



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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November 30, 2016

**MEMORANDUM**

To: The Commission

Through: Alec Palmer *[Signature]*  
Staff Director

From: Patricia C. Orrock *[Signature]*  
Chief Compliance Officer

Thomas E. Hintermister *[Signature]*  
Assistant Staff Director  
Audit Division

Zuzana O. Pacious *[Signature]*  
Audit Manager

By: Mary Moss *[Signature]*  
Lead Auditor

Subject: Audit Hearing for the Colorado Republican Committee (A13-12)

**AGENDA ITEM**

For Hearing of 12-6-16

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 Colorado Republican Committee (CRC) on October 5, 2016. Counsel representing CRC responded to the DFAR on October 24, 2016, and requested a hearing before the Commission to present its case relative to Finding 1(C) (Misstatement of Financial Activity – Unreported Bank Account) and Finding 4 (Failure to Itemize Debts and Obligations). The hearing was granted on November 7, 2016, and has been scheduled for December 6, 2016.

Finding 1(C) – Misstatement of Financial Activity – Unreported Account

Finding 1(C) is based on CRC's failure to comply with 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5). The Federal Election Campaign Act ("Act") and related regulations refer to contents of reports and require that each report disclose financial activity for the corresponding reporting period and calendar year.

In the Interim Audit Report (IAR), the Audit staff determined that CRC did not report financial activity for a bank account that was identified on the bank statements as

the Colorado State Republican Central Committee Republican National Convention Expense Account (Convention Account). This account was maintained at the same financial depository used by CRC for other federal and non-federal bank accounts. Although CRC provided copies of bank statements, deposit tickets and cancelled checks pertaining to this account, none of the receipts or disbursements appeared to have been reported. For the calendar year 2012, the total activity and the cash balance were as follows: receipts, \$87,354; disbursements, \$86,428; and ending cash-on-hand, \$926.<sup>1</sup>

CRC's Chairman (Chairman) explained that the financial activity from this account did not need to be reported since it was a bank account that belonged to a separate legal entity identified as the Colorado Chairman's Host Committee for the Republican National Convention (Colorado RNC Host) and neither CRC or any of its officers or agents managed or controlled that committee's activities. The Chairman also provided a copy of the Articles of Incorporation that reflected the Colorado RNC Host was incorporated in the state of Colorado as a Non-Profit 501(c)(4) corporation on June 26, 2012 and was established independently to accept contributions and pay for certain events and promotion items for delegates and their guests from Colorado and other states in connection with the 2012 Republican National Convention in Tampa, Florida. The Chairman provided a link to the Colorado Secretary of State website and related any additional questions pertaining to the Colorado RNC Host should be directed to that committee's legal representatives. The Chairman did not explain how CRC came to be in possession of the bank statements and other banking documentation. Likewise, the Chairman did not explain why the bank statement's name included the Colorado State Republican Central Committee, indicating CRC was an accountholder of this account. Although requested, CRC did not authorize the Audit staff to submit a request to the bank to confirm the Employee Identification Number (EIN)<sup>2</sup> that was associated with this account, nor did CRC provide any documentation from the bank that would clarify this matter. In the IAR, the Audit staff asked that CRC provide additional documentation to resolve the question of ownership and control of the Convention Account as well as the reporting requirement for the financial activity.

In response to the IAR recommendation, CRC expressed its disagreement. CRC stated that it has previously provided documentation demonstrating that the account in question was not controlled by CRC and, as such, was not an unreported federal account.

The DFAR concluded that the documentation previously provided by CRC did not resolve the question of ownership and control of the Convention Account. Absent bank documentation that confirms CRC was not associated with the Convention Account, the Audit staff considers this matter unresolved.

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<sup>1</sup> These totals were not included in Part A (Most Recent Reports Filed Prior to the Audit) of the audit report.

<sup>2</sup> The EIN is a unique nine-digit number that the Internal Revenue Service and other federal agencies use to identify a business. Banks will not allow a business entity to open an account without providing an EIN.

In response to the DFAR, CRC continued to disagree with the Audit staff's conclusion that the matter was unresolved. CRC stated that it has previously provided documentation demonstrating that the Convention Account was not controlled by CRC and is thus not a federal account.

#### Finding 4 – Failure to File Debts and Obligations

Finding 4 is based on CRC's failure to comply with 52 U.S.C. §30104(b)(8), 11 C.F.R §104.11(a), (b) and 11 C.F.R §116.10. The finding concludes that CRC failed to disclose the outstanding balance of a contract for a Get-Out-the-Vote (GOTV) program totaling \$133,487.<sup>3</sup> The Federal Election Campaign Act ("Act") and related regulations require that a political committee disclose the amount and nature of outstanding debt and obligations owed by or to the reporting committee until those debts are extinguished. In cases of disputed debt, the committee must disclose the amount owed; the amount the creditor claims is owed; and any amount the committee has paid the creditor.

CRC disagreed with the requirement to disclose debt for the GOTV program because the vendor had not yet provided all contracted services. CRC provided a copy of an unsigned letter, sent by CRC to the GOTV vendor, which advised this vendor of an immediate termination of the contract. Based on the terms of contract, its termination does not release CRC from an obligation to make pro rata payments and fees for the services provided by the vendor. CRC stated that it terminated the contract before the vendor provided *all* of the contracted services which seems to suggest that the vendor provided at least *some* of the contracted services before the termination of the contract. Available disbursement documentation provided by CRC did not indicate as to whether CRC paid the vendor for services that the vendor provided to CRC prior to the termination. In the IAR, the Audit staff asked that CRC provide information and documentation relating to debt remaining for any services that the vendor provided before the termination of the contract. Since the termination letter was not signed, CRC was asked to submit documentation such as a signed letter to the vendor, e-mails or telephone logs regarding the termination. Absent such documentation, the Audit staff asked that CRC amend its reports to disclose these debts and obligations.

In response to the IAR recommendation, CRC stated it would not amend its reports to disclose the debt owed to its former GOTV vendor due to the termination of the contract. CRC provided the previously submitted unsigned termination letter but did not submit any documentation related to debt for any services prior to termination of the contract.

The DFAR concluded that absent the filing of amended reports to include the \$133,487 debt owed to the GOTV vendor, the Audit staff considers the matter unresolved.

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<sup>3</sup> Finding 4 discusses unreported debt and obligations for additional two CRC vendors, however, the disclosure of these debts has been rectified by CRC and is not a subject of the hearing.

In response to the DFAR, CRC stated that it has appropriately declined to amend its reports to the amounts allegedly owed to its former GOTV vendor, as that the contract was terminated and the amounts were disputed by CRC. CRC further stated that these amounts were never paid and the statute of limitations for any breach of the agreement has run. CRC therefore believes it cannot amend its reports as any amounts allegedly owed to the vendor were and are not properly debt.

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

Attachments:

- Draft Final Audit Report of the Audit Division on the Colorado Republican Committee
- Office of General Counsel Legal Analysis, dated August 15, 2016
- CRC Response to Draft Final Audit Report, dated October 24, 2016

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on the Colorado Republican Committee

(January 1, 2011 - December 31, 2012)

## 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. 3)

The Colorado Republican Committee is a state party committee headquartered in Greenwood Village, Colorado. For more information, see the chart on the Committee Organization, p. 3.

## Financial Activity (p. 3)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 1,975,834
○ Contributions from Political Committees	61,630
○ Transfers from Affiliated and Other Party Committees	8,332,317
○ Transfers from Non-Federal Accounts	1,940
○ Other Receipts	235,765
<b>Total Receipts</b>	<b>\$ 10,607,486</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 8,863,660
○ Federal Election Activity	1,374,497
○ Refunds of Contributions	3,050
<b>Total Disbursements</b>	<b>\$ 10,241,207</b>

## Findings and Recommendations (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Apparent Independent Expenditures (Finding 2)
- Recordkeeping for Communications (Finding 3)
- Failure to Itemize Debts and Obligations (Finding 4)

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<sup>1</sup> 52 U.S.C. §30111(b).

# **Draft Final Audit Report of the Audit Division on the Colorado Republican Committee**

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(January 1, 2011 - December 31, 2012)



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the Colorado Republican Committee (CRC), 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 contributions from prohibited sources;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of disbursements, debts and obligations;
4. the disclosure of expenses allocated between federal and non-federal accounts;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

### **Commission Guidance**

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

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," CRC requested early consideration of a legal question raised during the audit. Specifically, CRC questioned whether the requirement under 11 CFR §104.3(d) to disclose outstanding debt on Schedule D (Debt and Obligations) violated attorney - client privilege when the debt related to outstanding legal representation services.

The Commission concluded, by a vote of 6-0, that the Colorado rules of confidentiality do not preclude the Commission from requiring CRC to report an outstanding debt and/or obligation owed by or to CRC from its legal counsel under 52 U.S.C. §30104(b)(8) and 11 C.F.R. §104.3(d). The Audit staff informed CRC's Counsel of the Commission's decision on CRC's request. This audit report includes findings and recommendations with respect to CRC's failure to disclose outstanding debt owed to its legal representative. (See Finding 4, p. 19.)

**Limitations**

CRC satisfied the minimum disbursement recordkeeping requirements of 11 CFR§102.9. However, in response to the Internal Control Questionnaire (ICQ) presented by the Audit staff at the beginning of the audit, CRC representatives identified a federal bank account titled "Federal Transfer Account" but did not provide bank statements from the audit period pertaining to that account. Without these statements, the Audit staff could not determine if federal activity related to this account was properly reported.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	February 17, 1976
• Audit Coverage	January 1, 2011 - December 31, 2012
<b>Headquarters</b>	Greenwood Village, Colorado
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	9 Federal, 8 Non-federal
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Marty Neilson (11/20/2015 – present) Robert Balink (5/9/2014 – 11/19/2015) Christine Mastin (6/10/2013 – 5/8/2014)
• Treasurer During Period Covered by Audit	Richard A. Westfall (8/15/2007 – 6/9/2013)
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2011</b>	<b>\$ 70,571</b>
<b>Receipts</b>	
○ Contributions from Individuals	1,975,834
○ Contributions from Political Committees	61,630
○ Transfers from Affiliated and Other Party Committees	8,332,317
○ Transfers from Non-Federal Accounts	1,940
○ Other Receipts	235,765
<b>Total Receipts</b>	<b>\$ 10,607,486</b>
<b>Disbursements</b>	
○ Operating Expenditures	8,863,660
○ Federal Election Activity	1,374,497
○ Refunds of Contributions	3,050
<b>Total Disbursements</b>	<b>\$ 10,241,207</b>
<b>Cash-on-hand @ December 31, 2012</b>	<b>\$ 436,850</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Misstatement of Financial Activity**

A comparison of CRC's bank activity with its most recent amended reports prior to the audit revealed material misstatements in both 2011 and 2012. In addition, a comparison of CRC's bank activity with its original reports for 2011 and 2012 also revealed material misstatements. In response to the Interim Audit Report recommendation, CRC stated that the misstatements were inadvertent and agreed to file amendments to the relevant reports. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. As of the date of this report, however, CRC has not materially complied with the recommendations to correct the misstatements in 2012, nor has it made an adjustment to reconcile the cash balance on its most recent report.

During audit fieldwork, CRC also provided bank statements and other related documentation for a Republican National Convention Expense Account, an apparent federal account. CRC did not report, however, any receipt and disbursement activity pertaining to this account on its disclosure reports. In response to the Interim Audit Report recommendation pertaining to the Republican National Convention Expense Account, CRC stated it has previously provided documentation that this account was not controlled by CRC and, as such, is not an unreported federal account. Absent bank documentation that confirms CRC was not associated with the Convention Account, the Audit staff considers this matter unresolved. (For more detail, see p. 6.)

##### **Finding 2. Reporting of Apparent Independent Expenditures**

During audit fieldwork, the Audit staff reviewed operating expenditures totaling \$357,895 that CRC disclosed on Schedule B, Line 21b (Operating Expenditures) that appeared to be direct mail or media-related independent expenditures that should have been disclosed on Schedule E (Itemized Independent Expenditures).

Additionally, of the \$357,895 appeared to be independent expenditures, CRC did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$203,995. CRC also did not provide invoices associated with 77 direct mail communications that contained express advocacy as defined under 11 CFR 100.22 (a) or (b).

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer

material exemption. CRC further stated it has provided all such documentation in its possession to substantiate application of the volunteer material exemption.

The Audit staff reexamined the documentation provided related to the volunteer materials exemption for specific communications totaling \$93,090 and determined the disbursements were not independent expenditures. For the remaining communications (consisting of \$110,905 and 77 mailers with no invoices) that CRC claims the volunteer materials exemptions is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. The Audit staff considered the disbursements for radio advertisements for \$153,900 to be independent expenditures that also required filing of 24 hour reports totaling \$32,164. (For more detail, see p. 11.)

### **Finding 3. Recordkeeping for Communications**

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC reported 28 expenditures totaling \$5,812,448, on Schedule B, Line 21b (Operating Expenditures) with purposes of “direct mail,” “direct mail advertising” or “party direct mail.” Documentation that was provided by CRC was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating expense.

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained it provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC indicated that it was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices. Absent the provision of records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1). (For more information, see p. 17.)

### **Finding 4. Failure to Itemized Debts and Obligations**

During audit fieldwork, the Audit staff noted that CRC failed to disclose debts and obligations owed to three vendors totaling \$235,968. In response to the Interim Audit Report recommendation, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC’s former legal counsel. CRC stated it would not amend its reports to disclose the debt owed to its former get-out-the-vote (GOTV) vendor due to the termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the debt owed to the GOTV vendor, the Audit staff considers the matter unresolved. (For more detail, see p. 19.)

## Part IV

# Findings and Recommendations

### Finding 1. Misstatement of Financial Activity

#### Summary

A comparison of CRC's bank activity with its most recent amended reports prior to the audit revealed material misstatements in both 2011 and 2012. In addition, a comparison of CRC's bank activity with its original reports for 2011 and 2012 also revealed material misstatements. In response to the Interim Audit Report recommendation, CRC stated that the misstatements were inadvertent and agreed to file amendments to the relevant reports. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. As of the date of this report, however, CRC has not materially complied with the recommendations to correct the misstatements in 2012, nor has it made an adjustment to reconcile the cash balance on its most recent report.

During audit fieldwork, CRC also provided bank statements and other related documentation for a Republican National Convention Expense Account, an apparent federal account. CRC did not report, however, any receipt and disbursement activity pertaining to this account on its disclosure reports. In response to the Interim Audit Report recommendation pertaining to the Republican National Convention Expense Account, CRC stated it has previously provided documentation that this account was not controlled by CRC and, as such, is not an unreported federal account. Absent bank documentation that confirms CRC was not associated with the Convention Account, the Audit staff considers this matter unresolved.

#### 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) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4) and (5).

#### Facts and Analysis

##### A. Misstatement of Financial Activity– Most Recent Reports Filed Prior to the Audit

###### 1. Facts

The Audit staff reconciled CRC's reported financial activity with its bank records for calendar years 2011 and 2012. The following charts outline the discrepancies

between CRC's disclosure reports and its bank records. Succeeding paragraphs explain why the discrepancies occurred.

<b>2011 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash-on-Hand @ January 1, 2011	\$71,745	\$70,571	(\$ 1,174) Overstated
Receipts	\$722,469	\$717,741	(\$4,728) Overstated
Disbursements	\$634,792	\$673,321	(\$38,529) Understated
Ending Cash-on-Hand @ December 31, 2011	\$ 159,422	\$ 114,991	(\$ 44,431) Overstated

The beginning cash balance was overstated by \$1,174 and the discrepancy is unexplained, but likely resulted from prior period discrepancies.

The understatement of disbursements resulted from the following:

• Transfers to non-federal accounts, not reported	\$35,805
• Disbursements not reported	2,448
• Unexplained difference	<u>276</u>
<b>Understatement of Disbursements</b>	<b><u>\$38,529</u></b>

The overstatement of \$44,431 of the ending cash balance was a result of the reporting discrepancies for disbursements described above as well as the \$4,728 overstatement of receipts.

<b>2012 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records<sup>2</sup></b>	<b>Discrepancy</b>
Beginning Cash-on-Hand @ January 1, 2012	\$159,422	\$114,991	(\$ 44,431) Overstated
Receipts	\$9,678,749	\$9,889,745	\$210,996 Understated
Disbursements	\$9,422,685	\$9,567,886	(\$145,201) Understated
Ending Cash-on-Hand @ December 31, 2012	\$ 415,486	\$ 436,850	\$ 21,364 Understated

<sup>2</sup> Correct reportable activity includes an adjustment to the bank account for \$9,146 itemized by CRC on Schedule A (Itemized Receipts) to correct the cash balance as recommended in a prior audit of CRC. See the Final Audit Report on the Colorado Republican Federal Campaign Committee, 2008 election cycle, Finding 1 – Misstatement of Financial Activity, Audit Division Recommendation, page 8.

The understatement of receipts resulted from the following:

• In-kind contributions, not reported as receipts <sup>3</sup>	\$162,099
• Receipts from an individual and a PAC, not reported	25,000
• Unexplained difference	<u>23,897</u>
<b>Understatement of Receipts</b>	<b><u>\$210,996</u></b>

The understatement of disbursements resulted from the following:

• In-kind contributions, not reported as disbursements <sup>3</sup>	\$162,099
• Disbursements in bank, not on reports	27,666
• Disbursements on reports, not in bank	(13,336)
• Incorrect or duplicate disbursement amounts reported	(23,228)
• Unexplained difference	<u>(8,000)</u>
<b>Understatement of Disbursements</b>	<b><u>\$145,201</u></b>

The \$21,364 understatement of the ending cash balance was a result of the reporting discrepancies noted above.

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

The Audit staff provided workpapers and discussed the misstatement of financial activity at the exit conference. CRC representatives asked questions for clarification during the discussion, however, they did not provide a response to either the disbursements or receipts misstatements.

The Interim Audit Report recommended that CRC amend its disclosure reports to correct the misstatements noted above and reconcile the cash balance on its most recent report to identify any subsequent discrepancies that may affect the recommended adjustments.

## **3. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendation, CRC stated it agreed with the Audit Division's recommendations regarding Finding 1A. CRC explained that the misstatements were inadvertent and that it would file amendments to the relevant reports consistent with the recommendation. CRC subsequently amended its reports to materially correct the misstatements identified for 2011. As of the date of this report, however, CRC has not materially complied with the recommendations to correct the misstatements in 2012, nor has it made an adjustment to reconcile the cash balance on its most recent report.

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<sup>3</sup> The unreported in-kind transactions discussed above were for disbursements paid on behalf of CRC for equipment and software licensing by the Republican National Committee (RNC) and the Republican Party of Wisconsin (RPW). Both the RNC and the RPW reported these transactions as in-kind contributions made to CRC.

## **B. Misstatement of Financial Activity – Original Reports Filed**

### **1. Facts**

During audit fieldwork, in addition to examining CRC's most recent reports filed prior to audit notification, the Audit staff compared CRC's originally filed reports with its bank records. The purpose of this additional reconciliation was to identify the degree to which CRC had misstated its original filings.

The Audit staff calculated that CRC understated the sum of the reported receipts on the original reports filed by \$803,097 and the sum of the reported disbursements on the original reports filed by \$637,688 over the two-year period (2011-2012). These figures include the \$4,728 and \$38,529 understatement of receipts and disbursements, respectively from 2011, and the \$210,996 and \$145,201<sup>4</sup> of the understatement of receipts and disbursements, respectively, from 2012 discussed in Section A above (Misstatement of Financial Activity – Most Recent Reports Filed Prior to the Audit).

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

The Audit staff discussed the understatement of receipts and disbursements on its original reports during the exit conference and provided copies of relevant schedules detailing the receipts and disbursements not reported. CRC representatives asked questions for clarification, and stated they understood the finding, but related that they inadvertently filed incorrect original reports.

The Interim Audit Report recommended that CRC provide any additional comments it deemed necessary with respect to this matter.

### **3. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendation, CRC stated it agreed with the Audit Division's recommendations regarding Finding 1B but provided no further comments regarding the misstatement of financial activity for the original reports filed.

## **C. Misstatement of Financial Activity – Unreported Bank Account**

### **1. Facts**

During audit fieldwork, CRC representatives provided bank statements and other banking documentation for a bank account that was identified on the bank statements as the Colorado State Republican Central Committee Republican National Convention Expense Account (Convention Account).<sup>5</sup> This account was maintained at the same financial depository used by CRC for other federal and non-federal bank

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<sup>4</sup> Net disbursement adjustments identified in Section A above (Misstatement of Financial Activity - Most Recent Reports Filed Prior to the Audit), totaling \$9,686, were correctly disclosed on the original reports in 2012.

<sup>5</sup> As noted in the scope section of this report, CRC representatives also identified an additional federal bank account in its written response to the Internal Control Questionnaire, but have not yet provided bank statements or other documentation pertaining to this account to indicate whether there was reportable activity during the audit period. See p. 2.

accounts. The bank statements reflected that the Convention Account was active in January 2012, although it had a zero balance until April 20, 2012, at which time a deposit of \$1,000 was made.<sup>6</sup> Although CRC provided copies of bank statements, deposit tickets and cancelled checks pertaining to this account, none of the receipts or disbursements appeared to have been reported. For the calendar year 2012, the total activity and the cash balance were as follows: receipts, \$87,354; disbursements, \$86,428; and ending cash-on-hand, \$926.<sup>7</sup>

In response to an Audit staff query, CRC's Chairman (Chairman) explained that the financial activity from this account did not need to be reported since it was a bank account that belonged to a separate legal entity identified as the Colorado Chairman's Host Committee for the Republican National Convention (Colorado RNC Host) and neither CRC or any of its officers or agents managed or controlled that committee's activities. The Chairman also provided a copy of the Articles of Incorporation that reflected the Colorado RNC Host was incorporated in the state of Colorado as a Non-Profit 501(c)(4) corporation on June 26, 2012 and was established independently to accept contributions and pay for certain events and promotion items for delegates and their guests from Colorado and other states in connection with the 2012 Republican National Convention in Tampa, Florida. The Chairman provided a link to the Colorado Secretary of State website and related any additional questions pertaining to the Colorado RNC Host should be directed to that committee's legal representatives. The Chairman did not explain how CRC came to be in possession of the bank statements and other banking documentation. Likewise, the Chairman did not explain why the bank statement's name included the Colorado State Republican Central Committee, indicating CRC was an account holder of this account. Although requested, CRC did not authorize the Audit staff to submit a request to the bank to confirm the Employee Identification Number (EIN)<sup>8</sup> that was associated with this account, nor did CRC provide any documentation from the bank that would clarify this matter.

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

The Audit staff discussed the Convention Account during the exit conference and provided relevant schedules detailing the financial activity pertaining to this account. At that time, the Audit staff again requested that CRC provide documentation from the bank or give the Audit staff authority to contact the bank to confirm the EIN associated with this account. The CRC representatives provided documentation pertaining to the EIN for the Colorado Chairman's Host Committee for the Republican National Convention, but did not provide additional documentation from the bank to verify that the Convention Account was assigned to this EIN.

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<sup>6</sup> The next deposit into this account was not made until June 13, 2012 (\$5,250). The first debit (by wire) occurred on August 10, 2012 (\$10,000).

<sup>7</sup> The tables and charts presented in Part A (Most Recent Reports Filed Prior to the Audit) do not include an analysis of the Convention Account.

<sup>8</sup> The EIN is a unique nine-digit number that the Internal Revenue Service and other federal agencies use to identify a business. Banks will not allow a business entity to open an account without providing an EIN.

The Interim Audit Report recommended that CRC provide additional documentation to resolve the question of ownership and control of the Convention Account. To support its position, CRC should have obtained pertinent bank documentation confirming that the CRC's EIN was not associated with the Convention Account and, therefore, CRC was not required to report the financial activity associated with this account.

### **3. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendation, CRC expressed its disagreement regarding Finding 1C. CRC stated that it has previously provided documentation demonstrating that the account in question was not controlled by CRC and, as such, was not an unreported federal account. CRC's position is that it has, by its prior correspondence, sufficiently demonstrated that it does not control the Convention Account. With its response, CRC enclosed a copy of the prior correspondence.

The Audit staff maintains that previously provided documentation did not resolve the question of ownership and control of the Convention Account. Absent bank documentation that confirms CRC was not associated with the Convention Account, the Audit staff considers this matter unresolved.

## **Finding 2. Reporting of Apparent Independent Expenditures**

### **Summary**

During audit fieldwork, the Audit staff reviewed operating expenditures totaling \$357,895 that CRC disclosed on Schedule B, Line 21b (Operating Expenditures) that appeared to be direct mail or media-related independent expenditures that should have been disclosed on Schedule E (Itemized Independent Expenditures).

Additionally, of the \$357,895 appeared to be independent expenditures, CRC did not provide sufficient documentation pertaining to dissemination dates to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$203,995. CRC also did not provide invoices associated with 77 direct mail communications that contained express advocacy as defined under 11 CFR 100.22 (a) or (b).

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. CRC further stated it has provided all such documentation in its possession to substantiate application of the volunteer material exemption.

The Audit staff reexamined the documentation provided during fieldwork related to the volunteer materials exemption for specific communications totaling \$93,090 and determined the disbursements were not independent expenditures. For the remaining

communications (consisting of \$110,905 and 77 mailers with no invoices) that CRC claims the volunteer materials exemptions is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. The Audit staff considered the disbursements for radio advertisements for \$153,900 to be independent expenditures that also required filing of 24 hour reports totaling \$32,164.

### **Legal Standard**

**A. Definition of Independent Expenditures.** An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not 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 or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Expressly advocating means any communication that:

- Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates.  
11 CFR §§100.16(a), 100.17 and 100.22.

**B. Disclosure Requirements – General Guidelines.** An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

**C. Last-Minute Independent Expenditure Reports (24-Hour Reports).** Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20<sup>th</sup> day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the

total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

**D. Independent Expenditure Reports (48-Hour Reports).** Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

**E. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

**F. Volunteer Activity.** The payment by a state committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

1. Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. The term direct mail means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.
2. The portion of the cost of such materials allocable to Federal candidates must be paid from contributions subject to the limitations and prohibitions of the Act.
3. Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for Federal office.
4. Such materials are distributed by volunteers and not by commercial or for-profit operations.
5. If made by a political committee, such payments shall be reported by the political committee as a disbursement in accordance with 11 CFR §104.3 but need not be allocated to specific candidates in committee reports.
6. The exemption is not applicable to campaign materials purchased by the national party committees. 11 CFR §100.87 (a), (b), (c), (d), (e) and (g) and 11 CFR §100.147 (a), (b), (c), (d), (e) and (g).

## **Facts and Analysis**

### **A. Reporting of Apparent Independent Expenditures**

#### **1. Facts**

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff noted that CRC did not disclose any independent expenditures on Schedule E, however, made apparent media-related expenditures totaling \$357,895 and disclosed them as operating expenditures. These communications, as well as others that are not associated with invoices, were identified as possible independent expenditures. A breakdown analysis of these expenditures is as follows:

#### **a. Independent Expenditures Reported as Operating Expenditures (Associated Invoice Provided)**

CRC made nine apparent independent expenditures totaling \$357,895 that were documented as follows:

- i. CRC made six disbursements for apparent independent expenditures for direct mail totaling \$203,995 for which it provided a copy of the direct mailer with an associated invoice. According to the Audit staff, each of these direct mailers contained language expressly advocating the election or defeat of a clearly identified candidate as defined under 11 CFR §100.22(a).
- ii. CRC made three disbursements for apparent independent expenditures for radio ads totaling \$153,900 for which it provided supporting documentation such as payment reconciliations, airing dates, scripts and audio files. The beginning of one of the audio files included the voice of an opposition federal candidate. Based upon this portion of the audio file, and the associated script, it appeared this radio ad expressly advocated the election or defeat of a clearly identified candidate as defined under 11 CFR 100.22(b).

#### **b. Independent Expenditures Reported as Operating Expenditures (No Invoice Associated)**

CRC provided 77 different direct mail communications that contained express advocacy, as defined under 11 CFR 100.22(a) or (b). The communications are as follows:

- i. 72 direct mail communications contained language expressly advocating the election or defeat of clearly identified candidates, as defined under 11 CFR 100.22(a).
- ii. Five direct mail communications contained language that encouraged the reader to vote for Republicans and help repeal “Obamacare”, with various reasons why Obamacare was bad for Colorado and/or America’s economy. Based on the definition of express advocacy under 11 CFR 100.22(b), these communications could only be

interpreted by a reasonable person as advocating the election or defeat of clearly identified candidates.

CRC did not provide sufficient information to allow each of the 77 communications to be associated with an invoice. Without this additional information, the Audit staff is unable to calculate the disbursement amount for each communication. (See Finding 3.)

**c. Volunteer Material Exemption**

In response to the Audit staff's request during fieldwork for documentation to support that volunteers participated in exempt activity,<sup>9</sup> CRC provided forms signed by 22 different mail processing volunteers. These forms reflected the volunteer's name, site location, and on most forms, the date. The mail piece section was left blank on all forms with one exception, in which a candidate's last name was specified. Based on the dates on the forms, it appeared most of this volunteer activity occurred immediately prior to the 2012 General Election.

The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Arizona Republican Party, the Democratic Executive Committee of Florida, and the Tennessee Republican Party. In these reports, the Commission recognized a lack of clarity regarding the application of the volunteer materials exemption. The Commission had attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption,<sup>10</sup> but this was never achieved. Since a lack of clarity exists concerning the application of the volunteer materials exemption, it follows that the type and amount of documentation needed to support volunteer involvement is also unclear.

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the Audit staff recommended at the conclusion of fieldwork that CRC provide more detailed information and documentation for any volunteer involvement associated with each mailer.

**2. Interim Audit Report and Audit Division Recommendation**

At the exit conference, the Audit staff presented the schedule of disclosure errors for independent expenditures. CRC representatives provided a listing of additional invoice numbers and invoice amounts in response to the exit conference but did not provide any copies of communications or further information that would allow the available invoices to be associated with the copies of the communications.

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<sup>9</sup> CRC has not claimed that any exemptions apply with respect to any expenditures discussed above such as, for example, volunteer material exemption, slate cards exemptions, etc.

<sup>10</sup> Proposed Interim Enforcement Policy, Agenda document No. 10-16.

The Interim Audit Report recommended that CRC:

- Provide additional invoices and/or information associating the 77 direct mail communications containing express advocacy with an invoice; and
- Provide documentation and evidence that apparent independent expenditures totaling \$357,895 and the 77 direct mail communications containing express advocacy, did not require reporting as independent expenditures. Evidence should have included any documentation such as volunteer timesheets and photographs to support the involvement of volunteers in the processing or distribution of the communications noted above.
- Absent such evidence, CRC should have amended its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

### **3. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. CRC further stated it has provided all documentation in its possession substantiating volunteer involvement including the volunteer names, the location where the work was done and the date of the volunteer involvement. CRC stated it had never been requested to provide volunteer timesheets and photographs, and that it did not collect such information. CRC further stated that "...it has provided enough information to substantiate application of the volunteer material exemption" and that it would not make any amendments to disclose the disbursements in question as independent expenditures.

The Audit staff maintains that the \$153,900 spent on radio communications should be reported as independent expenditures since the volunteer materials exemptions does not apply to those communications.

With respect to the 22 volunteer forms signed by volunteers on direct mailers of \$93,090, the Audit staff has reexamined the documentation and believes the documentation provided in support of the volunteer materials exemption is consistent with such evidence provided in past audits. As a result, these disbursements are not considered independent expenditures. For the remaining communications (consisting of \$110,905 and 77 direct mailers without invoices) that CRC claims the volunteer materials exemptions is applicable, the Audit staff again recommends that CRC provide further evidence to support the application of the volunteer materials exemption to the specific communications involved. Such evidence will assist the Commission in determining if the volunteer materials exemption is applicable to these communications.

## **B. Failure to File 24/48 Hour Reports for Apparent Independent Expenditures**

### **1. Facts**

In addition to not reporting any independent expenditures during the audit period, CRC also did not file 24 or 48-hour reports for any independent expenditures. Therefore, the apparent independent expenditures identified above by the Audit staff may also have required such a filing.

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

At the exit conference, the Audit staff provided CRC with a schedule of possible undisclosed 24/48-hour reports. CRC representatives did not offer any comments regarding this matter.

The Interim Audit Report recommended that, absent documentation and evidence that apparent independent expenditures totaling \$357,895 and the 77 direct mailer communications containing express advocacy did not require reporting as independent expenditures (per Part A above), CRC provide documentation to support the date of public dissemination for each communication to determine whether a filing of a 24/48-hour report was required.

### **3. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation. CRC reiterated its belief that the communications at issue were not reportable as independent expenditures because they were subject to the volunteer material exemption. For that reason, CRC did not believe any 24 or 48-hour reports were necessary for these disbursements.

The Audit staff maintains the \$153,900 in radio advertisements are independent expenditures that required 24-hour reports totaling \$32,164.

The Audit staff maintains that unless further evidence of the volunteer involvement with the specific communications is provided, the Commission may conclude the remaining direct mailers totaling \$110,905 as well as the 77 direct mailers without invoices may be reportable as independent expenditures and may require 24 or 48-hour reports.

## **Finding 3. Recordkeeping for Communications**

### **Summary**

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC reported 28 expenditures totaling \$5,812,448, on Schedule B, Line 21b (Operating Expenditures) with purposes of "direct mail," "direct mail advertising" or "party direct mail." Documentation that was provided by CRC was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating expense.

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained it provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC indicated that it was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices. Absent the provision of records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

### **Legal Standard**

**A. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

**B. Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

### **Facts and Analysis**

#### **A. Facts**

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. CRC made 28 expenditures totaling \$5,812,448 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 21b (Operating Expenditures).

The Audit staff's analysis resulted in the following:

i. **Disbursements- No Invoices or Copies of Communications Provided (\$2,156,415)**

Disbursements totaling \$2,156,415 were paid to two direct mail vendors, and were disclosed on Schedule B with purposes of "direct mail", "direct mail advertising" or "party direct mail", but no invoices or associated communications were provided. Without sufficient details, the Audit staff is unable to verify CRC's reporting of these amounts as operating expenditures. The Audit staff requested copies of the invoices and the associated direct mail piece for each of the disbursements. To date, these invoices or other information to associate the payments to a particular communication have not been provided.

**ii. Disbursements- Invoices Provided – Not Able to Associate with Copies of Communications (\$3,656,033)**

Disbursements totaling \$3,656,033 were paid to direct mail vendors and were disclosed on Schedule B with purposes of “direct mail,” “direct mail advertising” or “party direct mail.” For these disbursements, CRC provided invoices but did not provide information about the related mail communications. Without sufficient details, the Audit staff is unable to verify CRC’s reporting itemization of these amounts as operating expenditures. The Audit staff requested information that would allow an association between the invoice and the communication, however, CRC has not responded to this request.

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

At the exit conference, the Audit staff presented a schedule of the disbursements for which further records were necessary to verify the accuracy of CRC’s reporting. The Audit staff again requested that CRC provide additional invoices and information that would associate each invoice to the corresponding communication. CRC representatives provided a listing of additional invoice numbers and invoice amounts in response to the exit conference but did not provide any copies of communications or further information that would allow the available invoices to be associated with the copies of the communications.

The Interim Audit Report recommended that CRC provide, in sufficient detail, the necessary information from which the reported operating expenditures totaling \$5,812,448 may be verified or explained. Such records should have included:

- Copies of invoices and identification of the associated communication, and
- If the communication has already been provided, information associating each communication with an invoice(s).

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

In response to the Interim Audit Report recommendation, CRC stated it disagreed with the recommendation and explained that it has provided all the requested documentation in its possession in a series of letters, USB thumb-drives and online file site links to the Audit staff. CRC was working to associate the provided invoices and communications with each other and would provide the final record associating all communications with invoices as soon as the record is complete. Absent the provision of records, the Audit staff considers the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

**Finding 4. Failure to Itemize Debts and Obligations**

**Summary**

During audit fieldwork, the Audit staff noted that CRC failed to disclose debts and obligations owed to three vendors totaling \$235,968. In response to the Interim Audit Report recommendation, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC’s former legal counsel. CRC stated it would not amend its reports to disclose the debt owed to its former get-out-the-vote (GOTV)

vendor due to the termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the debt owed to the GOTV vendor, the Audit staff considers the matter unresolved.

### **Legal Standard**

**A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee until those debts are extinguished. 52 USC §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

**B. Separate Schedules.** A political committee must file separate schedules for debts owed by or to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

### **C. Itemizing Debts and Obligations.**

- A debt of \$500 or less, not including rent, salary or other regularly reoccurring administrative expenses, must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- Regularly recurring administrative expenses, like rent, do not have to be treated as debts until payment is due.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

**D. Disputed Debts.** A disputed debt is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. Until the creditor and committee resolve the dispute (assuming the creditor did provide something of value), the committee must disclose:

- The amount the committee admits it owes;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor. 11 CFR §116.10.

### **Facts and Analysis**

#### **A. Facts**

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts<sup>11</sup> of three CRC vendors. This review identified debts owed to these three vendors totaling \$235,968 that should have been disclosed on Schedule D.<sup>12</sup>

<sup>11</sup> The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2011 – 2012 election cycle. The Audit staff then determined whether outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

<sup>12</sup> There was no debt reported during the audit period for any of these three vendors.

One of the vendors provided legal services and had debt outstanding at the end of four reporting periods totaling \$100,197, including an outstanding balance at the end of the audit period of \$13,541. A second vendor that provided accounting services had an outstanding balance at the end of one reporting period for \$2,284, but did not have an outstanding balance at the end of the audit period. The last vendor had debt outstanding at the end of the audit period of \$133,487 that pertained to the unpaid balance of a contract for a GOTV program.

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

At the exit conference, the Audit staff discussed these disclosure errors with CRC representatives and provided them with schedules detailing the debts that were not reported. CRC representatives disagreed with the Audit staff's determination with respect to the disclosure of debts owed to the vendor that provided legal services. Subsequent to the exit conference, CRC requested the consideration of a legal question by the Commission regarding the disclosure of the debt for legal services prior to payment. CRC contended the disclosure would violate confidential attorney/client privileges.<sup>13</sup> CRC representatives also disagreed with the requirement to disclose debt for the GOTV program, stating that CRC had terminated the contract before the vendor provided all contracted services. CRC representatives provided a copy of an unsigned letter, sent by CRC to the GOTV program vendor, which advised this vendor of an immediate termination of the contract.

Based on the terms of contract, its termination does not release CRC from the obligation to make pro rata payments of fees for the services provided by the vendor. CRC stated that it terminated the contract before the vendor provided *all* of the contracted services which suggests that the vendor provided at least *some* of the contracted services before the termination of the contract. Available disbursement documentation provided by CRC did not indicate as to whether CRC paid the vendor for services that the vendor provided to CRC prior to the termination.

The Interim Audit Report recommended that CRC provide documentation demonstrating that expenditures totaling \$235,968 did not require reporting on Schedule D. As for the GOTV program vendor, the Interim Audit Report further recommended that CRC provide information and documentation relating to debt remaining for any services that the vendor provided before the termination of the contract. Since the termination letter was not signed, CRC should have submitted documentation such as a signed letter to the vendor, e-mails or telephone logs regarding the termination. Absent such documentation, the Interim Audit Report recommended that CRC amend its reports to disclose these debts and obligations.

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

In response to the Interim Audit Report recommendations, CRC stated that, given the Commission's determination that the amounts owed to CRC's former counsel were not privileged from disclosure, CRC agreed to amend its disclosure reports for the applicable period and disclose the debt owed to CRC's former legal counsel. CRC stated it would

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<sup>13</sup> See Part I Background, Commission Guidance at p. 1.

not amend its reports to disclose the debt owed to its former GOTV vendor due to the termination of the contract. CRC provided the previously submitted unsigned termination letter but did not submit any documentation related to debt for any services prior to termination of the contract. CRC subsequently filed amended reports to disclose debt owed to the two non-GOTV vendors. Absent the filing of amended reports to include the \$133,487 debt owed to the GOTV vendor, the Audit staff considers the matter unresolved.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

**MEMORANDUM**

**AUG 15 2016**

**TO:** Patricia C. Orrock  
Chief Compliance Officer

Thomas E. Hintermister  
Assistant Staff Director  
Audit Division

**FROM:** Adav Noti *AN*  
Associate General Counsel  
Policy Division

Lorenzo Holloway *LH*  
Assistant General Counsel  
for Compliance Advice

Joshua Blume *JB*  
Attorney

**SUBJECT:** Draft Final Audit Report on the Colorado Republican Committee (LRA 961)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the Draft Final Audit Report ("DFAR") on the Colorado Republican Committee ("the Committee"). The DFAR contains four findings: Misstatement of Financial Activity (Finding 1); Failure to File Notices and Properly Disclose Independent Expenditures (Finding 2); Recordkeeping for Communications (Finding 3); and Failure to Itemize Debts and Obligations (Finding 4). Our comments address Findings 1, 2, and 4. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

## II. MISSTATEMENT OF FINANCIAL ACTIVITY (Finding 1)

The DFAR addresses an apparent unreported bank account: Colorado State Republican Central Committee Republican National Convention Expense Account (“Convention Account”), and recommends that it be treated as a federal account owned or controlled by the Committee that is subject to this audit. According to Audit staff, the Convention Account was active for a period of time in 2012 and had receipts of approximately \$87,000 and disbursements of approximately \$86,000. The Audit Division believes that the vast majority of disbursements from the account paid for travel and other expenses of delegates from Colorado to the 2012 Republican National Convention in Tampa, Florida.

The Committee has consistently maintained that it was not required to report the activity of the Convention Account because the account did not belong to the Committee. The Committee claims that a separate entity established as a non-profit corporation pursuant to 26 U.S.C. § 501(c)(4), and called the “Colorado Chairman’s Host Committee for the Republican National Convention” (“Chairman’s Committee”),<sup>1</sup> owned and controlled the account. The Committee has stated that neither the Committee, nor any of its officers or agents, controlled the Chairman’s Committee’s activities.

Throughout the audit process, however, the Audit staff has noted evidence tending to suggest that, contrary to the Committee’s representation, the Committee may in fact have owned or controlled the Convention Account. First, the Audit staff notes that the name of the Convention Account refers to the Chairman of the Committee. Second, the Audit staff notes that the Committee itself possessed statements associated with the Convention Account and provided them to the Audit staff. Third, the Audit staff indicates that the Convention Account was active in January 2012 and that funds were first deposited into the account in April 2012. This last item is significant because the Chairman’s Committee did not receive an Employer Identification Number (“EIN”) from the Internal Revenue Service for tax identification purposes until June 2012.<sup>2</sup> The fact that the Chairman’s Committee did not acquire an EIN until at least six months after the Convention Account became active is noteworthy because banks and other financial institutions generally will not allow business entities to open accounts without providing their EINs.<sup>3</sup> This

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<sup>1</sup> Although this organization referred to itself as the “Host Committee,” it is not clear that the organization would have qualified as a “host committee” under Commission regulations. See 11 C.F.R. § 9008.50(b)(3).

<sup>2</sup> The Committee supplied a copy of the IRS’s letter assigning an EIN to the Chairman’s Committee. It is dated June 26, 2012. Also, the Chairman’s Committee’s application for an EIN indicates that the Chairman’s Committee was started or acquired in June 2012, and the organization’s articles of incorporation were apparently filed with the Colorado Secretary of State in June 2012.

<sup>3</sup> A United States Treasury Department regulation requires banks to design and implement customer identification programs (“CIPs”), which must contain procedures for opening an account that specify the identifying information that the bank will collect from customers. 31 C.F.R. § 1020.220(a)(2)(i)(A). At a minimum, the bank must obtain, from U.S. persons, a taxpayer identification number (“TIN”) in conjunction with the opening of an account. 31 C.F.R. § 1020.220(a)(2)(i)(A)(4)(i). The EIN is the TIN for a business entity. See <https://www.irs.gov/individuals/international-taxpayers/taxpayer-identification-numbers-tin> (“An [EIN] is also known as a federal tax identification number, and is used to identify a business entity.”) (last viewed July 19, 2016). A bank may allow customers who have applied for, but not yet received, a TIN to open an account so long as the CIP

timing therefore suggests that a preexisting entity such as the Committee — not the Chairman’s Committee — opened the Convention Account.

In our comments on the Interim Audit Report (“IAR”), we stated that the aforementioned evidence was circumstantial. *See* OGC Comments on Interim Audit Report on the Colorado Republican Committee (LRA 961), at 3 (received by Audit Division on Dec. 11, 2015). At the same time, however, we believed that the evidence raised questions that warranted further inquiry, and thus recommended that the Audit staff consider requesting from the Commission a subpoena and order for written answers to the bank or a voluntary release from the Committee for the Audit staff to ask the bank whether the Committee’s EIN was associated with the Convention Account. *Id.*

The Committee declined to provide bank documentation or to provide the Audit staff with the authorization that it sought. The Audit staff has determined that the aforementioned evidence is sufficient to conclude that the Convention Account is a federal account of the Committee and, as such, should be included within the scope of the audit.

We reiterate our view in our comments on the IAR that this evidence, without information from the bank or the Committee that would resolve the question of ownership of the Convention Account, remains circumstantial. The evidence tends to suggest that the Committee may have opened the Convention Account, but it is also consistent with alternative explanations, such as, for example, that a third party opened the Convention Account and then transferred ownership and control of the Convention Account to the Chairman’s Committee.

Because the evidence raises significant questions that warrant resolution, we renew our recommendation that the Audit staff consider requesting a subpoena and order for written answers to obtain information about the association, if any, of the Committee’s EIN with the Convention Account.<sup>4</sup> Given the limited information required, the subpoena and order could be narrowly drawn so that it communicates a single request directed to the bank requiring that it provide the EINs associated with the Convention Account.

### **III. FAILURE TO FILE NOTICES AND PROPERLY DISCLOSE INDEPENDENT EXPENDITURES (Finding 2)**

The Committee made media-related expenditures totaling \$357,895 that it reported as operating expenditures, but which, upon evaluation of the underlying communications, appear to constitute independent expenditures according to the Audit staff. Of this amount, \$203,995 was

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contains procedures for confirming that the application was filed before the opening of the account and for obtaining the TIN within a reasonable period of time after the opening of the account. 31 C.F.R. § 1020.220(a)(2)(i)(B). Here, the evidence shows that the Chairman’s Committee did not submit an application for a TIN until after the Convention Account was opened.

<sup>4</sup> Should the Audit Division decide not to seek a subpoena, we recommend that the Audit staff revise its recommendation in Finding 2 to indicate that it considers the status of the Convention Account to be unresolved.

spent on “direct mail”<sup>5</sup> and \$153,900 was spent on radio advertisements. Included in this finding are 77 mailings that cannot be associated with invoices. The Committee also reported the mailers as operating expenditures, but the Audit staff has classified these as apparent independent expenditures.

The Committee does not challenge the Audit staff’s classifications of the advertisements on the basis of whether they constitute express advocacy. *See* 11 C.F.R. §§ 100.16, 100.22 (independent expenditures defined in part as communications that expressly advocate, a term defined in section 100.22). Rather, the Committee argues that the communications are not properly regarded as expenditures because they were distributed by volunteers, invoking the “volunteer materials exception” (“VME”) to the definition of “expenditure.” *See* 52 U.S.C. § 30101(9)(B)(viii); 11 C.F.R. § 100.147. The Committee submitted some documents in support of this assertion: 22 forms containing individual volunteer names, site locations, and, in most cases, dates, accompanied by certifications from the individuals stating that they assisted with processing mail on behalf of the Committee on the property of the firm Wiz Bang Solutions, Inc. on the specified date as uncompensated volunteers. However, the vast majority of the forms do not identify the specific mailing or mailings on which the volunteer may have worked, although one form does identify the last name of a candidate. According to the Audit staff, the dates furnished on the forms show that most of the claimed volunteer activity occurred shortly before the 2012 general election date.

The Audit staff informs us that the disbursements made for mailings encompassed within Finding 2 appear to be associated with two commercial vendors: Majority Strategies,<sup>6</sup> sometimes alternately identified as Next Wave Communications in the pertinent documents, and Wiz Bang Solutions.<sup>7</sup> However, the statements submitted by the Committee specify that certain volunteers processed mailings only on the property of Wiz Bang Solutions – not in connection with the other commercial vendor receiving the Committee’s mailing-related disbursements. In spite of this, the Committee states in response to Audit staff inquiry that the volunteer statements apply to all of its disbursements on mailings to all vendors. Further, in response to the Audit staff’s recommendation in the IAR that the Committee furnish more detailed documentation, such as

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<sup>5</sup> While the DFAR uses the term “direct mail,” the Audit staff has clarified in discussion with us that the term is not being used here in its technical sense to signify mail distributed by a commercial firm or from a commercial list. *See* 11 C.F.R. § 100.147. The “volunteer materials exception,” with which this portion of our comments is concerned, does not apply to direct mail in this sense. *Id.*; 52 U.S.C. § 30101(9)(B)(viii)(1). We recommend revising the DFAR to refer to “mail” or “mailings” rather than to “direct mail” in order to avoid this ambiguity.

<sup>6</sup> The Audit staff includes within this category of disbursements associated with Majority Strategies the aforementioned 77 communications not positively associated with invoices. The Audit staff states that in response to the exit conference, the Committee provided a listing of Majority Strategies invoice numbers and invoice amounts that materially correlate with the total amount of disbursements paid to Majority Strategies. The Audit staff therefore concludes that these 77 mailings were associated with Majority Strategies. We conclude that this inference is reasonable, however the Audit staff should revise Finding 2 to invite the Committee to submit evidence to show that this inference is mistaken if the Committee deems it to be so.

<sup>7</sup> A third commercial vendor, Mentzner Media, appears to be associated with the radio advertisements.

timesheets or photographs, tending to substantiate its assertion that the VME applies, the Committee stated that it has provided all of the supporting documentation in its possession.

The Audit staff concludes that the documentation provided by the Committee is insufficient to support its assertion that the VME applies. It concludes that as a result of the absence of sufficient documentation, the Audit staff considers the communications to be independent expenditures.

The DFAR correctly observes that a lack of clarity exists, in the context of mailings, regarding how to apply the VME and what quantum and type(s) of documentation are necessary to substantiate a claim that the VME applies. *See, e.g.*, OGC Comments on Draft Final Audit Report - Arizona Republican Party (LRA 889), at 4-5 (Apr. 8, 2013). In recent audits addressing this issue, the Commission has approved findings that reported expenditures should not be attributed to a committee's coordinated expenditure limit where there was some evidence of volunteer activity.<sup>8</sup> We believe that the documentation submitted by the Committee here — i.e., detailed volunteer forms and certifications — is consistent with the documentation in those prior audits in which the Commission has approved proposed audit report findings not attributing the costs of mailings to the coordinated party expenditure limit. We, therefore, recommend that the DFAR be revised to conclude that the costs of mailings associated with Wiz Bang Solutions will not be counted as independent expenditures, based upon the Committee's submission of supporting documentation regarding the VME, due to the lack of clarity regarding the VME.

The Committee's supporting documentation, however, pertains only to the costs of mailings associated with Wiz Bang Solutions, and not to the costs of mailings attributable to Majority Strategies.<sup>9</sup> Even in recent audits in which the Commission has deadlocked on whether to apply the VME on the basis of unsworn written assertions regarding volunteer activity, the committees' assertions have related specifically to volunteer involvement in the spending at issue. *See Final Audit Report of the Commission on the Arizona Republican Party*, at 16-17 (committee furnished written description of mailing process and of volunteer involvement in that process); *Final Audit Report of the Commission on the Nebraska Democratic Party*, at 15 (committee furnished signed and dated declaration from executive director who oversaw political and

<sup>8</sup> *See, e.g.*, *Final Audit Report of the Commission on the Arizona Republican Party*, at 13, 17 (approved Nov. 14, 2013) (Commission does not count mailings made on behalf of candidate David Schweikert against committee's coordinated expenditure limit where committee provided written description of process and photographs of volunteers working on mailers to support claim of VME, but did not approve recommendation by four votes to find similarly regarding mailings on behalf of two other candidates, where committee provided only written description of process); *Final Audit Report of the Commission on the Nebraska Democratic Party*, at 16-17, 19-20 (approved Oct. 23, 2014) (Commission does not count cost of mailings against coordinated expenditure limit where committee provided vendor statements and invoices along with photographs of volunteers participating in various duties, but did not approve recommendation to find similarly by four votes where committee submitted unsworn written assertions without documentation of nature and extent of volunteer involvement); *Final Audit Report of the Commission on the South Dakota Democratic Party*, at 14-15 (approved Apr. 17, 2015) (Commission does not count cost of mailings against coordinated expenditure limit where committee provided photographs of volunteers working on mailers and signed declaration that that type of mailing generally performed by volunteers).

<sup>9</sup> This would include any ascertainable costs attributable to the 77 mailings that lack invoices which the Audit staff has ascribed by inference to Majority Strategies, provided that the Committee also be invited in the DFAR to submit evidence to show that this inference is erroneous, as discussed in footnote 7, *supra*.

administrative operations containing recollections of nature of volunteer involvement for mailing at issue). Here, in contrast, the only statement that the Committee has provided regarding the Majority Strategy mailings is a general, conclusory assertion from the Committee's counsel that the VME applies. The Commission has never approved application of the VME based solely on an assertion of this nature. Therefore, we recommend that the Audit Division conclude in the DFAR that the question of whether the costs of the mailings attributable to Majority Strategies should be counted as independent expenditures is unresolved because of the lack of clarity involving the VME. We also recommend that the Audit Division raise this issue in the cover memorandum accompanying the transmission of the DFAR to the Commission for the Commission's consideration.

Finally, we note that the VME does not apply to radio advertisements. *See* 52 U.S.C. § 30101(9)(viii); 11 C.F.R. § 100.147 (excluding broadcast advertising from VME). Consequently, even though the Committee's response appears to argue that the VME applies to all communications in Finding 2 without distinction, we agree that the radio advertisements identified as apparent independent expenditures in that finding, and costing \$153,900, should be deemed reportable independent expenditures.

#### **IV. FAILURE TO ITEMIZE DEBTS AND OBLIGATIONS (Finding 4)**

The DFAR concludes that the Committee did not properly report certain items of debt owed to three vendors totaling \$235,968 in Schedule D of its disclosure reports. The Committee agreed to amend its reports to disclose indebtedness to two of the three vendors.

The Committee contends, however, that it is not required to disclose the debt to its third vendor because it terminated its contract with that vendor. According to the Audit staff, the Committee has an outstanding debt of \$133,487, representing the unpaid balance of a contract with this vendor, a provider of get-out-the-vote ("GOTV") services.

Even assuming that the Committee did effectively terminate its contract with the GOTV vendor, that fact might reduce the amount of the debt to be reported, but would not abrogate the Committee's responsibility to continuously report any indebtedness that it may have incurred for services the GOTV vendor rendered before the effective date of the termination. Commission regulations require the continuous reporting of outstanding debt from the date on which the debt is incurred until the debt is extinguished. 11 C.F.R. § 104.11(b) (debt or obligation, including written contract, to make expenditure over \$500 to be reported as of date of incurrence of obligation in most circumstances). The Committee's statement that it terminated the contract before the vendor provided all of the contracted services suggests that some of the contracted services may have been provided before the termination became effective. Further, the Committee's contract with the vendor provides that successful termination of the contract does not release the client from the obligation to make pro rata payments of fees for the services the vendor

actually provided under the contract.<sup>10</sup> See Get Out The Vote Program Agreement, Par. 6 (Sept. 17, 2012). The Committee, therefore, must report this outstanding debt.

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<sup>10</sup> To the extent that a dispute may exist between the Committee and the GOTV vendor arising out of this provision, or regarding whether the Committee owes any payment to the vendor for one or more services, disputed debt too must be continuously reported. 11 C.F.R. 116.10(a).

October 24, 2016

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**Via E-mail (to Audit@fec.gov)**

Federal Election Commission  
Audit Division  
Ms. Zuzana Pacious  
999 E. Street N.W.  
Washington, D.C. 20463

RE: Response of the Colorado Republican Committee to DFAR dated October 5, 2016

Dear Ms. Pacious:

This firm represents the Colorado Republican Committee (the "Committee"). This letter will serve as the Committee's response to the Commission's Draft Final Audit Report dated October 5, 2016. I address the Committee's response to each of the Audit Division's interim Findings and recommendations in turn.

**Finding 1 – "Misstatement of Financial Activity"**

The Committee agrees with the Audit Division's recommendations regarding Finding 1(A) and Finding 1(B). The misstatements were inadvertent. As the Draft Final Audit Report notes, the Committee has filed amendments to the relevant 2011 reports to address these recommendations. The Committee inadvertently failed to file amendments for 2012. These amendments will be filed on or before October 31, 2016 and will complete the Committee's compliance with the Audit Division's recommendations.

As to Finding 1(C), the Committee continues to disagree with the Audit Division's recommendations and conclusion that the matter is unresolved. The Committee has previously provided documentation—as noted in the Interim Audit Report and the Draft Final Audit Report—demonstrating that the account in question (the "Colorado RNC Host account") is not controlled by the Committee and is therefore not an unreported federal account. The Committee's position is that it has by its prior correspondence, including its response to the Interim Audit Report, and cooperation with Commission staff sufficiently demonstrated that it does not control the Colorado RNC Host account.

**Finding 2 – "Reporting of Apparent Independent Expenditures"**

The Committee partially disagrees with the Audit Division's recommendations as to Finding 2. The Committee has—as noted in the Interim Audit Report and Draft Final Audit Report—consistently asserted that the communications at issue are not reportable as independent expenditures because they are subject to the volunteer material exemption. The Committee has provided documentation substantiating volunteer involvement including the volunteer names, the location the work was done, and the date of the volunteer involvement. The Committee appreciates the Audit Division's acknowledgment in the Draft Final Audit Report that the Committee has never before been requested to provide volunteer timesheets and photographs and its revision of its recommendation regarding the \$93,090.00 in direct mailers to conclude that these are

not properly considered independent expenditures. The Committee believes it has provided enough information to substantiate application of the volunteer material exemption as to the remaining \$110,905.00 in expenditures of the same nature. As a result, the Committee will not make any amendments to disclose these disbursements as independent expenditures, and continues to believe that no 24/48 hour report was necessary these disbursements.

This said, the Committee agrees with the Audit Division that the \$153,900.00 spent on radio advertising does not qualify for the volunteer materials exemption. The Committee will file amendments to the relevant reports on or before Friday, November 11, 2016 in compliance with the Audit Division's recommendations.

Finding 3 – "Recordkeeping for Communications"

The Committee continues to disagree with the Audit Division's recommendations as to Finding 3. After Audit staff provided the Committee with a schedule of disbursements for which it required further documentation, the Committee provided all documentation in its possession in a series of letters, USB thumb-drives and online file site links between January 31, 2014 and August 11, 2014. The Committee continues to work to associate the already provided invoices and communications with each other. This is a time-consuming task that has not been possible in advance of the November 8, 2016 election. The Committee will complete this work and provide the Audit Division with a final record associating all communications with invoices on or before December 31, 2016.

Finding 4 – "Failure to Itemize Debts and Obligations"

The Committee maintains that it has done all that is necessary to comply with the Audit Division's recommendations as to Finding 4. Given the Commission's determination that the amounts owed to the Committee's former legal counsel were not privileged from disclosure, the Committee amended its reports for the applicable period to reflect these amounts as debt. The Committee has appropriately declined to amend its reports to the amounts allegedly owed to its former get-out-the-vote ("GOTV") vendor, as that contract was terminated and the amounts disputed by CRC. The amounts were never paid and the statute of limitations for any breach of this agreement has run, hence the CRC cannot amend its reports as any amounts allegedly owed to this vendor were and are not properly debt.

Request for Hearing

The CRC hereby requests a hearing before the Commission to present legal arguments regarding Finding 1 (the status of the "Colorado RNC Host Account") and Finding 4 (the status of disputed and unpaid amounts as reportable "debt").

Thank you for your attention to this response; please do not hesitate to contact me should you have any questions regarding it.

Regards,

  
Christopher O. Murray

cc. Mary Moss, Federal Election Commission  
Steve House, Colorado Republican Committee  
Marty Neilson, Colorado Republican Committee  
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