

AGENDA DOCUMENT NO. 12-09



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEDERAL ELECTION COMMISSION
SECRETARIAT

2012 FEB -7 P 3: 54

February 7, 2012

MEMORANDUM

AGENDA ITEM

To: The Commission

For Meeting of 2/15/12

Through: Alec Palmer *AP*
Staff Director

From: Patricia Carmona *PC*
Chief Compliance Officer

Tom Hintermister *TH*
Assistant Staff Director
Audit Division

Marty Favin *MLF*
Audit Manager

By: Camilla Reminsky *CR* by *MLF*
Lead Auditor

Subject: Audit Hearing for the National Right to Life Political Action Committee

Attached for your information is a copy of the Draft Final Audit Report (DFAR) and Office of General Counsel legal analysis that was mailed to the National Right to Life Political Action Committee (NRLPAC) on December 2, 2011. NRLPAC formally responded to the report on December 20, 2011, and has requested a hearing before the Commission to present its case. The hearing was granted on December 21, 2011, and has been scheduled for February 15, 2012.

Prior to the receipt of the DFAR, NRLPAC received the Interim Audit Report (IAR) that contained the same findings presented in the DFAR. After receipt of the IAR, NRLPAC filed amendments in response to the two IAR findings. However, in its response to the DFAR, NRLPAC questions: "(1) whether the correction of reports should be satisfactory in an audit proceeding; (2) whether the Commission's requirements for showing best efforts in obtaining contributor information provide a clear standard for what is required; and (3) whether invoices and broadcast affidavits are required by law so that a committee under audit can be made to produce them in response."

In its response to the DFAR regarding the Misstatement of Financial Activity finding, Committee counsel (Counsel) noted that the Committee had filed the corrected reports as recommended in the IAR. The Audit staff noted that amendments were filed for the audit period that materially corrected the errors, and this action was acknowledged in the DFAR. The only part of the recommendation the Committee did not address, to date, was to revise the beginning cash balance on the most recently filed report, if necessary.

Regarding the Disclosure of Occupation and Name of Employer finding, Counsel stated that the Committee complied with “all legal requirements concerning the exercise of best efforts.” Pursuant to 11 CFR 104.7(b), a treasurer establishes “best efforts” by ensuring (1) that all solicitations request the contributor’s full name, address, occupation and name of employer, and that this information is required by law, (2) within 30 days of receipt of a contribution, an attempt is made to obtain the missing information, and (3) that the treasurer report any additional information received that had not been initially provided by the contributor. In its response to the IAR, the Committee filed amendments to disclose additional occupation and name of employer information that was present in the Committee’s records prior to the audit. By filing these amendments, NRLPAC complied with the third prong of the best efforts requirements. This corrective action was noted in the DFAR.

Counsel also expressed concern about the scope limitation. In the “Limitations” section of the DFAR, the Audit staff stated that the Committee **met** the minimum requirements for recordkeeping; therefore, no recordkeeping finding resulted from our review. The Audit staff notes that when following Generally Accepted Auditing Standards, “[s]ufficient competent evidential matter is to be obtained ... to afford a reasonable basis for an opinion...” Also, “[t]he report shall contain either an expression of opinion ... or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated.” (AU Section 150.02). Since the Audit staff is required to follow Generally Accepted Auditing Standards, the purpose for including the scope limitation is to explain that the Audit staff was unable to express an opinion on the Committee’s timely filing of Independent Expenditures and disclosure of debts due to the lack of invoices and broadcast affidavits.

Documents related to this audit report can also be viewed in Voting Ballot Matters. Should you have any questions, please contact Camilla Reminsky or Marty Favin at 694-1200.

Attachments:

- Draft Final Audit Report
- Office of General Counsel Legal Analysis of Draft Final Audit Report
- NRLPAC Response to the Draft Final Audit Report/Request for Hearing

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the National Right to Life Political Action Committee

January 1, 2007 – December 31, 2008

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 National Right to Life Political Action Committee is a separate segregated fund of the National Right to Life Committee and is headquartered in Washington, DC. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ From Individuals	\$ 3,662,627
○ From Other Political Committees	9,850
○ Offsets to Operating Expenditures	4,051
Total Receipts	\$ 3,676,528
• Disbursements	
○ Operating Expenditures	\$ 567,680
○ Independent Expenditures	2,804,925
○ Contributions to Other Committees	13,750
Total Disbursements	\$ 3,386,355

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation and Name of Employer (Finding 2)

¹ 2 U.S.C. §438(b).

Draft Final Audit Report of the Audit Division on the National Right to Life Political Action Committee

January 1, 2007 – December 31, 2008



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Part I

Background

Authority for Audit

This report is based on an audit of the National Right to Life Political Action Committee (NRL PAC), 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 risk factors and, as a result, this audit examined:

1. the disclosure of disbursements, debts and obligations;
2. the disclosure of individual contributors' occupation and name of employer;
3. the consistency between reported figures and bank records;
4. the completeness of records; and
5. other committee operations necessary to the review.

Limitations

In maintaining its disbursement records, NRL PAC satisfied the minimum recordkeeping requirements of 11 CFR §102.9. However, external documentation, such as invoices and broadcast station affidavits, were not available for review. In order to determine whether or not debts and obligations were paid in a timely manner or should have been reported as debts, the Audit staff needed to see dated invoices. The invoice dates would indicate when the debt was incurred and whether it was required to be reported under 11 CFR §104.11.

Similarly, in order to determine if notices of independent expenditures were required to be filed under 11 CFR §104.4, the Audit staff needed to see invoices or broadcast station affidavits that contained the dates of dissemination of these independent expenditures. Without the proper documentation disclosing those dates of dissemination, the Audit staff was unable to ensure that all notices of independent expenditure were filed timely.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 12, 1979
• Audit Coverage	January 1, 2007 - December 31, 2008
Headquarters	
Washington, DC	
Bank Information	
• Bank Depositories	One
• Bank Accounts	Two
Treasurer	
• Treasurer When Audit Was Conducted	Carol Tobias (October 29, 2009 – June 9, 2011) Joseph M. Landrum (June 10, 2011 – Present)
• Treasurer During Period Covered by Audit	Amarie Natividad (January 1, 2007 – September 3, 2008) Carol Tobias (September 4, 2008 – December 31, 2008)
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, 2007	\$ 481,805
Receipts	
○ From Individuals	\$ 3,662,627
○ From Other Political Committees	9,850
○ Offsets to Operating Expenditures	4,051
Total Receipts	\$ 3,676,528
Disbursements	
○ Operating Expenditures	\$ 567,680
○ Independent Expenditures	2,804,925
○ Contributions to Other Committees	13,750
Total Disbursements	\$ 3,386,355
Cash-on-hand @ December 31, 2008	\$ 771,978

Part III Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of NRL PAC's reported figures with bank records revealed a misstatement of receipts and cash-on-hand in 2007 and disbursements and cash-on-hand in 2008. In 2007, NRL PAC overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624 and overstated ending cash-on-hand by \$104,632. In 2008, NRL PAC overstated disbursements by \$1,437,635 and understated the ending cash-on-hand by \$1,300,378. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports, properly disclosing 2007 and 2008 activity. The NRL PAC treasurer stated that NRL PAC would reconcile its most recently reported cash balance and amend its cash balance on the next disclosure report filed.

In addition, the original reports filed by NRL PAC for 2007 and 2008 revealed an overstatement of disbursements in the amount of \$687,536. NRL PAC did not submit any additional information or written comments in response to the Interim Audit Report. (For more detail, see p. 4)

Finding 2. Disclosure of Occupation and Name of Employer

During audit fieldwork, a review of contributions from individuals revealed that 1,044 contributions totaling \$146,115 lacked disclosure of the contributor's occupation and/or name of employer. In addition, NRL PAC did not document "best efforts" to obtain, maintain and submit information for most of these contributions. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports disclosing additional information received from contributors. (For more detail, see p. 7)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of NRL PAC's reported figures with bank records revealed a misstatement of receipts and cash-on-hand in 2007 and disbursements and cash-on-hand in 2008. In 2007, NRL PAC overstated beginning cash-on-hand by \$130,932, understated receipts by \$29,624 and overstated ending cash-on-hand by \$104,632. In 2008, NRL PAC overstated disbursements by \$1,437,635 and understated the ending cash-on-hand by \$1,300,378. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports, properly disclosing 2007 and 2008 activity. The NRL PAC treasurer stated that NRL PAC would reconcile its most recently reported cash balance and amend its cash balance on the next disclosure report filed.

In addition, the original reports filed by NRL PAC for 2007 and 2008 revealed an overstatement of disbursements in the amount of \$687,536. NRL PAC did not submit any additional information or written comments in response to the Interim Audit Report.

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), Schedule B (Itemized Disbursements) or Schedule E (Itemized Independent Expenditures). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Misstatement of Activity on Amended Reports as Compared with Bank Records

1. Facts

During audit fieldwork, The Audit staff reconciled reported activity with bank records for calendar years 2007 and 2008. The following charts outline the discrepancies for the beginning and ending cash balances, receipts and disbursements for each year. Succeeding paragraphs address the reasons for the misstatements, if known.

2007 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2007	\$612,737	\$481,805	\$130,932 Overstated
Receipts	\$53,518	\$83,142	\$29,624 Understated
Disbursements	\$102,265	\$105,589	\$3,324 Understated
Ending Cash Balance @ December 31, 2007	\$563,990	\$459,358	\$104,632 Overstated

The overstatement of the beginning cash-on-hand by \$130,932 likely resulted from prior period discrepancies.

The understatement of receipts resulted from the following:

• Bank interest not reported	\$ 14,771
• Vendor refunds for radio ads not reported	4,051
• Unexplained difference	<u>10,802</u>
Understatement of receipts	<u>\$ 29,624</u>

The misstatements described above resulted in a \$104,632 overstatement of the ending cash-on-hand.

2008 Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2008	\$563,990	\$459,358	\$104,632 Overstated
Receipts	\$3,626,011	\$3,593,386	\$32,625 Overstated
Disbursements	\$4,718,401	\$3,280,766	\$1,437,635 Overstated
Ending Cash Balance @ December 31, 2008	\$(528,400)	\$771,978	\$1,300,378 Understated

The overstatement of disbursements resulted from the following:

• Unreported disbursements	\$ 184,070
• Disbursements to printing vendor reported twice	(1,526,656)
• Over-reported disbursements	(80,357)
• Unexplained difference	<u>(14,692)</u>
Net overstatement of disbursements	<u>\$ 1,437,635</u>

The duplicate reporting of \$1,526,656 in disbursements to the printing vendor was due to incorrect reporting of independent expenditures. NRL PAC paid for these independent

expenditures in advance of the dissemination dates. NRL PAC should have reported these advance payments on Schedule B, Line 21b, as operating expenditures. Once the committee distributed the printed materials, it should have subtracted the amounts of these expenditures from Line 21b and reported them as independent expenditures on Schedule E. NRL PAC correctly reported these expenditures on Line 21b when the payments were made, then correctly disclosed the independent expenditures on Schedule E upon dissemination of the materials. However, NRL PAC failed to subtract the amount of the independent expenditures from Line 21b.

The misstatements described above resulted in a \$1,300,378 understatement of the ending cash-on-hand.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with NRL PAC representatives during the exit conference and provided copies of relevant work papers detailing the misstatements. NRL PAC representatives stated that the committee would file the necessary amended reports. Amended reports filed by NRL PAC after the exit conference corrected some, but not all, of the misstatements.

The Interim Audit Report recommended that NRL PAC:

- amend its reports to correct the misstatements noted above;
- reconcile the cash balance on its most recent report to identify any subsequent discrepancies that could affect the recommended adjustments; and
- adjust cash as necessary on its most recent report, noting that the adjustment is the result of prior period adjustments.

3. Committee Response to Interim Audit Report

NRL PAC filed amended 2007 and 2008 reports to properly disclose activity as recommended. In a subsequent communication with the current NRL PAC treasurer, he stated that the committee would reconcile the most recent cash balance and include the revised figure on the next report filed to comply with the recommendation.

B. Misstatement of Activity Reported on Original Reports as Compared with Bank Records

1. Facts

In addition to examining the most recent reports filed by NRL PAC prior to the audit, the Audit staff compared the original reports filed with the bank records and discovered a \$687,536 overstatement of disbursements in 2007 and 2008. This misstatement was largely due to the incorrect reporting of independent expenditures as noted above.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with NRL PAC representatives during the exit conference and provided copies of relevant work papers detailing the misstatements.

The Interim Audit Report recommended that NRL PAC submit any additional information or written comments it considers relevant to the matter.

3. Committee Response to Interim Audit Report

NRL PAC did not submit any additional information or written comments regarding this matter.

Finding 2. Disclosure of Occupation and Name of Employer

Summary

During audit fieldwork, a review of contributions from individuals revealed that 1,044 contributions totaling \$146,115 lacked disclosure of the contributor's occupation and/or name of employer. In addition, NRL PAC did not document "best efforts" to obtain, maintain and submit information for most of these contributions. In response to the Interim Audit Report recommendation, NRL PAC filed amended reports disclosing additional information received from contributors.

Legal Standard

A. Disclosure of Receipts. For each itemized contribution, the committee must provide:

- the full name and address (including zip code) of the contributor or other source;
- the name of the contributor's employer (if the contributor is an individual);
- the contributor's occupation (if the contributor is an individual);
- the election to which a contribution or loan was designated;
- the date of receipt;
- the amount; and
- the aggregate election cycle-to-date of all receipts (within the same category) from the same source. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A).

B. 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. 2 U.S.C. §432(i).

C. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

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

Facts and Analysis

A. Facts

A review of itemized contributions from individuals revealed that 1,044 contributions totaling \$145,615, or 29 percent, of the dollar value of individual contributions itemized by NRL PAC, lacked disclosure of the contributor's occupation and/or name of employer. NRL PAC disclosed most of these contributions with the notation "requested" or "Information Requested."

For 708 of these contributions totaling \$92,416, the committee provided no evidence that it had exercised "best efforts" to obtain, maintain and submit the information. This represents the majority of the individual contributions lacking the required information. For the remaining 336 (1,044 – 708) contributions totaling \$53,699, NRL PAC obtained the required information. It did not, however, amend its reports to disclose the additional information.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter to NRL PAC representatives at the exit conference, along with the appropriate work papers. In response, NRL PAC counsel stated that appropriate amended reports would be filed. Amended reports filed by NRL PAC after the exit conference reduced the dollar value of errors to \$136,330, or 27 percent of the dollar value of individual contributions itemized by NRL PAC.

The Audit staff recommended that NRL PAC take the following actions:

- provide documentation that it exercised best efforts to obtain, maintain and submit the required contributor information; or
- make an effort to contact those individuals lacking the required contributor information and provide documentation of such efforts (such as copies of letters/emails to the contributors and/or phone logs); and
- file amended Schedules A (Itemized Receipts) to disclose contributor information in NRL PAC's possession as well as contributor information obtained in response to this recommendation.

C. Committee Response to Interim Audit Report

In response, NRL PAC filed amended Schedules A that materially corrected the missing contributor information.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 10, 2011

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

Tom Hintermister
Acting Assistant Staff Director
Audit Division

FROM: Christopher Hughey *pch*
Deputy General Counsel

Lawrence L. Calvert, Jr. *LJC*
Associate General Counsel
General Law and Advice

Lorenzo Holloway *LH*
Assistant General Counsel
Public Finance and Audit Advice

Margaret J. Forman *MJF*
Attorney

SUBJECT: Draft Final Audit Report on the National Right to Life Political
Action Committee (LRA 812)

The Audit Division has submitted for our review the Draft Final Audit Report ("DFAR") for the National Right to Live Political Action Committee. The DFAR has two findings: (1) Misstatement of Financial Activity; and (2) Disclosure of Occupation and Name of Employer. We agree with the Audit Division as to these findings; however, we discuss the scope limitation below. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

SCOPE LIMITATION SHOULD BE MORE SPECIFIC

The scope limitation states that although NRL PAC satisfied the minimum recordkeeping requirements of 11 C.F.R. 102.9, a lack of external documentation limited the Audit staff's testing of the proper reporting of debts and obligations and the adequacy of independent expenditure disclosures. According to the draft, the type of external documentation described includes invoices and broadcast station affidavits, which are items the Audit staff normally expects to find when conducting an audit.

We suggest that the scope limitation be more specific as to what precisely it was about the Committee's reporting of debts and obligations, or of independent expenditures, that the audit was unable to fully test. Independent expenditure reporting, in particular, involves a number of different requirements, and it is not clear from the draft which of these requirements could not be sufficiently tested.

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21 DEC 21 RCVD

21 DEC 11 RCVD

FAX TRANSMITTAL

TO: Thomas Hintermister and Camilla Reminsky	FROM: James Bopp, Jr. and Joseph A. Vanderhulst
DATE: December 20, 2011	FAX NUMBER: 202-219-3483
ADDRESS: 999 E Street, N.W. Washington, DC 20463	RE: National Right to Life PAC

COMMENTS: *Response to Draft Final Audit Report
and request for hearing*

TRANSMISSION NOTE: Including this page, the number of pages sent is **3**. Please call if you are having reception problems. Please notify recipient at once of the arrival of this material.

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[Initial When Transmitted: W Time (& Date if different than above): _____]

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December 20, 2011

Mr. Thomas Hintermister
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: National Right to Life PAC

VIA FAX: 202-219-3483

Dear Mr. Hintermister:

As you know, this firm represents the National Right to Life PAC (NRL PAC) in regard to the audit of the 2007-08 election cycle. Statements of Designation of Counsel were previously provided. This will acknowledge receipt of your Draft Final Audit Report, dated December 2, 2011. This is NRL PAC's response and request for a hearing.

Response to the Draft Final Audit Report

The basis for Finding 1 is a bookkeeping error on the part of NRL PAC. Because of this internal error, certain expenditures were reported as both expenditures and advances. As a result, NRL PAC overstated expenditures and understated its cash-on-hand. This error has been corrected internally and NRL PAC has filed corrected reports with the FEC.

With respect to Finding 2, NRL PAC has complied with all legal requirements concerning the exercise of best efforts to obtain and provide contributor occupation and/or name of employer information. NRL PAC has filed amended Schedules A that materially correct the missing contributor information. Furthermore, the procedures used by NRL PAC to obtain this information from contributors satisfy the best efforts requirements. The recommendations by the Audit staff require further documentation that is not required by law.

Federal Election Commission
December 20, 2011
Page 2

Finally, the scope limitation in the report is incorrect. Invoices and broadcast station affidavits for the expenditures in question were provided to the Audit staff for review.

Request for Hearing

Respondent NRL PAC requests a hearing before the Commission to present legal arguments concerning the findings in the Draft Final Audit Report. 11 CFR Part 111.

A hearing is being requested because (1) the misstatements of financial activity have been corrected; (2) the committee complied with all best efforts requirements in obtaining contributor occupation and/or name of employer information, yet the audit process now requires them to produce documentation above and beyond what is required to show best efforts; and (3) the creation and maintenance of invoices and broadcast affidavits are not required by law when making independent expenditures, and yet the audit process is now requiring them.

The issues that NRL PAC will address at the hearing are: (1) whether the correction of reports should be satisfactory in an audit proceeding; (2) whether the Commission's requirements for showing best efforts in obtaining contributor information provide a clear standard for what is required; and (3) whether invoices and broadcast affidavits are required by law so that a committee under audit can be made to produce them in response.

Sincerely,

THE BOPP LAW FIRM



James Bopp, Jr.
Joseph A. Vanderhulst