to 11 CFR §104.11.

In order to determine whether notices for independent expenditures (radio and print ads) were required to be filed, the Audit staff needed invoices or broadcast station affidavits containing enough information to associate a dissemination date with a particular independent expenditure. In addition, the documentation provided to the auditors did not always detail the costs spent on behalf of each candidate; nor did the documents always contain information as to which ads were aired or when a specific ad was run or mailer was sent.

To verify the accuracy of debt reporting, the Audit staff needed dated invoices to determine whether they were required to be disclosed as a debt based on the dates of incurrence noted on the invoices.

In its response to the DFAR and during the audit hearing, NRLPAC disagreed with the scope limitation presented in the DFAR. At the hearing, NRLPAC counsel maintained that the committee had provided documentation for 83% of the media buys for its independent expenditures to the Audit staff and that these station affidavits indicated the dates that the stations broadcasted the commercials.

The Audit staff does not dispute that NRLPAC provided many of the missing records by the end of audit fieldwork. However, the documentation provided did not always contain enough information to verify dissemination dates; nor did it always break down the costs spent on behalf of each candidate. In addition, the affidavits were not always clear as to which ads were aired or when a specific ad was actually run. As a result, the Audit staff was unable to complete its testing in this area.

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

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Camilla Reminsky or Martin Favin at 694-1200.

Attachments:

- Draft Final Audit Report of the Audit Division on the National Right to Life Political Action Committee
- Office of General Counsel comments on Audit Division Recommendation Memorandum on the National Right to Life Political Action Committee (A09-19)

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the National Right to Life Political Action Committee

January 1, 2007 – December 31, 2008

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 National Right to Life Political Action Committee is a separate segregated fund of the National Right to Life Committee and is headquartered in Washington, DC. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ From Individuals	\$ 3,662,627
○ From Other Political Committees	9,850
○ Offsets to Operating Expenditures	4,051
Total Receipts	\$ 3,676,528
• Disbursements	
○ Operating Expenditures	\$ 567,680
○ Independent Expenditures	2,804,925
○ Contributions to Other Committees	13,750
Total Disbursements	\$ 3,386,355

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation and Name of Employer (Finding 2)

¹ 2 U.S.C. §438(b).

**Draft Final Audit Report of the
Audit Division on the
National Right to Life Political
Action Committee**

January 1, 2007 – December 31, 2008



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Part I Background

Authority for Audit

This report is based on an audit of the National Right to Life Political Action Committee (NRL PAC), 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

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

1. the disclosure of disbursements, debts and obligations;
2. the disclosure of individual contributors, occupation and name of employer;
3. the consistency between reported figures and bank records;
4. the completeness of records; and
5. other committee operations necessary to the review.

Limitations

In maintaining its disbursement records, NRL PAC satisfied the minimum recordkeeping requirements of 11 CFR §102.9. However, external documentation, such as invoices and broadcast station affidavits, were not available for review. In order to determine whether or not debts and obligations were paid in a timely manner or should have been reported as debts, the Audit staff needed to see dated invoices. The invoice dates would indicate when the debt was incurred and whether it was required to be reported under 11 CFR §104.11.

Similarly, in order to determine if notices of independent expenditures were required to be filed under 11 CFR §104.4, the Audit staff needed to see invoices or broadcast station affidavits that contained the dates of dissemination of these independent expenditures. Without the proper documentation disclosing those dates of dissemination, the Audit staff was unable to ensure that all notices of independent expenditure were filed timely.

Part II Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 12, 1979
• Audit Coverage	January 1, 2007 - December 31, 2008
Headquarters	
Washington, DC	
Bank Information	
• Bank Depositories	One
• Bank Accounts	Two
Treasurer	
• Treasurer When Audit Was Conducted	Carol Tobias (October 29, 2009 - June 9, 2011) Joseph M. Landrum (June 10, 2011 - Present)
• Treasurer During Period Covered by Audit	Amarie Natividad (January 1, 2007 - September 3, 2008) Carol Tobias (September 4, 2008 - December 31, 2008)
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2007	\$ 481,805
Receipts	
o From Individuals	\$ 3,662,627
o From Other Political Committees	9,850
o Offsets to Operating Expenditures	4,051
Total Receipts	\$ 3,676,528
Disbursements	
o Operating Expenditures	\$ 567,680
o Independent Expenditures	2,804,925
o Contributions to Other Committees	13,750
Total Disbursements	\$ 3,386,355
Cash-on-hand @ December 31, 2008	\$ 771,978

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of NRL PAC's reported figures with bank records revealed a misstatement of receipts and cash-on-hand in 2007 and disbursements and cash-on-hand in 2008. In 2007, NRL PAC overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624 and overstated ending cash-on-hand by \$104,632. In 2008, NRL PAC overstated disbursements by \$1,437,635 and understated the ending cash-on-hand by \$1,300,378. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports, properly disclosing 2007 and 2008 activity. The NRL PAC treasurer stated that NRL PAC would reconcile its most recently reported cash balance and amend its cash balance on the next disclosure report filed.

In addition, the original reports filed by NRL PAC for 2007 and 2008 revealed an overstatement of disbursements in the amount of \$687,536. NRL PAC did not submit any additional information or written comments in response to the Interim Audit Report.

(For more detail, see p. 4)

Finding 2. Disclosure of Occupation and Name of Employer

During audit fieldwork, a review of contributions from individuals revealed that 1,044 contributions totaling \$146,115 lacked disclosure of the contributor's occupation and/or name of employer. In addition, NRL PAC did not document "best efforts" to obtain, maintain and submit information for most of these contributions. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports disclosing additional information received from contributors. (For more detail, see p. 7)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of NRL PAC's reported figures with bank records revealed a misstatement of receipts and cash-on-hand in 2007 and disbursements and cash-on-hand in 2008. In 2007, NRL PAC overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624 and overstated ending cash-on-hand by \$104,632. In 2008, NRL PAC overstated disbursements by \$1,437,635 and understated the ending cash-on-hand by \$1,300,378. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports, properly disclosing 2007 and 2008 activity. The NRL PAC treasurer stated that NRL PAC would reconcile its most recently reported cash balance and amend its cash balance on the next disclosure report filed.

In addition, the original reports filed by NRL PAC for 2007 and 2008 revealed an overstatement of disbursements in the amount of \$687,536. NRL PAC did not submit any additional information or written comments in response to the Interim Audit Report.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts), Schedule B (Itemized Disbursements) or Schedule E (Itemized Independent Expenditures). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Misstatement of Activity in Amended Reports as Compared with Bank Records

1. Facts

During audit fieldwork, The Audit staff reconciled reported activity with bank records for calendar years 2007 and 2008. The following charts outline the discrepancies for the beginning and ending cash balances, receipts and disbursements for each year. Succeeding paragraphs address the reasons for the misstatements, if known.

2007 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2007	\$612,737	\$481,805	\$130,932 Overstated
Receipts	\$53,518	\$83,142	\$29,624 Understated
Disbursements	\$102,265	\$105,589	\$3,324 Understated
Ending Cash Balance @ December 31, 2007	\$563,990	\$459,358	\$104,632 Overstated

The overstatement of the beginning cash-on-hand by \$130,932 likely resulted from prior period discrepancies.

The understatement of receipts resulted from the following:

• Bank interest not reported	\$14,771
• Vendor refunds for radio ads not reported	4,051
• Unexplained difference	<u>10,802</u>
Understatement of receipts	<u>\$ 29,624</u>

The misstatements described above resulted in a \$104,632 overstatement of the ending cash-on-hand.

2008 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2008	\$563,990	\$459,358	\$104,632 Overstated
Receipts	\$3,626,011	\$3,593,386	\$32,625 Overstated
Disbursements	\$4,718,401	\$3,280,766	\$1,437,635 Overstated
Ending Cash Balance @ December 31, 2008	\$(528,400)	\$771,978	\$1,300,378 Understated

The overstatement of disbursements resulted from the following:

• Unreported disbursements	\$ 184,070
• Disbursements to printing vendor reported twice	(1,526,656)
• Over-reported disbursements	(80,357)
• Unexplained difference	<u>(14,692)</u>
Net overstatement of disbursements	<u>\$ 1,437,635</u>

The duplicate reporting of \$1,526,656 in disbursements to the printing vendor was due to incorrect reporting of independent expenditures. NRL PAC paid for these independent

expenditures in advance of the dissemination dates. NRL PAC should have reported these advance payments on Schedules B, Line 21b, as operating expenditures. Once the committee distributed the printed materials, it should have subtracted the amount of these expenditures from Line 21b and reported them as independent expenditures on Schedule E. NRL PAC correctly reported these expenditures on Line 21b when the payments were made, then correctly disclosed the independent expenditures on Schedule E upon dissemination of the materials. However, NRL PAC failed to subtract the amount of the independent expenditures from Line 21b.

The misstatements described above resulted in a \$1,300,378 understatement of the ending cash-on-hand.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with NRL PAC representatives during the exit conference and provided copies of relevant work papers detailing the misstatements. NRL PAC representatives stated that the committee would file the necessary amended reports. Amended reports filed by NRL PAC after the exit conference corrected some, but not all, of the misstatements.

The Interim Audit Report recommended that NRL PAC:

- amend its reports to correct the misstatements noted above;
- reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments; and
- adjust cash as necessary on its most recent report, noting that the adjustment is the result of prior period adjustments.

3. Committee Response to Interim Audit Report

NRL PAC filed amended 2007 and 2008 reports to properly disclose activity as recommended. In a subsequent communication with the current NRL PAC treasurer, he stated that the committee would reconcile the most recent cash balance and include the revised figure on the next report filed to comply with the recommendation.

B. Misstatement of Activity Reported on Original Reports as Compared with Bank Records

1. Facts

In addition to examining the most recent reports filed by NRL PAC prior to the audit, the Audit staff compared the original reports filed with the bank records and discovered a \$687,536 overstatement of disbursements in 2007 and 2008. This misstatement was largely due to the incorrect reporting of independent expenditures as noted above.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with NRL PAC representatives during the exit conference and provided copies of relevant work papers detailing the misstatements.

The Interim Audit Report recommended that NRL PAC submit any additional information or written comments it considers relevant to the matter.

3. Committee Response to Interim Audit Report

NRL PAC did not submit any additional information or written comments regarding this matter.

Finding 2. Disclosure of Occupation and Name of Employer

Summary

During audit fieldwork, a review of contributions from individuals revealed that 1,044 contributions totaling \$146,115 lacked disclosure of the contributor's occupation and/or name of employer. In addition, NRL PAC did not document "best efforts" to obtain, maintain and submit information for most of these contributions. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports disclosing additional information received from contributors.

Legal Standard

A. Disclosure of Receipts. For each itemized contribution, the committee must provide:

- the full name and address (including zip code) of the contributor or other source;
- the name of the contributor's employer (if the contributor is an individual);
- the contributor's occupation (if the contributor is an individual);
- the election to which a contribution or loan was designated;
- the date of receipt;
- the amount; and
- the aggregate election cycle to-date of all receipts (within the same category) from the same source. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A).

B. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(i).

C. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - a clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - the statement that such reporting is required by Federal law.
- Within 30 days of receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

Facts and Analysis

A. Facts

A review of itemized contributions from individuals revealed that 1,044 contributions totaling \$145,615, or 29 percent, of the dollar value of individual contributions itemized by NRL PAC, lacked disclosure of the contributor's occupation and/or name of employer. NRL PAC disclosed most of these contributions with the notation "requested" or "Information Requested."

For 708 of these contributions totaling \$92,416, the committee provided no evidence that it had exercised "best efforts" to obtain, maintain and submit the information. This represents the majority of the individual contributions lacking the required information. For the remaining 336 (1,044 - 708) contributions totaling \$53,699, NRL PAC obtained the required information. It did not, however, amend its reports to disclose the additional information.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter to NRL PAC representatives at the exit conference, along with the appropriate work papers. In response, NRL PAC counsel stated that appropriate amended reports would be filed. Amended reports filed by NRL PAC after the exit conference reduced the dollar value of errors to \$136,330, or 27 percent of the dollar value of individual contributions itemized by NRL PAC.

The Audit staff recommended that NRL PAC take the following actions:

- provide documentation that it exercised best efforts to obtain, maintain and submit the required contributor information; or
- make an effort to contact those individuals lacking the required contributor information and provide documentation of such efforts (such as copies of letters/emails to the contributors and/or phone logs); and
- file amended Schedules A (Itemized Receipts) to disclose contributor information in NRL PAC's possession as well as contributor information obtained in response to this recommendation.

C. Committee Response to Interim Audit Report

In response, NRL PAC filed amended Schedules A that materially corrected the missing contributor information.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 2012

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

Tom Hintermister
Assistant Staff Director
Audit Division

FROM: Christopher Hughey *pch*
Deputy General Counsel

Lawrence L. Calvert, Jr. *LC*
Associate General Counsel
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Lorenzo Holloway *LH by MJF*
Assistant General Counsel
Public Finance and Audit Advice

Margaret J. Forman *mjf*
Attorney

SUBJECT: Audit Division Recommendation Memorandum on the National
Right to Life Political Action Committee (LRA 812)

The Audit Division has submitted for our review the Audit Division Recommendation Memorandum ("ADRM") on the National Right to Life Political Action Committee ("NRLPAC"). The ADRM includes a scope limitation and two findings: Misstatement of Financial Activity (Finding 1); and Disclosure of Occupation and Name of Employer (Finding 2). We agree with the Audit Division as to these findings; however, we recommend that the ADRM include more information pertaining to recommended changes to the scope limitation as described below. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

SCOPE LIMITATION SHOULD BE MORE SPECIFIC

The Audit staff proposes in the ADRM to amend the scope limitation. We agree with the Audit Division's approach; but we think that the scope limitation requires additional explanation about what could not be tested and why the Committee's documents related to the independent expenditures were not sufficient.

During the audit hearing, NRLPAC raised concerns about the language in the scope limitation and the auditors agreed that it would be more accurate if they modified the language to clarify that *some of* the disbursement records did not contain information necessary to verify the reporting of certain information pertaining to independent expenditures pursuant to 11 C.F.R. § 104.4 or the reporting of debts pursuant to 11 C.F.R. § 104.11. In making this change, however, the Audit staff removed other language previously added in response to our advice.

We had previously advised the Audit staff, in our comments to the Draft Final Audit Report ("DFAR"), to be more specific as to what it was about the Committee's reporting of debts and obligations, or of independent expenditures, that the audit was unable to fully test. Independent expenditure reporting, in particular, involves a number of different requirements, and it was not clear from the draft version of the DFAR which of these requirements could not be sufficiently tested. The auditors modified the DFAR to include additional sentences that addressed our concerns. We do not believe that anything has changed since the audit hearing that would eliminate this concern. We, therefore, recommend that the Audit staff modify the ADRM to include this information or explain why this information is no longer necessary.

The ADRM should also explain why the Committee's documentation of its independent expenditures was not sufficient. The Committee asserted, at the audit hearing, that it had station affidavits supporting 83% of the media buys for its independent expenditures. The Committee claims that the station affidavits show the dates that the station broadcasted the commercial. The Committee contends that this information should be sufficient to allow the Audit Division to test for when the Committee disseminated its independent expenditures. The Committee's arguments, therefore, raise the issue of why the Audit Division still maintains that it could not test for the date that the Committee disseminated the independent expenditures.

We understand that the Audit Division has several reasons why it maintains that it cannot test for the date of dissemination. To resolve this issue, we believe that the Commission should be aware of the underlying reasons for the Audit Division's position. We, therefore, recommend that the Audit Division revise the ADRM to include this explanation.