



# **Final Audit Report of the Commission on the South Dakota Democratic Party**

(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).<sup>1</sup> The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>2</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 Committee** (p. 2)

The South Dakota Democratic Party is a state party committee headquartered in Sioux Falls, South Dakota. For more information, see the chart on the Committee Organization, p. 2.

## **Financial Activity** (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 180,424
○ Contributions from Political Party and Other Political Committees	133,843
○ Transfers from Affiliated/Other Party Committees	593,756
○ All Other Receipts	13,042
<b>Total Receipts</b>	<b>\$ 921,065</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 574,603
○ Coordinated Expenditures Made by Party Committees	144,700
○ Federal Election Activity	184,970
○ All Other Disbursements	88,966
<b>Total Disbursements</b>	<b>\$ 993,239</b>

## **Commission Findings** (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Recordkeeping for Employees (Finding 2)
- Reporting of Coordinated Party Expenditures (Finding 3)
- Contributions from Unregistered Political Organizations (Finding 4)
- Disclosure of Occupation/Name of Employer (Finding 5)

## **Additional Issue** (p. 5)

- Recordkeeping for Employees

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to the new Title 52 of the United States Code.

<sup>2</sup> 52 U.S.C. § 30111(b).

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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the South Dakota Democratic Party (SDDP), 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 52 U.S.C. § 30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. § 30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine whether the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. § 30111(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 contributions from prohibited sources;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of disbursements, debts and obligations;
4. the disclosure of expenses allocated between federal and non-federal accounts;
5. the consistency between reported figures and bank records;
6. the disclosure of independent and coordinated expenditures;
7. the completeness of records; and
8. other committee operations necessary to the review.

### **Commission Guidance**

#### **Request for Early Commission Consideration of a Legal Question**

Pursuant to the "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," SDDP requested early consideration of a legal question raised during the audit. SDDP questioned whether the monthly time logs required under 11 C.F.R. §106.7(d)(1) applied to employees paid with 100 percent federal funds. (See Finding 2.)

The Commission concluded, by a vote of 5-1, that 11 C.F.R. §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. Accordingly, Finding 2, Recordkeeping for Employees, of this audit report does not include a recommendation to pursue a recordkeeping violation for employees paid with 100 percent federal funds and reported as such.

**Audit Hearing**

SDDP declined the opportunity for a hearing before the Commission on the matters presented in this report.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	April 24, 1982
• Audit Coverage	January 1, 2009 - December 31, 2010
<b>Headquarters</b>	
Sioux Falls, South Dakota	
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	Four Federal and Three Non-federal
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Bill Nibbelink
• Treasurer During Period Covered by Audit	Bill Nibbelink
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

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

<b>Cash-on-hand @ January 1, 2009</b>	<b>\$ 93,826</b>
<b>Receipts</b>	
○ Contributions from Individuals	180,424
○ Contributions from Political Party and Other Political Committees	133,843
○ Transfers from Affiliated/Other Party Committees	593,756
○ All Other Receipts	13,042
<b>Total Receipts</b>	<b>\$ 921,065</b>
<b>Disbursements</b>	
○ Operating Expenditures	574,603
○ Coordinated Expenditures Made by Party Committees	144,700
○ Federal Election Activity	184,970
○ All Other Disbursements	88,966
<b>Total Disbursements</b>	<b>\$ 993,239</b>
<b>Cash-on-hand @ December 31, 2010</b>	<b>\$ 21,652</b>

## **Part III**

### **Summaries**

#### **Commission Findings**

##### **Finding 1. Misstatement of Financial Activity**

During audit fieldwork, a comparison of SDDP's reported financial activity with its bank records revealed misstatements for calendar years 2009 and 2010. For 2009, SDDP understated disbursements by \$15,155. For 2010, SDDP understated receipts by \$26,721. Subsequent to audit notification, SDDP amended its reports, which corrected the misstatement for 2009. In response to the Interim Audit Report recommendation, SDDP amended its 2010 reports to materially correct its remaining misstatements.

The Commission approved a finding that SDDP misstated its financial activity for the calendar years 2009 and 2010. (For more detail, see p. 7.)

##### **Finding 2. Recordkeeping for Employees**

During audit fieldwork, the Audit staff determined that SDDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDDP employees totaling \$60,143, for which monthly payroll logs were not maintained. This consisted of \$42,557, reported as allocated between federal and non-federal funds; \$15,187 that was paid from an exclusively non-federal account in a given month; and \$2,399 that was paid from an exclusively non-federal account during periods in which the same employee was also paid from a federal account. Subsequent to being notified of the audit, SDDP filed amended reports for 2009 disclosing all allocated payroll on Line 30b (Federal Election Activity) as paid with 100 percent federal funds. In response to the Interim Audit Report recommendation, Counsel said SDDP moved all payroll expenses on their reports to Federal Election Activity. The Audit staff considers this matter resolved.

The Commission approved a finding that SDDP failed to maintain monthly time logs for \$42,557 in payroll allocated between federal and non-federal funds and also for \$2,399 in payroll that was paid from an exclusively non-federal account during periods in which the same employee was also paid from a federal account. The Commission did not approve that portion of the finding for \$15,187 in payroll that was paid exclusively with non-federal funds in a given month; as such, these expenses are presented as an "Additional Issue." (For more detail, see p. 9.)

##### **Finding 3. Reporting of Coordinated Party Expenditures**

The Audit staff found that SDDP made an apparent excessive in-kind contribution of \$16,277 to a House candidate, resulting from coordinated expenditures made in excess of the coordinated party spending limitation. During the audit exit conference, SDDP officials stated that they had erroneously reported \$19,529 for two direct mail pieces as

Coordinated Party Expenditures on Schedule F, Line 25, when the expenditure was actually for Federal Election/Exempt activity, that SDDP should have reported on Schedule B, Line 30b. SDDP argued that the disbursements should not have been counted towards its coordinated party expenditure limit because the disbursements qualify for the volunteer materials exemption but were not properly disclosed on its reports. However, SDDP provided only limited evidence that volunteer activity existed.

In response to the Interim Audit Report recommendations, SDDP amended its reports to disclose the \$19,529 as a volunteer exempt expense and provided a signed declaration that this type of mailing was generally performed by volunteers. Given the uncertainty regarding the level of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures are no longer being attributed to SDDP's coordinated expenditure limit.

The Commission approved a finding that expenditures totaling \$19,529 should not be attributed towards SDDP's coordinated expenditure limitation and that SDDP did not exceed the 2010 coordinated expenditure limit. (For more detail, see p. 11.)

#### **Finding 4. Contributions from Unregistered Political Organizations**

SDDP received contributions totaling \$14,831 from unregistered political organizations that may not have used permissible funds. SDDP refunded contributions totaling \$4,891 of the \$14,831, though it did so in an untimely manner.

In response to the Interim Audit Report recommendations, SDDP provided signed letters from contributors confirming that \$3,140 were from permissible sources. In addition, SDDP provided documentation supporting that \$5,000 was not a contribution but rather a reimbursement from a non-federal committee related to a door hanger. SDDP also issued a disgorgement check for \$1,800 payable to the U.S. Treasury for the balance of the impermissible contributions.

The Commission approved a finding that SDDP received impermissible contributions from unregistered political organizations totaling \$6,691. (For more detail, see p. 15.)

#### **Finding 5. Disclosure of Occupation/Name of Employer**

The Audit staff reviewed individual contributions, for which itemization is required, and found that 78 contributions totaling \$30,702 lacked adequate disclosure of occupation and/or name of employer (OCC/NOE) information. Furthermore, prior to the notification of the audit, SDDP did not sufficiently document "best efforts" to obtain, maintain, and submit contributor information. After being notified of the audit, SDDP obtained some of the missing contributor information and filed amended reports for calendar year 2009, which materially corrected the disclosure of OCC/NOE.

In the Interim Audit Report, the Audit staff recommended that SDDP provide any additional information it considers relevant to this matter. SDDP made no comment in



response to the audit report. However, although not required, SDDP amended its 2010 reports to include previously undisclosed OCC/NOE information for \$10,206 in contributions from individuals.

The Commission approved a finding that SDDP failed to disclose OCC/NOE information for individuals totaling \$30,702 and did not timely demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions. (For more detail, see p. 17.)

## **Additional Issue**

### **Recordkeeping for Employees**

As stated in the Finding 2 (Recordkeeping for Employees), SDDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDDP employees totaling \$60,143, for which monthly payroll logs were not maintained. This consisted of \$42,557, reported as allocated between federal and non-federal funds; \$15,187 that was paid from an exclusively non-federal account in a given month; and \$2,399 that was paid from an exclusively non-federal account during periods in which the same employee was also paid from a federal account.

In response to the Interim Audit Report recommendation, Counsel said SDDP moved all payroll expenses on their reports to Federal Election Activity.

The Commission did not approve, by the required four votes, the portion of the Audit staff's recommended finding that SDDP failed to maintain monthly payroll logs for the \$15,187 in payroll paid from an exclusively non-federal account in a given month. Pursuant to Commission Directive 70,<sup>3</sup> these expenses are discussed in the "Additional Issue" section, and the payroll expenditures of \$15,187 are not included in Finding 2. (For more detail, see p.20.)

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<sup>3</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf).

## Part IV

### Commission Findings

#### Finding 1. Misstatement of Financial Activity

##### Summary

During audit fieldwork, a comparison of SDDP's reported financial activity with its bank records revealed misstatements for calendar years 2009 and 2010. For 2009, SDDP understated disbursements by \$15,155. For 2010, SDDP understated receipts by \$26,721. Subsequent to audit notification, SDDP amended its reports, which corrected the misstatement for 2009. In response to the Interim Audit Report recommendation, SDDP amended its 2010 reports to materially correct its remaining misstatements.

The Commission approved a finding that SDDP misstated its financial activity for the calendar years 2009 and 2010.

##### 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) or Schedule B (Itemized Disbursements). 52 U.S.C. § 30104(b)(1),(2),(3),(4) and (5).

##### Facts and Analysis

##### A. Facts

The Audit staff reconciled reported activity with bank records for calendar years 2009 and 2010. The following charts outline the discrepancies for the beginning cash balances, receipts, disbursements and ending cash balances for each year. Succeeding paragraphs address the reasons for the misstatements.

2009 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2009	\$94,626	\$93,826	\$ 800 Overstated
Receipts	\$194,044	\$197,026	\$ 2,982 Understated
Disbursements	\$261,047	\$276,202	\$15,155 Understated
Ending Cash Balance @ December 31, 2009	\$11,645 <sup>4</sup>	\$14,650	\$3,005 Understated

<sup>4</sup> SDDP did not carry the correct ending cash balance to the subsequent report's beginning cash balance from the July 2009 Monthly report through the Year End 2009 report. As a result of these discrepancies, the amounts in the "Reported" column do not total correctly.

The understatement of disbursements resulted from the following:

• Disbursements not reported	\$ 18,938
• Disbursement reported but not supported by a check or debit	( 3,390)
• Unexplained difference	<u>(393)</u>
<b>Net Understatement of Disbursements</b>	<b><u>\$ 15,155</u></b>

Unreported disbursements of \$18,938 consist primarily of payments for salaries and a loan payment.

The \$3,005 understatement of the ending cash balance on December 31, 2009 resulted from the misstatements described above, as well as discrepancies in the beginning cash balance and receipts.

Subsequent to audit notification, SDDP amended its reports for calendar year 2009, which corrected the misstatements noted above.

<b>2010 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2010	\$11,655 <sup>5</sup>	\$14,650	\$2,995 Understated
Receipts	\$697,318	\$724,039	\$26,721 Understated
Disbursements	\$707,313	\$717,037	\$9,724 Understated
Ending Cash Balance @ December 31, 2010	\$21,191 <sup>6</sup>	\$21,652	\$461 Understated

The understatement of receipts resulted from the following:

• Receipts from political committees not reported	\$ 28,534
• In-kind receipt reported twice	( 2,026)
• Unexplained difference	<u>213</u>
<b>Net Understatement of Receipts</b>	<b><u>\$ 26,721</u></b>

The \$461 understatement of the ending cash balance on December 31, 2010, resulted from the misstatements described above, as well as discrepancies in the beginning cash balance on January 1, 2010, and disbursements.

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

At the exit conference, the Audit staff discussed the misstatements with SDDP representatives and provided copies of relevant schedules. SDDP filed amendments correcting the misstatements for 2009 and said that it would file corrective amendments for 2010.

<sup>5</sup> The beginning cash balance was not carried forward correctly from the previous period.

<sup>6</sup> This column does not total due to discrepancies throughout 2010 between reported amounts for ending cash and the subsequent period's beginning cash balance.

The Interim Audit Report recommended that SDDP amend its reports to correct the misstatements noted above for calendar year 2010 and amend its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendations, SDDP reconciled its accounts and filed amended reports for 2010 that materially corrected its misstatements.<sup>7</sup>

**D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that SDDP amended its reports and materially corrected the misstatement of financial activity.

**E. Committee Response to the Draft Final Audit Report**

Counsel responded to the Draft Final Audit Report and said that SDDP had no additional comments.

**Commission Conclusion**

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that SDDP misstated its financial activity for the calendar years 2009 and 2010.

The Commission approved the Audit staff's recommendation.

## **Finding 2. Recordkeeping for Employees**

**Summary**

During audit fieldwork, the Audit staff determined that SDDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDDP employees totaling \$60,143, for which monthly payroll logs were not maintained. This consisted of \$42,557, reported as allocated between federal and non-federal funds; \$15,187 that was paid from an exclusively non-federal account in a given month; and \$2,399 that was paid from an exclusively non-federal account during periods in which the same employee was also paid from a federal account. Subsequent to being notified of the audit, SDDP filed amended reports for 2009 disclosing all allocated payroll on Line 30b (Federal Election Activity) as paid with 100 percent federal funds. In response to the Interim Audit Report recommendation, Counsel said SDDP moved all payroll expenses on their reports to Federal Election Activity. The Audit staff considers this matter resolved.

The Commission approved a finding that SDDP failed to maintain monthly time logs for \$42,557 in payroll allocated between federal and non-federal funds and also for \$2,399 in payroll that was paid from an exclusively non-federal account during periods in which the same employee was also paid from a federal account. The Commission did not

<sup>7</sup> During SDDP's reconciliation, additional information was provided to the Audit staff for which adjustments were made to the misstated amounts in this report.

approve that portion of the finding for \$15,187 in payroll that was paid exclusively with non-federal funds in a given month; as such, these expenses are presented as an "Additional Issue."

### **Legal Standard**

**Maintenance of Monthly Logs.** Committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- Employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or have their pay allocated as administrative costs;
- Employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and,
- Employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with State law. 11 CFR §106.7(d)(1).

### **Facts and Analysis**

#### **A. Facts**

During fieldwork, the Audit staff reviewed disbursements for payroll. SDDP did not maintain any monthly logs or equivalent records to document the percentage of time each employee spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2009 and 2010, SDDP did not maintain logs for \$60,143<sup>8</sup> in payroll. This consisted of \$42,557, reported as allocated between federal and non-federal funds; \$15,187 that was paid from an exclusively non-federal account in a given month, and \$2,399 that was paid from an exclusively non-federal account but also included employees paid from a federal account during the same periods.

Subsequent to audit notification, SDDP filed amended reports for calendar year 2009 that moved all previously allocated salaries to Line 30b, Federal Election Activity. The remaining payroll amount was immaterial. During fieldwork, the Audit staff asked SDDP representatives why SDDP made changes for its 2009 payroll disclosures. SDDP representatives said the following:

These changes were made as the result of two things. The first is that due to the fact that allocation transfers were never completed for these individuals' expense, these items were mis-reported. Secondly, with the knowledge of their roles, it is understood that their time was spent beyond 25 percent on federal activity.

The Audit staff acknowledges that the changes made by SDDP in the reporting of its payroll obviates the need for monthly timesheets since the payroll was paid with

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<sup>8</sup> Amounts are net of payroll taxes and benefits. This total does not include payroll for employees paid with 100 percent federal funds and reported as such. (See Part I, Background, Commission Guidance, Request for Early Consideration of a Legal Question, p. 1). For all future payroll, the Audit staff recommended that SDDP maintain payroll logs for all employees.

exclusively federal funds and reported as such. However, since SDDP amended reports after notification of the audit, this matter is included in this audit report.

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

At the exit conference, Audit staff presented the matter of maintaining monthly payroll logs to track the amount of time spent on federal election activity. SDDP Counsel stated that SDDP's position is that no payroll logs are required for activity reported and paid as 100 percent federal. The Interim Audit Report noted the verification of SDDP's amended reports that had moved allocated payroll to Line 30b, Federal Election Activity, and that no further action was required.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, Counsel reiterated previous comments regarding payroll and filed more amendments that reported 2010 payroll expenses on Line 30b. The Audit staff considers this matter resolved.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that SDDP resolved the matter of recordkeeping for employees.

#### **E. Committee Response to the Draft Final Audit Report**

SDDP's response to the Draft Final Audit Report provided no additional comments.

#### **Commission Conclusion**

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that SDDP failed to maintain monthly time logs to document the time employees spent on federal election activity totaling \$60,143.

The Commission approved a finding that SDDP failed to maintain monthly time logs for \$42,557 in payroll allocated between federal and non-federal funds and also for \$2,399 in payroll that was paid from an exclusively non-federal account during periods in which the same employee was also paid from a federal account. The Commission did not approve that portion of the finding for \$15,187 in payroll that was paid exclusively with non-federal funds in a given month; as such, these expenses are presented as an "Additional Issue."

### **Finding 3. Reporting of Coordinated Party Expenditures**

#### **Summary**

The Audit staff found that SDDP made an apparent excessive in-kind contribution of \$16,277 to a House candidate, resulting from coordinated expenditures made in excess of the coordinated party spending limitation. During the audit exit conference, SDDP officials stated that they had erroneously reported \$19,529 for two direct mail pieces as Coordinated Party Expenditures on Schedule F, Line 25, when the expenditure was actually for Federal Election/Exempt activity, that SDDP should have reported on Schedule B, Line 30b. SDDP argued that the disbursements should not have been

counted towards its coordinated party expenditure limit because the disbursements qualify for the volunteer materials exemption but were not properly disclosed on its reports. However, SDDP provided only limited evidence that volunteer activity existed.

In response to the Interim Audit Report recommendations, SDDP amended its reports to disclose the \$19,529 as a volunteer exempt expense and provided a signed declaration that this type of mailing was generally performed by volunteers. Given the uncertainty regarding the level of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures are no longer being attributed to SDDP's coordinated expenditure limit.

The Commission approved a finding that expenditures totaling \$19,529 should not be attributed towards SDDP's coordinated expenditure limitation and that SDDP did not exceed the 2010 coordinated expenditure limit.

### **Legal Standard**

**A. Coordinated Party Expenditure.** National party committees and state party committees may each make coordinated party expenditures in connection with the general election campaign of a candidate in that state who is affiliated with the party. 11 CFR §109.32(b).

**B. Assignment of Coordinated Party Expenditure Limit.** A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

**C. Exempt Activity.** The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

- Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists;
- The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act;
- Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for federal office;
- Such materials are distributed by volunteers and not by commercial or for-profit operations;

- If made by a political committee such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports; and
- The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

**D. Coordinated Party Communication.** A political party communication is coordinated with a candidate, a candidate's authorized committee, or agent of any of the foregoing, when the communication satisfies the following conditions:

- (1) The communication is paid for by a political party committee or its agent.
- (2) The communication satisfies at least one of the content standards.
  - Must expressly advocate a candidate's election or defeat 11 CFR §100.22(a) and (b).
  - Involve the dissemination, distribution or republication of a candidate's campaign materials.
  - Refers to a federal candidate, is directed to the candidate's constituents and is distributed within certain time frame before an election.
- (3) The communication satisfies at least one of the conduct standards in 11 CFR §109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR §109.21(e), (g), and (h).
  - Must have been created, produced or distributed at the request of the candidate or its' agent.
  - Developed with a "material involvement" of the candidate.
  - Created, produced or distributed after "substantial discussion" with the candidate or his agents.
  - The use of a common vendor in the creation, production or distribution of a communication. 11 CFR §109.37.

## **Facts and Analysis**

### **A. Facts**

The combined coordinated party expenditure limit for a 2010 candidate for the House of Representatives from South Dakota was \$174,000, with an \$87,000 limit for both SDDP and the National Party (Democratic National Committee (DNC)). SDDP reported coordinated expenditures of \$164,229<sup>9</sup> on Schedule F (Itemized Coordinated Party Expenditures) for Stephanie Herseth Sandlin, a candidate for the House of Representatives. The Democratic Congressional Campaign Committee (DCCC) reported coordinated expenditures for the candidate of \$26,048. The total reported coordinated expenditures by both the SDDP and the DCCC exceeded the coordinated expenditure limit by \$16,277.

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<sup>9</sup> Of the \$164,229 reported on Schedule F, SDDP provided assignment letters disclosing that the DNC (through DCCC) designated it to make expenditures of \$145,809 on behalf of the candidate.



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

At the exit conference, the Audit staff provided a schedule of the coordinated expenditures subject to the limit and discussed them with SDDP representatives. During the discussion, SDDP representatives said that the SDDP had erroneously included direct mail pieces costing \$19,529 in its Coordinated Expenses of \$164,229 and that it should have reported this expenditure as volunteer exempt activity.

The Audit staff requested further documentation to support the reporting of the direct mailers as exempt activity. In response, SDDP provided pictures of volunteers working on the direct mailers. It is also noted that the vendor for the two direct mail pieces was the same as the vendor used for other direct mail pieces reported as having exempt activity.

Both mail pieces are brochures containing four pages, including the back and front cover. One of the mail pieces emphasizes the words, "Reckless and Wrong" when discussing the plans of the opposing political party's congressional candidate. The other mail piece's message is that the candidate, "...does what's right for South Dakota Seniors," and then goes on to discuss, primarily, Medicare. The candidate's and the opponent's viewpoints and plans are provided. The final words on the inside cover urge a no vote for the other candidate.<sup>10</sup>

The Commission addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Democratic Executive Committee of Florida and the Tennessee Republican Party. In these reports, the Commission recognized that a lack of clarity exists regarding the application of the volunteer materials exemption. The Commission had attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption,<sup>11</sup> but this was never achieved. Since a lack of clarity exists concerning the application of the volunteer materials exemption, it follows that the type and amount of documentation needed to support volunteer involvement is also unclear.

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption and to document that involvement, the Interim Audit Report recommended that SDDP provide a more detailed statement<sup>12</sup> and further documentation regarding the volunteers' involvement for the two mailers. In addition, that SDDP should amend its reports in accordance with its earlier statements at the audit exit conference. Absent such further information, the disbursement might have been considered a coordinated expenditure, resulting in SDDP exceeding the coordinated expenditure limit by \$16,277.

### **C. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendations, SDDP amended its filing to show \$19,529 as a volunteer exempt expense and provided a signed declaration that this type of mailing was generally performed by volunteers.

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<sup>10</sup> Each mailer includes a statement, "Paid for by the South Dakota Democratic Party."

<sup>11</sup> Proposed Interim Enforcement Policy, Agenda document No. 10-16.

<sup>12</sup> SDDP might want to consider providing a sworn statement which might be considered stronger evidence of volunteer involvement.

Given the lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures for which the SDDP claims as qualifying for a volunteer exempt activity are no longer being attributed to SDDP's coordinated expenditure limit and this matter is considered resolved.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that SDDP resolved the matter for reporting of coordinated party expenditures.

#### **E. Committee Response to the Draft Final Audit Report**

SDDP's response to the Draft Final Audit Report provided no additional comments.

#### **Commission Conclusion**

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that expenditures totaling \$19,529 should not be attributed towards SDDP's coordinated expenditure limitation and that SDDP did not exceed the 2010 coordinated expenditure limit.

The Commission approved the Audit staff's recommendation.

### **Finding 4. Contributions from Unregistered Political Organizations**

#### **Summary**

SDDP received contributions totaling \$14,831 from unregistered political organizations that may not have used permissible funds. SDDP refunded contributions totaling \$4,891 of the \$14,831, though it did so in an untimely manner.

In response to the Interim Audit Report recommendations, SDDP provided signed letters from contributors confirming that \$3,140 were from permissible sources. In addition, SDDP provided documentation supporting that \$5,000 was not a contribution but rather a reimbursement from a non-federal committee related to a door hanger. SDDP also issued a disgorgement check for \$1,800 payable to the U.S. Treasury for the balance of the impermissible contributions.

The Commission approved a finding that SDDP received impermissible contributions from unregistered political organizations totaling \$6,691.

#### **Legal Standard**

**A. Party Committee Limits.** A party committee may not receive more than a total of \$10,000 per year from any one individual. This limit is shared by state, district, & local party committees. 52 U.S.C. § 30116a(a)(1)(C),(2)(C) and (f) and 11 CFR §§110.1(a) and (d) and 110.9(a).

**B. Handling Contributions that Appear Impermissible or Excessive.** If a committee receives a contribution that appears to be impermissible or excessive, the committee must either:

1. Return the questionable check to the donor; or
2. Deposit the check into its federal account and:
  - Keep enough money in the account to cover all potential refunds;
  - Keep a written record explaining why the contribution may be illegal;
  - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established. 11 CFR §103.3(b)(3), (4) and (5).

**C. Receipt of Contributions.** Organizations that are political committees under the Act, other than national party committees shall establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. 11 CFR §102.5(a).

## **Facts and Analysis**

### **A. Facts**

During the 2010 audit cycle, SDDP deposited 16 contributions, totaling \$14,831, from unregistered political organizations into its federal account. Following the issuance of the audit notification letter, SDDP issued untimely refunds totaling \$4,891.<sup>13</sup> SDDP has taken no action with respect to the remaining \$9,940 and the Audit staff considered the contributions at issue impermissible and unresolved.

The Audit staff reviewed all documentation provided by SDDP pertaining to contributions received from unregistered political organizations. In several instances, notations in SDDP records were made stating, "mis-deposited into the federal committee funds." However, the Audit staff found no attempt on the part of SDDP to make refunds of those contributions prior to being notified of the audit. In addition, the Audit staff found no attempt on the part of SDDP to ascertain the permissibility of other unregistered political organizations' contributions.

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

During audit fieldwork, Audit staff presented this matter to SDDP representatives. SDDP responded that one of the contributions for \$5,000 should have been reported as an offset for door hangers, not as a contribution. In addition, the SDDP representatives also said that an effort would be made to contact the unregistered political organizations to substantiate that funds were from permissible sources.

The Audit staff requested additional information concerning the door hangers and the results of SDDP's efforts to contact unregistered political committees to substantiate that

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<sup>13</sup> SDDP issued refund checks totaling \$6,691 but only \$4,891 has cleared SDDP's bank account.

the funds were from permissible sources, but received no further information. Absent such additional information, the Audit staff concluded that these items were impermissible contributions that needed to be refunded to the contributors or disgorged to the U.S. Treasury.

The Interim Audit Report recommended that SDDP provide documentation that demonstrates \$9,940 in questioned contributions were made with permissible funds or that they be refunded to the contributor or disgorged to the U.S. Treasury.

#### **C. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendations, SDDP provided eight signed letters from contributors confirming that \$3,140 were from permissible sources. In addition, SDDP provided documentation supporting that \$5,000 was not a contribution but rather a reimbursement from a non-federal committee related to a door hanger. SDDP also issued a disgorgement check for \$1,800 payable to the U.S. Treasury for the balance of the impermissible contributions.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that SDDP had disgorged the remaining balance of impermissible contributions to the U.S. Treasury and therefore the finding was resolved.

#### **E. Committee Response to the Draft Final Audit Report**

SDDP's response to the Draft Final Audit Report provided no additional comments.

#### **Commission Conclusion**

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that SDDP received impermissible contributions totaling \$6,691 from unregistered political organizations.

The Commission approved the Audit staff's recommendation.

### **Finding 5. Disclosure of Occupation/Name of Employer**

#### **Summary**

The Audit staff reviewed individual contributions, for which itemization is required, and found that 78 contributions totaling \$30,702 lacked adequate disclosure of occupation and/or name of employer (OCC/NOE) information. Furthermore, prior to the notification of the audit, SDDP did not sufficiently document "best efforts" to obtain, maintain, and submit contributor information. After being notified of the audit, SDDP obtained some of the missing contributor information and filed amended reports for calendar year 2009, which materially corrected the disclosure of OCC/NOE.

In the Interim Audit Report, the Audit staff recommended that SDDP provide any additional information it considers relevant to this matter. SDDP made no comment in response to the audit report. However, although not required, SDDP amended its 2010 reports to include previously undisclosed OCC/NOE information for \$10,206 in contributions from individuals.

The Commission approved a finding that SDDP failed to disclose OCC/NOE information for individuals totaling \$30,702 and did not timely demonstrate “best efforts” to obtain, maintain, and submit disclosure information with respect to these contributions.

### **Legal Standard**

**A. Itemization required for Contributions from Individuals.** A political committee other than an authorized committee must itemize any contribution from an individual if it exceeds \$200 per calendar year, either by itself or when combined with other contributions from the same contributions. 52 U.S.C. § 30104(b)(3)(A).

**B. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:

- The contributor’s full name and address (including zip code);
- The contributor’s occupation and the name of his or her employer;
- The date of receipt (the date the committee received the contribution);
- The amount of the contribution; and
- The calendar year-to-date total of all contributions from the same individual. 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. § 30104(b)(3)(A).

**C. 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. 52 U.S.C. § 30102(h)(2)(i).

**D. Definition of Best Efforts.** The treasurer and the committee will be considered to have used “best efforts” with respect to contributions, if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
  - A clear request for the contributors full name, mailing address, occupation, and name of employer; and
  - The statement that such reporting is required by Federal Law.
- Within 30 days after the 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 provide by the contributor, was obtained in a follow-up communication or was contained in the committees’ records or in prior reports that the committee filed during the same two-year cycle. 11 CFR §104.7(b).

### **Facts and Analysis**

#### **A. Facts**

Using the most recent reports for the audit period filed prior to the audit, the Audit staff determined that 78 contributions from individuals totaling \$30,702 (approximately 24

percent of itemized contributions) lacked adequate disclosure of occupation and/or name of employer (OCC/NOE) information. Most of the errors either disclosed a notation, "best efforts" or were left blank on the Schedule A, Itemized Receipts, filed with the Commission.

After notification of the audit and prior to audit fieldwork, SDDP provided the Audit staff with copies of letters that were sent to contributors to obtain OCC/NOE information. These letters were dated after SDDP was notified of the audit. Also, after notification of the audit, SDDP filed amended reports for 2009 that materially corrected the previously undisclosed OCC/NOE information. Since SDDP took corrective action after notification of the audit, this matter is included in this audit report.

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

The Audit staff discussed the disclosure of OCC/NOE information with SDDP representatives at the exit conference and provided a schedule of the remaining errors. The Interim Audit Report recommended that SDDP provide any additional information it considered relevant to this matter.

**C. Committee Response to the Interim Audit Report**

SDDP made no comment in response to the Interim Audit Report. However, although not required, SDDP amended its 2010 reports to include previously undisclosed OCC/NOE information for \$10,206 in contributions from individuals.

**D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that SDDP resolved the reporting of OCC/NOE information.

**E. Committee Response to the Draft Final Audit Report**

SDDP's response to the Draft Final Audit Report provided no additional comments.

**Commission Conclusion**

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that SDDP failed to disclose OCC/NOE information for individuals totaling \$30,702 and did not timely demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions.

The Commission approved the Audit staff's recommendation.

## Part V

### Additional Issue

#### Recordkeeping for Employees

##### Summary

As stated in the Finding 2 (Recordkeeping for Employees), SDDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDDP employees totaling \$60,143, for which monthly payroll logs were not maintained. This consisted of \$42,557, reported as allocated between federal and non-federal funds; \$15,187 that was paid from an exclusively non-federal account in a given month; and \$2,399 that was paid from an exclusively non-federal account during periods in which the same employee was also paid from a federal account.

In response to the Interim Audit Report recommendation, Counsel said SDDP moved all payroll expenses on their reports to Federal Election Activity.

The Commission did not approve, by the required four votes, the portion of the Audit staff's recommended finding that SDDP failed to maintain monthly payroll logs for the \$15,187 in payroll paid from an exclusively non-federal account in a given month. Pursuant to Commission Directive 70,<sup>14</sup> these expenses are discussed in the "Additional Issue" section, and the payroll expenditures of \$15,187 are not included in Finding 2.

##### Legal Standard

The legal standard in Finding 2 above is incorporated herein.

##### Facts and Analysis

###### A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. SDDP did not maintain any monthly logs or equivalent records to document the percentage of time each employee spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2009 and 2010, SDDP did not maintain logs for \$60,143<sup>15</sup> in payroll. This consisted of \$42,557, reported as allocated between federal and non-federal funds; \$15,187 that was paid from an exclusively non-federal account in a given month, and \$2,399 that was paid from an exclusively non-federal account but also included employees paid from a federal account during the same periods.

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<sup>14</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf).

<sup>15</sup> Amounts are net of payroll taxes and benefits. This total does not include payroll for employees paid with 100 percent federal funds and reported as such. (See Part I, Background, Commission Guidance, Request for Early Consideration of a Legal Question, p. 1).

Subsequent to audit notification, SDDP filed amended reports for calendar year 2009 that moved all previously allocated salaries to Line 30b, Federal Election Activity. The remaining payroll amount was immaterial. During fieldwork, the Audit staff asked SDDP representatives why SDDP made changes for its 2009 payroll disclosures. SDDP representatives said the following:

These changes were made as the result of two things. The first is that due to the fact that allocation transfers were never completed for these individuals' expense, these items were mis-reported. Secondly, with the knowledge of their roles, it is understood that their time was spent beyond 25 percent on federal activity.

The Audit staff acknowledges that the changes made by SDDP in the reporting of its payroll obviates the need for monthly timesheets since the payroll was paid with exclusively federal funds and reported as such. However, since SDDP amended reports after notification of the audit, this matter is included in this audit report.

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

At the exit conference, Audit staff presented the matter of maintaining monthly payroll logs to track the amount of time spent on federal election activity. SDDP Counsel stated that SDDP's position is that no payroll logs are required for activity reported and paid as 100 percent federal. The Interim Audit Report noted the verification of SDDP's amended reports that had moved allocated payroll to Line 30b, Federal Election Activity, and that no further action was required.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, Counsel reiterated previous comments regarding payroll and filed more amendments that reported 2010 payroll expenses on Line 30b. The Audit staff considers this matter resolved.

**D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that SDDP resolved the matter of recordkeeping for employees.

**E. Committee Response to the Draft Final Audit Report**

SDDP's response to the Draft Final Audit Report provided no additional comments.

**Commission Conclusion**

On March 10, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission find that SDDP failed to maintain monthly time logs to document the time employees spent on federal election activity totaling \$60,143.



The Commission did not approve, by the required four votes, the portion of the Audit staff's recommended finding that SDDP failed to maintain monthly payroll logs for the \$15,187 in payroll paid from an exclusively non-federal account in a given month. Some Commissioners voted to approve the Audit staff's recommendation. Others did not, and had previously cited the position of three Commissioners in the Final Audit Report of the Commission on the Georgia Federal Elections Committee, in support of the proposition that the Commission lacks jurisdiction to impose recordkeeping and documentation requirements on exclusively non-federal activity. Pursuant to Commission Directive 70,<sup>16</sup> these expenses are discussed in the "Additional Issue" section.

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<sup>16</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf).