




FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 15, 1999

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
THE COMMITTEE TO ELECT MIKE BURKHOLD TO CONGRESS

Attached please find a copy of the final audit report and related documents on The Committee to Elect Mike Burkhold to Congress which was approved by the Commission on October 7, 1999.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

22.07.025.343

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22.07.025.244



FEDERAL ELECTION COMMISSION
Washington, DC 20463

**REPORT OF THE AUDIT DIVISION
ON
THE COMMITTEE TO ELECT MIKE BURKHOLD TO CONGRESS
EXECUTIVE SUMMARY**

The Committee to Elect Mike Burkhold to Congress (CEMB) registered with the Federal Election Commission on July, 7, 1997, as the principal campaign committee for Michael B. Burkhold, Jr., Republican candidate for the U.S. House of Representatives from the state of South Carolina for the Fifth District.

The audit was conducted pursuant to 2 U.S.C. Section 438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings of the audit were presented to the CEMB at an exit conference held at the completion of fieldwork on May 20, 1999 and later, in an interim audit report. The CEMB's responses to those findings are included in this final audit report.

The following is an overview of the findings contained in the final audit report.

Apparent Excessive Contributions - 2 U.S.C. Section 441a(a)(1)(A) and (2)(A); 11 CFR Sections: 110.1(b)(1), (3) and (5), 110.1(k), and 110.9(a). The CEMB received contributions which exceeded the individual donor's limitations by \$18,025 and \$2,375 for political committees. The CEMB complied with an interim audit report recommendation by refunding \$12,700 in individual excessive contributions and \$1,000 in excessive contributions to political committees. The remaining excessive amounts were reported as debts.

Misstatement of Financial Activity - 2 U.S.C. Section 433(b)(1), (2) and (4). The CEMB understated receipts and disbursements by \$15,825 and \$15,120, respectively for calendar year 1998, which result in an understatement of ending cash on hand by \$1,555. In response to the interim audit report the CEMB filed a comprehensive amendment for calendar year 1998, correcting the misstatement of financial activity.

Disclosure of Contributions from Political Organizations - 2 U.S.C. Sections: 434(b)(3)(B); and 431(13)(B); 11 CFR Section 104.7(a). The CEMB failed to itemize

nine contributions, totaling \$11,281. In addition nineteen contributions were not properly disclosed. Sixteen contributions, totaling \$35,265, lacked or contained erroneous aggregate year to date amounts, addresses, and names. Also, the CEMB failed to file the memo schedules to accompany two transfers, totaling \$10,000, from the New Conservative Leadership Fund, a joint fundraising committee. One contribution, totaling \$4,500 was reported twice. In response to the interim audit report recommendation, the CEMB filed amended schedules to correct the errors and omissions.

Debts and Obligations - 2 U.S.C. Section 434(b)(8); 11CFR Section 104.11(a) and (b). The CEMB failed to itemize obligations totaling \$30,914. Debts and obligations with reported ending balances of \$2,494 were not itemized adequately. The CEMB complied with the interim audit report recommendation by filing debt schedules to correctly disclose outstanding obligations.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

***REPORT OF THE AUDIT DIVISION
ON
THE COMMITTEE TO ELECT MIKE BURKHOLD TO CONGRESS***

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of The Committee to Elect Mike Burkhold to Congress (CEMB), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall 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.

B. AUDIT COVERAGE

The audit covered the period from January 1, 1997 through December 31, 1998. The CEMB reported a beginning cash balance of \$0; total receipts for the period of \$496,575¹; total disbursements for the period of \$494,047; and an ending cash balance of \$1,678.²

¹ The figures cited in this report are rounded to the nearest dollar.

² The totals do not foot due to a reporting discrepancy.

22-07-025-3347

C. CAMPAIGN ORGANIZATION

The CEMB registered with the Commission on July 7, 1997, as the principal campaign committee for Michael B. Burkhold, Jr., Republican candidate for the U.S. House of Representatives, Fifth District, from the state of South Carolina. Mr. Burkhold, Jr., filed a Statement of Candidacy for the 1998 election on July 7, 1997.

The Treasurer of the CEMB for the period July 1, 1997 through May 20, 1998, was Terry G. Livingston. Hulic Ratterree replaced Mr. Livingston on May 22, 1998 as the Treasurer, and is currently serving in that capacity. The CEMB maintains its headquarters in Rock Hill, South Carolina.

To manage its financial activity, the CEMB maintained two checking accounts, one money market account, and one certificate of deposit. From these accounts the CEMB made approximately 500 disbursements. Into these accounts the CEMB deposited contributions from individuals of approximately \$308,500, contributions from political party and other committees totaling approximately \$88,200, contributions from a joint fundraiser of \$11,223, loans received from the Candidate of \$93,000, and contributions from the Candidate of \$5,328.

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.C.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of campaign debts and obligations (see Finding II.D.);
6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records (see Finding II.B.);

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7. adequate recordkeeping for campaign transactions; and
8. other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. FINDINGS AND RECOMMENDATIONS

In a written response to the exit conference, the CEMB noted that the mistakes and omissions determined during the audit were mainly due to paperwork errors, high staff turnover which resulted in some confusion in paperwork management, and staff inexperience with federal election finance laws. The CEMB further stated that, any and all findings noted in the audit were a result of mistakes made by a novice campaign.

A. APPARENT EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Subsection (b)(2)(ii) of Title 11 of the Code of Federal Regulations section 110.1 explains *with respect to any election* means, if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made (emphasis added). A contribution is considered to be made (subsection (6) of this section) when the contributor relinquishes control over the contribution by delivering the contribution to the candidate, the political committee, or an agent of the committee. A mailed contribution is considered made on the date of the postmark.

Section 110.1(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1);
- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be

accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);

- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Further, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. Furthermore, a contribution made by more than one person that does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

If a contribution to a candidate, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR §110.1(b) or (d), as appropriate, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 441a(a)(2)(A) of Title 2 of the United States Code states, in part, that no multicandidate political committee shall make contributions to any candidate and

his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Section 110.9(a) of Title 11 of the Code of Federal Regulations states, in part, that no candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

A review of the CEMB's receipts data file, check copies, deposit tickets, and disclosure reports relating to contributions from individuals, identified contributions from 22 individuals, which exceeded the contribution limitation by \$18,025. Of this amount, \$11,750, was excessive for the General Election; the balance, \$6,275, was excessive for the Primary Election.

In addition, four registered political action committees exceeded the contribution limitations by a total of \$2,375. These contributions were excessive for the General Election.

A schedule of the excessive contributions was presented to the Finance Director at the exit conference. The CEMB did not comment at the exit conference, however, in a written response to the exit conference, it states that with the exception of three individuals, the potential excessive contributions noted in the audit were the result of misplaced paperwork. The CEMB defines "misplaced paperwork" as "checks contributed during the right time during the campaign, but missing a primary/general election designation" or "donations made by married couples but missing a letter designating all, or part of the contribution to one spouse or the other." The CEMB states that it has begun fundraising and has refunded as many "potentially excessive" contributions as possible. To date CEMB states that it has refunded \$11,525, in excessive contributions from individuals and that copies of the canceled checks will be provided as soon as they are received. With regard to the excessive contributions from political committees, the CEMB noted the mistakes were "a result of a quite confusing process" involving a joint fundraiser. Each excessive contribution was received through the joint fundraising committee and not identified by the CEMB.

The interim audit report recommended that the CEMB provide evidence that the contributions were either not excessive, or were reattributed, redesignated or refunded in a timely manner. If funds were not available to make refunds the report recommended that the CEMB disclose the excessive contributions as refunds owed to the contributors until such time that funds became available.

In its response to the interim audit report, the CEMB submitted copies of bank statements along with canceled checks to demonstrate its actions to date. Refunds

were made totaling \$12,700³ to individuals and \$1,000 to political committees. The CEMB reported the remaining excessive contributions from individuals of \$5,325 and political committees of \$1,375, as debts owed to the contributors. Further in a written response the CEMB noted, an additional excessive contribution was refunded on June 4, 1999, however, that check had not cleared the bank, as of September 20, 1999. The CEMB states that it is diligently tracking the outcome of this disbursement.

B. MISSTATEMENT OF FINANCIAL ACTIVITY

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in part, that a political committee shall disclose the amount of cash on hand at the beginning of the reporting period and the total amount of all receipts and all disbursements for the reporting period and the calendar year.

The reconciliation of reported financial activity to bank records for calendar year 1998 revealed the following misstatements:

1. Receipts

The CEMB's reported receipts were understated by \$15,825. The components of the misstatement are as follows:

Reported Receipts		\$474,971
In-Kind Contributions Not Reported	\$309	
Contributions Reported Twice	(4,500)	
Addition Error on Report	(850)	
PAC Contributions Not Reported	10,973	
Other Contributions Not Reported	11,127	
Interest Income Not Reported	748	
Refunded Deposits Not Reported	654	
NSF Contribution Reported	(2,000)	
Reconciling Item	<u>\$(636)</u>	<u>15,825</u>
Correct Reportable Receipts		<u>\$ 490,795</u>

³ Included in this amount is a \$500 refund that the Audit staff was unable to determine whether it cleared the bank, due to lack of documentation.

2. Disbursements

Reported disbursements were understated by \$15,120. The components of the misstatement are as follows:

Reported Disbursements		\$ 480,183
In-Kind Contributions Not Reported	\$ 2,037	
Bank Fees and Interest Not Reported	181	
Disbursements Not Reported	14,582	
Reconciling Amount	<u>\$(1,679)</u>	<u>15,120</u>
Correct Reportable Disbursements		<u>\$ 495,302</u>

3. Ending Cash On Hand

The reported ending cash on hand at December 31, 1998 was understated by \$1,555, resulting from the misstatements detailed above. The correct ending cash on hand was \$3,233.

At the exit conference, the Audit staff provided the CEMB with schedules detailing both the bank activity and the noted adjustments. The CEMB declined to comment on the misstatement finding during the conference.

In the interim audit report, the Audit Staff recommended the CEMB file a comprehensive amended report for calendar year 1998 correcting the misstatements noted above.

The CEMB complied with the Audit recommendation by filing a comprehensive amended report for calendar year 1998. This report materially corrects the problems noted above.

C. DISCLOSURE OF CONTRIBUTIONS FROM POLITICAL COMMITTEES

Section 434(b)(3)(B) of Title 2 of the United States Code requires, in part, a political committee to disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 431(13)(B) of Title 2 of the United States Code defines the term "identification" to be, in the case of any other person, the full name and address of such person.

Section 104.7(a) of Title 11 of the Code of Federal Regulations states, in part, that when the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

The Audit staff reviewed 60 contributions from political committees and other committees, totaling \$100,144. Reports filed with the Commission by other political committees, contributor check copies, and other correspondence were compared to reports filed by the CEMB. Nine contributions, totaling \$11,281, were not itemized on Schedules A.

The review also identified 19 disclosure errors. Sixteen contributions, totaling \$35,265, lacked or contained erroneous aggregate year to date amounts, addresses, and names. Also, the CEMB failed to file the memo schedules A to accompany two transfers, totaling \$10,000, from The New Conservative Leadership Fund, a joint fundraising committee. Finally, one contribution in the amount of \$4,500 was reported twice.

The CEMB was provided schedules detailing the reporting errors and omissions at the exit conference, but offered no comment at that time.

In the interim audit report, the CEMB was requested to file, as part of a comprehensive amended report, Schedules A to correct the itemization and disclosure problems noted above.

In response to the recommendation, the CEMB filed the required schedules. These amended schedules materially corrected the itemization and disclosure problems noted above.

D. DEBTS AND OBLIGATIONS

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report filed under this section shall disclose the amount and nature of outstanding debts and obligations owed by a political committee.

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. A debt or obligation, the amount of which is \$500 or less, shall be reported

as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

The CEMB's disbursements were reviewed to determine if it had correctly reported debts and obligations owed to vendors. In order to derive the total obligations, each outstanding obligation was counted only once, even if it was outstanding for several periods. The review identified obligations totaling \$30,914.

The CEMB also reported incorrect beginning balances, amounts incurred, payments made, and ending balances for a number of obligations beginning with the Year End 1997 Report through the October 15, 1998 Quarterly Report. Debts and obligations with reported ending balances of \$2,494 were not itemized adequately.

At the exit conference, the Audit staff provided the CEMB with schedules detailing the issues discussed above. The CEMB did not comment during the conference.

In the interim audit report, the staff recommended that the CEMB file amended Schedules D for the Year End 1997 Report through the Year End 1998 Report to correctly disclose outstanding obligations.

In response to this recommendation the CEMB demonstrated that one of the transactions noted for one of the vendors was not an outstanding obligation. For the remaining items amended Schedules D were filed.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 8, 1999

Hulic Ratterree, Treasurer
The Committee to Elect Mike Burkhold to Congress
P.O. Box 10488
Rock Hill, South Carolina 29731

Dear Mr. Ratterree:

Attached please find the Report of the Audit Division on The Committee to Elect Mike Burkhold to Congress. The Commission approved the report on October 7, 1999.

The Commission approved Final Audit Report will be placed on the public record on October 15, 1999. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220. Any questions you have related to matters covered during the audit or in the report should be directed to Nicole Clay or Russ Bruner of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Costa".

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

CHRONOLOGY

THE COMMITTEE TO ELECT MIKE BURKHOLD TO CONGRESS

Audit Fieldwork	May 3 - May 21, 1999
Interim Audit Report to the Committee	July 21, 1999
Response Received to the Interim Audit Report	September 8, 1999
Final Audit Report Approved	October 7, 1999

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