



Final Audit Report of the Commission on the Nebraska Democratic Party

(January 1, 2009 - December 31, 2010)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act¹ (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.² 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 Nebraska Democratic Party is a state party committee headquartered in Lincoln, Nebraska. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 218,270
○ Contributions from Political Committees	24,202
○ Transfers from Affiliates	1,682,699
○ Transfers from Non-federal Accounts	344,901
○ Other Receipts	185,066
Total Receipts	\$ 2,455,138
• Disbursements	
○ Operating Expenditures	\$ 540,126
○ Other Federal Expenditures	129,323
○ Federal Election Activity	1,490,477
○ Transfers to Affiliates	138,967
○ Coordinated Expenditures	114,788
○ Independent Expenditures	12,475
○ Other Disbursements	35,174
Total Disbursements	\$ 2,461,330

Commission Findings (p. 3)

- Recordkeeping for Employees (Finding 1)
- Reporting of Debts and Obligations (Finding 2)
- Excessive Coordinated Party Expenditures (Finding 3)

Additional Issue (p. 5)

- Reported Coordinated Party Expenditures

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)).

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Part I

Background

Authority for Audit

This report is based on an audit of the Nebraska Democratic Party³ (NDP), 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) (formerly 2 U.S.C. §438(b)), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C §30104 (formerly 2 U.S.C. §434). Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine whether the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C §30111(b) (formerly 2 U.S.C. §438(b)).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the disclosure of independent and coordinated expenditures;
6. the completeness of records; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

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

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

³ The committee's name during the audit period was the Nebraska Democratic State Central Committee and was changed subsequently on April 4, 2012.

Audit Hearing

NDP declined the opportunity for a hearing before the Commission on matters presented in this report.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	December 3, 1975
• Audit Coverage	January 1, 2009 - December 31, 2010
Headquarters	Lincoln, Nebraska
Bank Information	
• Bank Depositories	One
• Bank Accounts	Five Federal and Two Non-federal Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Gerry Finnegan
• Treasurer During Period Covered by Audit	Gerry Finnegan
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 63,195
Receipts	
○ Contributions from Individuals	218,270
○ Contributions from Political Committees	24,202
○ Transfers from Affiliates	1,682,699
○ Transfers from Non-federal Accounts	344,901
○ Other Receipts	185,066
Total Receipts	\$ 2,455,138
Disbursements	
○ Operating Expenditures	540,126
○ Other Federal Expenditures	129,323
○ Federal Election Activity	1,490,477
○ Transfers to Affiliates	138,967
○ Coordinated Expenditures	114,788
○ Independent Expenditures	12,475
○ Other Disbursements	35,174
Total Disbursements	\$ 2,461,330
Cash-on-hand @ December 31, 2010	\$ 57,003

Part III

Summaries

Commission Findings

Finding 1. Recordkeeping for Employees

During audit fieldwork, the Audit staff noted that NDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to NDP employees totaling \$282,882 for which payroll logs were not maintained. This amount consisted of payroll which was allocated between federal and non-federal funds.

In response to the Interim Audit Report recommendation, NDP stated that it has established procedures to maintain contemporaneous documents to certify the payroll records for employees paid exclusively with non-federal funds or with an allocation of federal and non-federal funds.

The Commission approved a finding that NDP failed to keep monthly time logs for the \$282,882 that NDP disclosed as having been paid with an allocation of federal and non-federal funds. (For more detail, see p. 7.)

Finding 2. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that NDP had failed to correctly disclose debts and obligations totaling \$120,447. In response to the Interim Audit Report recommendation, NDP filed amended reports to materially disclose these debts and obligations.

The Commission approved a finding that NDP failed to itemize debts and obligations totaling \$120,447. (For more detail, see p. 9.)

Finding 3. Excessive Coordinated Party Expenditures

During audit fieldwork, the Audit staff identified \$114,789 of coordinated party expenditures made by NDP for a House candidate that appeared to exceed the 2010 coordinated party expenditure limitation by \$34,789.

In response to the Interim Audit Report recommendation, NDP argued that of the \$114,789 identified by the Audit staff as coordinated expenditures, two expenditures totaling \$5,174 should not be considered excessive coordinated party expenditures and that the unspent coordinated party expenditure limitation of \$6,600, ceded by the DCCC, remains available under the spending authority and therefore should reduce the amount of excessive expenditures. NDP also acknowledged that it incorrectly reported expenses for "Get Out The Vote" (GOTV) calls totaling \$29,615 due to a miscommunication with the candidate campaign. As part of its response, NDP materially amended its disclosure reports by including these expenditures on Schedule F (Coordinated Party Expenditures).

After considering NDP's Interim Audit Report response, the Audit staff recalculated the excessive coordinated expenditures to account for the \$4,596 for a candidate postcard which NDP claims as exempt under the volunteer materials exemption and the \$578 for a window sign which NDP indicated was not a public communication. However, while the Audit staff recognized that the \$6,600 represented unspent funds under the combined spending authority of both committees, the Audit staff did not allow for the additional spending authority of \$6,600 because, in similar cases, the Commission has rejected assignments of spending authority after the fact. Accordingly, the Audit staff recommended that the Commission find that NDP exceeded the coordinated party expenditure limit by \$29,615 (\$34,789 less the candidate postcard of \$4,596 and campaign sign of \$578).

The Commission approved a finding that NDP exceeded the 2010 coordinated party expenditure limit by \$29,615.

In addition, the Audit staff recommended that due to the lack of clarity on the volunteer materials exemption, the reported expenditures of \$99,206 should not be attributed to NDP's coordinated expenditure limit. The Commission agreed that \$95,188 should not be attributed to NDP's coordinated expenditure limit. The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding related to the \$4,596 for the candidate postcard. As such, this expenditure is presented in the "Additional Issue" section. (For more detail, see p. 11.)

Additional Issue

Reported Coordinated Party Expenditures

As detailed in Finding 3 above, at the end of audit fieldwork, the Audit staff concluded that NDP spent \$114,789 on coordinated expenditures. In addition, the Audit staff concluded that NDP spent \$94,610 to produce a single mailer on behalf of the candidate which NDP considered to be an exempt activity under the volunteer materials exemption. Due to the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures for the mailer totaling \$94,610 were not attributed to NDP's coordinated expenditure limit in the Interim Audit Report.

In response to the Interim Audit Report recommendation, NDP argued that of the \$114,789 identified by the Audit staff as coordinated expenditures, two expenditures totaling \$5,174 did not represent coordinated activity. NDP argued that \$578 for a sign placed in the party's field office was not a public communication and that \$4,596 for the candidate postcard qualified for the volunteer materials exemption.

Based on NDP's explanation, the Audit staff agreed that the payment of \$578 did not represent a coordinated expenditure as the sign was not intended as a public communication. Additionally, due to the lack of clarity regarding the application of the volunteer materials exemption, the Audit staff did not attribute the \$4,596 for the candidate post card, as well as the \$94,610 of expenditures identified by the Audit staff

during field work, to NDP's coordinated expenditure limit in the Draft Final Audit Report.

Accordingly, the Audit staff recommended that the Commission should not attribute expenditures totaling \$99,206 towards the coordinated expenditure limit. The Commission approved a finding that the reported expenditures of \$95,188 should not be attributed to NDP's coordinated expenditure limit.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding related to the \$4,596 for the candidate postcard. Pursuant to Commission Directive 70,⁴ this expenditure is discussed in the "Additional Issue" section. (For more detail, see p. 17.)

⁴ Available at http://www.fec.gov/directives/directive_70.pdf

Part IV

Commission Findings

Finding 1. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff noted that NDP did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to NDP employees totaling \$282,882 for which payroll logs were not maintained. This amount consisted of payroll which was allocated between federal and non-federal funds.

In response to the Interim Audit Report recommendation, NDP stated that it has established procedures to maintain contemporaneous documents to certify the payroll records for employees paid exclusively with non-federal funds or with an allocation of federal and non-federal funds.

The Commission approved a finding that NDP failed to keep monthly time logs for the \$282,882 that NDP disclosed as having been paid with an allocation of federal and non-federal funds.

Legal Standard

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

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

- employees who spend 25% or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs.
- 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).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements NDP made to employees for payroll, totaling \$282,882⁵, for which monthly logs were not provided to document the percentage of time the employee spent in connection with federal election activity. These

⁵ 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 is stated net of taxes.

logs are required to document proper allocation of federal and non-federal funds used to pay these workers.

As part of fieldwork, the Audit staff provided NDP with a schedule of employees with an allocation of federal and non-federal funds for which a log was required. An NDP representative completed this schedule by inserting the percentage of time each employee spent in connection with federal election activity and provided a signed affidavit in which a NDP representative attested to the accuracy of the information provided.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed the recordkeeping issue with NDP representatives. They asked whether the schedule and the affidavit they had provided would resolve the recordkeeping finding. The Audit staff explained that because NDP did not create and maintain these documents prior to the audit notification letter, but instead prepared them during fieldwork, the issue would be included in the Interim Audit Report.

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

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, NDP stated that, while it has already provided the documentation reflecting how much time employees spent on federal election activity, it agreed to maintain such records contemporaneously with payroll activities in the future. The Audit staff considered this matter resolved.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that NDP has established procedures to maintain contemporaneous documents to certify the payroll records for employees paid with an allocation of federal and non-federal funds.

E. Committee Response to the Draft Final Audit Report

NDP's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On August 14, 2014, the Commission considered the Audit staff's recommendation that the Commission adopt a finding that NDP failed to maintain logs to document the time employees spent on federal election activity totaling \$282,882.⁶

⁶ On April 23, 2014, the Commission approved the Audit Division Recommendation Memorandum in which the Audit staff recommended that NDP failed to maintain logs to document the time employees spent on federal election activity totaling \$300,708. Subsequent to this approval, the Audit staff recommended that the Commission rescind its prior approval of Finding 1 and approve a revised Finding 1 based on this revised amount. See Audit Division Recommendation Memorandum on the Nebraska Democratic Party (Resubmission) – Agenda Document No. 14-23, dated July 25, 2014.

The Commission approved a finding that NDP failed to keep monthly time logs for the \$282,882 that NDP disclosed as having been paid with an allocation of federal and non-federal funds.

Finding 2. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that NDP had failed to correctly disclose debts and obligations totaling \$120,447. In response to the Interim Audit Report recommendation, NDP filed amended reports to materially disclose these debts and obligations.

The Commission approved a finding that NDP failed to itemize debts and obligations totaling \$120,447.

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) (Formerly 2 U.S.C. §434(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 and to the committee 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.

- Once it has been outstanding 60 days from the date incurred, a debt of \$500 or less must be reported 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, except reoccurring administrative expenses (such as rent) shall not be reported as a debt before the payment due date. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used available disbursement records to reconcile the accounts⁷ of NDP's 11 largest vendors. These vendors provided NDP mainly with services such as office space, phone bank, printing and compliance services.

⁷ The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2009-2010 campaign cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedule D. Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

The Audit staff reviewed the vendors' invoiced amounts and identified unreported debts and obligations, totaling \$105,447, owed to 10 of its vendors. Included in this balance were payments totaling \$4,500 for office space that NDP made more than 30 days late throughout the audit period. Regularly reoccurring administrative expenses such as rent are reportable as debts if payment is not made by the due date.

In addition to the unreported debts discussed above, NDP incorrectly reported debt amounts owed to one vendor. The under-reported debts total \$15,000 for the audit period.⁸

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter to NDP representatives at the exit conference and provided schedules detailing the unreported and under-reported debts for each reporting period for the audited cycle. NDP representatives objected to the inclusion of rent, a regularly recurring obligation, appearing on the debt schedule. The Audit staff acknowledged that regularly occurring administrative expenses are not debt reportable as long as they are paid by the due date; however, NDP had consistently paid its rent more than 30 days after the payment was due.

The Interim Audit Report recommended that NDP provide documentation demonstrating that these expenditures did not require reporting on Schedule D. Absent such documentation, the Interim Audit Report recommended that NDP amend its reports to disclose the outstanding debts.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, NDP filed amended reports to materially disclose these debts and obligations.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that NDP materially amended its reports and correctly disclosed the debts and obligations.

E. Committee Response to the Draft Final Audit Report

NDP's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On April 23, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that NDP had failed to disclose debts and obligations totaling \$120,447.

The Commission approved the Audit staff's recommendation.

⁸ The total amount of reportable debt to this vendor was \$34,500. NDP reported only \$19,500 on its 2009 and 2010 disclosure reports. The underpayment was calculated as follows: \$34,500 - \$19,500 = \$15,000.

Finding 3. Excessive Coordinated Party Expenditures

Summary

During audit fieldwork, the Audit staff identified \$114,789 of coordinated party expenditures made by NDP for a House candidate that appeared to exceed the 2010 coordinated party expenditure limitation by \$34,789.

In response to the Interim Audit Report recommendation, NDP argued that of the \$114,789 identified by the Audit staff as coordinated expenditures, two expenditures totaling \$5,174 should not be considered excessive coordinated party expenditures and that the unspent coordinated party expenditure limitation of \$6,600, ceded by the DCCC, remains available under the spending authority and therefore should reduce the amount of excessive expenditures. NDP also acknowledged that it incorrectly reported expenses for “Get Out The Vote” (GOTV) calls totaling \$29,615 due to a miscommunication with the candidate campaign. As part of its response, NDP materially amended its disclosure reports to include these expenditures on Schedule F (Coordinated Party Expenditures).

After considering NDP’s Interim Audit Report response, the Audit staff recalculated the excessive coordinated expenditures to account for the \$4,596 for a candidate postcard which NDP claims as exempt under the volunteer materials exemption and the \$578 for a window sign which NDP indicated was not a public communication. However, while the Audit staff recognized that the \$6,600 represented unspent funds under the combined spending authority of both committees, the Audit staff did not allow for the additional spending authority of \$6,600 because, in similar cases, the Commission has rejected assignments of spending authority after the fact. Accordingly, the Audit staff recommended that the Commission find that NDP exceeded the coordinated party expenditure limit by \$29,615 (\$34,789 less the candidate postcard of \$4,596 and campaign sign of \$578).

The Commission approved a finding that NDP exceeded the 2010 coordinated party expenditure limit by \$29,615.

In addition, the Audit staff recommended that due to the lack of clarity on the volunteer materials exemption, the reported expenditures of \$99,206 should not be attributed to NDP’s coordinated expenditure limit. The Commission agreed that \$95,188 should not be attributed to NDP’s coordinated expenditure limit. The Commission did not approve by the required four votes the portion of the Audit staff’s recommended finding related to the \$4,596 for the candidate postcard. As such, this expenditure is presented in the “Additional Issue” section.

Legal Standard

A. Coordinated Party Expenditures. National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits.

Such purchases are referred to as “coordinated party expenditures.” They are subject to the following rules:

- The amount spent on “coordinated party expenditures” is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting age population;
- Party committees are permitted to coordinate the spending with the candidate committees;
- The parties may make these expenditures only in connection with the general election;
- The party committees—not the candidates—are responsible for reporting these expenditures; and
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits. 2 U.S.C. §30116(d) (Formerly 2 U.S.C. §441a(d)) and 11 CFR §§109.30 and 109.32.

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

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

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

D. Limits on Contributions Made by State and Local Party Committees.

State and local party committees must comply with the contribution limits below:

- \$5,000 per election to a Federal campaign if the contributing committee has qualified as a multicandidate committee;
- \$2,400 per election to a Federal campaign if the contributing committee has not qualified as a multicandidate committee;
- \$5,000 per year to a separate segregated fund (corporate or labor political action committee) or a non-connected committee; and
- unlimited transfers to other party committees. 52 U.S.C. §30116(a) (Formerly 2 U.S.C. §441a(a)).

Facts and Analysis

A. Facts

The coordinated expenditure limit for the 2010 election cycle for a House candidate in the state of Nebraska was \$43,500 each for the state and national party committees. During audit fieldwork, the Audit staff reviewed the correspondence between NDP and the DCCC that addressed the coordinated expenditures. On May 25, 2010, NDP transferred its entire coordinated spending limit to DCCC. This permitted DCCC to make coordinated expenditures of \$87,000 on behalf of Tom White, Democratic candidate for the United States House of Representatives from Nebraska's 2nd Congressional District (the candidate). Additional documentation indicated that DCCC authorized NDP to spend no more than \$80,000 of its coordinated party spending limit on behalf of the candidate.⁹

The Audit staff's review of disbursements during field work indicated that NDP appeared to make coordinated expenditures on behalf of the candidate that totaled \$114,789, as outlined below.

- NDP reported three media-related expenditures totaling \$85,174 as coordinated expenditures on behalf of the candidate. Specifically, NDP spent \$80,000 on a media ad in opposition of the candidate's opponent, \$4,596 on production of a candidate postcard, and \$578 for campaign signage.
- After the coordinated spending limit was established, NDP reported two additional disbursements, totaling \$29,615, for generic GOTV calls as federal election activity on its disclosure reports. The scripts provided by the vendor seem to indicate there was possible coordination with the candidate's committee since the scripts contained the message to vote for the candidate and included a disclaimer that the message was paid for by NDP and authorized by the candidate.

In addition to the \$114,789 in expenditures discussed above, NDP spent \$94,610 to produce a single mailer on behalf of the candidate. This amount consisted of the following components: layout and production (\$92,610) and postage (\$2,000). NDP considered the cost of the entire mailer to be an exempt activity under the volunteer materials exemption. To support its assertion, NDP provided vendor statements and

⁹ DCCC filings disclosed an additional candidate expenditure in the amount of \$353, leaving DCCC with an available coordinated limit of \$6,647; (\$87,000 - \$80,000 - \$353.)

invoices along with photographs of the volunteers participating in various duties such as reviewing, sorting, and packing the direct mail pieces.

The Commission has addressed the applicability of the volunteer materials exemption in the Final Audit Reports of the Republican Party of Arizona, 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.¹⁰

In view of the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures for the mailer totaling \$94,610 were not attributed to NDP's coordinated expenditure limit.

The Audit staff concluded that NDP spent \$114,789 on coordinated expenditures and exceeded its authorized coordinated party expenditure limit by \$34,789.¹¹ As a result, these expenditures are considered an excessive in-kind contribution to the candidate.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided schedules detailing the possible excessive in-kind contributions NDP made on behalf of the candidate. In response, NDP representatives stated their belief that some of the amounts reported on Schedule F might not actually have been coordinated expenditures.

The Interim Audit Report recommended that NDP provide additional documentation demonstrating that it did not exceed the coordinated party expenditure limitation for the candidate.¹²

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, NDP argued that of the \$114,789 identified by the Audit staff as coordinated expenditures, two expenditures totaling \$5,174 (items 1 and 2 below) do not represent coordinated activity and that the unspent coordinated party expenditure limitation of \$6,600 (item 3 below), ceded by the DCCC, should further reduce the amount of the excessive expenditures. NDP explained as follows:

1. The payment of \$578 to an NDP vendor was for a sign that was placed in the window of the party's field office during the 2010 general election period. The

¹⁰ In recognizing the lack of clarity, the Commission has attempted to formulate a consensus policy regarding what constitutes substantial volunteer involvement for the purpose of applying the exemption. Proposed Interim Enforcement Policy, Open Session Agenda document No. 10-16 dated March 10, 2010, Drafts A through D.

¹¹ The amount over the limit was calculated as follows: Total spent by NDP less amount authorized by DCCC: \$114,789 - \$80,000=\$34,789. NDP made and reported the maximum allowable contribution to the candidate during the 2010 election cycle.

¹² The authorized committee of Tom White was approved for administrative termination on May 10, 2011. Therefore, a recommendation to seek refund from the candidate committee is not warranted.

sign was not intended as a public communication; it was placed next to the sign of many other Nebraska candidates as is commonplace for party offices.

2. NDP provided a declaration, signed and dated September 16, 2013, from its Executive Director who oversaw all political and administrative operations of NDP during the 2009/2010 election cycle. In the document, the Executive Director attested that NDP paid for the printing of the postcards (\$4,596) which advocated the election of the candidate. According to his recollection, the volunteers distributed, hand stamped, and placed the mailing labels on the postcards at the party headquarters. NDP incorrectly disclosed this payment on Schedule F and plans to amend its reports by disclosing the expenditures as Federal Election Activity (Line 30b).
3. NDP acknowledged that it received spending authority of only \$80,000 from the DCCC prior to making expenditures.¹³ In addition, NDP presented an unsigned letter from the DCCC dated April 24, 2012, in which DCCC designated NDP as its agent "...for the exclusive purpose of making expenditures pursuant to 52 U.S.C. §30116(d) (Formerly 2 U.S.C. §441a(d)) on behalf of [the Candidate] up to \$6,600." NDP acknowledged this authority was not ceded in a timely fashion. Nevertheless, NDP urged the Commission to acknowledge that this amount remains available under the spending authority and should therefore reduce the amount of excessive expenditures.
4. In its response, NDP also acknowledged that it incorrectly reported expenses for GOTV calls totaling \$29,615 due to a miscommunication with the candidate campaign. NDP materially amended its disclosure reports and included these expenditures on Schedule F (Coordinated Party Expenditures).

The Audit staff considered NDP's response and reviewed the submitted documentation. Based on NDP's additional explanation regarding the nature and the location of the campaign sign, the Audit staff agreed that the payment of \$578 did not represent a coordinated expenditure as the sign was not intended as a public communication. Since NDP disclosed this expenditure on Schedule F, the Audit staff recommended that NDP amend its 2010 August Monthly report to disclose this disbursement on Schedule E (Independent Expenditures) since the sign contains express advocacy.

NDP's Executive Director attested to the volunteers' involvement with the printing of a candidate postcard (\$4,596). As with the other expenditures noted above, totaling \$94,610, for which NDP claims the volunteer materials exemptions, the Audit staff acknowledged the lack of clarity regarding the level of volunteer involvement needed to qualify for the volunteer materials exemption. As with the treatment of those expenditures, the Audit staff no longer attributed the \$4,596 expenditure toward NDP's coordinated limit. NDP was encouraged, however, to provide any further documentation

¹³ NDP used these funds to finance its broadcast television media buy and production and disclosed this expenditure on Schedule F of its 2010 Post-General disclosure reports.

such as photographs of the volunteers participating in the dissemination of the candidate postcard for the Commission's consideration of the matter.

Finally, by presenting the assignment authority letter from the DCCC, NDP demonstrated that it was granted additional spending authority (\$6,600) beyond \$80,000. The Audit staff noted that the letter was issued on April 24, 2012, well after the November 2, 2010, general election. As noted in the legal standards above, 11 CFR § 109.33(a) requires that an assignment must be made in writing, state the amount of the authority assigned, and be received by the assignee before any coordinated party expenditure is made pursuant to the assignment. In similar cases, the Commission has rejected assignments of spending authority after the fact. Therefore, while the Audit staff recognized that the \$6,600 represented unspent funds under the combined spending authority of both committees, the Audit staff did not allow for the additional spending authority of \$6,600.

As a result of NDP's response to the Interim Audit Report, the Audit staff recalculated the excessive coordinated expenditures to be \$29,615.¹⁴ The revised figure adjusts for \$578 which does not represent a coordinated expenditure and \$4,596 which NDP claims as exempt from the definition of a contribution under the volunteer materials exemption.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged NDP's response that provided a written description and documentation of the tasks performed by the volunteers. Given the lack of clarity regarding the amount of volunteer involvement deemed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures totaling \$99,206 were not attributed to NDP's coordinated expenditure limit.

E. Committee Response to the Draft Final Audit Report

NDP's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On April 23, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that NDP exceeded the 2010 coordinated party expenditure limit by \$29,615. The Commission approved the Audit staff's recommendation as to the amount by which NDP exceeded the 2010 coordinated party expenditure limit.

In addition, the Audit Division Recommendation Memorandum recommended that due to the lack of clarity regarding the level of volunteer involvement needed to qualify for the volunteer materials exemption, the Commission not attribute expenditures totaling \$99,206 towards the coordinated expenditure limitation. The Commission agreed not to attribute \$95,188 of the reported expenditures to NDP's coordinated expenditure limit. The Commission concluded that the reported expenditures of \$94,610 (the amount associated with the candidate mailer) should not be attributed to NDP's coordinated

¹⁴ Calculated as follows: \$29,615 = [(\$114,789 - \$578 - \$4,596) - \$80,000].

expenditure limit due to the lack of clarity on the volunteer materials exemption. NDP had provided vendor statements and invoices along with photographs of the volunteers participating in various duties, such as reviewing, sorting, and packing the direct mail pieces, relating to these expenditures. In addition, the Commission concluded that the reported expenditure of \$578 (the amount associated with the window sign) should not be attributed to NDP's coordinated expenditure limit because the expenditure was not a public communication.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding related to the \$4,596 for the candidate postcard. As such, this expenditure is presented in the "Additional Issue" section.

Part V

Additional Issue

Reported Coordinated Party Expenditures

Summary

As detailed in Finding 3 above, at the end of audit fieldwork, the Audit staff concluded that NDP spent \$114,789 on coordinated expenditures. In addition, the Audit staff concluded that NDP spent \$94,610 to produce a single mailer on behalf of the candidate which NDP considered to be an exempt activity under the volunteer materials exemption. Due to the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures for the mailer totaling \$94,610 were not attributed to NDP's coordinated expenditure limit in the Interim Audit Report.

In response to the Interim Audit Report recommendation, NDP argued that of the \$114,789 identified by the Audit staff as coordinated expenditures, two expenditures totaling \$5,174 did not represent coordinated activity. NDP argued that \$578 for a sign placed in the party's field office was not a public communication and that \$4,596 for the candidate postcard qualified for the volunteer materials exemption.

Based on NDP's explanation, the Audit staff agreed that the payment of \$578 did not represent a coordinated expenditure as the sign was not intended as a public communication. Additionally, due to the lack of clarity regarding the application of the volunteer materials exemption, the Audit staff did not attribute the \$4,596 for the candidate post card, as well as the \$94,610 of expenditures identified by the Audit staff during field work, to NDP's coordinated expenditure limit in the Draft Final Audit Report.

Accordingly, the Audit staff recommended that the Commission should not attribute expenditures totaling \$99,206 towards the coordinated expenditure limit. The Commission approved a finding that the reported expenditures of \$95,188 should not be attributed to NDP's coordinated expenditure limit.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding related to the \$4,596 for the candidate postcard. Pursuant to Commission Directive 70,¹⁵ this expenditure is discussed in the "Additional Issue" section.

Legal Standard

The legal standard in the Finding 3 above is incorporated herein.

Facts and Analysis

A. Facts

As detailed in Finding 3 above, at the end of audit fieldwork, the Audit staff concluded that NDP spent \$114,789 on coordinated expenditures. Specifically, NDP reported three media-related expenditures totaling \$85,174 as coordinated expenditures on behalf of the candidate. NDP reported two additional disbursements for generic GOTV calls, totaling \$29,615, as federal election activity on its disclosure reports for which the scripts seem to indicate there was possible coordination with the candidate's committee.

In addition to the \$114,789 in expenditures discussed above, the Audit staff concluded that NDP spent \$94,610 to produce a single mailer on behalf of the candidate. This amount consisted of the following components: layout and production (\$92,610) and postage (\$2,000). NDP considered the cost of the entire mailer to be an exempt activity under the volunteer materials exemption. To support its assertion, NDP provided vendor statements and invoices along with photographs of the volunteers participating in various duties such as reviewing, sorting, and packing the direct mail pieces.

Due to the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the expenditures for the mailer totaling \$94,610 were not attributed to NDP's coordinated expenditure limit in the Interim Audit Report.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided schedules detailing the possible excessive in-kind contributions NDP made on behalf of the candidate. In response, NDP representatives stated their belief that some of the amounts reported on Schedule F might not actually have been coordinated expenditures. The Interim Audit Report recommended that NDP provide additional documentation demonstrating that it did not exceed the coordinated party expenditure limitation for the candidate.¹⁶

¹⁵ Available at http://www.fec.gov/directives/directive_70.pdf

¹⁶ The authorized committee of Tom White was approved for administrative termination on May 10, 2011. Therefore, a recommendation to seek refund from the candidate committee is not warranted.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, NDP argued that of the \$114,789 identified by the Audit staff as coordinated expenditures, two expenditures totaling \$5,174 did not represent coordinated activity.

NDP explained that the payment of \$578 to an NDP vendor was for a sign that was placed in the window of the party's field office during the 2010 general election period. The sign was not intended as a public communication; it was placed next to the sign of many other Nebraska candidates as is commonplace for party offices.

NDP also provided a declaration, signed and dated September 16, 2013, from its Executive Director who oversaw all political and administrative operations of NDP during the 2009/2010 election cycle. NDP's Executive Director attested to the volunteers' involvement with the candidate postcard (\$4,596). According to his recollection, the volunteers distributed, hand stamped, and placed the mailing labels on the postcards at the party headquarters.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged NDP's response and reviewed the submitted documentation.

Based on NDP's additional explanation regarding the nature and the location of the campaign sign, the Audit staff agreed that the payment of \$578 did not represent a coordinated expenditure as the sign was not a public communication. Since NDP disclosed this expenditure on Schedule F, the Audit staff recommended that NDP amend its 2010 August Monthly report to disclose this disbursement on Schedule E (Independent Expenditures) since the sign contains express advocacy.

Additionally, given the lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption, as well as the amount of documentation required to support such an exemption, the \$94,610 of expenditures identified by the Audit staff during field work and the expenditures totaling \$4,596 were not attributed to NDP's coordinated expenditure limit in the Draft Final Audit Report.

E. Committee Response to the Draft Final Audit Report

NDP's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On April 23, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that due to the lack of clarity regarding the level of volunteer involvement needed to qualify for the volunteer materials exemption, the Commission should not attribute expenditures totaling \$99,206 towards the coordinated expenditure limitation. The Commission approved a finding that the reported expenditures of \$95,188 should not be attributed to NDP's coordinated expenditure limit.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding related to the \$4,596 in the reported expenditures for the candidate postcard. Some Commissioners approved the finding. Other Commissioners determined that unsworn written assertions absent any documentation of the nature and extent of the volunteer involvement would not be sufficient to qualify these expenses for the volunteer materials exemption.

Pursuant to Commission Directive 70, this matter is presented as an "Additional Issue".