

Tennessee Democratic Party - Audit Referral

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

During audit fieldwork, a comparison of TDP's reported financial activity with its bank records revealed a misstatement of receipts and disbursements in calendar year 2015. Specifically, TDP understated its receipts and disbursements by \$148,395 and \$147,409, respectively. In response to the Interim Audit Report recommendation, TDP amended its disclosure reports correcting the misstatements for the 2015 calendar year. TDP provided no formal response to the Draft Final Audit Report.

Additionally, a comparison of TDP's bank activity with its original reports filed for 2015 and 2016 also revealed a material misstatement of receipt and disbursement activity. In response to the Interim Audit Report recommendation, TDP had no comments. TDP provided no formal response to the Draft Final Audit Report.

The Commission approved a finding that TDP understated receipts and disbursements by \$148,395 and \$147,409, respectively for calendar year 2015. Additionally, the Commission approved a finding that TDP understated receipts by \$1,362,191 and disbursements by \$1,377,720 on the original reports filed over the two-year period ending December 31, 2016.

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**

During audit fieldwork, the Audit staff reconciled TDP's reported financial activity with its bank records for the calendar years 2015 and 2016. The reconciliation determined that TDP misstated receipts and disbursements for 2015. The following chart details the discrepancies between TDP's disclosure reports and bank activity. The succeeding paragraphs explain why the discrepancies occurred.

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2015 Committee Activity			
	Reported	Bank Records	Discrepancy
Opening Cash on hand @ January 1, 2015	\$12,577	\$12,079	\$498 Overstated
Receipts	\$714,262	\$862,657	\$148,395 Understated
Disbursements	\$659,107	\$806,516	\$147,409 Understated
Ending Cash on hand @ December 31, 2015	\$67,732	\$68,220	\$488 Understated

The understatement of receipts resulted from the following:

• Contributions from individuals not reported	\$ 106,950 ⁶
• Transfer from affiliated committee not reported	43,500
• Contribution from political committee not reported	1,000
• Unexplained difference	<u>(3,055)</u>
Net Understatement of Receipts	<u>\$ 148,395</u>

The understatement of disbursements resulted from the following:

• Transfers to Non-federal account not reported	\$ 105,000
• Transfer to affiliated committee not reported	43,500
• Disbursement reported incorrectly	115
• Unexplained difference	<u>(1,206)</u>
Net Understatements of Disbursements	<u>\$ 147,409</u>

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the misstatements for calendar year 2015 with TDP representatives and provided schedules detailing the misstatements. TDP representatives did not provide any comments.

The Interim Audit Report recommended that, TDP amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements noted above. It was further recommended, that TDP reconcile the cash on hand in its most recently filed report to include these adjustments and correct any subsequent discrepancies.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TDP amended its disclosure reports to correct the misstatements for the 2015 calendar year.

⁶ Of these contributions not reported, \$105,000 represent a portion of the excessive contributions (see Finding 2) that were transferred timely without notification to the contributor, to the non-federal account.

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4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TDP filed amended disclosure reports that corrected the misstatement of receipts and disbursements.

5. Committee Response to the Draft Final Audit Report

TDP provided no formal response to the Draft Final Audit Report.

Commission Conclusion

On August 30, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TDP understated receipts and disbursements by \$148,395 and \$147,409, respectively for calendar year 2015.

The Commission approved the Audit staff's recommendation.

B. Misstatement of Financial Activity – Original Reports Filed**1. Facts**

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

The Audit staff calculated that TDP understated its receipts by \$1,362,191 and disbursements by \$1,377,720 on the original reports filed over the two-year period ending December 31, 2016. These understatements in receipts and disbursements were primarily due to transfers, received from and made to, affiliated committees. In addition, these figures include the understatement of receipts (\$148,395) and disbursements (\$147,409) discussed in Section A above (Misstatement of Financial Activity – Most Recent Reports Filed Prior to the Audit). The latest amendments filed prior to the audit corrected the understatement of receipts and disbursements related to the transfers.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the understatement of receipts and disbursements on TDP's original reports during the exit conference. TDP representatives did not provide any comments.

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

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TDP had no comments.

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4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TDP did not provide any additional comments with respect to this matter.

5. Committee Response to the Draft Final Audit Report

TDP provided no formal response to the Draft Final Audit Report.

Commission Conclusion

On August 30, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TDP understated receipts by \$1,362,191 and disbursements by \$1,377,720 on the original reports filed over the two-year period ending December 31, 2016.

The Commission approved the Audit staff's recommendation.

Finding 2. Receipt of Contributions in Excess of the Limit**Summary**

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that TDP received apparent excessive contributions totaling \$166,450⁷. Errors totaling \$151,200⁸ occurred due to TDP not notifying contributors that the excessive portion of the contribution was transferred to the non-federal account. In response to the Interim Audit Report recommendation, TDP provided copies of letters to contributors, notifying them that the excessive portion of their contribution had been transferred to the non-federal account and offering the "option to request a refund", thus untimely resolving the excessive portion. For the remaining excessive contributions totaling \$15,250, TDP also notified contributors, via letter, that the excessive portion of their contribution had been "allocated" to the non-federal account and offered an "option to request a refund." TDP has not yet made the transfer to the non-federal account totaling \$15,000⁹, but reported the transfer as a debt on Schedule D (Debts and Obligations) and refunded \$250 to one contributor. TDP provided no formal response to the Draft Final Audit Report.

The Commission approved a finding that TDP received excessive contributions totaling \$166,450.

⁷ The sample projection amount of \$34,824 was removed by the Audit staff from this finding after further analysis.

⁸ This amount includes \$10,250 that was eligible for presumptive reattribution. However, instead of presumptively reattributing the excessive portion to another contributor, TDP transferred the funds to its non-federal account.

⁹ In June 2019, subsequent to the Draft Final Audit Report, TDP transferred the \$15,000 to the non-federal account.

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Legal Standard.

- A. Party Committee Limits.** A party committee may not receive more than a total of \$10,000 per year from any one individual. This limit is shared by the state, district, and local party committees. 52 U.S.C. §30116(a)(1)(D) and 11 CFR §110.9.
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution of the excessive portion, following the instructions provided in the Commission regulations (see below for explanation of reattribution); and
 - If the committee does not receive a proper reattribution within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).
- C. Joint Contributions.** Any contribution made by more than one person, except for a contribution made by a partnership, must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).
- D. Reattribution of Excessive Contributions.** The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:
- The reattribution must be signed by both contributors;
 - The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
 - The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

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

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

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

E. Receipt of Contributions. Organizations that are political committees under the Act, other than national party committees shall establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. 11 CFR §102.5(a).

Facts and Analysis

A. Facts

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

Excessive Contributions-Testing Method	
High Dollar/Other Review - contribution error amount	\$166,450
Total Amount of Excessive Contributions	\$166,450
Reasons for Excessive Contributions	
Contributions transferred to the non-federal account without prior notification	\$151,200
Contributions not resolved via signed reattribution letter, refund or transfer to the non-federal account	\$15,250
Total Amount of Excessive Contributions	\$166,450

B. Additional Information

TDP did not maintain a separate account for questionable contributions. Based on its cash on hand at the end of the audit period (December 31, 2016), it appears that TDP did not maintain sufficient funds to make refunds of the remaining excessive contributions that had not been previously transferred to the non-federal account.

C. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with TDP representatives at the exit conference and provided schedules of the apparent excessive contributions. In response to the exit conference, TDP representatives did not provide any comments and did not submit any additional documentation.

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The Interim Audit Report recommended that TDP provide documentation demonstrating that these contributions were not excessive, or if excessive, were resolved in a timely manner. Absent such a demonstration, TDP should have sent letters to those contributors whose contributions were eligible for presumptive reattribution and/or refund any remaining excessive amounts that had not been previously transferred to the non-federal account.

D. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TDP provided the following:

Corrective Action Taken in Response to the Interim Audit Report	
Letters sent notifying contributors of transfer to the non-federal account – <i>Untimely</i>	\$151,200
Excessive contribution refunded- <i>Untimely</i>	\$250
Debt to non-federal account reported on Schedule D	\$15,000

Additional Information:

- For excessive contributions timely transferred to the non-federal account without notification totaling \$151,200
TDP provided copies of letters, dated February 21, 2019, notifying contributors that the excessive portion of their contribution had been previously “allocated” to the non-federal account and offering an option to request a refund or “alternative redesignation” of the excessive portion.
- For excessive contributions not resolved via transfer to the non-federal account or refund totaling \$15,250
TDP provided copies of notification letters sent to two contributors totaling \$15,250. The letters stated the excessive portion of their contribution had been “allocated” to the non-federal account and offered an option to request a refund. In response to the letters, one contributor requested a refund of \$250 excessive. Although, TDP has disclosed the refund to the contributor, it has not provided the Audit staff with documentation which demonstrates the check was negotiated (copy of the front and back of the negotiated check). TDP stated that it intends to transfer the remaining \$15,000 to the non-federal account. Until the transfer is made, TDP has disclosed this amount as debt on Schedule D.

The Audit staff concluded that TDP resolved the excessive contributions, albeit untimely.

E. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TDP resolved the excessive contributions, albeit untimely.

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F. Committee Response to the Draft Final Audit Report

TDP provided no formal response to the Draft Final Audit Report.

Commission Conclusion

On August 30, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TDP received excessive contributions totaling \$166,450.

The Commission approved the Audit staff's recommendation.

Finding 3. Disclosure of Joint Fundraising Transfers

Summary

During audit fieldwork, the Audit staff reviewed receipts to verify the accuracy of the information disclosed on TDP's reports. TDP received net proceeds of \$3,113,531 from two joint fundraisers but did not itemize memo entries totaling \$1,509,766 on Schedule A (Itemized Receipts), as required. These memo entries represented the gross contributions from the original contributors. In response to the Interim Audit Report recommendation, TDP filed amended Schedules A itemizing the memo entries totaling \$1,509,766. TDP provided no formal response to the Draft Final Audit Report.

The Commission approved a finding that TDP failed to disclose memo entries which represented the gross contributions from the original contributors totaling \$1,509,766.

Legal Standard

- A. Itemization of Contributions from Joint Fundraising Efforts.** Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR §102.17(c)(8) when such funds are received from the fundraising representative. 11 CFR §102.17(c)(3)(iii).

Each participating political committee reports its share of the net proceeds as a transfer-in from the fundraising representative and shall also file a memo Schedule A itemizing its share of gross receipts as contributions from the original contributors to the extent required under 11 CFR §104.3(a). 11 CFR §102.17(c)(8)(i)(B).

- B. Itemization required.** Political committees must itemize:

- Any contributions from an individual if it exceeds \$200 per calendar year either by itself or when aggregated with other contributions from the same contributor. 11 CFR §104.3(a)(4)(i); and
- Every contribution from any political committee, regardless of the amount. 52 U.S.C. §30104(b)(3)(A) and (B).

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Facts and Analysis**A. Facts**

During audit fieldwork, the Audit staff determined that TDP received a total of \$3,113,531 in net proceeds from joint fundraising activity; \$3,021,100 from Hillary Victory Fund (HVF) and \$92,431 from the Tennessee State Party Victory Fund (TVF). However, TDP did not itemize memo entries totaling \$1,509,766 on Schedules A (Itemized Receipts) from the HVF (\$1,423,722) and the TVF (\$86,044).

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed this matter with TDP representatives and provided schedules detailing the missing disclosure items. TDP representatives did not provide any comments.

The Interim Audit Report recommended that TDP file either amended Schedules A or Form 99 to itemize the required memo entries.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TDP filed amended Schedules A itemizing memo entries totaling \$1,509,766.¹⁰

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TDP filed amended Schedules A itemizing the memo entries.

E. Committee Response to the Draft Final Audit Report

TDP provided no formal response to the Draft Final Audit Report.

Commission Conclusion

On August 30, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TDP failed to disclose memo entries which represented the gross contributions from the original contributors totaling \$1,509,766.

The Commission approved the Audit staff's recommendation.

Finding 4. Recordkeeping for Employees**Summary**

During audit fieldwork, the Audit staff determined that TDP did not maintain monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2015 and 2016, the Audit staff identified payments to TDP employees totaling \$409,900 for which TDP did not maintain monthly payroll logs. This consisted of payroll which was allocated with federal and non-federal

¹⁰ Of this amount, \$78,999 were not adequately disclosed on Schedule A as unitemized lump sum contributions from TVF.

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funds. There was no payroll paid exclusively with non-federal funds. In response to the Interim Audit Report recommendation, TDP stated that it now has procedures in place to track the percentage of time employees spend on federal election activities. TDP provided no formal response to the Draft Final Audit Report.

The Commission approved a finding that TDP failed to maintain monthly payroll logs totaling \$409,900, as required, to document the percentage of time each employee spent in connection with a federal election.

Legal Standard

Maintenance of Monthly Logs. 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 audit fieldwork, the Audit staff reviewed disbursements for payroll. TDP did not maintain any monthly logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2015 and 2016, TDP did not maintain monthly logs for \$409,900 in payroll.¹¹ This amount consisted entirely of payroll which was reported on Schedule H4 (Disbursements for Allocated Federal and Non-Federal Activity) and paid with an allocation of federal and non-federal funds during the same month. There was no payroll paid exclusively with non-federal funds.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the payroll recordkeeping requirement with TDP representatives and provided schedules of the payroll transactions. TDP representatives did not provide any comments.

¹¹ 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, Page 1). Payroll amounts do not include fringe benefits.

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For TDP employees that were paid with an allocation of federal and non-federal funds, the Interim Audit Report recommended that TDP:

- provide evidence that monthly time logs were maintained to document the percentage of time an employee spent in connection with a federal election; or
- provide and implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, TDP stated that it now has procedures in place to track the percentage of time employees spend on federal activities. The Audit staff concludes that TDP did not maintain monthly logs for payroll totaling \$409,900.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TDP now has procedures in place to track the percentage of time employees spend on federal activities.

E. Committee Response to the Draft Final Audit Report

TDP provided no formal response to the Draft Final Audit Report.

Commission Conclusion

On August 30, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TDP failed to maintain monthly payroll logs totaling \$409,900, as required, to document the percentage of time each employee spent in connection with a federal election.

The Commission approved the Audit staff's recommendation.



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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

2/8/18
Date

Debra McMillan
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