



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

APRIL 26, 2006

MEMORANDUM

TO: ROBERT W. BIERSACK  
PRESS OFFICER  
PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON  
COMMITTEE TO RE-ELECT VITO FOSSELLA

Attached please find a copy of the final audit report and related documents on Committee to Re-Elect Vito Fossella, which was approved by the Commission on APRIL 18, 2006.

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  
Web Manager



# Report of the Audit Division on the Committee to Re-Elect Vito Fossella

January 1, 2003 – December 31, 2004

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## Why the Audit Was Done

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

## Future Action

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

## About the Campaign (p. 2)

Committee to Re-Elect Vito Fossella (CRVF) is the principal campaign committee for Vito J. Fossella, Jr., Republican candidate for the U.S. House of Representatives from the state of New York, Thirteenth Congressional District. CRVF is headquartered in Staten Island, New York. For more information, see chart on Campaign Organization p.2.

## Financial Activity (p. 2)

- **Receipts**
  - From Individuals \$ 593,254
  - From Political Committees 489,082
  - Offsets to Operating Expenditures 41,077
  - **Total Receipts** \$ 1,123,413
- **Disbursements**
  - Operating Expenditures \$ 1,000,979
  - Other Disbursements 55,237
  - Contributions Refunds 82,236
  - **Total Disbursements** \$ 1,138,452

## Findings and Recommendations (p. 3)

- Form 3Z-1 Filed Untimely (Finding 1)
- Stale-Dated Contribution Refund Checks (Finding 2)

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<sup>1</sup> 2 U.S.C. §438(b).

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# **Report of the Audit Division on the Committee to Re-Elect Vito Fossella**

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January 1, 2003 – December 31, 2004



# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the Committee to Re-Elect Vito Fossella (CRVF), 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 consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

## Part II

# Overview of Campaign

## Campaign Organization

<b>Important Dates</b>	<b>Committee to Re-Elect Vito Fossella</b>
• Date of Registration	June 18, 1997
• Audit Coverage	January 1, 2003 through December 31, 2004
<b>Headquarters</b>	Staten Island, New York
<b>Bank Information</b>	
• Bank Depositories	2
• Bank Accounts	3 Checking
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Anthony Maltese
• Treasurer During Period Covered by Audit	Anthony Maltese
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid CPA Firm

## Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ January 1, 2003</b>	<b>\$ 171,220</b>
<b>Receipts</b>	
○ From Individuals	593,254
○ From Political Committees	489,082
○ Offsets to Operating Expenditures	41,077
<b>Total Receipts</b>	<b>\$ 1,123,413</b>
<b>Disbursements</b>	
○ Operating Expenditures	1,000,979
○ Other Disbursements	55,237
○ Refunds	82,236
<b>Total Disbursements</b>	<b>\$ 1,138,452</b>
<b>Cash on hand @ December 31, 2004</b>	<b>\$ 156,181</b>

# **Part III**

## **Summaries**

### **Findings and Recommendations**

#### **Finding 1. Form 3Z-1 Filed Untimely**

CRVF did not file Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End report in a timely manner. The Audit staff recommended that CRVF demonstrate that the required form was filed timely or provide any additional comments. In response to the recommendation in the interim audit report, CRVF submitted a letter explaining why the Form 3Z-1 was not filed in a timely manner. (For more detail, see p. 4)

#### **Finding 2. Stale-Dated Contribution Refund Checks**

The Audit staff determined that 15 refund checks written in January 2003 by CRVF, totaling \$18,100, relating to impermissible contributions from the 1997-1998 election cycle, had not cleared CRVF's bank account. A conciliation agreement between CRVF and the Commission in October 2002 [Matter Under Review (MUR) 4850] required these refunds to be made. The Audit staff recommended that CRVF remit \$18,100 to the U.S. Treasury. In response to the recommendation in the interim audit report, CRVF remitted a check for \$18,100 to the U.S. Treasury. (For more detail, see p. 5)

# Part IV

## Findings and Recommendations

### Finding 1. Form 3Z-1 Filed Untimely

#### Summary

CRVF did not file Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End report in a timely manner. The Audit staff recommended that CRVF demonstrate that the required form was filed timely or provide any additional comments. In response to the recommendation in the interim audit report, CRVF submitted a letter explaining why the Form 3Z-1 was not filed in a timely manner.

#### Legal Standard

**Special Reporting Requirements.** Principal campaign committees of candidates for the U.S. House and the U.S. Senate must file FEC Form 3Z-1 as part of their July Quarterly and Year-End Reports in the year preceding the year in which the general election for the office sought is held. The information in this form allows opposing candidates to compute their "gross receipts advantage" used to determine whether a candidate is entitled to an increased contribution limit. The following information is to be disclosed:

1. Gross receipts to date for the primary and general elections,
2. Aggregate amount of contributions from personal funds of the candidate for the primary and general elections, and,
3. A calculation of gross receipts less the candidate's personal contributions for each election. 11 CFR §104.19.<sup>2</sup>

#### Facts and Analysis

CRVF did not file a Form 3Z-1 with its 2003 Year-End report until an amended report was filed on April 15, 2004. This amended report appears to have been filed as a result of CRVF receiving a Request for Additional Information letter (dated March 2, 2004) from the Commission's Reports Analysis Division.

The Audit staff determined gross receipts for the primary election of \$386,375 and for the general election of \$38,199 should have been disclosed on Form 3Z-1 of the 2003 Year-End Report. The totals disclosed on the Form 3Z-1 filed in April 2004 were determined to be materially correct. There were no personal contributions by the candidate.

The Audit staff discussed this matter with a CRFV representative at the exit conference. The representative stated that he thought the Form 3Z-1 had been correctly filed with the original report.

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<sup>2</sup> This regulation became effective January 27, 2003; as such, this election cycle is the first that required filing of this form.



## **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that CRVF demonstrate that the required form was correctly filed or provide any additional comments relevant to this matter. In response, the CRVF Treasurer stated that the failure to file Form 3Z-1 timely was an oversight. He added that, at the time the report was filed, the software that CRVF used to prepare its reports was not able to generate the required form, and as a result, CRVF was unaware of the omission. The Form 3Z-1 was submitted after they received a Request for Additional Information from the Commission.

## **Finding 2. Stale-Dated Contribution Refund Checks**

### **Summary**

The Audit staff determined that 15 refund checks written in January 2003 by CRVF, totaling \$18,100, relating to impermissible contributions from the 1997-1998 election cycle, had not cleared CRVF's bank account. A conciliation agreement between CRVF and the Commission in October 2002 [Matter Under Review (MUR) 4850] required these refunds to be made. The Audit staff recommended that CRVF remit \$18,100 to the U.S. Treasury. In response to the recommendation in the interim audit report, CRVF remitted a check for \$18,100 to the U.S. Treasury.

### **Legal Standard**

**A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$1,000<sup>3</sup> per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
  - o Keep enough money in the account to cover all potential refunds;
  - o Keep a written record explaining why the contribution may be illegal;
  - o Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
  - o Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations; and
  - o If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

<sup>3</sup> The Bipartisan Campaign Reform Act of 2002 (BCRA) amended section 441a and the \$1,000 contribution limit was modified to \$2,000 with respect to contributions from any one person made on or after January 1, 2003.

**C. Refund or Disgorge Questionable Contributions.** If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

**Facts and Analysis**

On October 28, 2002, CRVF and the Commission signed a conciliation agreement relative to MUR 4850 which stemmed from a complaint filed under 2 U.S.C. §437g regarding impermissible contributions received during the 1997-1998 election cycle. CRVF made refunds in early January 2003 and the Audit staff determined that 15 of these refund checks, totaling \$18,100, had either never been cashed by the payees or had been returned as undeliverable by the post office. The payees included 12 individuals (\$8,100) and 2 political action committees (\$10,000).<sup>4</sup>

At the exit conference, the Audit staff provided CRVF representatives a schedule of these 15 stale-dated contribution refund checks and in a written response, they stated that they wanted to contact the individuals and organizations one more time in an attempt to get them to cash these checks.

**Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that CRVF provide evidence that the checks were not outstanding by providing copies of the front and back of the negotiated checks along with bank statements. Absent such evidence, the Audit staff recommended that \$18,100 be paid to the U.S. Treasury. In response, CRVF remitted a check for \$18,100 to the U.S. Treasury.

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<sup>4</sup> One of these political action committees terminated in March 2000.