

  
**SANDLER REIFF**

**SANDLER REIFF LAMB  
ROSENSTEIN & BIRKENSTOCK, P.C.**

1025 Vermont Ave NW, Suite 300  
Washington, DC 20005  
[www.sandlerreiff.com](http://www.sandlerreiff.com)  
T: 202-479-1111  
F: 202-479-1115

December 12, 2016

Mr. Thomas Hintermeister  
Assistant Staff Director  
Audit Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Hintermeister:

This letter will serve as the response of the Hawaii Democratic Party ("HDP") to the Interim Audit Report ("IAR") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the HDP's financial activities for 2011 and 2012.

The response to each of the Audit Division's seven findings is as follows:

**Finding #1**

The IAR's first finding involves the misstatement of committee activities for the calendar years 2011 and 2012. The committee has filed comprehensive amendments to the 2011 and 2012 reports in accordance with the errors noted in the IAR. Notwithstanding the amendments, it should be noted that the HDP does not believe that the State Convention Account should have been included in the Commission's finding, as well as in Finding #3. This account was established for the sole purpose of administering the HDP's biennial convention. Commission regulations specifically permit state parties to exclusively use non-federal funds to pay for convention expenses and all funds deposited into this account were used solely for that purpose. The HDP acknowledges that some portion of the activity of this account was inadvertently and incorrectly included in its federal reports, therefore it has decided to leave this this account in its amended reports. However, the inclusion of this account has significant implications for purposes of Finding #3 which is discussed below. It should be noted that subsequent to the 2012 convention, the HDP has properly paid for convention expenses directly from non-federal accounts, and had done so previously. It did not intend to diverge from this practice in 2012 but for incorrect inclusion of this activity on its federal report.

### Finding #2

The IAR's second finding involves the receipt and refund of two excessive contributions. As noted in the IAR the committee has already refunded the excessive portion of these contributions. Per the IAR's request, attached as Exhibit A, please find bank documentation demonstrating that the refunds have cleared the bank.

### Finding #3

The IAR's third finding involves the apparent receipt of prohibited contributions. In HDP wishes to generally acknowledge that several prohibited contributions appear to have been incorrectly deposited into the federal account but specifically comments as follows:

- 1) Certain receipts marked as impermissible contributions were actually vendor refunds and, if not already disclosed on Line 15, will be moved to Line 15, including:
  - a. Ward Research, Inc. – 2/24/16 - \$5.00
  - b. Friends of Jake Bradshaw – 4/24/12 - \$75.00

A majority of the impermissible contributions identified by the IAR were received in connection with the HDP's state convention. These contributions were merely pass-through contributions and were used to underwrite the HDP's state convention. As discussed above, the Commission should not require the HDP to reimburse its non-federal account for these contributions because the money was immediately spent on the state convention and the state convention was paid for directly from the state convention account. Specifically, the IAR identifies 54 contributions totaling \$19,020.50 for the convention. As stated above, the HDP did not intend for this account to be a federal account and used the account exclusively for expenses related to its state convention. The Commission permits state party committees to pay for its state conventions exclusively with non-federal funds and the HDP was not required to use any federal funds to pay for its state convention. 11 C.F.R. § 100.24(c)(3). See Explanation and Justification, Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 Fed. Reg. 49064, 49070 ("...the activities described in paragraphs (c)(1) through (c)(4) of section 100.24, which always may be paid for with entirely non-Federal funds.") Therefore, the HDP believes that this account should be excluded for purposes of any analysis related to misdeposits of contributions. In addition, the HDP notes that it transferred approximately \$56,000 of funds from its federal account into this account to cover a shortfall in fundraising for the convention. Since these funds were transferred for use for a non-federal purpose, the Commission should acknowledge that this transfer further mitigates other misdeposits made by the HDP in 2012.

- 2) Notwithstanding the above, it should be noted that there were LLC contributions from Radcliffe and Associates, LLC, Hoakea Communications, LLC and the Kaopuiki Group LLC deposited into the state convention account. The HDP has confirmed that all three LLC's are taxed as partnerships and were permissible contributions under federal law. See documentation attached as Exhibit B.
- 3) Included in the state convention contributions were several contributions from unregistered candidates for local office. The HDP believes that these committees had more than sufficient permissible funds to make a contribution to the HDP under 11 C.F.R. § 102.5(b)(1).
- 4) The IAR identifies additional contributions that appear to be from prohibited sources. Please note the following:
  - a. The IAR identifies four apparently impermissible contributions totaling \$27,000 that had already subsequently been refunded by the HDP. Attached as Exhibit C please find documentation to demonstrate that these refunds have been deposited by the donor.
  - b. The contributions Diwalt, LLC was from LLC's that have chosen partnership taxation. See attached documentation as Exhibit D.
  - c. The remaining 10 contributions totaling \$115,000 have been placed on the committee's debt schedule and the funds will be refunded to these donors if and when funds become available. However, the Commission should allow the DPH to reduce this amount by \$56,000 based upon the transfer of federal funds to its state convention account.

#### Finding #4

The IAR fourth finding involves the apparent misreporting of vendor debt. In response to the IAR, the HDP has amended Schedule D of its reports in accordance with the IAR's recommendations.

#### Finding #5

The fifth finding of the IAR involves recordkeeping for payroll and benefits expenses disclosed on Schedule H4 of the committee's reports. Although the HDP cannot locate the records requested in the IAR, the HDP has implemented procedures to ensure that will maintain the necessary documentation in connection with payroll and benefit expenses for such expenses disclosed on Schedule H4 of its reports.

#### Finding #6

The sixth finding in the IAR involves the apparent failure to disclose certain communications as Independent Expenditures within 24 hours of dissemination. The HDP objects

to the characterization of these communications as independent expenditures and the HDP should have disclosed such expenditures as coordinated expenditures on Schedule E of its reports.

The HDP acknowledges that it did not have enough of the coordinated expenditure authority to fund all of the expenditures disclosed as coordinated expenditures. However, the combined spending of the HDP and the DSCC did not exceed the combined coordinated expenditure limit of \$195,200 and the failure to obtain additional authority from the DSCC prior to making additional coordinated expenditures was an administrative oversight. Attached as Exhibit F, please find a letter from counsel of the DSCC that acknowledges that the DSCC did not use its remaining coordinated expenditure authority and would not have objected to a request for the transfer of such authority to the HDP. The HDP requests that the Final Audit Report reflect that the HDP's spending did not exceed the combined coordinated expenditure limit for the 2012 Hawaii Senate election (See Final Audit Report of the Democratic Executive Committee of Florida for the 2008 Election Cycle, Finding 1).

#### Finding #7

The seventh finding of the IAR involves the apparent over transfer of non-federal funds during the election cycle in connection with allocable expenses during the 2012 election cycle. In response to the IAR, the HDP notes the following:

- 1) Attached as Exhibit F, please find a declaration signed by then Chairman, Dante Carpenter. In Chairman Carpenter's declaration, he acknowledges that several staff payments were made to individuals who worked less than 25% percent of time in a given month on activities in connection with federal elections and federal election activities.
- 2) Attached as Exhibit G, please find a declaration signed by then Chairman Dante Carpenter that asserts that several expenses disallowed by the IAR as allocated expenses were, in fact ordinary operating costs. Therefore, the Audit Division should reduce the finding of over allocation to include these costs as properly allocable expenditures.
- 3) The HDP has amended its reports to move \$37,334.70 in expenses disclosed on Schedule H4 to Schedule H6. In addition, the HDP has provided schedules L for Levin Activity and has moved the necessary portion of allocation transfers to Schedule H5 so that these activities are properly disclosed as allocable federal election activity.
- 4) The HDP objects to the inclusion of non-federal bank service charges as allocable expenses. To our knowledge the Commission has never required such a reading of its regulations and these expenses were related to the banking activities of its non-federal accounts. To be sure, to require these non-federal expenses be treated as allocable expenses for all non-federal bank charges would lead to an automatic violation of 11 C.F.R. § 106.7(f) which requires allocable expenditures to paid directly from a federal account. To state that these are allocable simply makes no sense and the IAR provides no justification as to why these expenses should be treated as allocable between federal and non-federal funds.

Based upon the above adjustments, it is the HDP's understanding and belief that there is no material over-transfer of non-federal funds in connection with its allocation activities for the 2012 election cycle.

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,

A handwritten signature in black ink, appearing to read 'Neil Reiff', written in a cursive style.

Neil Reiff  
Counsel to the Hawaii Democratic Party