



FEDERAL ELECTION COMMISSION  
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December 23, 2013

## AGENDA ITEM

### MEMORANDUM

To: The Commission

For Meeting of 1-16-14

Through: Alec Palmer  
Staff Director *AP*

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Thomas E. Hintermister *TH*  
Assistant Staff Director  
Audit Division

Doug Kodish *DK*  
Audit Manager

By: Paula Nurthen *PN*  
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Democratic Party of South Carolina ((DPSC) A11-19)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

#### **Finding 1. Recordkeeping for Employees**

For the period covered by the audit, DPSC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to DPSC employees totaling \$481,956 for which payroll logs were not maintained. This amount consisted of payroll that was allocated between federal and non-federal funds.

In response to the Interim Audit Report (IAR) recommendation, DPSC stated that it agrees to maintain monthly payroll logs to track federal election activity for those employees who are paid all or in part with non-federal funds. DPSC did not file an additional response to the DFAR.

The Audit staff recommends that the Commission find that DPSC failed to maintain logs to document the time employees spent on federal election activity totaling \$481,956.

**Finding 2. Coordinated Party Expenditures**

The Audit staff determined that DPSC appeared to have exceeded the 2010 coordinated party expenditures limit on behalf of a House candidate by \$5,117. Subsequent to audit fieldwork, DPSC provided additional documentation and filed an amended report reclassifying one of the coordinated expenditures to Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). The Audit staff concluded in the IAR and DFAR that DPSC did not make excessive coordinated expenditures.

The Audit staff recommends that the Commission find that DPSC did not exceed the 2010 coordinated party expenditure limit.

DPSC did not request an audit hearing.

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

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 Paula Nurthen or Doug Kodish at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Democratic Party of South Carolina

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on the Democratic Party of South Carolina

(January 1, 2009 - December 31, 2010)

## 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.<sup>1</sup> 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 Democratic Party of South Carolina is a state party committee headquartered in Columbia, South Carolina. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity (p. 3)

|   |                     |
|---|---------------------|
| • <b>Receipts</b>                           |                     |
| ○ Contributions from Individuals            | \$ 501,313          |
| ○ Transfers from Non-Federal Account        | 736,973             |
| ○ Transfers from Affiliated Committees      | 753,574             |
| ○ Transfers from Other Political Committees | 670,971             |
| ○ Other Receipts                            | 301,155             |
| <b>Total Receipts</b>                       | <b>\$ 2,963,986</b> |
| • <b>Disbursements</b>                      |                     |
| ○ Operating Expenditures                    | \$ 1,597,632        |
| ○ Federal Election Activity                 | 1,307,227           |
| ○ Coordinated Expenditures                  | 50,366              |
| ○ Other Disbursements                       | 83,850              |
| <b>Total Disbursements</b>                  | <b>\$ 3,039,075</b> |
| • <b>Levin Receipts</b>                     | <b>\$ 51,000</b>    |
| • <b>Levin Disbursements</b>                | <b>\$ 51,000</b>    |

## Findings and Recommendations (p. 4)

- Recordkeeping for Employees (Finding 1)
- Coordinated Party Expenditures (Finding 2)

<sup>1</sup> 2 U.S.C. §438(b).

# **Draft Final Audit Report of the Audit Division on the Democratic Party of South Carolina**

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(January 1, 2009 - December 31, 2010)

Draft



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# Part I

## Background

### Authority for Audit

This report is based on an audit of the Democratic Party of South Carolina (DPSC), 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 individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the completeness of records; and
6. other committee operations necessary to the review.

### Commission Guidance

#### Request for Early Commission Consideration of a Legal Question

Pursuant to the "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," DPSC requested early consideration of a legal question raised during the audit. DPSC questioned whether the monthly time logs required under 11 CFR §106.7(d)(1) applied to employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed DPSC Counsel of the Commission's decision. Finding 1- Recordkeeping for Employees of this audit report does not include any DPSC employees paid with 100 percent federal funds and reported as such.

## Part II

### Overview of Committee

#### Committee Organization

|  |  |
|--|--|
| <b>Important Dates</b>                           |  |
| • Date of Registration                           | July 10, 1976  |
| • Audit Coverage                                 | January 1, 2009 - December 31, 2010  |
| <b>Headquarters</b>                              |  |
|  | Columbia, South Carolina   |
| <b>Bank Information</b>                          |  |
| • Bank Depositories                              | Two  |
| • Bank Accounts                                  | Four federal and five non-federal  |
| <b>Treasurer</b>                                 |  |
| • Treasurer When Audit Was Conducted             | Dan D'Alborto  |
| • Treasurer During Period Covered by Audit       | Marc Posner, May 29, 2009 - December 31, 2010<br>Kathryn Hensley, January 1, 2009 - May 28, 2009 |
| <b>Management Information</b>                    |  |
| • Attended Commission Campaign Finance Seminar   | No   |
| • Who Handled Accounting and Recordkeeping Tasks | Paid staff   |

## Overview of Financial Activity (Audited Amounts)

|   |                     |
|---|---------------------|
| <b>Cash-on-hand @ January 1, 2009</b>         | <b>\$ 125,742</b>   |
| <b>Receipts</b>                               |                     |
| ○ Contributions from Individuals              | 501,313             |
| ○ Transfers from Non-federal Account          | 736,973             |
| ○ Transfers from Affiliated Committees        | 753,574             |
| ○ Transfers from Other Political Committees   | 670,971             |
| ○ Other Receipts                              | 301,155             |
| <b>Total Receipts</b>                         | <b>\$ 2,963,986</b> |
| <b>Disbursements</b>                          |                     |
| ○ Operating Expenditures                      | 1,597,632           |
| ○ Federal Election Activity                   | 1,307,227           |
| ○ Coordinated Expenditures                    | 50,366              |
| ○ Other Disbursements                         | 83,850              |
| <b>Total Disbursements</b>                    | <b>\$ 3,039,075</b> |
| <b>Cash-on-hand @ December 31, 2010</b>       | <b>\$ 50,653</b>    |
| <b>Levin Cash-on-hand @ January 1, 2009</b>   | <b>\$ 0</b>         |
| <b>Total Levin Receipts</b>                   | <b>\$ 51,000</b>    |
| <b>Total Levin Disbursements</b>              | <b>\$ 51,000</b>    |
| <b>Levin Cash-on-hand @ December 31, 2010</b> | <b>\$ 0</b>         |

## Part III Summaries

### Findings and Recommendations

#### **Finding 1. Recordkeeping for Employees**

During audit fieldwork, the Audit staff determined that DPSC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to DPSC employees totaling \$481,956<sup>2,3</sup> for which payroll logs were not maintained. This amount consisted of payroll which was allocated between federal and non-federal funds.

In response to the Interim Audit Report recommendation, DPSC stated that it agrees to maintain monthly payroll logs to track federal election activity for those employees who are paid all or in-part with non-federal funds. The Audit staff considers the matter resolved. (For more detail, see p. 5.)

#### **Finding 2. Coordinated Party Expenditures**

The Audit staff determined that DPSC appeared to have exceeded the 2010 coordinated party expenditures limit on behalf of a House candidate by \$5,117. In response to the audit fieldwork, DPSC provided additional documentation and filed an amended report reclassifying one of the coordinated expenditures to Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds) thus resolving the overage. In response to the Interim Audit Report recommendation, DPSC provided no additional information regarding this matter. (For more detail, see p. 6.)

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<sup>2</sup> This total does not include payroll for employees paid with 100 percent federal funds and reported as such. (See Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, p. 1.)

<sup>3</sup> Payroll is stated net of taxes and benefits.

## Part IV

# Findings and Recommendations

### Finding 1. Recordkeeping for Employees

#### Summary

During audit fieldwork, the Audit staff determined that DPSC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to DPSC employees totaling \$481,956<sup>4,5</sup> for which payroll logs were not maintained. This amount consisted of payroll which was allocated between federal and non-federal funds.

In response to the Interim Audit Report recommendation, DPSC stated that it agrees to maintain monthly payroll logs to track federal election activity for those employees who are paid all or in-part with non-federal funds. The Audit staff considers the matter resolved.

#### Legal Standard

**Maintenance of Monthly Logs.** Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or have their pay allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with State law. 11 CFR §106.7(d)(1).

#### Facts and Analysis

##### A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. DPSC did not maintain any monthly logs or equivalent records to document the percentage of time each employee spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employees. For 2009 and 2010, logs were not maintained for \$481,956<sup>3,4</sup> in payroll.

<sup>4</sup> This total does not include payroll for employees paid with 100 percent federal funds and reported as such. (See Part I, Background, Commission Guidance, Request for Early Consideration of a Legal Question, p. 1.)

<sup>5</sup> Payroll is stated net of taxes and benefits.

This amount consisted of payroll which was allocated between federal and non-federal funds. DPSC had no employees paid with exclusively non-federal funds.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the payroll recordkeeping matter with DPSC representatives during audit fieldwork and at the exit conference. DPSC representatives stated that they did not maintain payroll log documentation and no further information was provided.

For DPSC employees paid with an allocation of federal and non-federal funds, the Interim Audit Report recommended that DPSC provide and implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, DPSC stated that it agrees to maintain monthly payroll logs to track federal election activity for those employees who are paid all or in-part with non-federal funds. Such action is consistent with Commission guidance with respect to the payroll logs. (See Commission Guidance, p. 1.) The Audit staff considers the matter resolved.

## **Finding 2. Coordinated Party Expenditures**

### **Summary**

The Audit staff determined that DPSC appeared to have exceeded the 2010 coordinated party expenditures limit on behalf of a House candidate by \$5,117. In response to the audit fieldwork, DPSC provided additional documentation and filed an amended report reclassifying one of the coordinated expenditures to Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds), thus resolving the overage. In response to the Interim Audit Report recommendation, DPSC provided no additional information regarding this matter.

### **Legal Standard**

**A. Coordinated Party Expenditures.** National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election, over and above the contributions that are subject to contribution limits. Such purchases are termed “coordinated party expenditures.” They are subject to the following rules:

- the amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting age population;
- party committees are permitted to coordinate the spending with the candidate committees;
- the parties may make these expenditures only in connection with the general election;

- the party committees—not the candidates—are responsible for reporting these expenditures; and
- if the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits. 2 U.S.C. §441a(d) and 11 CFR §§109.30 and 109.32.

**B. Assignment of Coordinated Party Expenditure Limit.** A political party may assign its authority to make coordinated party expenditures to another political party committee. Such an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. The political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 CFR §§104.14 and 109.33(a) and (c).

## **Facts and Analysis**

### **A. Facts**

The combined coordinated party expenditure limit for a House of Representative's Candidate in South Carolina for the 2010 election cycle was \$87,000, with a \$43,500 limit for both the state party (DPSC) and the National Party ((Democratic National Committee (DNC)). DPSC reported coordinated expenditures of \$48,617 on Schedule F (Itemized Coordinated Party Expenditures) for Robert Miller, a candidate for the House of Representatives (the Candidate). The reported coordinated expenditures exceeded the state party limit by \$5,117.

Of the \$48,617 reported on Schedule F, DPSC disclosed that the DNC<sup>6</sup> designated it to spend \$20,250 on their behalf for the Candidate. During fieldwork, the Audit staff requested that DPSC provide DNC<sup>7</sup> assignment letters to document the assignment of spending authority to DPSC. DPSC representatives did not provide any letters or other documentation to support the assignment of DNC's spending authority. Therefore, the Audit staff concluded that the DPSC's expenditures for the Candidate exceeded the state party coordinated expenditure limit.

### **B. Interim Audit Report & Audit Division Recommendation**

After the exit conference, in response to the Audit staff's request for documentation to show that DPSC had not exceeded the coordinated expenditure limit, DPSC representatives stated that DPSC had mistakenly reported a \$10,250 disbursement for door hangers as a coordinated expenditure that should have been reported as Federal Election Activity on Schedule B, Line 30(b). DPSC's counsel stated that this disbursement was an "exempt slate card activity" and DPSC filed an amended report, reclassifying the \$10,250 expenditure to Line 30(b) as "exempt canvassing material."

<sup>6</sup> DNC did not report any coordinated expenditures on behalf of the Candidate, but the Democratic Congressional Campaign Committee (DCCC) filings disclosed additional coordinated expenditures of \$15,118 for the Candidate, which is below the spending limit of \$43,500.

<sup>7</sup> The Audit staff requested that DPSC officials provide letters from both the DNC and the DCCC to document the assigning of its coordinated spending authority.

Based upon a review of the content of the door hanger and the timing of the invoice relative to the election (it appears to have fallen within the established FEA timelines), the Audit staff agreed with the reclassification and concluded that DPSC did not make excessive coordinated expenditures.

The Interim Audit Report recommended that DPSC provide any additional information or written comments that it considered relevant to this finding.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, DPSC provided no additional information regarding this matter.

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