




FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 6, 2001

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
THE NEW YORK STATE DEMOCRATIC STATE COMMITTEE

Attached please find a copy of the final audit report and related documents on the New York State Democratic Committee which was approved by the Commission on May 25, 2001.

Informational copies of the report have been received by all parties involved and the report may be released to the public on June 6, 2001.

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 THE
**NEW YORK STATE DEMOCRATIC
COMMITTEE**

Approved May 25, 2001



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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON THE
NEW YORK STATE DEMOCRATIC COMMITTEE
EXECUTIVE SUMMARY**

The New York State Democratic Committee (NYSDC) registered with the Federal Election Commission (the Commission) on July 17, 1981 and maintains its headquarters in New York, New York. The Treasurer for NYSDC at the beginning of the audit period was Marcia Allina. David Alpert, the current Treasurer, succeeded her on September 28, 1998.

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 the NYSDC at the completion of fieldwork on August 25, 2000 and later in the interim audit report (IAR). NYSDC's responses to the findings are contained in the audit report.

The NYSDC expended approximately \$2.7 million on various types of media that criticized the Republican candidate for U.S. Senator in the 1998 election. These expenditures were paid with a combination of Federal and non-federal funds using the ballot composition ratio applicable to administrative costs and the cost of generic voter drives. The Commission did not consider in the context of the audit whether the costs were contributions to or coordinated expenditures on behalf of the Democratic candidate.

RECEIPT OF CONTRIBUTIONS IN EXCESS OF THE LIMITATION - 2 U.S.C. Section 441a(a)(1). The audit questioned apparent excessive contributions totaling \$12,000 from seven individuals. Within the sixty-day period provided for the resolution of excessive contributions by 11 CFR 103.3(b)(3), the excessive portions were transferred to a non-federal account. However, no evidence was found that the contributors were notified of the transfer or advised that a refund was available.

In response to the interim audit report, the NYSDC stated it had obtained written permission to make such transfers from each of the seven individuals and none of these individuals requested a refund. The NYSDC provided copies of reallocation letters for six of the seven contributors. NYSDC also noted that, in the future, such a letter would be sent within ten days of receipt of said contribution.

DOCUMENTATION AND DISCLOSURE OF DEBTS AND OBLIGATIONS - 2 U.S.C. §432(c) and (d). The review of debts and obligations identified debts owed to 56 vendors totaling \$330,775, which had been incurred prior to the beginning of the audit period. The Audit staff was unable to locate documentation to support the existence of these debts in NYSDC's files. In response to repeated inquiries for documentation supporting these debts, NYSDC personnel noted that these debts were in dispute and there was no supporting documentation available. In addition, NYSDC failed to report debts incurred during the audit period to 16 vendors that totaled \$110,118.

In response to the Interim Audit Report, the NYSDC filed amended Schedules D to disclose the debt (\$110,118) that was incurred during the audit period. In response to the issue of reported debts totaling \$330,775 incurred prior to the audit period, the NYSDC cited 2 U.S.C. §432(d), contending that records must be maintained for three years following a transaction. Further, it stated that even if it was required to maintain these records these activities occurred nearly seven years ago and any applicable statute of limitation for collection has expired. Nonetheless, NYSDC submitted documentation or information for many of these debts.

The Audit staff notes that 2 U.S.C. §432(d) does not state that records must be maintained for three years following a transaction, but it does state that all records required to be kept and copies of all reports shall be preserved for three years after the report is filed. Since the NYSDC has continued to disclose the debt on its reports through its last filing, the 2000 Year-End report, the three-year record retention requirement has not expired. The NYSDC must continue to report the debt until the Commission has completed a review of a debt settlement plan pursuant to 11 CFR 116.7(f), until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR 116.8, or until it debts are paid.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON THE
NEW YORK STATE DEMOCRATIC COMMITTEE**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the New York State Democratic Committee (the NYSDC), 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 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 January 1, 1997 through December 31, 1998. During this period, the NYSDC reported a beginning cash balance of \$52,932; total receipts of \$10,534,301; total disbursements of \$10,526,346; and a closing cash balance of \$60,887.¹

C. COMMITTEE ORGANIZATION

The NYSDC registered with the Commission on July 17, 1981 and maintains its headquarters in New York, New York. The Treasurer for the Committee at the beginning of the audit period was Marcia Allina. David Alpert, the current Treasurer, succeeded her on September 28, 1998.

To manage its federal financial activity, the NYSDC used four bank accounts in 1997 and two accounts in 1998. From these accounts the NYSDC made approximately 2,400 disbursements. Receipts were mainly composed of contributions from individuals \$757,161; contributions from political party committees \$9,000;

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

contributions from other political committees \$150,250; transfers from affiliated/other party committees \$3,267,345; offsets to operating expenditures \$100,277; and transfers from the nonfederal account for joint activities of \$6,320,000. The NYSDC also maintained six non-federal accounts from which it expended \$7,342,304.

D. AUDIT SCOPE AND PROCEDURES

The NYSDC expended approximately \$2.7 million on various types of media that criticized the Republican candidate for U.S. Senator in the 1998 election. These expenditures were paid with a combination of Federal and non-federal funds using the ballot composition ratio applicable to administrative costs and the cost of generic voter drives. The Commission did not consider in the context of the audit whether the costs were contributions to or coordinated expenditures on behalf of the Democratic candidate.

A matter noted during the audit is pending before the Commission in another context. When the Commission concludes its consideration of this matter, information will be made public in accordance with Commission 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 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 debts and obligations (See Finding II.B.);
6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records;
7. adequate recordkeeping for committee transactions;

8. proper disclosure of the allocation of costs associated with administrative expenses and activities conducted jointly on behalf of federal and non-federal elections and candidates; and
9. other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance with statutory or regulatory requirements 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 FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF CONTRIBUTIONS IN EXCESS OF THE LIMITATION

Section 441a(a)(1) of Title 2 of the United States Code establishes separate contribution limitations for candidates and their authorized committees and for national party committees. In addition, it states that no person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

Section 110.9(a) of Title 11 of the Code of Federal Regulations states, in part, that no political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in relevant part, that contributions which on their face, or when combined with other contributions from the same contributor, exceed the limitations at 11 CFR §110.1, they may be either 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 in accordance with 11 CFR §§110.1(b), 110.1(k), or 110.2(b), 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. A request for either a redesignation under 11 CFR §110.1(b) or a reattribution under 11 CFR §110.1(k) must inform the contributor that a refund is available.

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.

A review of the NYSDC's receipt records identified seven contributions from seven individuals that exceeded the contribution limitations by \$12,000. These contributions were deposited into NYSDC's federal account and sufficient funds were maintained in that account to make any necessary refunds. Within the sixty-day period provided for the resolution of excessive contributions by 11 CFR 103.3(b)(3), the excessive portions were transferred to a non-federal account. However, no evidence was found that the contributors were notified of the transfer or advised that a refund was available.

At the exit conference, the Audit staff provided NYSDC representatives with a schedule of the identified excessive contributions.

In the Interim Audit Report, the Audit staff recommended that the NYSDC provide evidence demonstrating that the contributions in question were not excessive, as well as a narrative description of changes implemented with respect to receipt of contributions in excess of the limitation to avoid future problems. Those procedures should include a written communication with the contributor advising of the action being taken and of the availability of a refund.

In response to the Interim Audit Report, the NYSDC stated "We have received written permission to make such transfers from each of the seven individuals identified by the FEC. None of these individuals have requested a refund. In the future, such a letter will be sent within ten days of receipt of said contribution."

The NYSDC provided copies of reallocation letters for six of the seven contributors. The letters were all dated August 25, 2000, the date of the exit conference, and informed the contributors that the excessive portions of the contributions were deposited into the non-federal account without written permission to do so. The contributors were asked to sign, date and return the letters to give the NYSDC written permission to allocate the contributions. All six copies of the letters were signed by the contributors, although only five of them were dated by the contributors.

B. DOCUMENTATION AND DISCLOSURE OF DEBTS AND OBLIGATIONS

Sections 432(c) and (d) of Title 2 of the United States Code state, in relevant part, that the treasurer of a political committee shall keep: an account of the name and address of every person to whom a disbursement is made; the date, amount, and purpose of the disbursement; the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made; and, a receipt, invoice, or canceled 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.

Section 102.9(d) of Title 11 of the Code of Federal Regulations states that in performing recordkeeping duties, the treasurer, or his or her authorized agent, shall use his or her best effort to obtain, maintain and submit the required information and shall keep a complete record of such efforts. If there is a showing that best efforts have been made, any records of a committee shall be deemed in compliance with this Act. With regard to the requirements of 11 CFR 102.9(b)(2) concerning receipts, invoices and canceled checks, the treasurer will not be deemed to have exercised best efforts to obtain, maintain and submit the records unless he or she has made at least one written effort per transaction to obtain a duplicate copy of the receipt, invoice or canceled check.

Section 104.11(a) and (b) of Title 11 of the Code of Federal Regulations states, in relevant part, that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished. A debt or obligation, the amount of which is \$500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

Section 116.4(f) of Title 11 of the Code of Federal Regulations states that the political committee shall continue to report the debt until the Commission has completed a review of the debt settlement plan pursuant to 11 CFR 116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR 116.8, or until the political committee pays the debt, whichever occurs first.

As part of its 1997 Mid Year disclosure report, the NYSDC submitted Schedules D disclosing debts owed to 56 vendors totaling \$330,775, which had been incurred prior to the beginning of the audit period. During the audit period, the NYSDC reported additional debt incurred relative to these vendors, as well as payments and a debt settlement² resulting in outstanding balances at December 31, 1998 of \$337,832.

The Audit staff was unable to locate documentation to support the existence of these debts in NYSDC's records. In response to repeated inquiries for documentation supporting these debts, NYSDC personnel noted that these debts were in dispute and there was no supporting documentation available.

Of this \$330,775 in debt disclosed on Schedules D, nearly half relates to the following six vendors: Conotabs Network (\$53,678) for voter files; DNC Travel Offset (\$22,488) for travel; Mead Data Central/Lexis-Nexis (\$80,607) for an on-line computer; Urbach, Kahn & Werlin (\$19,073) for accounting services; Whiteman,

² Although the NYSDC reported that a debt was settled with Blue Bird Coach Lines on its Schedules D, the Commission has neither reviewed a debt settlement plan nor reviewed a request to forgive the debt with this vendor as is required in 11 CFR 116.4(f).

Osterman, and Hanna (\$18,007) for legal services; and Zale S. Koff Graphics (\$24,614) for printing. The NYSDC has stated that it filed amended Schedules D to disclose these debts in response to a question that arose from Matter Under Review (MUR) #4608³. The Audit staff has reviewed MUR #4608, as well as disclosure reports and other filings made by the NYSDC prior to the audit period, and the only document that provides any information is a debt settlement plan that the NYSDC submitted to the Commission on July 18, 1996.⁴ The NYSDC attempted to settle the two largest reported debts with Conotabs Network (\$53,678) and Mead Data Central (\$80,607). In the debt settlement plan, the NYSDC indicates that these two debts were incurred during the 1994 New York gubernatorial campaign.

Further, the review of debts and obligations incurred during the audit period revealed that the NYSDC failed to report debts to 16 vendors that totaled \$110,118. The vendors provided services such as printing, telephone, fundraising, accounting, polling and computer services. From the documentation that was available, debt totaling \$12,098 remained outstanding as of December 31, 1998.

At the exit conference, these issues were discussed with NYSDC representatives. They re-stated that the debt incurred prior to the audit period resulted from the MUR and was in dispute. The NYSDC representatives did not respond to the issue of the more recent debts.

In the Interim Audit Report, the Audit staff recommended that the NYSDC provide documentation supporting the reported debt incurred prior to the audit period. Further, the Audit staff recommended that the NYSDC file Schedules D (by reporting period) to disclose the \$110,118 in debt incurred during the audit period.

In response to the Interim Audit Report, the NYSDC filed amended Schedules D to disclose the \$110,118 debt that was incurred during the audit period. In response to the issue of reported debts incurred prior to the audit period, the NYSDC cited 2 U.S.C. §432(d), contending that records must be maintained for three years following a transaction. Further, it stated, "we believe that the State Committee no longer is required to maintain these records. However, even if the State Committee was required to maintain these records, please note that as these activities occurred nearly seven years ago, any applicable statute of limitation for collection has expired." Nonetheless, NYSDC submitted documentation or information for many of these debts. For Mead Data Central/Lexis-Nexis (\$80,607), NYSDC provided a Stipulation of Settlement dated June 9, 1999, filed with the Supreme Court of the State of New York, County of Kings,

³ MUR 4608 was generated internally, alleging, in part, that the NYSDC did not report \$208,000 in debt. The NYSDC entered into a conciliation agreement to settle this matter. The Commission closed the file on January 21, 1998.

⁴ On August 28, 1996, the Commission concluded that NYSDC's debt settlement plan did not meet the criteria set forth in 11 CFR Part 116 and the NYSDC could not settle its debts with these vendors.

indicating the debt had been settled for the sum of \$40,000 and had disclosed this on its Mid-Year 1999 report. The settlement has not been submitted to the Commission for its approval. In addition, a letter was provided from the New York Amsterdam News that *confirms a debt of \$3,935 remains outstanding*. Conversely, documentation was provided indicating no debt exists to DNC Travel Offset (\$22,488), Oxford Health Plans (\$5,795) and Rudin Management Corp. (\$12,344). Further, NYSDC indicates that for 15 vendors, owed a total of \$97,008, no telephone listing could be found when directory assistance was contacted. Finally, the NYSDC reported the extinguishment of a \$12,250 debt owed to Skadden, Arps during 1999. All of the other debts remain unchanged.

The Audit staff notes that 2 U.S.C. §432(d) does not state that records must be maintained for three years following a transaction, but it does state that all records required to be kept and copies of all reports shall be preserved for three years after the report is filed. Since the NYSDC has continued to disclose the debt on its reports through its last filing, the 2000 Year-End report, the three-year record retention requirement has not expired. The NYSDC must continue to report the debt (\$330,775) incurred prior to the beginning of the audit period, as required under 11 CFR §104.11, until the Commission has completed a review of a debt settlement plan pursuant to 11 CFR §116.7(f) or until the Commission has completed a review of the request to forgive the debt pursuant to 11 CFR §116.8, or until the debts are paid.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 29, 2001

Mr. David Alpert, Treasurer
New York State Democratic Committee
60 Madison Avenue Suite # 1201
New York, NY 10010

Dear Mr. Alpert:

Attached please find the Final Audit Report on the New York State Democratic Committee. The Commission approved the report on May 25, 2001.

The Commission approved Final Audit Report will be placed on the public record on June 4, 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. Tesfai Asmamaw or Mr. Alex Boniewicz 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". The signature is stylized and written in cursive.

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as Stated

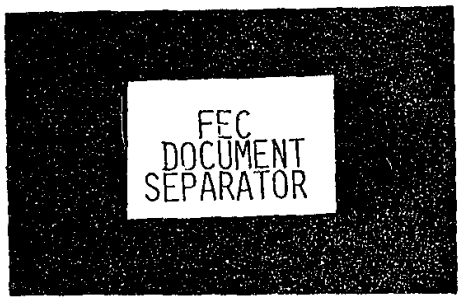
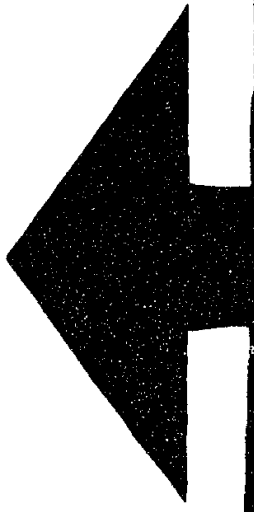
RECORDED

CHRONOLOGY

NEW YORK STATE DEMOCRATIC COMMITTEE

Audit Fieldwork	July 17 - August 25, 2000
Interim Audit Report to the Committee	April 18, 2001
Response Received to the Interim Audit Report	May 11, 2001
Final Audit Report Approved	May 25, 2001

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