



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK007004

September 27, 1995

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA *RC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
FRIENDS OF MARC LITTLE

Attached please find a copy of the final audit report and related documents on Friends of Marc Little which was approved by the Commission on September 21, 1995.

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

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**REPORT OF THE AUDIT DIVISION
ON**

Friends of Marc Little

Approved September 21, 1995



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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FINAL AUDIT REPORT
ON
FRIENDS OF MARC LITTLE
EXECUTIVE SUMMARY

Friends of Marc Little (the Committee) registered with the Clerk of the U.S. House of Representatives on December 8, 1993 as the principal campaign committee for Marc Little, Republican candidate for the U.S. House of Representatives, Florida, 3rd District.

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 findings of the audit were presented to the Committee at an exit conference held after the audit fieldwork (5/17/95) and later in an interim audit report.

The candidate responded that during the campaign he did not approve any bank deposits or sign any campaign checks. According to the candidate, he cannot afford the time or money to go back to vendors to get missing invoices, obtain canceled checks, obtain information for in-kind contributions, provide evidence that contributions were not from corporations, refund money to contributors, and find contributors to explain excessive contributions. He hired a campaign manager, who appointed treasurers, who were accountable for the activities. They were responsible for maintaining this information. He concluded that he is not responsible for the issues detailed in the interim audit report. As a result, the Committee did not comply with any of the recommendations.

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

Failure to Maintain Disbursement Records - 2 U.S.C. §432(c)(1),(2),(5), and (d); 11 CFR 100.7(a)(1) and 100.8(a)(1).
The Committee did not maintain canceled checks for \$97,377 in

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disbursements. Of the disbursements that exceeded \$200, the Committee did not provide a canceled check, invoice, or receipted bill to support \$34,898. The Committee also did not maintain any documentation to support \$12,237 in in-kind contributions.

Prohibited Contributions - 2 U.S.C. §441(b); 11 CFR 103.3(b)(4). The Committee received \$4,803 in prohibited contributions from corporations.

Excessive Contributions - 2 U.S.C. §441a(a)(1)(A) and 441f; 11 CFR 110.4(b) and 103.3(b). One individual made a total of \$4,000 in contributions for the general election, exceeding the contribution limitation by \$3,000. The excessive amount was attributed to three other individuals.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

REPORT OF THE AUDIT DIVISION
ON
FRIENDS OF MARC LITTLE

I. Background

A. Overview

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This report is based on an audit of Friends of Marc Little (the "Committee"), 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.

The audit covered the period from September 13, 1993, the inception of the Committee, through December 31, 1994. The Committee reported a beginning cash balance of \$0; total receipts for the period of \$214,221; total disbursements for the period of \$212,238; and an ending cash balance of \$1,983.1/

B. Campaign Organization

The Committee registered with the Clerk of the U.S. House of Representatives on December 8, 1993 as the principal campaign committee for Marc Little, Republican candidate for the U.S. House of Representatives, District 3, from the state of Florida. The Committee maintained its headquarters in Jacksonville, Florida.

1/ All figures in this report have been rounded to the nearest dollar.

Friends of Marc Little Committee
Audit Report

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The audit indicated that the 90% of the Committee's receipts were contributions from individuals, 6% from Political Action Committees and the rest from offsets to operating expenditures, a loan from the candidate and contributions from political party committees.

This report is based on documents and workpapers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to the Commissioners and appropriate staff for review.

C. Key Personnel

The Treasurers of the Committee during the period covered by the audit were Mr. Clive Stephenson from inception to October 11, 1994 and Ms. Eleanor M. Christen from October 11, 1994 to January 17, 1995.^{2/}

D. Scope

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Findings II.C.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding II.B.);
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions 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 campaign debts and obligations;

2/ Mr. Stephenson resigned from the Committee on September 20, 1994 but the Amended Statement of Organization was not received at the Commission until October 11, 1994.

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**Friends of Marc Little Committee
Audit Report**

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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.A);
8. other audit procedures that were deemed necessary in the situation.

An Interim Audit Report was sent to the Committee on June 30, 1995. The candidate responded on August 2, 1995. He stated that during the campaign he did not approve any bank deposits or sign any campaign checks. According to the candidate, he cannot afford the time or money to go back to vendors to get missing invoices, obtain cancelled checks, obtain information for in-kind contributions, provide evidence that contributions were not from corporations, refund money to contributors, and find contributors to explain excessive contributions. He hired a campaign manager, who appointed treasurers, who were accountable for the activities. They were responsible for maintaining this information. He concludes that he is not responsible for the issues detailed in the Interim Audit Report. As a result, the Committee did not comply with any of the recommendations.

As part of the Interim Audit Report, the Audit staff stated they were not able to complete reviews due to the lack of disbursement records (see Finding II.A below). Unless specifically discussed below, no material non-compliance was detected. Also, it was noted that the Commission may pursue any of the matters discussed in the report in an enforcement action.

II. Findings and Recommendation

A. Failure to Maintain Disbursement Records

Sections 432(c)(1), (2), (5), and (d) of Title 2 of the United States Code state, in part, that the treasurer of a political committee shall keep an account of all contributions received by or on behalf of such political committee and the name and address of any person who makes any contribution in excess of \$50, together with the date and amount of such contribution by any person; and the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, including a receipt, invoice, or cancelled check for each disbursement in excess of \$200. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

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**Friends of Marc Little Committee
Audit Report**

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Sections 100.7(a)(1)(iii)(A) and 100.8(a)(1)(iv)(A) of Title 11 of the Code of Federal Regulations state, in part, that the terms contributions and expenditures include anything of value, which includes in kind contributions.

The Committee did not maintain cancelled checks for \$97,377 of their disbursements, however, it did maintain receipts and invoices to support many of the disbursements. These records were not maintained in any particular order. The Committee records also contained all of the bank statements and check registers for part of the period. Using these records and the Committee's disclosure reports which itemized nearly all disbursements, the Audit staff attempted to associate the expenditures itemized on the report with the receipts and invoices provided by the Committee. Of the disbursements that exceeded \$200, the Committee did not provide a cancelled check, invoice, or receipted bill to support \$34,898.

The Committee also did not maintain a complete record of the expenditures made during the campaign. Using other available records, including printouts of Committee disbursements, hand written summaries of checks, and the above documentation, the Audit staff was able to find some record, beyond an entry on a bank statement, for all but \$17,447 in Committee disbursements. All of these disbursements were itemized on the Committee's disclosure reports. Also, \$13,627 of the \$17,447 is included in the \$34,898 noted above.

In addition, during the audit period, the Committee reported receiving in-kind contributions from individuals totaling \$24,170. The Audit staff could not locate support for \$12,237 of the reported in-kind contributions in the Committee records.

The Committee was provided lists of the disbursements discussed above at the exit conference. As of the date of the Interim Audit Report, the Committee had not submitted any additional records.

In the Interim Audit Report recommendation the Committee was to either: (1) contact the vendors and attempt to get missing invoices, or some other statement from the vendor to support the disbursements and submit copies of the letters sent and responses received; and/or (2) obtain and submit copies of both sides of the cancelled checks from its bank supporting the \$34,898 in disbursements. The Committee was to also submit additional information concerning the \$17,447 and the \$12,237 in in-kind contributions for which no records were presented.

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B. Prohibited Contributions

Section 441b of Title 2 of the United States Code states, in part, that it is unlawful any national bank, corporation, or labor organization to make a contribution or expenditure in connection with any election at which a Representative in Congress is to be voted for or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states that any contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (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.

The Audit staff conducted a 100% review of contributor check copies for possible prohibited contributions. Upon verification with various Secretaries of State, it was determined that the Committee had received 31 contributions totaling \$4,803 from 28 entities that are apparently incorporated. There was no record that the Committee had made any attempt to determine whether these contributions were from prohibited sources. The Committee did not maintain a separate account or maintain sufficient funds to refund these contributions, as required by 11 CFR §103.3(b)(4).

At the completion of fieldwork the Committee was supplied with the list of verified corporate contributions.

In the Interim Audit Report recommendation the Committee was to provide evidence that demonstrated these contributions were not from corporations. Absent such a demonstration, the Committee was to refund the contributions and provide evidence of the refunds (photocopies of the front and back of the canceled check). If money was not available, the Committee was to report debts owed to the contributors, and refund these contributions from the next available funds that it received.

C. Excessive Contributions

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.

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**Friends of Marc Little Committee
Audit Report**

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Section 441f of Title 2 of the United States Code states, that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

Section 110.4(b)(iv)(2)(ii) of Title 11 of the Code of Federal Regulations states, in part, that an example of a contribution in the name of another includes, making a contribution and attributing the source as another person when in fact the contributor is the source.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states that any contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (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.

During the Audit staff review of the Committee's contributor records and contributor check copies, we noted a contributor, L. John Arbizzani, who contributed \$1,000 for the primary election and \$1,000 for the general election. In addition, Mr. Arbizzani made an additional \$3,000 in contributions on October 14, 1994. On the memo lines of each check were the names of three individuals. The Committee included the names of these other individuals in the records and on its disclosure reports as the source of these contributions. The Committee was provided this information at the exit conference.

There was no record that the Committee had made any attempt to determine whether these contributions were from the three individuals on the memo lines of the checks. The Committee did not maintain a separate account or maintain sufficient funds to refund these contributions, as required by 11 CFR §103.3(b)(4).

In the Interim Audit Report recommendation the Committee was to provide evidence that demonstrated these were not excessive contributions and represented the personal funds of the contributors recorded by the Committee, to include a statement from the contributors. Absent such a demonstration, the Committee was to refund the contributions and provide evidence of the refund (photocopies of the front and back of the canceled check). If money was not available, the Committee was to report debts owed to the contributors, and refund these contributions from the next available funds that it received.

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*Received
7/21/95*



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

September 7, 1995

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina *JCS by CW*
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman *KBC*
Associate General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel

Rhonda J. Vosdingh *RJV*
Attorney

SUBJECT: Proposed Final Audit Report on Friends of Marc Little
(LRA #477)

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The Office of General Counsel has reviewed the proposed Final Audit Report on Friends of Marc Little ("the Committee") submitted to this Office on August 7, 1995.^{1/} The following memorandum provides our comments on the proposed report. If you have any questions concerning our comments, please contact Rhonda Vosdingh, the attorney assigned to this audit.

Initially, we note that we concur with the Audit Division's recommendations contained in the proposed Final Audit Report.

^{1/} Since the proposed Final Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 2.4, we recommend that the Commission's discussion of this document be conducted in open session. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

In the cover memorandum to the proposed Final Audit Report, you asked whether, in the absence of a treasurer, "the candidate should be held responsible for the matters noted in the report." You explained that there has been a vacancy in the treasurer's office since January 17, 1995 and stated that you have been working with the candidate throughout the audit. In discussions with this Office, you explained that your question went to whether the Interim Audit Report had been properly served on the Committee in light of the fact that it was provided to the candidate. The candidate had responded to the Interim Audit Report by disavowing responsibility for the issues raised in the Interim Audit Report.

On January 17, 1995, prior to the audit fieldwork, the Committee treasurer, Ellie Christen, and deputy treasurer, Jeanne MacDonald, resigned. No one was appointed to fill these positions, and the Committee did not comply with any of the recommendations in the Interim Audit Report. The Interim Audit Report was provided to the candidate on June 30, 1995, and he responded to it on August 2, 1995. The candidate argued that the campaign manager, Glorious Johnson, and Committee treasurers are responsible for complying with the recommendations in the Interim Audit Report "because they signed documents indicating they would assume such responsibilities."^{2/}

The Office of General Counsel believes that the candidate is an agent of the Committee who may accept service of the Interim Audit Report. We also believe the candidate may be responsible for responding to the recommendations in the Interim Audit Report. Under the FECA, the treasurer is an agent of the committee. 2 U.S.C. § 432(a) ("No expenditure shall be made without authorization of the treasurer or designated agent."). Similarly, if a candidate accepts or obligates funds of his or her authorized committee, the candidate has acted as an agent of the committee. 11 C.F.R. § 102.7(d). Thus, if a candidate serves as an agent of his or her committee when the candidate accepts contributions or obligates funds, by analogy, the candidate serves in this capacity also when he or she undertakes other activities normally assumed by the treasurer or on behalf of the committee. Cf. Karl Rove & Co. v. Thornburgh, 39 F.3d 1273 (5th Cir. 1994) (candidate held personally liable for contractual obligation incurred by his campaign committee).

^{2/} The responsibilities to which he referred include obtaining missing invoices from vendors, copies of both sides of canceled checks, information on in-kind contributions; providing evidence to the Commission that contributions were not from corporations; refunding contributions; and finding contributors to explain excessive contributions, as recommended in the Interim Audit Report. The candidate further contended that the campaign manager and Committee treasurers were "also responsible for keeping all campaign data up-to-date and accessible."

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Furthermore, the Commission has named individuals, including candidates, acting as treasurer as respondents in enforcement matters where there was no committee treasurer and the candidate has assumed the duties of treasurer. In determining whether to name an individual as treasurer in an enforcement matter, the Commission considers the following factors: 1) whether the treasurer of record has ceased to perform his or her duties as treasurer; 2) whether the individual acting as treasurer maintained the committee's books and records; 3) whether the individual acting as treasurer accepted contributions on behalf of the committee; 4) whether the individual acting as treasurer made expenditures on behalf of the committee; 5) whether the individual acting as treasurer made deposits into and disbursements from the committee's accounts; and 6) whether the individual acting as treasurer filed the committee's financial reports. See FEC v. Committee to Elect Bennie Batts, No. 87-5789 (S.D.N.Y. Feb. 14, 1989). Although the instant question does not arise in an enforcement context, we believe the same principles apply.

No one was appointed to the treasurer or deputy treasurer position of the Committee. The candidate, however, performed the duties required of a committee treasurer. When the treasurer and deputy treasurer resigned their posts, the Committee's check book and other financial information were left in the candidate's control. Furthermore, the candidate participated in the audit. He attended the audit entrance and exit conferences.^{3/} He also signed the Statement of Availability of Records and the Statement of Bank Accounts and Cash on Hand.^{4/} Moreover, notwithstanding his disavowal of responsibility, the candidate accepted the Interim Audit Report and provided a response to it.

In addition, the candidate did not argue that his receipt of the Interim Audit Report rendered the report invalid. Thus, it appears that neither the candidate nor the Committee is challenging the sufficiency of service of the Interim Audit Report. The candidate's assertion that the campaign manager, Glorious Johnson, and Committee treasurers are responsible for complying with the recommendations in the Interim Audit Report "because they signed documents indicating they would assume such responsibilities" does not absolve the candidate from

^{3/} The former treasurer and deputy treasurer also attended the entrance conference.

^{4/} The form Statement of Availability of Records contains the statement "I am the treasurer of _____ Committee(s)." The candidate crossed out "treasurer" and wrote "custodian." The form Statement of Bank Accounts and Cash on Hand also contains the statement "I am the treasurer of _____ Committee(s)" and asks for the signature of the treasurer. The candidate did not replace the word "treasurer" in the statement; he did, however, replace it with "custodian" on the signature line.

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responsibility.^{5/} The FECA requires political committees to appoint a treasurer. 2 U.S.C. § 432(a); 11 C.F.R. § 102.7. Failure to appoint a treasurer cannot absolve a committee from performing tasks normally undertaken by the treasurer.^{6/}

Consequently, it was proper to provide the Interim Audit Report to the candidate, and the candidate was responsible for responding to the Interim Audit Report.

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5/ The candidate did not provide the documents he claimed indicate the campaign manager and treasurers assumed any responsibility.

6/ Moreover, we note that serving the Interim Audit Report on the candidate is consistent with Commission policy. In the absence of a designated treasurer, Commission notices generally are issued to the candidate as an agent of or as the de facto treasurer of the committee. For example, the Reports Analysis Division addressed a Request for Additional Information from the Committee to "Marc Little, Treasurer."



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK006974

September 22, 1995

Mr. Marc Little
Friends of Marc Little
UMC Group
5991 Chester Ave., #213
Jacksonville, FL 32217

Dear Mr. Little:

Attached please find the Final Audit Report on Friends of Marc Little. The Commission approved the report on September 21, 1995.

The Commission approved Final Audit Report will be on the public record on September 27, 1995. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155. Any questions you have related to matters covered during the audit or in the report should be directed to Russ Bruner or Joe Stoltz of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

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CHRONOLOGY

FRIENDS OF MARC LITTLE

Audit Fieldwork	5/1/95 - 5/17/95
Interim Audit Report to the Committee	6/30/95
Response Received to the Interim Audit Report	8/2/95
Final Audit Report Approved	9/21/95

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