



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 27, 2004

MEMORANDUM

TO: ROBERT W. BIERSACK
PRESS OFFICER
PRESS OFFICE

FROM: JOSEPH F. STOLTZ *JFS*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON
VOLUNTEER PAC

Attached please find a copy of the audit report on Volunteer PAC which was approved by the Commission on September 21, 2004.

All parties involved have received informational copies of the report 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
Web Manager



Report of the Audit Division on Volunteer PAC

January 1, 2001- December 31, 2002

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.¹ 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)

Volunteer PAC is a non-connected, Political Action Committee, which qualified for multi-candidate status on June 30, 1999 and is headquartered in Nashville, Tennessee.² For more information, see chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**
 - Contributions from Individuals \$ 726,356
 - Other Political Committees 401,967
 - Refund of Contributions Made 10,000
 - Offsets to Expenditures 12,823
 - **Total Receipts** \$ **1,151,146**
- **Disbursements**
 - Operating Expenditures (including other disbursements) \$ 513,659
 - Contributions to Federal Candidates/Other Political Committees 493,585
 - **Total Disbursements** \$ **1,007,244**

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Failure to Report Earmarked Contributions (Finding 2)
- Non-Federal Funding of Federal Activity (Finding 3)
- Inadequate Disclosure of Contributions to Federal Candidates (Finding 4)

¹ 2 U.S.C. §438(b).

² The Chairman of Volunteer PAC is Senate Majority leader Bill Frist, M.D. Volunteer PAC's stated mission is the advancement of common sense, conservative, citizen legislators; to maintain the Republican majority in the U.S. Senate; and House, and to assist Republican colleagues and candidates around the country.

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Part I

Background

Authority for Audit

This report is based on an audit of the Volunteer PAC (VOLPAC), 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 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 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 if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
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. Other committee operations necessary to the review.

Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for the period November 7, 2002, through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are primarily those that were in effect prior to November 7, 2002.

Part II

Overview of Committee

Committee Organization

Important Dates	VOLPAC
• Date of Registration	November 24, 1998
• Audit Coverage	January 1, 2001 – December 31, 2002
Headquarters	Nashville, Tennessee
Bank Information	
• Bank Depositories	2
• Bank Accounts	2 Federal and 1 Non-Federal Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Dawn Perkerson
• Treasurers During Period Covered by Audit	Linus Catignani (Inception – 05/01/01) Dawn Perkerson (05/02/01 – present)
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2001	\$ 38,371
○ Contributions from Individuals	726,356
○ Other Political Committees	401,967
○ Refunds of Contributions Made	10,000
○ Offsets to Expenditures	12,823
Total Receipts	\$1,151,146
○ Operating Expenditures	513,659
○ Contributions to Federal Candidates/Other Political Committees	493,585
Total Disbursements	\$1,007,244
Cash on hand @ December 31, 2002	\$ 182,273

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

A comparison of VOLPAC's reported figures to its bank records revealed that beginning cash on hand, receipts and disbursements had been misstated for calendar year 2001 as well as beginning cash on hand, disbursements and ending cash on hand for calendar year 2002. In response to the interim audit report, VOLPAC amended its reports to materially correct the misstatement noted above. (For more detail, see p. 4)

Finding 2. Failure to Report Earmarked Contributions

VOLPAC collected thirteen groups of contributions totaling \$183,000 for twelve Republican Senate candidates and transferred them directly (without depositing) to these candidates. In five instances, events were held benefiting six of the candidates. Current committee representatives were not involved in this activity and were unable to provide any specific detail. VOLPAC neither reported the receipt nor the transfer of these contributions. In response to the interim audit report, VOLPAC amended its reports to disclose the earmarked contributions noted above.

(For more detail, see p. 6)

Finding 3. Non-Federal Funding of Federal Activity

A review of expenditures by the federal and non-federal accounts indicated that the non-federal account had over funded its share of allocable expenses by \$166,047. Contributing significantly to this result was the allocation ratio used by VOLPAC which allocated such expenses 71% to the non-federal account, when it should have only been 15%. In response to the interim audit report, VOLPAC stated on its amended report that it had reimbursed its non-federal account \$166,047 to correct the over funding by the non-federal account identified in the audit. Additionally, VOLPAC itemized its allocable activity in memo entries on Schedules H4 to correct the disclosure of expenditures. (For more detail, see p. 8)

Finding 4. Inadequate Disclosure of Contributions to Federal Candidates

VOLPAC did not adequately disclose seventy-four contributions (\$281,000) to federal candidates and other political committees. The vast majority of these items failed to disclose the office sought, and where appropriate, congressional district. In response to the interim audit report, VOLPAC amended its reports to disclose the missing information noted above. (For more detail, see p. 11)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

A comparison of VOLPAC's reported figures to its bank records revealed that beginning cash-on-hand, receipts and disbursements had been misstated for calendar year 2001 as well as beginning cash-on-hand, disbursements and ending cash-on-hand for calendar year 2002. In response to the interim audit report, VOLPAC amended its disclosure reports to materially correct the misstatement noted above.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A or Schedule B.
2 U.S.C. §§434(b)(1), (2), and(4).

Facts and Analysis

The Audit staff reconciled reported activity to bank records for calendar years 2001 and 2002. The following charts outline the discrepancies for the beginning cash balance, receipts, disbursements and the ending cash balance for each year. Succeeding paragraphs address the reasons for the misstatements.

2001 Committee Activity			
	Reported ³	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2001	\$28,928	\$38,371	\$(9,443) Understated
Receipts	\$532,924	\$520,660	\$12,264 Overstated
Disbursements	\$272,347	\$278,149	\$(5,802) Understated
Ending Cash Balance @ December 31, 2001	\$280,883	\$280,883	\$0

The \$9,443 understatement of the beginning cash balance on January 1, 2001 could not be explained.

³ These figures do not add correctly as the result of a \$8,623 discrepancy (understatement) between VOLPAC's reported ending cash balance at 06/30/01 (\$101,675) and beginning cash balance at 07/01/01 (\$93,051). See ending cash on hand discussion on the next page.

The overstatement of receipts resulted from the following:

• Reported non-federal PAC contribution not supported by deposit or credit in the federal account.	\$ 10,000
• Reported contribution from individual not supported by deposit or credit in the federal account.	1,000
• Unexplained difference.	<u>1,264</u>
Total net overstatement of receipts	<u>\$ 12,264</u>

The understatement of disbursements resulted from the following:

• Unreported operating expenditures.	\$ 5,759
• Unexplained difference.	<u>43</u>
Total net understatement of disbursements	<u>\$ 5,802</u>

As a result of the misstatements detailed above and a correction of beginning cash on hand made on VOLPAC's Year End report, the closing cash on hand is correctly reported.

2002 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2002	\$298,561	\$280,883	\$17,678 Overstated
Receipts	\$625,671	\$630,711	\$(5,040) Understated
Disbursements	\$709,273	\$729,320	\$(20,047) Understated
Ending Cash Balance @ December 31, 2002	\$214,959	\$182,274	\$32,685 Overstated

No explanation was provided for the \$17,678 overstatement of beginning cash on January 1, 2002 nor why it differed from the correct ending cash balance on December 31, 2001. It is possible that VOLPAC, certain of the reported ending cash balance at March 31, 2002, calculated backwards to arrive at this amount.⁴

The understatement of receipts resulted from the following:

• Mathematical error understating contributions from individuals on the 30-Day Post General report.	\$ 5,000
• Unexplained difference.	<u>40</u>
Total overstatement of receipts	<u>\$ 5,040</u>

⁴ In the preceding report period, VOLPAC apparently made a similar adjustment. At December 31, 2001, it reported the correct ending cash balance but reported beginning cash of \$93,051, an understatement of \$8,623. The ending reported cash balance from the preceding report period was \$101,675. This difference evidently resulted from VOLPAC's using the correct ending cash and working backwards, subtracting receipts and adding disbursements, to arrive at the understated beginning cash balance for the period.

The understatement of disbursements resulted from the following:

• Unreported operating expenditures.	\$ 12,805
• Unreported contributions to candidates	17,500
• Reported void contributions	(10,000)
• Unexplained difference.	<u>(258)</u>
Total net understatement of disbursements	<u>\$ 20,047</u>

The \$32,685 overstatement of ending cash on hand was the net result of the misstatements detailed above.

At the exit conference, the Audit staff explained the misstatements and provided VOLPAC's representative with schedules detailing these discrepancies. The representative stated that she was unaware of the misstatements but agreed to review the spreadsheets provided and file amended reports.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of the interim audit report, VOLPAC amend its reports to correct the misstatements noted above to include amended Schedules A and B as appropriate, and to amend its latest report to correct the cash misstatement.

In response to the interim audit report, VOLPAC filed amended its disclosure reports to materially correct the misstatements noted above.

Finding 2. Failure to Report Earmarked Contributions

Summary

VOLPAC collected thirteen groups of contributions totaling \$183,000 for twelve Republican Senate candidates and transferred them directly (without depositing) to these candidates. In five instances, events were held benefiting six of the candidates. Current committee representatives were not involved in this activity and were unable to provide any specific detail. VOLPAC neither reported the receipt nor the transfer of these contributions. In response to the interim audit report, VOLPAC amended its reports to disclose the earmarked contributions noted above.

Legal Standard

Earmarked Contributions. Earmarking may take the form of a designation, instruction or encumbrance and may be direct or indirect, express or implied. Anyone who receives and forwards an earmarked contribution to a candidate committee is considered a conduit or intermediary. The conduit must comply with special reporting rules, which vary depending on whether the contribution was deposited in the conduit's bank account or was passed on directly to the campaign in the form of the original contributor's check.

A registered nonconnected committee acting as a conduit must disclose its activity for the reporting period in which the contribution is received. 11 CFR §110.6(b) and (c).

Disclosure on Schedule A should include:

- The name and mailing address of each person making an earmarked contribution (including earmarked contributions of \$200 or less);
- The occupation and employer of each individual making an earmarked contribution exceeding \$200;
- The candidate designated by the contributor as the recipient of the contribution;
- The election for which the contribution was designated, if any;
- The amount of the earmarked contribution; and
- The date the contribution was received by the conduit (11 CFR 110.6(b)(3)(i) and (c)(1)(iv)).

Disclosure on Schedule B should include:

- The candidate designated by the contributor;
- The date the contribution was forwarded;
- The amount forwarded to the candidate;
- The election designated by the contributor, if any;
- The name of the contributor;
- An indication that the contribution was passed on in the form of the contributor's original check, if appropriate; and
- A statement indicating that the conduit's limit was also affected, if appropriate. (11 CFR 110.1(b)(3)(i), (c)(1)(iv) and (d)(2)).

Facts and Analysis

Copies of thirteen groups of contribution checks for twelve U.S. Senate candidates were located in VOLPAC's records. VOLPAC apparently collected contributions from individuals and political committees earmarked for these specific candidates. In five instances, VOLPAC held small events to facilitate the receipt of these contributions and allow the candidates to meet with the contributors. The earmarked contributions, totaling \$183,000, were passed directly to the designated campaigns; the contributions were not deposited to VOLPAC's account.

VOLPAC, functioning as a conduit, is required to disclose this activity on its disclosure reports and, therefore, should have reported the receipt and transfer of these contributions.⁵ The contribution checks in each group have a range of dates which suggests that VOLPAC collected the contributions and then passed them on to the candidates. Because VOLPAC forwarded each contribution without depositing it first (i.e., in the form of the contributor's original check), it must disclose the information detailed above as memo entries on Schedules A (Itemized Receipts) and B (Itemized Disbursements).

⁵ VOLPAC disclosed earmarked contributions on its Mid Year 2003 report. The contributions disclosed as earmarked resemble the contributions identified above in the 2002 cycle.

The Audit staff presented this matter at the exit conference and provided VOLPAC's representative with schedules detailing the earmarked contributions requiring disclosure. The representative expressed a willingness to file amended reports.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of the interim audit report, VOLPAC either provide conclusive evidence that would show that it had not functioned as a conduit in the collection and forwarding of these contributions, or alternatively, file amended reports to disclose the earmarked contributions as memo entries on Schedules A and the transfer of those contributions to the intended recipients on Schedules B.

In response to the interim audit report, VOLPAC filed amended disclosure reports on which it included memo entries on Schedules A and B for the earmarked contributions identified in the audit.

Finding 3. Non-Federal Funding of Federal Activity

Summary

A review of expenditures by the federal and non-federal accounts indicated that the non-federal account had over funded its share of allocable expenses by \$166,047. Contributing significantly to this result was the allocation ratio used by VOLPAC which allocated such expenses 71% to the non-federal account, when it should have only been 15%. In response to the interim audit report, VOLPAC stated on its amended report that it had reimbursed its non-federal account \$166,047 to correct the over funding by the non-federal account identified in the audit. Additionally, VOLPAC itemized its allocable activity in memo entries on Schedules H4 to correct the disclosure of expenditures.

Legal Standard

Accounts for Federal and Non-Federal Activity. A committee that finances political activity in connection with both federal and non-federal elections must establish two accounts (federal and non-federal) and allocate shared expenses--those that simultaneously support federal and non-federal election activity—between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).

Federal vs. Non-Federal Account. The federal account may contain only those funds that are permissible under the federal election law; the non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3).

Reporting Allocable Expenses. A political committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H4. 11 CFR §104.10(b)(4)

Allocation Required for Generic Voter Drives. Nonconnected committees must allocate all of their costs for generic voter drives. A generic voter drive is an activity that urges the general public:

- To register to vote;
- To vote; or
- To support candidates of a particular party or candidates who are associated with a particular issue, without mentioning a specific candidate. 11 CFR §106.6(b)(2)(iii).

Determining the appropriate allocation ratio. Nonconnected committees shall allocate administrative expenses and costs of generic voter drives based on the ratio of federal expenditures to total federal and non-federal expenditures. The federal and non-federal expenditures used in this calculation are limited to expenditures made in direct support of candidates. 11 CFR §106.6(c)(1)

Facts and Analysis

VOLPAC neither paid all allocable expenses from the federal account or an allocation account, nor used the correct allocation ratio. Rather, using a ratio of 29% federal and 71% non-federal, VOLPAC calculated the respective shares of allocable expenses and paid each portion separately from the federal and non-federal accounts. VOLPAC has indicated its ratio was based on the ratio used by The Republican Party of Tennessee; however, it did not disclose this ratio on Schedule H1(Allocation Ratios), as required.

The Audit staff reviewed direct candidate support by VOLPAC in order to determine the correct allocation ratio for administrative and generic get out the vote expenses.

VOLPAC contributed a total of \$344,500 directly to candidates; \$53,000 to state (non-federal) candidates and \$291,500 to federal candidates. Based on this information, the Audit staff calculated the allocation ratio to be 85% federal ($\$251,500/\$344,500$) and 15% non-federal ($\$53,000/\$344,500$).

The Audit staff reviewed expenditures made by VOLPAC's federal and non-federal accounts and determined the following:

- VOLPAC funded a statewide generic get-out-the-vote media campaign in Tennessee during the last two weeks of October, 2002. These expenses were paid separately from the Committee's federal and non-federal accounts. The total cost of the program was \$198,974. The first four invoices from the media vendor were allocated and paid 29% or \$57,475 federal and 71% or \$140,715 non-federal. A payment for the final invoice, in the amount of \$784, was paid entirely from the federal account.
- Two payments totaling \$95,100 were made entirely from the non-federal account, one in the amount of \$15,000 for VOLPAC's website development and a consulting fee of \$80,100. Both expenditures were administrative in nature which should also have been paid on an allocated basis.
- Additional administrative expenses were identified, totaling \$161,087 that were paid entirely by the federal account. Of this amount, 15%, or \$24,163, could have been funded by the non-federal account.

- VOLPAC received offsets of \$16,385 relative to the media program. Of this amount, it deposited \$12,433 into the federal account and \$3,952 into the non-federal account. Since VOLPAC would have been permitted to deposit these 85% federal and 15% non-federal, it should have deposited only \$2,458 to the non-federal account. This resulted in an “overfunding” by the non-federal of \$1,494 (\$3,952 - \$2,458).

Based on the above, the following chart summarizes and calculates the extent of the non-federal funding of federal activity.

Description	Non-federal Share as paid by VOLPAC	Non-federal Share per Audit Staff at 15%	Amount Over Funded by Non-federal
Statewide GOTV	\$140,715	\$29,846	\$110,869
Consulting & Website costs paid 100% by Non federal	\$95,100	\$14,265	\$80,835
Administrative costs paid 100% by Federal	\$0	\$24,163	(\$24,163)
Refunds of Allocable Expenses	(\$3,952)	(\$2,458)	(\$1,494)
	Total Over Funding:		\$166,047

The Audit staff’s analysis indicates that the non-federal account has over funded its share of allocable expenses by \$166,047.

The Audit staff presented this matter at the exit conference and provided VOLPAC’s representative with schedules detailing the expenditures. The representative expressed a willingness to file amended reports and understood a payment from the federal to the non-federal was necessary.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of the interim audit report, VOLPAC demonstrate that the identified disbursements are not allocable expenses; the Audit staff’s ratio calculation is incorrect; and/or there has been no over funding by the non-federal account. Absent such a demonstration, it is recommended that VOLPAC:

- File a Schedule H1 to correctly disclose the administrative/gotv allocation ratio;
- File Schedules H4 (Joint Federal/Non-Federal Activity Schedule) disclosing the payments noted above (as memo entries), including the total amount paid, the federal share, and the non-federal share;⁶
- Footnote each memo entry on Schedules H4 to say “recognize payments of allocable expenses from the non-federal account; and

⁶ The original entries on Schedules B must remain since the Schedule H4 entries must be entirely memo entries. Electronically filed Schedules H4 may not contain entries that are partially memo and partially non-memo.

- Using funds from its federal account, reimburse the non-federal account \$166,067 and provide evidence of such reimbursement. If VOLPAC lacks the funds to make the reimbursement, it should disclose the amount owed as a debt on Schedule D (Debts and Obligations) until such time as funds become available to make the reimbursement.

In response to the interim audit report, VOLPAC acknowledged the over funding of federal expenses by the non-federal account, provided evidence of the reimbursement of the non-federal account and filed amended disclosure reports. On the amended reports, VOLPAC stated on its amended report that it had reimbursed its non-federal account \$166,067 to correct the over funding by the non-federal account and would report this transfer in the current period. Also included on the amended report was a Schedule H1 indicating an administrative allocation ratio of 85% federal and 15% non-federal and memo entries of expenses on Schedules H4 to correctly disclose allocable expenditures.

Finding 4. Inadequate Disclosure of Contributions to Federal Candidates

Summary

VOLPAC did not adequately disclose seventy-four contributions (\$281,000) to federal candidates and other political committees. For the vast majority of these items VOLPAC failed to disclose the office sought, and where appropriate, congressional district. In response to the interim audit report, VOLPAC amended its reports to include the missing information noted above.

Legal Standard

Reporting Contributions to Federal Candidates or Committees. When making contributions to federal candidates, the committee must report the:

- Amount;
- Date when the contribution was made;
- Candidate name and address;
- Office sought, (including state and Congressional district if applicable); and
- election designation.² U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(v).

Facts and Analysis

In a review of all contributions to federal candidates and other political committees itemized by VOLPAC, the Audit staff identified seventy-four disbursements, totaling \$281,000 (62% of such disbursements) that were not adequately disclosed.

VOLPAC failed to disclose the state, office sought, and where appropriate, congressional district for seventy-three of the contributions. Included among these were seventeen that included apparently incorrect election designations to the 1998 primary or general. There were two items which failed to include complete addresses.⁷ The information missing from the reports for these items was not found in VOLPAC's records.

⁷ One of these items was also among the seventy-three items previously mentioned.

At the exit conference, VOLPAC representatives indicated their willingness to file amended reports to correct this deficiency.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that, within 30 calendar days of service of the interim audit report, VOLPAC amend its reports to correctly disclose the contributions to federal candidates noted above.

In response to the interim audit report, VOLPAC filed amended reports which corrected the identified disclosure omissions.