



## Interim Audit Report of the Audit Division on Canseco for Congress

(January 1, 2009 - December 31, 2010)

### 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.<sup>1</sup> 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)

Canseco for Congress is the principal campaign committee for Francisco R. Canseco, Republican candidate for the U.S. House of Representatives from the State of Texas, 23<sup>rd</sup> District, headquartered in San Antonio, Texas. For more information, see the chart on the Campaign Organization, p. 2.

### Financial Activity (p. 2)

• Receipts	
○ From Individuals	\$ 1,006,533
○ From Other Political Committees	316,035
○ Candidate Loans	578,429
○ Other Receipts	9,794
<b>Total Receipts</b>	<b>\$ 1,910,791</b>
• Disbursements	
○ Operating Expenditures	\$ 1,467,834
○ Repayment of Candidate Loans	363,505
<b>Total Disbursements</b>	<b>\$ 1,831,339</b>

### Findings and Recommendations (p. 3)

- Receipt of Apparent Prohibited Contributions (Finding 1)
- Receipt of Contributions that Exceed Limits (Finding 2)
- Misstatement of Financial Activity (Finding 3)

<sup>1</sup> 2 U.S.C. §438(b).

# **Interim Audit Report of the Audit Division on Canseco for Congress**

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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of Canseco for Congress (CFC), 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 receipt of excessive contributions and loans;
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

<b>Important Dates</b>	
• Date of Registration	January 7, 2004
• Audit Coverage	January 1, 2009 - December 31, 2010
<b>Headquarters</b>	
San Antonio, Texas	
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	Two Checking Accounts
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Randy Blair
• Treasurer During Period Covered by Audit	Randy Blair
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2009</b>	<b>\$ 0</b>
<b>Receipts</b>	
○ From Individuals	1,006,533
○ From Other Political Committees	316,035
○ Candidate Loans	578,429
○ Other Receipts	9,794
<b>Total Receipts</b>	<b>\$ 1,910,791</b>
<b>Disbursements</b>	
○ Operating Expenditures	1,467,834
○ Repayment of Candidate Loans	363,505
<b>Total Disbursements</b>	<b>\$ 1,831,339</b>
<b>Cash-on-hand @ December 31, 2010</b>	<b>\$ 79,452</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Receipt of Apparent Prohibited Contributions**

During audit fieldwork, the Audit staff identified two contributions totaling \$100,000 that appear to be prohibited contributions from a foreign national. CFC stated that these transactions were loans from the Candidate, but the funds appear to have originated from the account of a foreign corporation. CFC later indicated these funds represented draws from partnership capital accounts of the Candidate and his sister. Although untimely, CFC has refunded \$44,605 of the \$100,000 in apparent prohibited contributions. The Audit staff recommends that CFC provide documentation demonstrating that the Candidate made the loans from his personal funds or that CFC refund the remaining \$55,395 in apparent prohibited contributions, and amend its reports to properly disclose the source of funds for these loans. (For more detail, see p. 4)

##### **Finding 2. Receipt of Contributions that Exceed Limits**

During audit fieldwork, the Audit staff identified contributions exceeding contribution limits by \$170,343. Of this amount, \$147,600 is from a personal loan made by an individual to the Candidate which is considered to be a contribution. The check was deposited directly into CFC's account. The Audit staff recommends that CFC refund the amount that exceeds the contribution limits and amend its reports to properly disclose these contributions. (For more detail, see p. 7)

##### **Finding 3. Misstatement of Financial Activity**

During audit fieldwork, a comparison of CFC's reported financial activity with its bank records revealed misstatements of beginning and ending cash-on-hand for calendar years 2009 and 2010, as well as misstatements of receipts and disbursements for calendar year 2009. For 2009, CFC overstated beginning cash-on-hand by \$32,344, overstated receipts by \$990, understated disbursements by \$16,897, and overstated ending cash-on-hand by \$50,231. For 2010, CFC overstated beginning cash-on-hand by \$50,231 and ending cash-on-hand by \$61,512. The Audit staff recommends that CFC amend its reports to correct the misstatements. (For more detail, see p. 9)

## Part IV

# Findings and Recommendations

### Finding 1. Receipt of Apparent Prohibited Contributions

#### Summary

During audit fieldwork, the Audit staff identified two contributions totaling \$100,000 that appear to be prohibited contributions from a foreign national. CFC stated that these transactions were loans from the Candidate, but the funds appear to have originated from the account of a foreign corporation. CFC later indicated these funds represented draws from partnership capital accounts of the Candidate and his sister. Although untimely, CFC has refunded \$44,605 of the \$100,000 in apparent prohibited contributions. The Audit staff recommends that CFC provide documentation demonstrating that the Candidate made the loans from his personal funds or that CFC refund the remaining \$55,395 in apparent prohibited contributions, and amend its reports to properly disclose the source of funds for these loans.

#### 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):

- In the name of another;
- From the treasury funds of the following sources:
  - Corporations (i.e., any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
  - Labor Organizations; and
  - National Banks;
- From Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); or
- From 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)). 2 U.S.C. §§ 441b, 441c, 441e, and 441f.

**B. Contribution.** A gift, subscription, loan (except a loan made in accordance with 11 CFR §§ 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan that exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that

individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. 11 CFR § 100.52(a) and (b).

**C. Partnership Contributions.** In addition to counting against the partnership's limits, a contribution from a partnership must be attributed to individual partners:

- According to each partner's share of the partnership's profits; or
- On another basis agreed to by the partners.

If the partnership attributed contributions on the basis of option 2 above, it must reduce only the contributing partners' profits (or increase their losses) and the profits must be reduced in proportion to the contribution attributed to the partner. Under both options listed above, the portion attributed to each partner must not, when aggregated with other contributions from that person, exceed his or her contribution limit. 11 CFR § 110.1(e).

**D. Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

- 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).
- If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund it. Therefore sufficient funds to make the refunds must be maintained or a separate account in a campaign depository must be established for possibly illegal contributions. 11 CFR § 103.3(b)(4).
- The committee must keep a written record noting the basis for the appearance of illegality, and it must include this information when reporting the receipt of the contribution. 11 CFR § 103.3(b)(5).
- 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).
- Within the 30-day period, 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), (5).

**E. Personal Funds.** Personal funds of a candidate consist of assets, income, or jointly owned spousal assets. Assets are amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest. Personal funds may also be income received during the current election cycle of the candidate including salary and other earned income from



bona fide employment and income from stocks or investments, including interest, dividends or proceeds from the sale of such stocks or investments. 11 CFR § 100.33.

**F. Expenditures by Candidates.** Candidates for Federal office may make unlimited expenditures from personal funds as defined in 11 CFR § 100.33. 11 CFR § 110.10.

**G. Reporting Loans.** All loans received by a committee must be itemized and continuously reported until repaid. All repayments made on a loan must also be itemized. 11 CFR §§ 104.3(a)(4)(iv), (b)(4)(iii) and 104.11.

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff noted two transactions totaling \$100,000 that appear to be prohibited contributions from a foreign national.

On January 29, 2010, \$14,000 was transferred into a CFC bank account. This transaction was not disclosed on CFC's reports. A CFC representative stated that this amount was a loan to the Candidate from his partnership. CFC provided a letter stating that the loan was made to the Candidate from Inmuebles Caza, S.A. de C.V. (Caza), which is wholly owned by Canseco Investments, Ltd., of which the Candidate is a limited partner. CFC also provided several e-mails between other partners and from the president of Caza, which taken together explain that this amount was borrowed from Caza based on the Candidate's capital account in the partnership. Audit staff was unable to review bank documentation relating to the source of this loan because it came from an account that was not owned by CFC. No repayments were made on this loan.

On April 13, 2010, a deposit of \$86,000 was made to a CFC bank account. This transaction was disclosed as a loan from the Candidate on CFC's reports. A copy of the deposit documentation shows that this was a cashier's check remitted by Caza. CFC provided two promissory notes showing that \$58,000 was a loan to the Candidate from his sister, and \$28,000 was a loan to the Candidate from Canseco Investments, Ltd. The emails described in the preceding paragraph also explain that these amounts represent the balance of each partner's capital account in Caza. Of the \$86,000 considered as an apparent prohibited contribution, \$44,605 was untimely repaid to the Candidate, with the first of three payments being made on August 3, 2010, 112 days after the loan was received.

Caza appears to be a foreign corporation registered in Mexico. The Texas Secretary of State shows that Canseco Investments, Ltd. is registered as a limited partnership and is wholly owned by FMC Developers, Inc., a corporation. The Audit staff concluded that the amounts of \$14,000 and \$86,000 represent apparent prohibited contributions from a foreign national. Although CFC maintained that the loans represented personal investments in the partnership, there was no documentation provided to support that these were distributions to partners from Canseco Investments, Ltd. Furthermore, the business registration of Canseco Investments, Ltd. does not indicate whether any of these individuals are partners; the only registered partner is a corporation.

### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff presented these apparent prohibited contributions to CFC. CFC representatives said that they would take another look at this matter.

The Audit staff recommends that, within 30 calendar days of receipt of this report, CFC demonstrate that the loans were made with the Candidate's personal funds or other permissible funds. Absent such a demonstration, CFC should:

- Refund the \$14,000 apparent prohibited contribution and amend its reports to correctly disclose this loan; and
- Refund \$41,395 remaining of the \$86,000<sup>2</sup> apparent prohibited contribution and amend its reports to correctly disclose this loan.

## **Finding 2. Receipt of Contributions that Exceed Limits**

### **Summary**

During audit fieldwork, the Audit staff identified contributions exceeding contribution limits by \$170,343. Of this amount, \$147,600 is from a personal loan made by an individual to the Candidate which is considered to be a contribution.<sup>3</sup> The check was deposited directly into CFC's account. The Audit staff recommends that CFC refund the amount that exceeds the contribution limits and amend its reports to properly disclose these contributions.

### **Legal Standard**

**A. Contribution Limits.** During the 2009-2010 cycle, no individual or group (other than a multicandidate committee) was permitted to contribute more than a total of \$2,400 per election to a federal candidate's campaign (the campaign includes the candidate and his or her agents and authorized committees). 2 U.S.C. § 441a (a)(1)(A).

**B. Contribution.** A gift, subscription, loan (except a loan made in accordance with 11 CFR §§ 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan that exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. 11 CFR § 100.52(a) and (b).

**C. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable contribution to the donor; or

<sup>2</sup> If the Committee shows that all or a portion of the \$86,000 was made with permissible funds, it would likely result in an excessive contribution instead of a prohibited contribution. In this case, the Audit staff would recommend that CFC refund the remaining excessive portion of the contribution.

<sup>3</sup> The remaining amount of excessive contributions, \$22,743, is later discussed as a part of this finding.

- Deposit the contribution into a campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR § 103.3(b)(3) and (4).

**D. Personal Funds.** Personal funds include salary and other earned income from bona fide employment and income from stocks or investments, including interest, dividends or proceeds from the sale of such stocks or investments. 11 CFR § 100.33(b).

**E. Reporting Loans.** All loans received by a committee must be itemized and continuously reported until repaid. All repayments made on a loan must also be itemized. 11 CFR §§ 104.3(a)(4)(iv), (b)(4)(iii) and 104.11.

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff noted three transactions that appear to be excessive contributions from individuals. The total amount that exceeds the individual contribution limit is \$170,343.

On April 27, 2010, a deposit of \$150,000 was made to the CFC bank account. The deposit documentation shows that this was a check from an individual written to the Candidate, but deposited directly into CFC's bank account.

The \$150,000 transaction was disclosed as a loan from the Candidate on CFC's reports. The Audit staff requested documentation showing that this loan was made with the Candidate's personal funds. CFC representatives responded that the funds were derived from the sale of the Candidate's stock. Later, CFC representatives stated that this was a personal loan made to the Candidate and provided a promissory note from the individual, which was signed only by the Candidate.

However, according to Commission regulations, since the funds were deposited into CFC's account and used for campaign activity, the Candidate is considered to have received the loan as an agent of the Committee<sup>4</sup>. Furthermore, all loans, except those made by financial institutions in the ordinary course of business, are considered to be contributions<sup>5</sup>. Therefore, absent further explanation and documentation, this transaction results in an excessive contribution of \$147,600 from the individual

It is noted that CFC disclosed a repayment of \$10,000 to the Candidate on April 28, 2010 in connection with the reported \$150,000 loan. However, documentation has not been provided to substantiate that funds were remitted to the actual contributor.

On December 10 and 18, 2009, \$22,000 and \$8,000, respectively, were transferred into the CFC bank account from the Candidate's personal bank account. These transactions were not disclosed on CFC's reports. CFC stated that these amounts represented loans from the Candidate. However, additional documentation provided by CFC showed that

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<sup>4</sup> 2 U.S.C. § 432(e)(2).

<sup>5</sup> 2 U.S.C. § 431(8)(B)(vii).

the funds used to make these transfers did not come from the Candidate's personal funds, but from personal loans individuals made to the Candidate, which were deposited into the Candidate's personal account. Since these funds were used for campaign activity, the personal loans resulted in contributions to CFC. The Audit staff performed a cash balance analysis on the Candidate's personal account and determined that the funds transferred to CFC (\$22,000 and \$8,000) could only have come from three individuals. Absent further documentation and explanation, CFC's receipt of these funds results in contributions by three individuals that exceed contribution limits by \$22,743.

#### **B. Interim Audit Report & Audit Division Recommendation**

During an interim fieldwork meeting, the Audit staff requested further information to support that the contributions described above were permissible. At the exit conference, CFC representatives stated that the Candidate had already repaid some of the contributions which comprised the \$22,000 and \$8,000 loans, and the Audit staff commented that CFC may need to make further refunds. Repayments made by the Candidate to these individuals have not been reported by CFC nor has documentation to support the repayments been received by the Audit staff.

The Audit staff recommends that, within 30 calendar days of receipt of this report, CFC should demonstrate that the contributions were not excessive or originated from the Candidate's personal funds. Absent such a demonstration, CFC should:

- Refund the excessive contribution of \$147,600 or provide documentation showing that refunds have been made already. CFC should also amend its reports to correctly disclose the source of funds for this loan and provide evidence that the refund check was negotiated by the contributor.
- Refund the excessive contributions totaling \$22,743 or provide documentation showing that refunds have been made already. CFC should also amend its reports to properly disclose these transactions and provide evidence that the refunds checks were negotiated by the contributor.

### **Finding 3. Misstatement of Financial Activity**

#### **Summary**

During audit fieldwork, a comparison of CFC's reported financial activity with its bank records revealed misstatements of beginning and ending cash-on-hand for calendar years 2009 and 2010, as well as misstatements of receipts and disbursements for calendar year 2009. For 2009, CFC overstated beginning cash-on-hand by \$32,344, overstated receipts by \$990, understated disbursements by \$16,897, and overstated ending cash-on-hand by \$50,231. For 2010, CFC overstated beginning cash-on-hand by \$50,231 and ending cash-on-hand by \$61,512. The Audit staff recommends that CFC amend its reports to correct the misstatements.

#### **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 all receipts for the reporting period and for the election cycle;

- The total amount of all disbursements for the reporting period and for the election cycle; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. § 434(b)(1), (2), (3), (4) and (5).

## Facts and Analysis

### A. Facts

During audit fieldwork, the Audit staff reconciled CFC's reported financial activity with its bank records for calendar years 2009 and 2010. The following chart outlines the discrepancies for the beginning cash balance, receipts, disbursements, and ending cash balance for 2009. Succeeding paragraphs address the reasons for the misstatements.

2009 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2009	\$ 32,344	\$ 0	\$ 32,344 Overstated
Receipts	\$160,551	\$159,561	\$ 990 Overstated
Disbursements	\$101,630	\$118,527	\$ 16,897 Understated
Ending Cash Balance @ December 31, 2009	\$ 91,265	\$ 41,034	\$ 50,231 Overstated

The beginning cash balance on January 1, 2009, was overstated by \$32,344. This overstatement is unexplained, but likely resulted from prior-period discrepancies.

The overstatement of receipts resulted from the following:

• Contributions from individuals not reported	\$ 1,000
• November and December loans from the Candidate and individuals not reported	51,179
• Reported contributions from individuals not supported by deposits	(2,025)
• September loan reported from the Candidate not supported by deposit	(50,000)
• Unexplained difference	<u>(1,144)</u>
<b>Net Overstatement of Receipts</b>	<b><u>\$ (990)</u></b>

The supporting information available indicated that the misreported loan transactions for September were unrelated to those for November and December.

The understatement of disbursements resulted from the following:

• Operating expenditures/reimbursements of expenses not reported	\$ 27,761
• Reported operating expenditures not supported by a check or debit	<u>(10,864)</u>
<b>Net Understatement of Disbursements</b>	<b><u>\$ 16,897</u></b>

CFC overstated the ending cash balance on December 31, 2009, by \$50,231 as a result of the misstatements described above. As a result of the above discrepancies, as well as other minor discrepancies during 2010, CFC overstated the ending cash balance on December 31, 2010, by \$61,512.

**B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff provided the CFC representatives with a list of discrepancies and report adjustments. The CFC representatives acknowledged the adjustments and asked when they should file the amendments.

The Audit staff recommends that, within 30 calendar days of receipt of this report, CFC should:

- Amend its reports to correct the misstatements noted above; and
- Amend its most recently filed report to correct the cash-on-hand balance. The Audit staff also recommends that CFC reconcile the cash balance of its most recent report to identify any subsequent discrepancies that may affect adjustments recommended by the Audit staff.