STATEMENT OF VICE CHAIR ANN M. RAVEL, COMMISSIONER STEVEN T. WALThER, AND COMMISSIONER ELLEN L. WEINTRAUB
Audit of the Nebraska Democratic Party (A11-18)

This audit presents concerns regarding the Nebraska Democratic Party’s failure to keep monthly time-logs for payroll payments associated with its contract workers. We raised these same concerns in our Statement on the Audits of the Vermont Democratic Party (A11-12), Dallas County Republican Party (A11-14), Democratic Party of South Carolina (A11-19), and Republican Party of Iowa (A11-24). See Attachment A. We continue to assert that the Act and Commission regulations require committees to maintain logs documenting the time that employees, including contract workers, spend on federal election activity.

8/14/14
Date

Ann M. Ravel
Vice Chair

8/14/14
Date

Steven T. Walther
Commissioner

8/14/14
Date

Ellen L. Weintraub
Commissioner
STATEMENT OF VICE CHAIR ANN M. RAVEL, COMMISSIONER STEVEN T.
WALTHER, AND COMMISSIONER ELLEN L. WEINTRAUB
Audits of the Vermont Democratic Party (A11-12), Dallas County Republican
Party (A11-14), Democratic Party of South Carolina (A11-19), and Republican Party
of Iowa (A11-24)

These four audits all presented the same question of whether “contract labor” workers
(i.e., independent contractors) should be treated as “employees” for purposes of the
Commission’s state party committee recordkeeping requirements.¹ We support the Office
of General Counsel’s position that independent contractors are “employees” for purposes of the
recordkeeping requirements, and therefore that committees must maintain logs documenting the
time that these employees spend on federal election activity (“FEA”). Unfortunately, however,
none of the recordkeeping findings in these Audit Reports includes any analysis of contract
workers’ time.² We write this statement to ensure that our strong views on this issue are

¹ Documents related to Commission audits can be accessed at www.fec.gov/auditsearch/auditsearch.do.

² This issue was first raised in a request for Commission guidance made pursuant to Directive 69 with respect to the
Dallas County Republican Party (“DCRP”) audit. See LRA 903, Request for Commission Directive 69 Guidance
(providing a mechanism through which the Office of Compliance (“OC”) and the Office of General Counsel
(“OGC”) may bring certain legal questions to the Commission for early consideration in the reports analysis or audit
process), available at www.fec.gov/directives/directive_69.pdf. The OGC and the OC recommended that the
Commission conclude that a state party’s “contract labor” be treated as “employees” under the provisions addressing
Bauerly, Walther, and Weintraub voted to support the recommendations; Commissioners Hunter, McGahn, and
Petersen dissented. Certification for LRA 903, dated Oct. 16, 2012. At the time of this vote, Chairman Goodman
and Vice Chair Ravel were not yet members of the Commission.

Under Directive 69, if the Commission is unable to provide guidance on how to proceed with an affirmative vote of
four or more Commissioners within 60 days, the Audit Division (part of the OC) must proceed with the audit
process. After the Republican Commissioners opposed the recommendation of the OGC and the OC in the
Directive 69 matter, however, this audit and the audits of the Vermont Democratic Party (“VDP”), the Democratic
Party of South Carolina (“DPSC”), and the Republican Party of Iowa (“RPIA”) did not include analysis of the
committees’ records of their contract workers.

While Vice Chair Ravel was not yet a member of the Commission when the Directive 69 matter was considered, the
undersigned all agree that party committees should keep time records for all their employees — both direct
employees and contract workers.
Statement of Vice Chair Ravel, Commissioner Walther, and Commissioner Weintraub

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reflected in the public record. ³

Under the Federal Election Campaign Act of 1971, as amended ("the Act") and the
Commission's regulations, whether and how a state party committee may permissibly allocate
the salary, wages, and benefits of its employees between its federal and non-federal accounts is
dependent on the percentage of time that its employees spend on FEA or activity in connection
with federal elections.⁴ To document this time, the Commission's regulations require that a state
party committee "keep a monthly log of the percentage of time each employee spends in
connection with a Federal election."⁵ Neither the statute nor the regulations define "employee"
for these purposes.

Independent contractors should, however, be subject to the same recordkeeping
requirements as other employees. In the past, the Commission has promulgated other regulations
that expressly include independent contractors when interpreting provisions of the Act that use
the statutory term "employees."⁶ Although the Commission did not expressly include
independent contractors in the regulation at issue here, the same rationale previously cited by the
Commission in those other rulemakings—namely, to "preclude circumvention by the expedient
of characterizing an 'employee' as an 'independent contractor' where the characterization makes
no difference in the individual's relationship with the . . . political party committee"—certainly
applies to recordkeeping requirements as well.⁷

Accordingly, we voted to amend the Recordkeeping Finding in each of the Audit Reports
to include the failure to maintain monthly time logs for contract workers.⁸ With each of the

³ This statement does not address our additional concerns regarding the RPIA's recordkeeping requirements for non-
federal payroll payments. We set out those concerns separately in our Statement on the RPIA (A11-24), dated
March 18, 2014.

⁴ Salaries and benefits for employees who spend more than 25% of their compensated time on FEA or activities in
connection with a federal election in a given month must be paid only from a federal account. 2 U.S.C.
§ 431(20)(A)(iv); 11 C.F.R. § 106.7(d)(1)(ii); see 2 U.S.C. § 441i(b)(1). Salaries and benefits for employees who
spend 25% or less of their time on FEA or activities in connection with a federal election must either be paid only
from the federal account or allocated as administrative costs. 11 C.F.R. §§ 106.7(c)(1) and 106.7(d)(1)(i).
Employees who spend none of their compensated time on FEA or activities in connection with a federal election
may be paid entirely with funds that comply with state law. 11 C.F.R. § 106.7(d)(1)(ii).

⁵ 11 C.F.R. § 106.7(d)(1) (emphasis added).

⁶ See Directive 69 Guidance at 3 (citing the Commission's coordination rules at 11 C.F.R. § 109.21(d)(5), which
expressly include independent contractors as falling under the statutory term "employees"). Documents related to
all Commission rulemaking proceedings are available at www.fec.gov/fosers/.


⁸ Certification in Audit Division Recommendation Memorandum ("ADRM") on DCRP, dated Jan. 30, 2014 (Vice
Chair Ravel and Commissioners Walther and Weintraub voting to amend the Recordkeeping Finding to include the
$56,407 paid to contract workers); Certification in ADRM on VDP, dated Jan. 16, 2014 (Vice Chair Ravel and
Commissioners Walther and Weintraub voting to amend the Recordkeeping Finding to include $630 paid to contract
workers); Certification in ADRM on DPSC, dated Jan. 16, 2014 (Vice Chair Ravel and Commissioners Walther and
Weintraub voting to amend the Recordkeeping Finding to include the $11,920 paid to contract workers);
Certification in ADRM on RPIA, dated Jan. 30, 2014 (Vice Chair Ravel and Commissioners Walther and Weintraub
deadlocked votes, the contract workers issue continues to be excluded from the Commission's Audit Reports and, as a result, the Reports represent an incomplete picture of the federal activity of these committees. Moreover, this result, which effectively permits state party committees to avoid keeping records of their federal activity simply by hiring federal staffers as "independent contractors," is directly contrary to the purpose of the Bipartisan Campaign Reform Act.

March 18, 2014
Date

Ann M. Ravel
Vice Chair

3/18/14
Date

Steven T. Walther
Commissioner

3/18/14
Date

Ellen L. Weintraub
Commissioner

voting to amend the Recordkeeping Finding to include $58,424 paid to contract workers). Chairman Goodman and Commissioners Hunter and Petersen dissented in each of the motions. Id.