



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**STATEMENT OF CHAIR ANN M. RAVEL,
COMMISSIONER STEVEN T. WALTHER, AND
COMMISSIONER ELLEN L. WEINTRAUB
Audit of the South Dakota Democratic Party (A11-20)**

This audit presents concerns regarding the South Dakota Democratic Party's failure to keep monthly time-logs for payroll payments associated with its contract workers and non-federal employees. 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) and our Statement on the Audit of the Republican Party of Iowa (A11-24). See Attachments A and B. We continue to assert that the Act and Commission regulations require committees to maintain logs documenting the time that all employees, including contract workers, spend on federal election activity.

3-25-15
Date

Ann M. Ravel
Ann M. Ravel
Chair

3-25-15
Date

Steven T. Walther
Steven T. Walther
Commissioner

3/25/15
Date

Ellen L. Weintraub
Ellen L. Weintraub
Commissioner



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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 Involving the DCRP (Sept. 25, 2012) (hereinafter “Directive 69 Guidance”); see also Commission Directive 69 (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 FEA at 2 U.S.C. § 431(20)(a)(iv) and 11 C.F.R. § 106.7(d)(1). Directive 69 Guidance at 2-4. Commissioners 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.

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)(2). 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)(iii).

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/.

⁷ *See* Final Rules for Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 438 (Jan. 3, 2003).

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
Ann M. Ravel
Vice Chair

3/18/14
Date

Steven T. Walther
Steven T. Walther
Commissioner

3/18/14
Date

Ellen L. Weintraub
Ellen L. Weintraub
Commissioner



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**STATEMENT OF VICE CHAIR ANN M. RAVEL, COMMISSIONER STEVEN T. WALTHER, AND COMMISSIONER ELLEN L. WEINTRAUB
Audit of the Republican Party of Iowa (A11-24)**

In the Commission's audit of the Republican Party of Iowa ("RPIA"), the Audit Division, in consultation with the Office of General Counsel, recommended that the Commission approve a finding that RPIA failed to maintain monthly time logs for \$476,442 in payroll consisting of both payments allocated between federal and non-federal funds and 100% non-federal funds.¹ We supported this recommendation. The Commission could not agree by the required four votes, however, that \$141,066 of this amount, consisting of payments to employees paid solely out of the RPIA's 100% non-federal account, should be included in the audit finding.² We write to explain why we support recordkeeping requirements for non-federal employees.³

The purpose of the Commission's audit process is to ensure that audited committees are conducting their federal activity in accordance with the Federal Election Campaign Act, as amended ("the Act"). Disbursements for federal activity must be reported to the Commission and made with funds subject to the limitations, prohibitions, and reporting requirements of the Act. 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 federal election activity ("FEA") or activity in connection with federal elections.⁴ To document this time, our regulations require that a state

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

² See Certification of the Audit Division Recommendation Memorandum on the Republican Party of Iowa, dated January 30, 2014. The Commission could agree only to include \$336,569 worth of payments in the recordkeeping finding. Because our colleagues disagreed with the Audit Division's recommendations as to \$141,066 of 100% non-federal payments in the recommended finding, the Report discusses this issue in the "Additional Issues" section rather than in the Report's "Findings." See Proposed Final Audit Report of the Commission at 10-12.

³ This statement does not address our additional concerns regarding this committee's recordkeeping requirement for its contract workers. We set out those concerns separately 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), 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)(2). 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(c)(1) and 106.7(d)(1)(iii).

party committee "keep a monthly log of the percentage of time *each* employee spends in connection with a Federal election."⁵ In the audit process, the Commission compares these logs against a committee's reporting of federal activity to verify that the committee used the proper amount of federal funds to pay for federal activity. In the absence of such documentation, the Commission has no way of determining whether a state party committee has paid its federal employees with impermissible non-federal funds.

The Commission's regulations make clear that state party committees have an obligation to maintain appropriate records for *all* employees. The unwillingness to require any documentation for expenses that a committee simply claims to be 100% non-federal severely limits the Commission's ability to implement the Act. This approach is both contrary to the plain language of the recordkeeping requirements in the Commission's regulations and creates a perverse incentive for state party committees to avoid keeping records of their activities. On the other hand, requiring committees to keep logs of their employees' federal activity—even when the percentage of federal activity is zero—provides a strong prophylactic reminder to committees to monitor their employees' federal and non-federal activity to ensure that all employees who spend any time on federal activity are paid with the appropriate amount of federal funds. Given this benefit, it is not overly burdensome for committees to maintain regular logs for their employees who have spent no time on federal activity.

There is no jurisdictional question here; the Commission is empowered to review records of both state and federal spending for federally-registered political committees.⁶ Our ability to comprehensively audit committees that influence federal elections is central to the Commission's mission.

March 18, 2014
Date

Ann M. Ravel
Ann M. Ravel
Vice Chair

3/18/14
Date

Steven T. Walther
Steven T. Walther
Commissioner

3/18/14
Date

Ellen L. Weintraub
Ellen L. Weintraub
Commissioner

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

⁶ See 2 U.S.C. § 438(b).