



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 24, 2018

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director

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Chief Compliance Officer

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Subject: Audit Division Recommendation Memorandum on Friends of Erik Paulsen (FEP) (A17-06)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to FEP on July 13, 2018 (see attachment). In response to the DFAR, FEP provided additional comments, as noted below, but did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for the finding outlined in the DFAR. The Office of General Counsel has reviewed this memorandum and concurs with the recommendation.

Receipt of Contributions in Excess of the Limit

In response to the Interim Audit Report, FEP disagreed that it received excessive contributions and stated that the projections from the statistical sampling were improper.

FEP stated, "Although sampling has been blessed by the Commission as a general matter, the Audit Division's projections here are incorrect because the sampled items relied on by the Audit Division were not excessive contributions (or erroneous in any other way). To the contrary, the Committee provided the auditors

with evidence demonstrating that *none* of the sample items involved excessive contributions – and the auditors agreed that all concerns regarding the sample items have been resolved. Because the sampled contributions were not errors, the Audit Division cannot draw statistical projections from them, per Commission regulation. *See* 11 C.F.R. § 9038.1(f)(2).”

Nonetheless, FEP stated it maintained the presumptive letters and considered this finding a “technical record-retention issue.” FEP also provided copies of presumptive letters to resolve, albeit untimely, all of the excessive contributions identified by the Audit staff totaling \$185,386.¹

In response to the DFAR, FEP again stated:

- A. The Audit Report wrongly calls certain contributions “excessive” even though the FEP has demonstrated that every donor received a reattribution or redesignation letter when warranted during the 2016 cycle.
- B. FEP’s evidence resolved the auditors’ concerns regarding the alleged errors in the sample items. Because those concerns were resolved, as a matter of regulation, the Audit Division cannot use the sample items as the basis for statistical projections. *See* 11 C.F.R. §9038.1(f)(2).

FEP stated that no findings of “excessive contributions” are warranted and the audit should be closed with no findings.

The Audit staff notes that, for the identified untimely resolved excessive contributions, FEP retained neither the written records concerning redesignations and reattributions as required under 11 CFR §110.1(l)(2), (3), (4)(ii), or (6), nor did it retain the contributor notices required under 11 CFR §110.1(l)(5). In the absence of any such documentation the original designations or attributions shall control, per 11 CFR 110.1(l)(5).

The Audit staff maintains that FEP received excessive contributions totaling \$185,386. The Audit staff notes that it recalculated its sample projection based on all timely presumptive letters presented by FEP during audit fieldwork. The errors identified by the Audit staff represent excessive contributions which were not resolved within 60 days after their receipt either via timely issued presumptive letter or a refund. Since FEP provided presumptive letters outside of the 60 days, these excessive contributions are untimely resolved per 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

The Audit staff recommends that the Commission find that FEP received excessive contributions totaling \$185,386.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission’s vote.

¹ FEP searched its contributor records and provided untimely presumptive letters for additional excessive contributions over the amount identified by the Audit staff. The dollar amounts of these letters were applied to the amount identified by the Audit staff as requiring presumptive letters.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Terry O'Brien or Zuzana Pacious at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on Friends of Erik Paulsen

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Friends of Erik Paulsen

(January 1, 2015 - December 31, 2016)

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.¹ 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 the matter discussed in this report.

About the Campaign (p. 2)

Friends of Erik Paulsen is the principal campaign committee for Erik Paulsen, Republican candidate for the United States House of Representatives from the state of Minnesota, 3rd District, and is headquartered in Eden Prairie, Minnesota. For more information, see the Campaign Organization Chart, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 2,505,856
○ Contributions from Other Political Committees	2,431,879
○ Other Receipts	16,698
Total Receipts	\$ 4,954,433
• Disbursements	
○ Operating Expenditures	\$ 5,713,973
○ Transfers to Other Authorized Committees	48,102
○ Refunds of Contributions	14,150
Total Disbursements	\$ 5,776,225

Finding and Recommendation (p. 3)

- Receipt of Contributions in Excess of the Limit

¹ 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on the Friends of Erik Paulsen

(January 1, 2015 - December 31, 2016)

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Part I

Background

Authority for Audit

This report is based on an audit of the Friends of Erik Paulsen (FEP), 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 if 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 excessive contributions;
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

Important Dates	
• Date of Registration	October 15, 2007
• Audit Coverage	January 1, 2015 - December 31, 2016
Headquarters	
Eden Prairie, Minnesota	
Bank Information	
• Bank Depositories	Three
• Bank Accounts	2 checking; 1 savings; 3 investment
Treasurer	
• Treasurer When Audit Was Conducted	David Asp (12/28/2016 – Present)
• Treasurer During Period Covered by Audit	Reid LeBeau (10/15/2007 – 12/27/2016) David Asp (12/28/2016 – Present)
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2015	\$ 1,194,961
Receipts	
○ Contributions from Individuals	2,505,856
○ Contributions from Other Political Committees	2,431,879
○ Other Receipts	16,698
Total Receipts	\$ 4,954,433
Disbursements	
○ Operating Expenditures	5,713,973
○ Transfers to Other Authorized Committees	48,102
○ Refunds of Contributions	14,150
Total Disbursements	\$ 5,776,225
Cash-on-hand @ December 31, 2016	\$ 373,169

Part III

Summary

Finding and Recommendation

Receipt of Contributions in Excess of the Limit

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that FEP received apparent excessive contributions totaling \$185,386. These errors occurred as a result of FEP not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors or issuing a refund of the excessive portion of contributions in a timely manner. In response to the exit conference, FEP untimely resolved excessive contributions from individuals totaling \$50,600. In response to the Interim Audit Report recommendation, FEP stated that it believed that presumptive letters were sent timely to its contributors and, at most, the Audit staff should find that FEP had a “technical record-retention issue.” FEP also presented 224 presumptive letters dated January 4, 2018, to untimely resolve the excessive contribution issue. (For more detail, see p. 4.)

Part IV

Finding and Recommendation

Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that FEP received apparent excessive contributions totaling \$185,386. These errors occurred as a result of FEP not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors or issuing a refund of the excessive portion of contributions in a timely manner. In response to the exit conference, FEP untimely resolved excessive contributions from individuals totaling \$50,600. In response to the Interim Audit Report recommendation, FEP stated that it believed that presumptive letters were sent timely to its contributors and, at most, the Audit staff should find that FEP had a “technical record-retention issue.” FEP also presented 224 presumptive letters dated January 4, 2018, to untimely resolve the excessive contribution issue.

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §§30116; 11 CFR §§110.1(a) and (b) and 110.9.
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
 - 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;
 - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).
- C. Joint Contributions.** Any contribution made by more than one person, except for a contribution made by a partnership, must include the signature of each contributor on

the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 11 CFR §110.1(b)(5)(ii)(B)(5) and (6).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized sample testing and a review of other contributions not included in the sample population to identify apparent excessive contributions from individuals.

Excessive Contributions-Testing Method	
Sample Projection Amount ²	\$153,586
High Dollar Contribution Error Amount	\$31,800
Total Amount of Excessive Contributions	\$185,386
Reasons for Excessive Contributions	
Contributions not resolved via presumptive letter or refund	\$182,686
Contributions resolved-Untimely	\$2,700 ³
Total Amount of Excessive Contributions	\$185,386

² The sample error amount (\$153,586) was projected using a Monetary Unit Sample with a 95 percent confidence level. The sample estimate could be as low as \$88,215 or as high as \$247,564.

³ The Audit staff was able to trace this refund to FEP's disbursement database. However, FEP has not provided evidence that this refund check has actually been negotiated.

B. Additional Information

FEP did not maintain a separate account for questionable contributions. However, based on its cash-on-hand balance at the end of the cycle (\$373,169), it appears that FEP maintained sufficient funds to make refunds of the apparent excessive contributions.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the FEP Treasurer (Treasurer) at the exit conference and provided schedules of the apparent excessive contributions along with descriptions of actions necessary to resolve each.

In response to the exit conference, the Treasurer submitted presumptive reattribution and redesignation letters that were sent to all the contributors identified by the Audit staff.⁴ Many timely presumptive letters were also submitted in response to the exit conference. The excessive contributions resolved by these letters are not included in the amounts presented in this report. The Treasurer stated he would review contribution records to identify other contributions requiring presumptive letters along with descriptions of actions necessary to resolve each.

The Treasurer also expressed FEP's commitment to resolving the issue of apparent excessive contributions and stated that during the campaign "contributors received solicitations with language informing them that their contributions could be reattributed" or "redesignated to comply with the federal limits." The Treasurer provided a signed letter from a former committee employee stating that she was the person responsible for "sending reallocation and redesignation letters on behalf of the Committee" during the cycle. The former employee stated that, consistent with her practice at the time, she sent presumptive letters to all individuals she determined to have given an excessive contribution, including those identified by the Audit staff. She believes that the reason copies of these letters are not available is because they were among letters she "inadvertently saved over when drafting new letters to be sent to other contributors."

In response to the exit conference, FEP submitted the following documentation:

Corrective Action Taken by Committee	
Presumptive Letters Sent- <i>Untimely</i>	\$50,600
Amount of Excessive Contributions – <i>Not Resolved</i>	\$134,786

The Interim Audit Report recommended that FEP provide evidence that demonstrated that the contributions totaling \$134,786 were not excessive or that they were timely resolved. Absent such evidence, FEP should have resolved these excessive contributions

⁴ FEP sent untimely presumptive letters to individuals who donated contributions in excess of the limit. These individuals were identified by the Audit staff in the high dollar review (\$31,800) and the sample review (\$18,800).

by (1) sending notices for those contributions that were eligible for presumptive redesignation/retribution letters, informing contributors about how the excessive portions of their contributions were resolved and offering refunds, (2) refunding the excessive portion of each contribution that was not eligible for a presumptive redesignation/retribution letter or making a payment to a governmental entity or to a qualified charitable organization and providing documentation, or (3) disclosing the contributions requiring refunds on Schedule D (Debts and Obligations) if funds were not available to make the necessary refunds.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, FEP disagreed with the Audit staff's conclusion that it received excessive contributions because, according to FEP, the projections from the statistical sampling were improper. FEP stated that "...the sampled items relied on by the Audit Division were not excessive contributions (or erroneous in any other way)." Further, FEP stated that it "...provided the auditors with evidence demonstrating that none of the sample items involved excessive contributions – and the auditors agreed that all concerns regarding the sample items have been resolved." By providing the letter from its former employee, FEP believes it has demonstrated that every donor requiring a presumptive letter for the 2016 cycle has received a letter. As a result, FEP contended that the Audit staff should report no finding, or revise its finding to match the evidence submitted by FEP which demonstrates that it did not receive excessive contributions. Finally, FEP stated that the Audit staff's finding suggested a "technical record-retention issue" due to its maintenance of redesignation/retribution letters.

The Audit staff notes that all errors identified in the sample represented excessive contributions. FEP did not provide presumptive letters sent to the contributors during the 2016 cycle. However, FEP sent follow-up letters to its contributors during audit fieldwork and untimely resolved the identified sample errors.

As for the remaining excessive errors in the population of contributions, the Audit staff acknowledged that FEP submitted a letter from a former employee attesting that presumptive letters were sent timely and that the electronic copies were deleted while saving subsequent presumptive letters. Although the letter from the former employee was helpful in that it provided information about FEP's procedures when it received the excessive contributions, it did not provide sufficient information or proof which would enable the Audit staff to independently verify that the presumptive letters were indeed timely sent to FEP's contributors. Lastly, FEP's statement that its situation resembled a "technical record-retention issue" is inaccurate as the regulations clearly state that a political committee must retain the written records concerning redesignation or retribution for either to be effective.

Notwithstanding the letter from the former employee, FEP also reviewed its contributor records and presented 224⁵ additional presumptive retribution/redesignation letters for

⁵ This amount does not include 15 duplicate presumptive letters sent to contributors for contributions totaling \$36,200.

contributions totaling \$391,950 which FEP sent to its contributors. These letters were dated January 4, 2018. The Audit staff reviewed the letters and concluded that FEP resolved all excessive contributions which could have been remedied with a presumptive reattribution and/or redesignation letter, albeit untimely.

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