



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 23, 2021

**MEMORANDUM**

To: The Commission

Through: Alec Palmer  
Staff Director

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

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Audit Division

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Subject: Audit Division Recommendation Memorandum on the Connecticut Democratic State Central Committee (A19-19)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to the Connecticut Democratic State Central Committee (CDSCC) on October 6, 2021 (see attachment). CDSCC did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

In response to the DFAR, CDSCC provided additional comments pertaining to Finding 2, Recordkeeping for Employees, and Finding 4, Reporting of Apparent Independent Expenditures, as noted below.

**Finding 1. Contributions from Unregistered Political Organizations**

The Audit staff recommends that the Commission find that CDSCC materially resolved contributions from unregistered political organizations totaling \$45,609 by providing documentation demonstrating that \$40,887 of these contributions were transferred to the non-federal account, refunded, or were received from permissible sources. CDSCC did not resolve the remaining contributions from unregistered political organizations totaling \$4,722.

**Finding 2. Recordkeeping for Employees**

In response to the DFAR, CDSCC reiterated that it has instituted procedures to ensure that time records are maintained for all employees paid in part with non-federal funds. CDSCC stated that the DFAR did not address its concern regarding the employees who were paid exclusively with non-federal funds. CDSCC cited previous state party audits wherein some Commissioners concluded that the recordkeeping requirements for employees paid exclusively with non-federal funds were outside the scope of the Commission's jurisdiction.<sup>1</sup> The Committee also noted that maintaining monthly payroll logs for employees paid with exclusively non-federal funds presents "a significant burden for state parties."

There have been audits in which the Commission did not agree that monthly payroll logs were required for employees paid with exclusively non-federal funds. The Audit staff notes, however, that in the two most recent audits which included this issue, the Commission approved the recordkeeping for employees monthly payroll logs finding. *See* Final Audit Report on Democratic Party of Hawaii (Feb. 16, 2018) at 25 (approving a finding that the committee failed to maintain a monthly payroll log for each employee, including those employees on the payroll who worked exclusively on non-federal activities); Final Audit Report on Illinois Republican Party (Oct. 24, 2017) at 12 (same). It was in several earlier audits that the Commission could not agree whether monthly payroll logs were required for employees who were paid exclusively with non-federal funds. *See* Final Audit Report on Utah Republican Party (Jan. 23, 2017), Final Audit Report on South Dakota Democratic Party (Apr. 27, 2015), Final Audit Report on Kentucky State Democratic Central Committee (Apr. 20, 2015), Final Audit Report on Democratic Party of Wisconsin (Apr. 6, 2015), Final Audit Report on Democratic Party of Illinois (Nov. 5, 2014), Final Audit Report on State Democratic Executive Committee of Alabama (May 12, 2014), Final Audit Report on Republican Party of Iowa (Mar. 18, 2014).

As such, the Audit staff recommends that the Commission find that CDSCC did not maintain monthly payroll logs or equivalent records, totaling \$111,812, to document the percentage of time each employee spent in connection with a federal election for calendar years 2017 and 2018.

**Finding 3. Reporting of Debts and Obligations**

The Audit staff recommends that the Commission find that CDSCC failed to disclose debts and obligations to vendors totaling \$33,273.

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<sup>1</sup> In those audits, the Commission moved the finding to the additional issues section of the respective final audit report since there were not four affirmative votes to include the finding.

**Finding 4. Reporting of Apparent Independent Expenditures**

In response to the DFAR, CDSCC maintained that the mailing activities subject to this finding, were not independent expenditures. Specifically, CDSCC reiterated that the expenditures were properly made as volunteer exempt activities and were fully coordinated with the Senate candidate.<sup>2</sup> With respect to the two mailers, CDSCC reiterated that in a previously provided sworn declaration the mail house production manager stated that he “personally oversaw production of the CDSCC volunteer exempt mail.” With respect to the door hanger,<sup>3</sup> CDSCC stated that “[s]ince these activities were not public communications, they cannot be considered coordinated communications regardless of whether it was distributed by volunteers and [thus] no further action [sh]ould be necessary regarding these expenditures.” Except for the declaration, CDSCC did not provide any other evidence to support the volunteer materials exemption.

Additionally, in response to the DFAR, CDSCC stated that, “[i]t appears that the Audit Division, for the first time that we can determine, is requiring some level of documentation for volunteer exempt canvassing activities.” The Audit staff maintains that the requirement to provide supporting documentation to show that the volunteer materials exemption applies is not novel. Under Commission regulations, the payment by a state or local party committee for 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 an expenditure provided that such materials are distributed by volunteers and not by commercial or for-profit operations. 11 C.F.R. § 100.147(d). As such, whether the volunteer materials exemption applies does not depend on the type of campaign materials CDSCC used. Rather, it depends on whether volunteers were used to distribute the materials. To that extent, CDSCC must provide further evidence of the volunteer involvement to avail itself of this exemption.

For \$140,259 in apparent independent expenditures, for which CDSCC provided a sworn declaration to document the volunteer materials exemption, the Audit staff recommends the Commission determine whether the declaration sufficiently documents volunteer involvement and satisfies the exemption given the lack of clarity regarding how the exemption should be applied.

Should the Commission determine that the sworn declaration does not sufficiently document the volunteers’ involvement and that the volunteer materials exemption does not apply, the Audit staff recommends the following:

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

The Audit staff recommends that the Commission find that CDSCC failed to properly disclose apparent independent expenditures totaling \$140,259 on Schedule E (Independent Expenditures).

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<sup>2</sup> The Audit staff notes that one mailer that appeared to have been coordinated with a candidate committee, is not included in the finding, as noted on pages 14 and 15 of the DFAR.

<sup>3</sup> On its 2018 Post-General Report, CDSCC disclosed this item as “mailer – door hanger.”

***B. Volunteer Materials Exemption***

The Audit staff recommends that the Commission find that CDSCC failed to provide documentation to support \$140,259 was volunteer exempt activity and as a result, should be disclosed as independent expenditures on Schedule E.

***C. Failure to File 24-Hour Reports for Apparent Independent Expenditures***

The Audit staff recommends that the Commission find that CDSCC failed to file 24-hour reports for apparent independent expenditures totaling \$140,259.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

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

**If this Audit Division Recommendation Memorandum is not approved on a tally vote, Directive No. 70 states that the matter will be placed on the next regularly scheduled open session agenda.**

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

Attachment:

- Draft Final Audit Report of the Audit Division on the Connecticut Democratic State Central Committee

cc: Office of General Counsel



# Draft Final Audit Report of the Audit Division on the Connecticut Democratic State Central Committee

(January 1, 2017 - December 31, 2018)

## Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

## About the Committee (p. 2)

The Connecticut Democratic State Central Committee is a state party committee headquartered in Hartford, Connecticut. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity (p. 2)

### • Receipts

○ Contributions from Individuals	\$ 1,473,664
○ Contributions from Political Party and Other Committees	1,036,328
○ Transfers from Affiliated/Other Party Committees	390,375
○ Other Receipts	339,600
○ Transfers from Non-Federal Account	38,972

### Total Receipts

**\$ 3,278,939**

### • Disbursements

○ Operating Expenditures	\$ 1,622,829
○ Allocated Federal/Non-Federal Expenditures	194,457
○ Other Disbursements	41,444
○ Federal Election Activity	1,292,443

### Total Disbursements

**\$ 3,151,173**

## Findings and Recommendations (p. 3)

- Contributions from Unregistered Political Organizations (Finding 1)
- Recordkeeping for Employees (Finding 2)
- Reporting of Debts and Obligations (Finding 3)
- Reporting of Apparent Independent Expenditures (Finding 4)

<sup>1</sup> 52 U.S.C. §30111(b).



# **Draft Final Audit Report of the Audit Division on the Connecticut Democratic State Central Committee**

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(January 1, 2017 - December 31, 2018)

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# Part I

## Background

### Authority for Audit

This report is based on an audit of the Connecticut Democratic State Central Committee (CDSCC), 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 and excessive contributions;
2. the disclosure of contributions received;
3. the disclosure of individual contributors' occupation and name of employer;
4. the disclosure of disbursements, debts and obligations;
5. the disclosure of expenses allocated between federal and non-federal accounts;
6. the consistency between reported figures and bank records;
7. the completeness of records;
8. the disclosure of independent expenditures; and
9. 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," several state party committees unaffiliated with CDSCC requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

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



## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	May 18, 1983
• Audit Coverage	January 1, 2017 - December 31, 2018
<b>Headquarters</b>	Hartford, Connecticut
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Accounts	Two Federal, One Non-Federal
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Eloisa Melendez (03/28/19 – Present)
• Treasurers During Period Covered by Audit	Michael Pohl (05/26/17 – 03/27/19) Nathan M. Wilson (03/23/17 – 05/25/17) Joshua Hall (01/29/15 – 03/22/17)
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

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

<b>Cash on hand @ January 1, 2017</b>	<b>\$ 104,974</b>
<b>Receipts</b>	
○ Contributions from Individuals	1,473,664
○ Contributions from Political Party and Other Committees	1,036,328
○ Transfers from Affiliated /Other Party Committees	390,375
○ Other Receipts	339,600
○ Transfers from Non-Federal Account	38,972
<b>Total Receipts</b>	<b>\$ 3,278,939</b>
<b>Disbursements</b>	
○ Operating Expenditures	1,622,829
○ Allocated Federal/Non-Federal Expenditures	194,457
○ Other Disbursements	41,444
○ Federal Election Activity	1,292,443
<b>Total Disbursements</b>	<b>\$ 3,151,173</b>
<b>Cash on hand @ December 31, 2018</b>	<b>\$ 232,740</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Contributions from Unregistered Political Organizations**

During audit fieldwork, the Audit staff identified 41 contributions from unregistered political organizations totaling \$45,609 that may have been made with impermissible funds. In response to the Interim Audit Report recommendation, CDSCC materially complied by submitting documentation demonstrating that contributions totaling \$23,691 were transferred, refunded or permissible. CDSCC also provided documentation demonstrating that \$17,196 of the \$45,609 was for the purchase of voter files and therefore not contributions. CDSCC did not demonstrate permissibility for ten contributions from unregistered political organizations totaling \$4,722. (For more detail, see p. 5.)

##### **Finding 2. Recordkeeping for Employees**

During audit fieldwork, the Audit staff determined that CDSCC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2017 and 2018, the Audit staff identified payments to CDSCC employees totaling \$111,812 for which CDSCC did not maintain monthly payroll logs. This consisted of payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds. In response to the Interim Audit Report recommendation, CDSCC stated it "...instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds" and, "...employees who are paid with non-federal funds are outside the scope of the Commission's jurisdiction....". (For more detail, see p. 8.)

##### **Finding 3. Reporting of Debts and Obligations**

During audit fieldwork, the Audit staff noted that CDSCC failed to disclose debts and obligations to three vendors totaling \$33,273. In response to the Interim Audit Report recommendation, CDSCC filed a Form 99 (Miscellaneous Electronic Submission) on June 22, 2021, disclosing the debts and obligations and correcting the public record. (For more detail, see p. 10.)

##### **Finding 4. Reporting of Apparent Independent Expenditures**

During audit fieldwork, the Audit staff reviewed expenditures totaling \$140,259 that CDSCC disclosed on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures appear to be independent expenditures containing express advocacy and should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures).

Additionally, CDSCC did not provide documentation to support the dissemination dates, to verify whether 24-hour reports were required to be filed for the apparent independent expenditures totaling \$140,259. Furthermore, CDSCC did not provide any volunteer documentation to support these disbursements.

In response to the Interim Audit Report recommendations, CDSCC objected to the characterization of these expenditures as independent expenditures and submitted a declaration from the production manager of "...the mail house that produced all volunteer exempt mail for the CDSCC." (For more detail, see p. 12.)

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## Part IV

# Findings and Recommendations

### Finding 1. Contributions from Unregistered Political Organizations

#### Summary

During audit fieldwork, the Audit staff identified 41 contributions from unregistered political organizations totaling \$45,609 that may have been made with impermissible funds. In response to the Interim Audit Report recommendation, CDSCC materially complied by submitting documentation demonstrating that contributions totaling \$23,691 were transferred, refunded or permissible. CDSCC also provided documentation demonstrating that \$17,196 of the \$45,609 was for the purchase of voter files and therefore not contributions. CDSCC did not demonstrate permissibility for ten contributions from unregistered political organizations totaling \$4,722.

#### 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. 52 U.S.C §30116(a)(1)(D), 11 CFR §110.1(c)(5), and 11 CFR §110.9.
- B. Organizations Not Registered With the Commission.** Any organization that makes contributions and expenditures, but that does not qualify as a political committee under 11 CFR §100.5, must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission. The organization must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution or expenditure. 11 CFR §102.5(b).
- C. Questionable Contributions.** It is the Treasurer's responsibility to ensure that all contributions are lawful. 11 CFR §103.3(b). If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:
1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
    - Return the contribution to the contributor without depositing it; or
    - Deposit the contribution (and follow steps below). 11 CFR §103.3(b)(1).
  2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3 (b)(4).

3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

**D. Donation of Funds to Charitable Organizations.** A State, district or local committee may donate funds to charitable organizations organized under 501(c) that do not make expenditures or disbursements in connection with an election for Federal office, including expenditures or disbursements for Federal election activity. 11 CFR §300.51(a)(1).

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff identified 41 contributions, totaling \$45,609, from unregistered political organizations, which CDSCC reported as follows:

- 6 contributions, totaling \$3,440, on Schedule A, Line 11(b) (Contributions from Political Party Committees) and Line 11(c) (Contributions from Other Political Committees);
- 11 contributions, totaling \$1,360, that were not itemized on Schedule A; and
- 24 contributions, totaling \$40,809, on Schedule A, Line 17 (Other Federal Receipts).

The Audit staff considers the receipts noted above to be contributions. CDSCC did not provide any documentation to demonstrate that these contributions, from unregistered political organizations, were made with permissible funds. Similarly, CDSCC did not submit any evidence to show that these receipts were not contributions. To date, none of these contributions have been refunded to the contributors.

There were 18 contributions from 15 of the unregistered political organizations, totaling \$24,181, that appear to have been made from state political action committees (state PACs). Under Connecticut state law, state PACs are prohibited from accepting corporate and union contributions.

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

The Audit staff discussed this matter with the CDSCC representatives during the exit conference and provided a schedule of the receipts. The CDSCC representatives inquired

about the transactions included on the list which did not require itemization. Specifically, they wanted to know which line number(s) these transactions were disclosed on. The Audit staff subsequently provided that information. In response to the exit conference, CDSCC stated it was still working on collecting the information. CDSCC also noted that Connecticut law is highly restrictive on what is permissible to receive, so it is highly unlikely the contributions received are anything other than that from individuals.

The Interim Audit Report recommended that CDSCC:

- Provide evidence that the 41 contributions in question were made from permissible funds; or
- Provide evidence to show these items were not contributions; or
- Refund the impermissible funds and provide evidence of such refunds (copies of front and back of the negotiated refund checks); or
- Transfer the impermissible funds to the non-federal account; or
- Donate the impermissible funds to a charitable organization organized under 501(c) that does not engage in the activities prohibited by 11 CFR §300.51 and provide evidence of such disgorgement; or
- If funds are not available to make the necessary refunds or donations, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

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

In response to the Interim Audit Report recommendation, CDSCC submitted the following documentation:

#### **Contributions for which permissibility, transfer, or refund was demonstrated (\$23,691)**

- For ten contributions (\$19,966), CDSCC submitted documentation demonstrating that the funds were untimely transferred to its non-federal account;
- For 11 contributions (\$2,245), CDSCC provided emails from the unregistered organizations attesting that the donated funds originated from permissible sources; and
- For one contribution (\$1,480), CDSCC issued a timely refund.

#### **Receipts that were for voter file purchases and not considered contributions (\$17,196)**

- For three receipts (\$15,800), CDSCC submitted the reports filed with the state of Connecticut by the unregistered organizations, disclosing the funds were paid to CDSCC for voter file purchases; and
- For six receipts (\$1,396), CDSCC provided the voter file agreements, confirming the unregistered organizations paid for voter files.

CDSCC did not demonstrate permissibility for the following contributions from unregistered organizations:

**Contributions for which sufficient permissibility documentation was not provided (\$1,292)**

- For seven contributions (\$1,292), CDSCC provided documentation which did not provide evidence or attestation that the contributions were made from permissible sources.

**Contributions for which documentation was not provided (\$3,430)**

- For three contributions (\$3,430), CDSCC did provide any documentation.

In conclusion, CDSCC did not address or insufficiently addressed ten contributions from unregistered political organizations totaling \$4,722.<sup>2</sup> Based on the documentation provided, CDSCC demonstrated that \$40,887<sup>3</sup>, was transferred to the non-federal account, refunded or received from permissible sources, and has materially complied with the recommendation.

**Finding 2. Recordkeeping for Employees**

**Summary**

During audit fieldwork, the Audit staff determined that CDSCC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2017 and 2018, the Audit staff identified payments to CDSCC employees totaling \$111,812 for which CDSCC did not maintain monthly payroll logs. This consisted of payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds. In response to the Interim Audit Report recommendation, CDSCC stated it "...instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds" and, "...employees who are paid with non-federal funds are outside the scope of the Commission's jurisdiction....".

**Legal Standard**

- A. 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% 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 between the federal and non-federal accounts;
  - Employees who spend more than 25% 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).

<sup>2</sup> \$4,722 = \$1,292 + \$3,430

<sup>3</sup> \$40,887 = \$23,691 + \$17,196

**B. 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).

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff reviewed disbursements for payroll. CDSCC did not maintain any monthly payroll 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 2017 and 2018, CDSCC did not maintain monthly logs for \$111,812 in payroll.<sup>4</sup> This amount consisted of:

- Payroll totaling \$74,684 for employees 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;
- Payroll totaling \$4,364 for employees reported on Schedule H4 (Disbursements for Allocated Federal and Non-Federal Activity) and also paid with 100 percent non-federal funds during the same month; and
- Payroll totaling \$32,764 for employees paid exclusively with non-federal funds in a given month.

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

The Audit staff discussed this matter with CDSCC representatives during the exit conference and provided a schedule of the payroll transactions. The CDSCC representatives stated that “the Commission did not have four votes to include the non-federal payroll as part of a recordkeeping finding and excised that portion of payroll spending from its findings.” The Audit Division has consistently included these types of transactions as findings. Therefore, these transactions were included in the exit conference as a preliminary finding. In its response to the exit conference, CDSCC did not provide any further comments.

The Interim Audit Report recommended that CDSCC 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, CDSCC stated it “...instituted procedures to ensure that time records are maintained for all employees who are paid in part with non-federal funds.” CDSCC further noted that the “inclusion of payroll records

<sup>4</sup> This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, and Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.



for those employees who are paid with non-federal funds are outside the scope of the Commission's jurisdiction and should not have been included in the finding.”

The Audit staff concludes that CDSCC did not provide monthly payroll logs for the \$118,812 in payroll. However, CDSCC complied with the Interim Audit Report recommendation by implementing a plan to maintain monthly payroll logs for all employees who are paid in part with the non-federal funds in the future.

The Audit staff maintains that CDSCC was required to maintain payroll logs for its employees paid with exclusively non-federal funds. Absent the provision of monthly logs specific to employees paid with exclusively non-federal funds, CDSCC may provide evidence that records consistent with 11 CFR §104.14(b)(1) were maintained to document that certain employees were involved in exclusively non-federal activities. Additionally, for employees paid with exclusively non-federal funds, CDSCC may also implement and provide a plan to maintain monthly logs or other records consistent with 11 CFR §104.14(b)(1).

### **Finding 3. Reporting of Debts and Obligations**

#### **Summary**

During audit fieldwork, the Audit staff noted that CDSCC failed to disclose debts and obligations to three vendors totaling \$33,273. In response to the Interim Audit Report recommendation, CDSCC filed a Form 99 (Miscellaneous Electronic Submission) on June 22, 2021, disclosing the debts and obligations and correcting the public record.

#### **Legal Standard**

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §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 the committee and debts owed 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 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.
  - 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).

#### **Facts and Analysis**

##### **A. Facts**

During audit fieldwork, the Audit staff reviewed CDSCC's disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to three vendors totaling \$33,273<sup>5</sup> that CDSCC failed to report on Schedule D during the audit period. Based on a review of the records, these vendors provided health insurance, consulting services and a venue for fundraising events. CDSCC reported debt totaling \$25,248 on Schedule D during the audit period. The Audit staff calculated the debts owed to the vendors based on the invoice date and the subsequent payment date. Debts were outstanding for periods ranging from 31 days to 105 days.

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

The Audit staff discussed this matter with CDSCC representatives at the exit conference and provided a schedule, detailing transactions requiring disclosure on Schedule D. The CDSCC representatives stated:

- The payments made to two vendors represented recurring expenses because they were paid monthly. The Audit staff explained that, according to the vendor invoices CDSCC provided, all of the payments to these two vendors were outstanding for more than 30 days. Some of the invoices included annotations stating that the services would be cancelled if the past due balances were not paid.
- The three payments to the third vendor were all paid within 30 days. The Audit staff explained that one of the three payments was made timely, however, the amount paid was less than the invoiced amount. Therefore, the remaining unpaid balance appears to have been outstanding and should be disclosed as debt, unless CDSCC can clarify otherwise. The remaining two payments to this vendor, according to the contractual agreement provided by CDSCC, were outstanding for more than 30 days.

In response to the exit conference, CDSCC reiterated that it believed the payments to two vendors mentioned above, represented monthly payments, however, CDSCC provided no additional documentation to support that assertion. With regards to the third vendor, CDSCC provided new documentation demonstrating that the remaining outstanding balance for the partial payment was made timely. As a result, this amount was deducted from the overall undisclosed debt balance discussed at the exit conference and is not included in this finding. CDSCC did not provide additional comments on the remaining outstanding balances for the vendors.

The Interim Audit Report recommended that CDSCC provide additional documentation demonstrating that the transactions totaling \$33,273 were not obligations which required reporting on Schedule D. Absent such documentation, the Interim Audit Report recommended that CDSCC amend its reports or file a Form 99 (Miscellaneous Electronic Submission)<sup>6</sup> to correctly disclose these debts and obligations.

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<sup>5</sup> Each debt in this amount was counted only once, even if it was required to be disclosed over multiple periods.

<sup>6</sup> The Audit staff advised CDSCC that if it chose to file a Form 99 instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

### C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, CDSCC filed a Form 99 (Miscellaneous Electronic Submission) on June 22, 2021, disclosing the debts and obligations and correcting the public record.

## **Finding 4. Reporting of Apparent Independent Expenditures**

### **Summary**

During audit fieldwork, the Audit staff reviewed expenditures totaling \$140,259 that CDSCC disclosed on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures appear to be independent expenditures containing express advocacy and should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures).

Additionally, CDSCC did not provide documentation to support the dissemination dates, to verify whether 24-hour reports were required to be filed for the apparent independent expenditures totaling \$140,259. Furthermore, CDSCC did not provide any volunteer documentation to support these disbursements.

In response to the Interim Audit Report recommendations, CDSCC objected to the characterization of these expenditures as independent expenditures and submitted a declaration from the production manager of "...the mail house that produced all volunteer exempt mail for the CDSCC."

### **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 30(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 24-hour report must be filed on a Schedule E. 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. 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).
- E. Allocation of Expenses between Candidates.** Expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit expected to be derived. In the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to all candidates. This method shall be used to allocate payments involving both clearly identified federal candidates and one or more clearly identified non-federal candidates. 11 CFR §106.1(a).
- 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:
- Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, 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.

- 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.
- Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate for federal office.
- Such materials are distributed by volunteers and not by commercial or for-profit operations.
- 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.
- 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 CDSCC did not disclose any independent expenditures on Schedule E, however, it made apparent independent expenditures totaling \$140,259, and disclosed them on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures were for two fundraising mailers and a mail piece disclosed as “mailer-door hanger,” which all contained express advocacy. A breakdown analysis for these expenditures is as follows:

##### **a. Apparent Independent Expenditures Reported as Federal Election Activity (FEA) Paid Entirely with Federal Funds (Associated Mailer Provided under 11 CFR §100.22(a))**

CDSCC made one disbursement for a mail piece totaling \$3,281 for which it provided a copy of the mail piece with an associated invoice and a corresponding cancelled check. The mail piece, disclosed as “mailer-door hanger” on CDSCC’s disclosure reports, contained the following phrases: “Your Row A Democrats are teaming up to stop Trump; Vote Row A Tuesday, Nov. 6.” This communication contained language expressly advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a).

##### **b. Apparent Independent Expenditures Reported as Federal Election Activity (FEA) Paid Entirely with Federal Funds (Associated Mailer Provided under 11 CFR §100.22(b))**

In 2018, CDSCC made three equal payments of \$68,489 to a vendor, for three separate mailers and reported them as Federal Election Activity on Line 30(b). The Audit staff’s review of the disclaimers annotated on the mailers indicated

that one of the mailers appeared to have been coordinated with a candidate committee. As such, this mailer is *not* included in this finding.

For the remaining two disbursements, totaling \$136,978<sup>7</sup>, CDSCC provided copies of the mailers with associated invoices and cancelled checks. Each of the two mailers had a picture of the candidate, along with his name, displayed either directly above or on the same page as the phrase: “Vote November 6<sup>th</sup>” and “Vote Tuesday, November 6<sup>th</sup>.” Based on the definition of express advocacy under 11 CFR §100.22(b), the Audit staff believes that these mailers could only be interpreted by a reasonable person as advocating the election or defeat of a clearly identified candidate.

## 2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the CDSCC representatives during the exit conference and provided a schedule detailing these expenditures. The CDSCC representatives stated that none of the three expenditures detailed in the schedule, totaling \$140,259, were independent expenditures. CDSCC further indicated that the description of one of the mailers in its database, the “mailer-door hanger”, could have created confusion. In response to the exit conference, CDSCC stated the following:

- One of the mailers totaling \$68,489, was intended to be a coordinated expenditure and CDSCC acknowledged that its report should be amended to disclose this expenditure on Schedule F (Coordinated Expenditures);
- The second mailer also totaling \$68,489, was intended to be a volunteer exempt mailing and was properly reported on Line 30(b). Although CDSCC could not locate any documentation to demonstrate volunteer involvement, CDSCC stated that it was aware of individuals who “could attest that volunteers were present.” However, CDSCC stated that “the combined spending on these two mailings [to] *sic* not exceed the coordinated expenditure limits ... Therefore, requiring us to expend the effort to demonstrate the volunteer activity should not be a necessary use of our time;” and
- The reported “mailer-door hanger” totaling \$3,281 was not an independent expenditure and was properly disclosed on Line 30(b).

The Audit staff maintains that the three mailers discussed above are independent expenditures for the following reasons:

- CDSCC stated that one of the mailings totaling \$68,498 was intended to be a coordinated expenditure. This coordinated expenditure should have been disclosed on Schedule F. As mentioned above, the cost of this coordinated mailer is not included in this finding.
- The remaining two mailers, each totaling \$68,489, contained express advocacy and appear to be independent expenditures. In its response,

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<sup>7</sup> \$136,978 = \$68,849 + \$68,849

CDSCC stated that one of those mailers was intended as a volunteer exempt mailing. However, CDSCC did not present any documentation to support that volunteers participated in exempt activity.

- Likewise, the reported “mailer-door hanger” also contained express advocacy and appears to be an independent expenditure.

The Interim Audit Report recommended that CDSCC:

- Provide documentation that apparent independent expenditures, totaling \$140,259, did not require reporting as independent expenditures; and/or
- Provide evidence to support the volunteer material exemption application for one mailer, totaling \$68,489.

Absent such documentation or evidence, the Interim Audit Report further recommended that CDSCC amend its reports to disclose these disbursements as independent expenditures on Schedule E (Itemized Independent Expenditures) and provide documentation to support the date of public dissemination for each communication to determine whether a 24-hour report was required to be filed.

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

In response to the Interim Audit Report recommendation, CDSCC objected to the characterization of these expenditures as independent expenditures. CDSCC stated that, “[T]hese expenditures were properly made as exempt activities and were fully coordinated with the Senate candidate.”

Regarding the mailing activities, CDSCC maintained that “these mailings were undertaken in accordance with the volunteer activity exemption in accordance with 11 C.F.R. §§100.87 & 100.47.” CDSCC provided a declaration from its “mail house” production manager during the audit period and stated that the declaration “confirms that volunteers were present during the production of all mailings in connection with the CDSCC’s exempt mailings on behalf of its nominee for United States Senate and performed adequate volunteer activities consistent with prior Commission precedent.” CDSCC also noted that the declaration “complies with the formatting requirements of 28 U.S.C. §1746” and, as such, cannot be characterized as “unsworn”.

Regarding the door hanger, CDSCC stated it was its understanding that “since these activities were not public communication, they cannot be considered coordinated communications and no further action would be necessary regarding these expenditures.” CDSCC also noted that the door hanger was distributed by volunteers, however, it did not provide any documentation to support its assertion. Due to the lack of a clear standard for applying the volunteer materials exemption, the Audit staff is unable to determine whether the declaration submitted by CDSCC suffices to document the involvement of volunteers. Additionally, the independent expenditure definition is not limited to “public communications” as defined in 11 C.F.R. § 100.26. As such, it is not necessary for the door hanger to be a public communication in order to be classified as an independent expenditure.

The Audit staff, therefore, considers the reported “mailer-door hanger” an apparent independent expenditure.

## **B. Volunteer Material Exemption**

### **1. Facts**

CDSCC reported three disbursements totaling \$140,259 on Schedule B as Federal Election Activity. CDSCC reported the purposes of these disbursements as “mailer- Chris Murphy mailer- exempt” and “mailer-doorhanger.” The invoices for two of these disbursements were annotated as “Design, Production, and Postage” while the third invoice was annotated as “Joint doorhanger; CT Dems Copywriting, creative design, production, management.” CDSCC, however, did not provide any volunteer documentation or evidence to support these disbursements.

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>8</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.

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

The Audit staff discussed this matter with the CDSCC representatives during the exit conference and provided a schedule detailing these expenditures. In response to the exit conference, CDSCC representatives stated that one mailing “was intended to be done as a volunteer exempt mailing and was properly reported on Line 30(b).” Although CDSCC could not locate any documentation to demonstrate volunteer involvement, CDSCC stated that it was aware of individuals who “could attest that volunteers were present.” However, CDSCC stated that “the combined spending on these two mailings [to] *sic* not exceed the coordinated expenditure limits.... Therefore, requiring us to expend the effort to demonstrate the volunteer activity should not be a necessary use of our time.” The Interim Audit Report recommended CDSCC provide documentation and evidence that apparent independent expenditures totaling \$140,259 did not require reporting as independent expenditures. Evidence should have included documentation such as volunteer sign in sheets, photographs of volunteers participating in various duties such as reviewing, sorting and packing the direct mail pieces, etc., to support the involvement of volunteer processing or

<sup>8</sup> Proposed Interim Enforcement Policy, Agenda document No. 10-16.  
<https://www.fec.gov/resources/updates/agendas/2010/mtgdoc1016.pdf>



distributing the communication. Absent such evidence, the Interim Audit Report recommended that CDSCC amend its reports to disclose the disbursements as independent expenditures on Schedule E.

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

In response to the Interim Audit Report recommendation, CDSCC submitted a declaration from its “mail house” production manager, as addressed in Part A above. Due to the lack of a clear standard for applying the volunteer materials exemption, the Audit staff is unable to determine whether the declaration submitted by CDSCC suffices to document the involvement of volunteers.

## **C. Failure to File 24-Hour Reports for Apparent Independent Expenditures**

### **1. Facts**

In addition to not reporting the apparent independent expenditures totaling \$140,259 identified above, CDSCC did not file any 24-hour reports<sup>9</sup>, which may have been required.

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

The Audit staff discussed this matter with the CDSCC representatives during the exit conference and presented a schedule detailing these expenditures. The CDSCC representatives stated that none of the three expenditures were independent expenditures and indicated that the description of one of the mailers could have created confusion.

The Interim Audit Report recommended that, absent documentation that the apparent independent expenditures, totaling \$140,259, did not require reporting as independent expenditures (per Part A above), CDSCC provide documentation to support the date of public dissemination for each mailer to determine whether a 24-hour report was required to be filed.

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

In response to the Interim Audit Report recommendation, CDSCC did not address the 24-hour reports but submitted a declaration from its “mail house” production manager, as addressed in Part A above. The Audit staff maintains that CDSCC failed to file 24-hour reports.

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<sup>9</sup> The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24-hour report filing requirement. In the absence of a known date for public dissemination, the Audit staff used the invoice date of incurrence to determine if a 24-hour report was required.