

file



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 23, 2001

MEMORANDUM

TO: RON M. HARRIS  
PRESS OFFICER  
PRESS OFFICE

FROM: ROBERT J. COSTA *RJC*  
DEPUTY STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON  
SHARPLESS 2000

Attached please find a copy of the final audit report and related documents on Sharpless 2000 which was approved by the Commission on October 16, 2001.

Informational copies of the report have been received by all parties involved and the report may be released to the public on October 23, 2001.

Attachment as stated

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

---

REPORT OF THE AUDIT DIVISION  
ON  
**SHARPLESS 2000**

Approved October 16, 2001



**FEDERAL ELECTION COMMISSION**  
999 E STREET, N.W.  
WASHINGTON, D.C.

---

## TABLE OF CONTENTS

### SHARPLESS 2000

	Page
Executive Summary	1
Final Audit Report	3
Background	3
Findings	5
Transmittal to Committee	11
Chronology	13



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION  
ON  
SHARPLESS 2000  
EXECUTIVE SUMMARY**

Sharpless 2000 registered with the Federal Election Commission on September 23, 1999 as the principal campaign committee for Mr. John Sharpless, Republican candidate for the U.S. House of Representatives from the state of Wisconsin, Second District. The Treasurer for Sharpless 2000 during the audit period was Ms. Mary Ann McCoshen. On April 12, 2001, Mr. Barry Widera became Treasurer and continues to serve in that capacity. Sharpless 2000 maintains its headquarters in Madison, WI.

The audit was conducted pursuant to 2 U.S.C. §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 two audit findings summarized below were presented to Sharpless 2000 at the completion of fieldwork on June 29, 2001 and later in the interim audit report (IAR). Sharpless 2000's responses to the findings are contained in the audit report.

**RECEIPT OF CONTRIBUTIONS IN EXCESS OF THE LIMITATION** - 2 U.S.C. Section 441a(a)(1). The audit questioned apparent excessive contributions totaling \$20,056 from 41 individuals. Sharpless 2000 did not make available reattribution or redesignation letters for any of the above contributors.

In response to the interim audit report, Sharpless 2000 stated they were meticulous in orally informing contributors what the limitations were and what they could contribute relative to the primary and general elections. The response also spoke to the regulatory requirements for designation by contributors and the responsibilities of the treasurer in determining illegal contributions. Finally, the response also contained letters of intent signed by some of the contributors, stating it was their intention was to have contributions to the primary in excess of \$1,000, and up to \$2,000, to be contributions to the general. Sharpless 2000 made no refunds nor disclosed the excessive contributions as debts owed on Schedule D (Debts and Obligations).

**DISBURSEMENT DOCUMENTATION** - 2 U.S.C. §432(c)(5). Based on a sample review of disbursements, Sharpless 2000 did not maintain a canceled check, invoice or bill for a material number of disbursements, in excess of \$200. The bank account arrangement did not provide for the bank to return canceled checks to Sharpless 2000, which contributed significantly to the problem. In response to the interim audit report, Sharpless 2000 provided copies of cancelled checks, resolving this matter.





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

A01-11

***REPORT OF THE AUDIT DIVISION  
ON  
SHARPLESS 2000***

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of Sharpless 2000, undertaken by the Audit Division of the Federal Election 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 September 18, 1999, through December 31, 2000. Sharpless 2000 reported a beginning cash balance of \$0, total receipts for the audit period of \$628,144; total disbursements for the audit period of \$620,327 and an ending cash balance of \$7,817 on December 31, 2000.<sup>1</sup>

**C. CAMPAIGN ORGANIZATION**

Sharpless 2000<sup>2</sup> registered with the Federal Election Commission on September 23, 1999 as the principal campaign committee for Mr. John Sharpless (the Candidate), Republican candidate for the U.S. House of Representatives from the state of Wisconsin, Second District.<sup>3</sup> The Treasurer for Sharpless 2000 during the audit period was Ms. Mary Ann McCoshen. On April 12, 2001, Mr. Barry Widera became Treasurer and continues to serve in that capacity. Sharpless 2000 maintains its headquarters in Madison, WI.

<sup>1</sup> The figures cited in this report are rounded to the nearest dollar.

<sup>2</sup> On April 23, 2001, an amended Statement of Organization was filed changing the committee's name to Friends of John Sharpless.

<sup>3</sup> On February 28, 2000, Students for Sharpless University of Wisconsin registered as an authorized committee that was not the principal campaign committee for the Candidate. The activity of this committee was deemed insignificant.

To manage its financial activity, Sharpless 2000 maintained one bank account from which it made approximately 540 disbursements. Into this account Sharpless 2000 deposited contributions from individuals totaling \$490,935, contributions from political committees and political party committees of \$138,625 and offsets of \$3,255. Sharpless 2000 utilized the Commission's electronic filing software to prepare and file its reports electronically. Accounting, recordkeeping and reporting functions were performed by campaign staff.

#### **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 receipts from individuals, political committees and other entities, to include the itemization of contributions or other receipts when required, as well as, the completeness and accuracy of the information disclosed;
4. proper disclosures of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
7. adequate recordkeeping for campaign transactions (See Finding II.B.); and
8. other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance was detected. Sharpless 2000 did not receive canceled checks under its banking arrangements and did not maintain externally generated documentation, such as invoices, bills or receipts, for about 40% of its disbursements (see Finding II.B.). The lack of these records limited our testing for the proper reporting of debts and obligations and the adequacy of disclosure of information, such as payee, address and purpose of disbursements. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

## II. AUDIT FINDINGS AND RECOMMENDATIONS

### A. RECEIPT OF CONTRIBUTIONS IN EXCESS OF THE LIMITATION

Section 441a(a)(1)(A) of Title 2 of the United States Code states 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) of 11 CFR §110.1 explains that *with respect to any election* means that 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. A contribution is considered made 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 contribution mailed is considered made on the date of the postmark.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states that the treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR §110.1. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR §§110.1(b) or 110.1(k), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in relevant part, that any contribution which appears to be illegal under 11 CFR §103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

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 and if a contribution made by more than one person 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 or political committee, 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, the treasurer of the recipient political committee 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 110.1(b)(5) 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 exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1). 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(l)(5) of Title 11 of the Code of Federal Regulations states that if a political committee does not retain the written records concerning redesignation or reattribution, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

A review of contributions from individuals that utilized the receipt database and copies of contributor checks provided by Sharpless 2000, identified apparent excessive contributions from 41 individuals. The contributions exceeded the limitation by \$20,056. Sharpless 2000 did not make available reattribution or redesignation letters for any of the above contributors. The excessive contributions were not deposited into a separate account, nor have they been refunded. Further, after November 15, 2000, sufficient funds were not maintained in Sharpless 2000's bank account to refund these contributions; the reported cash on hand balance at June 30, 2001 is \$471.

At the Exit Conference, the Audit staff provided a schedule of the apparent excessive contributions. At that time, Sharpless 2000 representatives indicated they were meticulous in orally informing contributors what the limitations were and what they could contribute relative to the primary and general elections. However, no written reattribution or redesignations were obtained from the contributors.

Subsequent to the exit conference, a written response was submitted. The Candidate stated that the campaign was very careful to keep track of contribution levels and indicates their major concern was in tracking the "overall" limit of \$2,000 (\$1000 for

the primary election and \$1000 for the general election). An in-depth description of their system for monitoring excessive contributions was also provided. Further, the response explained that unless a contributor had exceeded the legal limits for the primary campaign, or otherwise designated the contribution, Sharpless 2000 attributed the contribution to the primary cycle up to the date of the primary (September 12, 2000). After that date, contributions were attributed to the general election. However, the Candidate goes on to say, "When an individual exceeded their Primary Election contribution level, we assumed (emphasis added) that the money was designated for the General Election cycle."

The Candidate's response continued by noting that the Regulations at 11 CFR §110.1(b)(2)(i) stated, in part, that "Contributors to candidates are encouraged (emphasis in original) to designate their contributions in writing for particular elections...we assumed that it was not necessary to demand that contributors make a clear election designation on their check. The word 'encouraged' suggested that designation was optional not mandatory."

The response closed with a request that Sharpless 2000 be allowed to contact these 41 contributors, explain in writing the situation, and give them the option of explicitly designating their intent or receiving a check for the amount in dispute. Sharpless 2000 would then submit amended reports making the appropriate corrections in the record.

With respect to arguments set forth in its response to the exit conference presentation of this issue, Sharpless 2000's analysis is flawed. The contribution limitation at 2 U.S.C. §441a (a) does not establish an overall limitation of \$2,000 for the primary and general elections combined, but separate \$1,000 limitations for each election. Sharpless 2000 is correct that contributors are encouraged, not required, to designate their contributions for a specific election and that absent that designation contributions are attributed to the next election after the date the contribution is made. However, Sharpless 2000 fails to note that, as is explained above, if a contribution that is not specifically designated for a particular election exceeds the limitation for the next election, the Commission's regulations provide very specific procedures, documentation requirements, and time frames for having the contribution designated to a different election. Sharpless 2000 did not comply with the requirements of those regulations. With respect to the Candidate's request that they be allowed to contact the contributors' to clarify their intent, the 60-day time frame provided under 11 CFR §103.3(b)(3) for the redesignation or reattribution of a contribution has past.

The interim audit report recommended that Sharpless 2000 provide evidence that the contributions in question were not excessive. Absent such evidence, it was recommended that Sharpless 2000 refund the excessive contributions and provide evidence of such refunds (i.e. copies of the front and back of the negotiated refund checks). If funds were not available to make such refunds, Sharpless 2000 was advised to

disclose the excessive contributions as debts owed on Schedule D (Debts and Obligations) and make refunds as funds became available.

In response to the interim audit report, Sharpless 2000 restates the position presented above. In addition, the response refers to regulations cited in the interim audit report that call upon the treasurer to act if there is evidence of illegality and contends there was no such evidence of illegality. Since there was an "unambiguous understanding between both the recipient and the contributor, there was no reason to believe that a contributor -- by ignorance or contrivance -- was trying to get away with something." An example of an oral exchange with a contributor to clarify a \$1,500 contribution is provided. The response also states that, although they may be wrong in their reading of the Regulations, in their judgment the Regulations clearly make the response of the treasurer discretionary. The treasurer is only required to make a good-faith judgment on whether a particular contribution is illegal and notes this is not the same as a check drawn on a corporate account. Finally, Sharpless 2000 submits letters from 23 contributors, who contributed \$9,431 in excess of the limitations, which state the contributor's intention was to have contributions to the primary in excess of \$1,000 and up to \$2,000, be considered contributions to the general.

The regulation that is referred to in the response is 11 CFR 103.3(b). That regulation deals with two distinct possibilities, contributions that appear to be illegal (corporate, labor organization, foreign national, or Federal contractor) and those that exceed the contribution limitations either on their face or when aggregated with other contributions from the same contributor. Subsection 3 of that regulation deals with apparent excessive contributions. It does not "make the response of the treasurer discretionary" but rather refers the reader to 11 CFR 110.1 and 110.2 that provide very detailed instructions for resolving such contributions. Further, as noted in the interim audit report, any reattribution to another contributor or redesignation to another election must occur within 60 days of the receipt of the contribution. The "letters of intent" submitted with the Sharpless 2000 response were obtained long after that time period had expired. The Audit staff notes that Sharpless 2000 has neither refunded any of the excessive contributions nor disclosed them as debts owed on Schedule D (Debts and Obligations).

## **B. DISBURSEMENT DOCUMENTATION**

Section 432(c)(5) of Title 2 of the United States Code requires that the treasurer of a political committee shall keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or cancelled check for each disbursement in excess of \$200.

Based on a sample review of disbursements, Sharpless 2000 did not maintain a canceled check, invoice or bill for a material number of disbursements, in

excess of \$200. As noted previously, the bank account arrangement did not provide for the bank to return canceled checks to Sharpless 2000, which contributed significantly to the problem.

This matter was discussed in detail with representatives of Sharpless 2000 at the exit conference. At that time, the representatives indicated they would review their records, obtain the necessary documentation and provide it to the Audit staff for review.

In a written response received subsequent to the Exit Conference, the Candidate stated that a copy of each check for expenditures over \$200 (roughly 214 items) has been ordered. His discussions with the bank indicated that they would not be able to provide these materials until late July or early August. The copies were to be forwarded when received.

The interim audit report recommended that Sharpless 2000 review its disbursement records and identify those payments in amounts greater than \$200 for which there is no canceled check, invoice or bill and obtain and submit the required documentation for the Audit staff's review.

In response to the interim audit report, Sharpless 2000 provided copies of cancelled checks, resolving this matter.





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 17, 2001

Mr. Barry Widera, Treasurer  
Sharpless 2000  
P.O. Box 260050  
Madison, WI 53726

Dear Mr. Widera:

Attached please find the Final Audit Report on Sharpless 2000. The Commission approved the report on October 16, 2001.

The Commission approved Final Audit Report will be placed on the public record on October 23, 2001. 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 Mr. Alex Boniewicz or Mr. Joe Stoltz 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  
Deputy Staff Director

Attachment as Stated



CHRONOLOGY

SHARPLESS 2000

Audit Fieldwork	June 18 - June 29, 2001
Interim Audit Report to the Committee	August 17, 2001
Response Received to the Interim Audit Report	September 19, 2001
Final Audit Report Approved	October 16, 2001