




FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 26, 2002

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: JOSEPH F. STOLTZ 
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 the Committee to Re-elect Vito Fossella that was approved by the Commission on April 17, 2002.

All parties involved have received informational copies of the report and the report may be released to the public on April 26, 2002.

Attachment as stated

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

**REPORT OF THE AUDIT DIVISION
ON THE
COMMITTEE TO RE-ELECT
VITO FOSSELLA**

Approved April 17, 2002



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

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

COMMITTEE TO RE-ELECT VITO FOSSELLA

EXECUTIVE SUMMARY

The Committee to Re-elect Vito Fossella (CRVF) registered with the Federal Election Commission on June 18, 1997 as the principal campaign committee for Vito Fossella, Republican candidate for the U.S. House of Representatives from the state of New York, Thirteenth Congressional District.¹

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 one finding from the audit was presented to the Committee at the completion of fieldwork on June 15, 2001 and later in the interim audit report. The relevant parts of the Committee's response to this finding are included in the audit report.

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

Receipt of Contributions from Individuals in Excess of the Limitation — 2 U.S.C. §441a(a)(1)(A); 11 CFR 103.3(b). A review of CRVF's receipt records identified contributions from 30 individuals that were in excess of the limitation by \$16,925. Of this amount, \$15,750 related to the 2000 primary election and the remainder related to the 2000 general election.

In response to the interim audit report, CRVF provided evidence of three refunds, totaling \$1,425, as well as evidence that excessive portions of contributions from two individuals, totaling \$1,000, did not exceed the limitation. As a result, excessive contributions totaling \$14,500 (\$16,925 - \$1,425 - \$1,000), from twenty-five individuals, remain unresolved.

It should be noted that subsequent to receiving the interim audit report, CRVF obtained redesignation/retribution statements from twenty of the identified contributors who contributed \$12,700 in excess of the limitation, but that this remedy was not available to CRVF because these statements were not obtained within 60 days of CRVF's receipt of the contributions.

¹ The CRVF changed its name from Fossella for Congress to the Committee to Re-Elect Vito Fossella on July 1, 1998.



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REPORT OF THE AUDIT DIVISION
ON
COMMITTEE TO RE-ELECT VITO FOSSELLA

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Committee to Re-elect Vito Fossella (CRVF), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code that states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. AUDIT COVERAGE

The audit covered the period from January 1, 1999 through December 31, 2000. CRVF reported a beginning cash balance of \$68,368; total receipts for the audit period of \$1,020,624; total disbursements for the audit period of \$767,606; and, an ending cash balance of \$320,198.

C. CAMPAIGN ORGANIZATION

CRVF registered with the Commission on June 18, 1997 as the principal campaign committee for Vito Fossella, Republican candidate for the U.S. House of

Representatives from the state of New York, Thirteenth Congressional District.¹ CRVF maintains its headquarters in Staten Island, New York and its treasurer is Mr. Anthony Maltese, who also served as treasurer during the period covered by the audit.

To manage its financial activity, CRVF maintained three bank accounts, one of which was closed in August 1999. CRVF receipts were comprised of approximately 1,647 contributions from individuals, totaling \$586,963; 407 contributions from political committees, totaling approximately \$428,105, and 3 offsets to operating expenditures, totaling \$5,656. Accounting and recordkeeping functions were performed by a CPA firm, which utilized commonly available campaign management software. CRVF paid this firm for its services. The CRVF did not file its disclosure reports electronically during the period covered by the audit. The treasurer attended an FEC reporting seminar several years ago and has worked with other congressional campaigns in previous election cycles.

D. AUDIT SCOPE AND PROCEDURES

Following Commission-approved procedures, the Audit staff evaluated various risk factors to determine the scope of this audit. 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);
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 disclosure of disbursements, including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed
5. proper disclosure of debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records;
7. adequate recordkeeping for transactions; and,
8. other audit procedures that were deemed necessary in the situation.

¹ The CRVF changed its name from Fossella for Congress to the Committee to Re-Elect Vito Fossella on July 1, 1998.

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

II. AUDIT FINDING AND RECOMMENDATION

RECEIPT OF CONTRIBUTIONS FROM INDIVIDUALS IN EXCESS OF THE LIMITATIONS

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)(2) 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 political committee. A contribution mailed is considered made on the date of the postmark.

Sections 103.3(b)(3) and (4) of Title 11 of the Code of Federal Regulations state, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. 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). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Further, 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(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation at 11 CFR §110.1(b)(1);

- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);
- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

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

Section 110.1(k) of Title 11 of the Code of Federal Regulations states 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(b), (c) or (d), as appropriate, 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(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.

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

During the review of receipts from individuals, the Audit staff identified contributions from 30 individuals that were in excess of the 2 U.S.C. §441a(a)(1)(A) limitation by the total amount of \$16,925. Of this amount, \$15,750 related to the 2000 primary election. The remainder of the contributions exceeded the limitation for the 2000 general election. Many of the reported entries on CRVF's Schedules A (Itemized Receipts) indicated that these contributions had been reattributed among individuals, such as spouses, or redesignated to another election. However, the contribution records made available did not support these reattributions or redesignations. The contribution records examined by the Audit staff consisted of copies of contributor checks, deposit slips, batch deposit cover sheets, receipts data entry sheets, and some information cards completed by the contributor.

At the exit conference, the Audit staff provided the CRVF treasurer a schedule that included the apparent excessive contributions noted above. Subsequent to the end of fieldwork, the CRVF treasurer stated in a written response

“...it is our committee's standard procedure to immediately communicate with the contributor regarding any excess contributions. However, there are occasions when contributors call our office to indicate how they wish the matter to be handled. Although they are instructed to put their instructions in writing, there is a chance that, for some reason, they may not follow-up on our request.”

The CRVF treasurer contends that they complied with the contributors' intentions but that these intentions may not have been documented in CRVF records. The Audit staff notes that CRVF provided copies of several redesignation letters, including those for three of the 30 contributors noted above, but the information for these three contributors was incomplete. In addition, documentation relative to three other contributors included notations apparently made by the contributors that attributed portions of the contributions to other individuals, however, the required signatures were not included.

No separate account was maintained by CRVF for questionable contributions but CRVF did consistently maintain a sufficient balance to cover the refund of these contributions during the period in question (see 11 CFR 103.3(b)(4)).²

In the interim audit report, the Audit staff recommended that CRVF provide evidence demonstrating that the contributions in question were not excessive. Absent such evidence, it was recommended that CRVF refund \$16,925 to the contributors and provide evidence of such refunds (photocopies of the front and back of the negotiated refund checks). If funds were not available to make the necessary refunds, it was further recommended that these contributions be disclosed on Schedules D (Debts and Obligations) until such time that funds became available to make the refunds.

In its response to the interim audit report, CRVF stated it had placed \$16,925 into a segregated account pending the outcome of their efforts to determine whether the contributions in question were in excess of the limitation. Subsequently, CRVF provided documentation demonstrating that the contributions from two of the identified individuals, whose excessive portions totaled \$1,000, did not exceed the contribution limitation³. Also, CRVF provided evidence that it had refunded a total of \$1,425 to three of the identified individuals (copies of the front of the refund checks only).

It should be noted that subsequent to receiving the interim audit report, CRVF contacted some of the identified contributors and obtained written redesignation or reattribution of the possible excessive amounts. CRVF obtained statements from twenty of the identified contributors who contributed \$12,700 in excess of the limitation. Although written redesignations and reattributions were obtained from these contributors, this remedy is not available to CRVF because these statements were not obtained within 60 days of the CRVF's receipt of the contributions pursuant to 11 CFR 103.3(b)(3). CRVF was required to refund the contributions within 60 days of its receipt thereof. The contributors' statements were all dated in February 2002 more than a year after CRVF's receipt of the contributions.

In summary, of the \$16,925 in excessive contributions received from individuals that were identified by the Audit staff, the CRVF has provided evidence of refunds totaling \$1,425 and demonstrated that \$1,000 was not in excess of the limitations. Therefore, excessive contributions totaling \$14,500 (\$16,925 - \$1,425 - \$1,000), from twenty-five individuals, have not been refunded.

² Based on an analysis of the contributions and disbursements databases provided by CRVF, employing the election designations contained therein, the 2000 Primary activity was not funded by contributions designated for the 2000 General or future elections, including any excessive contributions identified by the Audit staff.

³ For one of the identified individuals, a father and son were erroneously recorded under the same contributor name on the CRVF's contributions database and for the other identified individual, an original redesignation letter signed within 60 days of the treasurer's receipt was provided.



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April 18, 2002

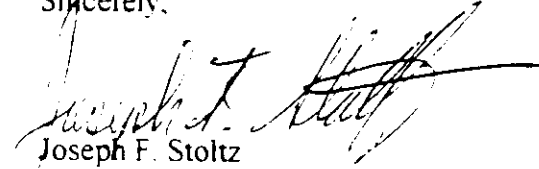
Mr. Anthony Maltese, Treasurer
Committee to Re-elect Vito Fossella
101 Tyrellan Avenue, Suite 400
Staten Island, New York 10309

Dear Mr. Maltese:

Attached please find the Report of the Audit Division on Committee to Re-Elect Vito Fossella (Final Audit Report). The Commission approved the report on April 17, 2002.

The Commission approved Final Audit Report will be placed on the public record on April 26, 2002. 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 Tom Hintermister or Marty Favin of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,


Joseph F. Stoltz
Assistant Staff Director
Audit Division

cc: Robert Allan Muir, Jr., Counsel

Attachment as stated

CHRONOLOGY

COMMITTEE TO RE-ELECT VITO FOSSELLA

Audit Fieldwork	June 4, 2001 to June 15, 2001
Interim Audit Report to the Committee	January 16, 2002
Response Received to the Interim Audit Report	March 6, 2002
Final Audit Report Approved	April 17, 2002