



Interim Report of the Audit Division on the Washington State Democratic Central Committee

January 1, 2003 – December 31, 2004

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 any of the matters discussed in this report.

About the Committee (p. 2)

The Washington State Democratic Central Committee (WSDCC) is a state party committee headquartered in Seattle, Washington. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

- **Federal Receipts**
 - Contributions from Individuals \$ 2,632,225
 - Contributions from Other Political Committees 1,154,210
 - Transfers from Affiliated Party Committees 2,569,816
 - Transfers from Nonfederal and Levin Funds 659,526
 - Other Federal Receipts 39,204
 - Total Federal Receipts \$7,054,981**
- **Federal Disbursements**
 - Operating Expenditures \$ 3,420,026
 - Contributions to Federal Candidates 31,241
 - Independent Expenditures 607,290
 - Coordinated Party Expenditures 723,065
 - Federal Election Activity 1,019,259
 - Other Federal Disbursements 662,438
 - Total Federal Disbursements \$6,463,319**
- **Levin Receipts \$ 87,750**
- **Levin Disbursements \$ 78,117**

Findings and Recommendations (p. 3)

- Disclosure of Disbursements (Finding 1)
- Excessive Contributions Made to Federal Candidates (Finding 2)
- Misstatement of Levin Financial Activity (Finding 3)
- Reporting of Apparent Independent Expenditures (Finding 4)
- Federal Telemarketing Activity (Finding 5)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of the Washington State Democratic Central Committee, 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 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. 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. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various factors and as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The disclosure of expenses allocated between federal, nonfederal, and Levin accounts.
6. The consistency between reported figures and bank records.
7. The completeness of records.
8. Other committee operations necessary to the review.

Part II

Overview of Committee

Committee Organization

Important Dates	WSDCC
• Date of Registration	October 16, 1979
• Audit Coverage	January 1, 2003 – December 31, 2004
Headquarters	Seattle, Washington
Bank Information	
• Bank Depositories	2
• Bank Accounts	6 Federal, 6 Nonfederal, 1 Levin
Treasurer	
• Treasurer When Audit Was Conducted	Habib M. Habib
• Treasurer During Period Covered by Audit	Habib M. Habib
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Federal Cash on hand @ January 1, 2003	\$ 71,554
○ Contributions from Individuals	2,632,225
○ Contributions from Other Political Committees	1,154,210
○ Transfers from Affiliated Party Committees	2,569,816
○ Transfers from Nonfederal and Levin Funds	659,526
○ Other Federal Receipts	39,204
Total Federal Receipts	\$ 7,054,981
○ Operating Expenditures	3,420,026
○ Contributions to Federal Candidates	31,241
○ Independent Expenditures	607,290
○ Coordinated Party Expenditures	723,065
○ Federal Election Activity	1,019,259
○ Other Federal Disbursements	662,438
Total Federal Disbursements	\$ 6,463,319
Federal Cash on hand @ December 31, 2004	\$ 663,216
Levin Cash on hand @ January 1, 2003	\$ 0
Total Levin Receipts	87,750
Total Levin Disbursements	78,117
Levin Cash on hand @ December 31, 2004	\$ 9,633

Part III

Summaries

Findings and Recommendations

Finding 1. Disclosure of Disbursements

The Audit staff identified 68 disbursements, totaling \$1,800,636, which lacked or inadequately disclosed the required information. The Audit Staff recommends WSDCC amend its reports correctly disclosing these disbursements. (For more detail, see p. 5)

Finding 2. Excessive Contributions Made to Federal Candidates

The Audit staff identified six contributions to three Federal candidates that exceeded the limitation by \$6,103. The Audit staff recommends WSDCC present evidence that the contributions were not excessive or request refunds and submit evidence of the refunds. (For more detail, see p. 7)

Finding 3. Misstatement of Levin Financial Activity

A comparison of WSDCC's reported Levin financial activity to Levin bank records identified a misstatement of receipts, disbursements, and 2004 ending cash on hand. The Audit staff recommends WSDCC amend its Schedules L (Aggregation Page: Levin Funds), Schedule L-A (Itemized Receipts of Levin Funds), and Schedule L-B (Itemized Disbursements of Levin Funds) to properly report its Levin receipt and disbursement activity. (For more detail, see p. 8)

Finding 4. Reporting of Apparent Independent Expenditures

The Audit staff identified 10 disbursements, totaling \$607,290, for apparent independent expenditures made by WSDCC that, based on the available documentation, were reported on the wrong schedule. As independent expenditures, these transactions should also have been reported by WSDCC within the required 24 or 48 hour period. WSDCC believes these disbursements qualify as exempt activity but has not provided documentation to support its claim. The Audit staff recommends WSDCC provide further documentation to support its reporting of these transactions and amend its reports to properly disclose these disbursements as necessary. (For more detail, see p. 10)

Finding 5. Federal Telemarketing Activity

WSDCC conducted a telemarketing fundraising effort that raised funds and for which payments were made from its non-federal account. Based on the available telemarketing script, the Audit staff determined the receipts and disbursements related to these telemarketing efforts were actually federal and, as a result, the activity should have been conducted from a federal account and reported to the FEC. Absent evidence that the telemarketing activity was solely for non-federal purposes, the Audit staff recommends

WSDCC transfer the contributions received, totaling \$331,772, from its non-federal account to its Federal account and reimburse the expenses paid, totaling \$190,951, from its Federal account to its non-federal account. WSDCC should also amend 2004 reports to disclose, as memo entries, the necessary contributor and vendor information related to this telemarketing fundraising effort. (For more detail, see p. 13)

Part IV

Findings and Recommendations

Finding 1. Disclosure of Disbursements

Summary

The Audit staff identified 68 disbursements, totaling \$1,800,636, which lacked or inadequately disclosed the required information. The Audit Staff recommends WSDCC amend its reports correctly disclosing these disbursements.

Legal Standard

A. Reporting Disbursements. All political committees shall report the total amount of disbursements made during the reporting period during the calendar year in each of the following categories:

- Operating expenditures for allocated federal/nonfederal activity on Schedule H4 (Line 21a) and Operating expenditures other than shared operating expenditures on Schedule B (Line 21b);
- Contributions made to other political committees on Schedule B (Line 23);
- Independent expenditures made by the reporting committee on Schedule E (Line 24);
- Expenditures made under 2 U.S.C. §441a(d) on Schedule F (Line 25);
- Other disbursements on Schedule B (Line 29); and
- Allocated Federal Election Activity on Schedule H6 (Line 30a) and Federal Election Activity paid entirely with federal funds on Schedule B (Line 30b). 11 CFR §104.3(b)(1) and August 2004 Federal Election Commission Campaign Guide for Political Party Committees, Pp. 70-71.

B. Itemized Information. When expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Name of payee;
- Address of payee;
- Purpose of disbursement (a brief but specific description of why the disbursement was made);
- Date of payment; and
- Amount. 2 U.S.C. §434(b)(5)(A) and 11 CFR §§104.3(b)(3)(i) and 104.9.

C. Examples of Purpose.

- Adequate Descriptions. Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(3)(i)(B).
- Inadequate Descriptions. The following descriptions do not meet the requirement for reporting “purpose”: advance, election day expenses, other expenses, expense

reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B) and Commission Policy Statement at www.fcc.gov/law/policy/purposeofdisbursement/inadequate_purpose_llst_3507.pdf.

D. Reporting Allocable Expenses Between Federal Funds and Levin Funds. A State, district, or local political party committee that makes a disbursement for Federal election activity that is allocated between Federal funds and Levin funds must state the category of Federal election activity for which each allocable disbursement was made. 11 CFR §300.36(b)(2)(i)(B).

E. Categories of Allocable Federal Election Activity. A State, district, or local political party committee may allocate disbursements between Federal funds and Levin funds for:

- Voter Registration Activity;
- Voter Identification;
- Get-Out-The-Vote Activity; and
- Generic Campaign Activity. 11 CFR §300.33(a)(1) and (2).

F. Categories of Non-Allocable Federal Election Activity. The following costs incurred by State, district, and local party committees and organizations must be paid for only with federal funds:

- A public communication that refers to a clearly identified candidate for federal office and that promotes, attacks, supports or opposes any candidate for federal office; and
- Services provided during a month by an employee of a state or local party committee who spends more than 25 percent of their compensated time during that month on activities in connection with a federal election, including FEA. 11 CFR §300.33(c)(1) and (2).

Facts and Analysis

The Audit staff identified 68 disbursements, totaling \$1,800,635, which lacked or inadequately disclosed the required information. These disclosure issues consisted primarily of:

- Forty-seven disbursements, totaling \$1,759,565, that were itemized on the incorrect schedule.² These consisted primarily of:
 - six disbursements itemized on Schedules B (Itemized Disbursements), H4 (Disbursements for Allocated Federal/Nonfederal Activity), or H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity), totaling \$705,989, that should be disclosed on Schedule F as Coordinated Expenditures;

² No Federal under-funding resulted from disbursements erroneously reported as allocable activity on Schedules H4 or H6.

- ten disbursements itemized on Schedules B or H6, totaling \$607,290, that should be disclosed on Schedule E as Independent Expenditures (see Finding 4); and
- thirty disbursements itemized on Schedules H4 or H6, totaling \$446,026, that should be disclosed on Schedule B, Line 21b as non-allocable federal election activity.
- Nineteen disbursements itemized on Schedule H6, totaling \$40,245, that disclosed the incorrect allocated activity or event.

The Audit staff discussed this matter with WSDCC representatives at an exit conference and provided a schedule of the transactions noted above.

Interim Audit Report Recommendation

The Audit staff recommends that, within 30 calendar days of service of this report, WSDCC amend its reports correctly disclosing these disbursements.

Finding 2. Excessive Contributions Made to Federal Candidates

Summary

The Audit staff identified six contributions to three Federal candidates that exceeded the limitation by \$6,103. The Audit staff recommends WSDCC present evidence that the contributions were not excessive or request refunds and submit evidence of the refunds.

Legal Standard

- A. Limits on Contributions Made by State and Local Party Committees.** No multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000. 2 U.S.C. §441a(a)(2)(A).
- B. Definition of Multicandidate Committee.** A multicandidate committee is a political committee that:
- Has been registered with the Commission or the Secretary of Senate for at least 6 months;
 - Has received contributions for Federal candidates from more than 50 persons; and
 - (except for any State political party organization) Has made contributions to 5 or more Federal candidates. 11 CFR §100.5(e)(3).

Facts and Analysis

The primary election for Washington State was held on September 14, 2004. The general election was held on November 2, 2004. The Audit staff identified six contributions to three federal candidates that exceeded the limitation by \$6,103. These excessive contributions consisted of:

- Two primary election contributions to Alben 2004 that exceeded the contribution limit by \$3,180. WSDCC made a \$3,000 contribution on September 22, 2003, an in-kind contribution for \$2,180 on October 22, 2003, and a \$3,000 contribution on December 8, 2003;
- Two primary election contributions to Barbieri for Congress that exceeded the contribution limit by \$2,207. WSDCC made a \$2,500 contribution on December 22, 2003, a \$1,000 contribution on January 28, 2004, an in-kind contribution for \$2,207 on April 2, 2004, and a \$1,500 contribution on May 20, 2004; and
- Two general election contributions to Friends of Sandy Matheson that exceeded the contribution limit by \$716. WSDCC made an in-kind contribution for \$500 on September 27, 2004, a \$5,000 contribution on September 28, 2004, and an in-kind contribution for \$216 on October 26, 2004.

The Audit staff discussed this matter with WSDCC representatives at an exit conference and provided a schedule of the transactions noted above.

Interim Audit Report Recommendation

The Audit staff recommends that, within 30 calendar days of service of this report, WSDCC present evidence that the contributions were not excessive or request refunds and submit evidence of the refunds.

Finding 3. Misstatement of Levin Financial Activity

Summary

A comparison of WSDCC's reported Levin financial activity to Levin bank records identified a misstatement of receipts, disbursements, and 2004 ending cash on hand. The Audit staff recommends WSDCC amend its Schedules L (Aggregation Page: Levin Funds), Schedule L-A (Itemized Receipts of Levin Funds), and Schedule L-B (Itemized Disbursements of Levin Funds) to properly report its Levin receipt and disbursement activity.

Legal Standard

A. What to Report. A state, district or local party committee of a political party that is a political committee must report all receipts and disbursements made for Federal election activity (FEA) if the aggregate amount of such receipts and disbursements is \$5,000 or more during the calendar year. The disclosure required must include receipts and disbursements of Federal funds and of Levin funds used for Federal election activity. 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
- The total amount of transfers of Levin Funds from its Levin account to its Federal or allocation account. 11 CFR §300.36(b)(2).

B. When to Itemize. The committee must itemize any receipt of \$200 or more from any person for Federal election activity on Schedule L-A, and itemize any disbursement of \$200 or more to any person for Federal election activity on Schedule L-B. 11 CFR §300.36(b)(2)(iv).

Facts and Analysis

A comparison of WSDCC's reported Levin financial activity to Levin bank records identified a misstatement of receipts, disbursements, and 2004 ending cash on hand.³ The following chart outlines the discrepancies.

2003 - 2004 Activity			
	Reported	Bank Records	Discrepancy
December 19, 2003 Opening Cash Balance	\$ 0	\$ 0	\$ 0
Receipts	\$72,750	\$87,750	\$15,000 Understated
Disbursements	\$72,750	\$78,117	\$ 5,367 Understated
December 31, 2004 Ending Cash Balance	\$ 0	\$ 9,633	\$ 9,633 Understated

The understatement of receipts was due to:

- WA Federation of State Employees contribution on December 19, 2003 not reported on Schedule L-A + \$ 7,000
- Washington State Council of County and City Employees contribution on December 31, 2003 not reported on Schedule L-A + 3,000
- Grassroots Democrats contribution on January 30, 2004 not reported on Schedule L-A + 10,000
- AFL-CIO COPE PCC returned deposit on November 15, 2004 not reported on Schedule L-A (Original deposit on October 28, 2004 reported) - 5,000
- Net Receipt Understatement \$15,000

The understatement of disbursements was due to:

- Bank charges not reported on Schedule L + \$ 152
- Portion of Levin funds transfer on October 29, 2004 reported on Schedule H3 but not reported on Schedule L-B + 5,215
- Net Disbursement Understatement \$ 5,367

The December 31, 2004 ending cash balance difference of \$9,633 resulted from the receipts and disbursement understatements noted above.

³ This activity is reported on Schedules L (Aggregation Page: Levin Funds), L-A (Itemized Receipts of Levin Funds), and L-B (Itemized Disbursements of Levin Funds). The L schedules are memo schedules and do not affect totals on the Summary and Detailed Summary Pages.

The Audit staff discussed this matter with WSDCC representatives at an exit conference and provided a schedule of the transactions noted above. WSDCC stated they would amend the appropriate schedules as necessary.

Interim Audit Report Recommendation

The Audit staff recommends that, within 30 calendar days of service of this report, WSDCC amend its Schedules L, Schedule L-A, and Schedule L-B to properly report the Levin receipt and disbursement activity.

Finding 4. Reporting of Apparent Independent Expenditures

Summary

The Audit staff identified 10 disbursements, totaling \$607,290, for apparent independent expenditures made by WSDCC that, based on the available documentation, were reported on the wrong schedule. As independent expenditures, these transactions should also have been reported by WSDCC within the required 24 or 48 hour period. WSDCC believes these disbursements qualify as exempt activity but has not provided documentation to support its claim. The Audit staff recommends WSDCC provide further documentation to support its reporting of these transactions and amend its reports to properly disclose these disbursements as necessary.

Legal Standard

- A. Definition of Independent Expenditure.** An independent expenditure is an expenditure for a communication, such as a web site, newspaper, TV or direct mail advertisement, that:
- Expressly advocates the election or defeat of a clearly identified candidate; and
 - Is not coordinated with a candidate, candidate's committee, party committee or their agents. 11 CFR §100.16(a).
- B. Clearly Identified Candidate.** A candidate is "clearly identified" if the candidate's name, nickname or image appears, or the identity of the candidate is otherwise apparent. 11 CFR §100.17.
- C. Express Advocacy.** "Express Advocacy" means that the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s). There are two ways that a communication can be considered express advocacy: by use of certain "explicit words of advocacy of election or defeat" and by the "only reasonable interpretation" test. 11 CFR §100.22.
1. **Explicit Words of Advocacy of Election or Defeat.** The following words convey a message of express advocacy:

- “Vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for the U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in ‘02”;
- Words urging action with respect to candidates associated with a particular issue, e.g., “vote Pro-Life” / “vote Pro-Choice,” when accompanied by names or photographs of candidates identified as either supporting or opposing the issue;
- “Defeat” accompanied by a photograph of the opposed candidate, the opposed candidate’s name or “reject the incumbent”; and
- Campaign slogan(s) or word(s), e.g., on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example, “Nixon’s the one,” “Carter ’76,” “Reagan/Bush.” 11 CFR §100.22(a).

2. **“Only Reasonable Interpretation” Test.** In the absence of such “explicit words of advocacy of election or defeat,” express advocacy is found in a communication that, when taken as a whole and with limited reference to external events, such as the proximity to the election, can only be interpreted by a “reasonable person” as advocating the election or defeat of one or more clearly identified candidates(s). 11 CFR §100.22(b)(1) and (2).

D. Allocation Among Candidates. When an independent expenditure is made on behalf of more than one clearly identified candidate, the committee must allocate the expenditure among the candidates in proportion to the benefit that each is expected to receive. For example, in the case of a publication or broadcast communication, the attribution should be determined by the proportion of space or time devoted to each candidate in comparison with the total space or time devoted to all the candidates. 11 CFR §104.10 and 11 CFR §106.1(a).

E. Payment for Communications that are Federal Election Activity. If a State, district, or local party committee’s payment on behalf of both a Federal candidate and a nonfederal candidate is for a Federal election activity,⁴ only Federal funds may be used for the entire payment. 11 CFR §106.1(a)(2).

F. Reporting Independent Expenditures. Every political committee that makes independent expenditures must report all such independent expenditures on Schedule E.

Political committees and other persons who make independent expenditures at any time during a calendar year – up to and including the 20th day before an election – must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more.

⁴ Federal election activity includes a public communication that refers to a clearly identified candidate for Federal office, regardless of whether a candidate for State or local election is also mentioned or identified, and that promotes or supports, or attacks or opposes any candidate for Federal office. 11 CFR §100.24(b)(3).

Political committees and other persons who make independent expenditures during the last 20 days – up to 24 hours – before an election, must disclose this activity within 24 hours each time that the expenditures aggregate \$1,000 or more. 11 CFR §104.4.

G. Definition of Coordinated. Coordinated means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.

Facts and Analysis

The Audit staff identified 10 disbursements, totaling \$607,290, for apparent independent expenditures made by WSDCC that were reported on the wrong schedule. These expenditures consisted of:

- Two expenditures, totaling \$183,716, for direct mail advertisements reported on Schedule B, Line 30b (Federal Election Activity Paid Entirely with Federal Funds). These expenditures were to AMS Communications, Inc., a political direct mail firm, and covered art, film, printing, postage, and shipping costs for persuasion mailings promoting John Kerry (the Democratic candidate for U.S. President) and attacking George Bush (the Republican candidate for U.S. President). The mailings contained the disclaimer "Paid for by Washington State Democratic Central Committee," but did not contain any authorization by a candidate's committee; and
- Eight expenditures, totaling \$423,574, for direct mail and automated telephone advertisements reported on Schedule H6 (Disbursement of Federal and Levin Funds for Allocated Federal Election Activity). These advertisements promoted one or more clearly identified federal candidates,⁵ and therefore must be paid for solely with federal funds. Each advertisement contained the disclaimer "Paid for by Washington State Democratic Central Committee," but did not contain any authorization by a candidate's committee.

Based on the available information, the Audit staff considered these 10 disbursements, totaling \$607,290, as independent expenditures that should have been disclosed on Schedules E and which required reporting within either a 24 or 48 hour time period. Expenditures aggregate \$1,000 or more during the last 20 days – up to 24 hours before an election (10/14/04 - 10/31/04) must be disclosed within 24 hours. Expenditures aggregate \$10,000 or more up to and including the 20th day before an election (1/1/04 - 10/13/04) must be disclosed within 48 hours. As independent expenditures, two of these transactions, totaling \$133,478, would have required 48 hour notification and the

⁵ When an independent expenditure is made on behalf of more than one clearly identified candidate, the committee must allocate the expenditure among the candidates in proportion to the space or time devoted to each candidate in comparison with the total space or time devoted to all the candidates. These expenditures should be reported on Schedule E in its entirety, along with memo entries disclosing each candidate's share.

remaining eight transactions, totaling \$473,812, would have required 24 hour notification.

It is noted that if the above direct mail advertisements were made in cooperation, consultation, or concert with, or at the request or suggestion of, the Candidate or the Candidate's authorized committee, then they are considered Coordinated Expenditures or contributions.

The Audit staff discussed this matter with WSDCC representatives at an exit conference and provided a schedule of the transactions noted above. In response, WSDCC's counsel believed that these expenditures were exempt party activities, and would provide documentation, at a later date, supporting that these activities were distributed by volunteers.

Interim Audit Report Recommendation

The Audit staff recommends that, within 30 calendar days of service of this report, WSDCC provide documentation to support that these disbursements qualify for the volunteer materials exemption and, for the eight expenditures totaling \$423,574 reported on H6, amend its reports to properly disclose these disbursements on Schedules B.

Absent evidence that the 10 disbursements totaling \$607,290 qualify for the volunteer materials exemption, WSDCC should provide information necessary to determine whether they are coordinated expenditures (Schedules F) or independent expenditures (Schedules E) and amend its reports to disclose these disbursements accordingly. If the activity is considered a coordinated expenditure, then WSDCC should also demonstrate that the expenditures did not exceed the applicable spending limits.

Finding 5. Federal Telemarketing Activity

Summary

WSDCC conducted a telemarketing fundraising effort that raised funds and for which payments were made from its non-federal account. Based on the available telemarketing script, the Audit staff determined the receipts and disbursements related to these telemarketing efforts were actually federal and, as a result, the activity should have been conducted from a federal account and reported to the FEC. Absent evidence that the telemarketing activity was solely for non-federal purposes, the Audit staff recommends WSDCC transfer the contributions received, totaling \$331,772, from its non-federal account to its Federal account and reimburse the expenses paid, totaling \$190,951, from its Federal account to its non-federal account. WSDCC should also amend 2004 reports to disclose, as memo entries, the necessary contributor and vendor information related to this telemarketing fundraising effort.

Legal Standard

- A. Definition of Contribution.** A contribution is defined as a gift, subscription, loan advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. §431(8)(A)(i).
- B. Definition of Expenditure.** An expenditure is defined as any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. §431(9)(A)(i).
- C. Fundraising Communications.** The Commission concluded that:
- Funds received by a registered political committee from solicitations that promote, support, attack, or oppose federal candidates and “convey a plan” to promote, support, attack, or oppose federal candidates are treated as contributions; and
 - Communications by a registered political committee, including fundraising communications, that promote, support, attack; or oppose (“PASO”) a clearly identified federal candidate are “expenditures” that must be paid for with federal funds. MURs 5403 and 5466.

Facts and Analysis

WSDCC engaged Gordon & Schwemkmeyer, Inc. (GSI) to conduct federal telemarketing fundraising during 2003 and 2004. Beginning in September 2004, this fundraising activity was shifted to generate non-federal contributions. As a result, contributions generated from this fundraising activity, totaling \$331,772, were deposited directly into WSDCC's non-federal account. Likewise, expenses totaling \$190,951 were disbursed from WSDCC's non-federal account to GSI for this fundraising activity.

The apparent telemarketing script⁶ that GSI used to fundraise on behalf of WSDCC expressly advocated the election and defeat of specific federal candidates. Specifically, the script stated that, “if we can raise the resources we need to implement our campaign, we will defeat George W. Bush and take back control of our country once and for all.” Based on this language, the Audit staff concluded that the funds raised pursuant to this solicitation would be used in connection with a federal election, and therefore considered contributions under the Act. These contributions should have been deposited into WSDCC's Federal account. Similarly, the costs associated with generating these contributions should have been paid with federal funds.

The Audit staff discussed this matter with WSDCC representatives at an exit conference. Counsel for WSDCC stated that this may not be the correct script, but to date no other script had been provided.

⁶ During the course of the audit, the WSDCC stated that the script might not have been the script that was used for the telemarketing. WSDCC, however, failed to submit an alternate script. Therefore, the Audit staff does not have a basis to conclude that the script that WSDCC submitted and addressed herein was not the script used for the telemarketing.

Interim Audit Report Recommendation

The Audit staff recommends that, within 30 calendar days of service of this report, WSDCC:

- Submit the correct script used for the non-federal GSI telemarketing; or
- Transfer the contributions generated from this fundraising activity, totaling \$331,772, from WSDCC's non-federal account to its Federal account;
- Reimburse expenses associated with this fundraising activity, totaling \$190,951, from WSDCC's Federal account to its non-federal account;
- Provide memo Schedule A Line 11(a) entries in 2004 for the \$331,772 in receipts received; and
- Provide memo Schedule B Line 21(b) entries in 2004 for the \$190,951 in disbursements paid.