



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 31, 2012

**MEMORANDUM**

**TO:** Tom Hintermister  
Assistant Staff Director

**FROM:** Christopher Hughey  
Deputy General Counsel

*pch*

Lawrence L. Calvert, Jr.  
Associate General Counsel

*[Signature]*

Lorenzo Holloway  
Assistant General Counsel  
For Public Finance and Audit Advice

*LHbg LLC*

Danita C. Lee *ATS for DCL*  
Attorney

Allison T. Steinle *ATS*  
Attorney

**SUBJECT:** Draft Final Audit Report – Democratic Executive Committee of Florida  
(LRA 805)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report (“DFAR”) on the Democratic Executive Committee of Florida (“DECF”). Our comments in this memorandum focus on Finding 1 (Excessive Coordinated Party Expenditures) and Finding 3 (Allocation of Expenditures). We concur with any findings not specifically discussed in this memorandum. If you have any questions, please contact Danita Lee or Allison Steinle, the attorneys assigned to this audit.

## **II. EXCESSIVE COORDINATED PARTY EXPENDITURES (Finding 1)**

### **A. Background**

The DECF made disbursements totaling \$95,108 on behalf of congressional candidate Annette Taddeo. Two disbursements for media advertisements totaled \$82,400. Two disbursements for direct mail pieces totaled \$12,708. The coordinated party expenditure limit in the 2008 U.S. House of Representatives election in Florida was \$42,100. The Democratic Congressional Campaign Committee ("DCCC") authorized the DECF to spend \$17,900 of its limit. Thus, the auditors determined that DECF's total coordinated party expenditure limit for Taddeo was \$60,000. The Interim Audit Report ("IAR") concluded that the DECF exceeded its coordinated party expenditure limit with respect to Taddeo by \$35,108. Consequently, the IAR concluded that the DECF made an excessive in-kind contribution to Taddeo.

In response to the IAR, the DECF states that its disbursements for the two direct mail pieces totaling \$12,708 should not be counted towards the coordinated party expenditure limit because the disbursements qualify for the volunteer materials exemption. While the DECF concedes that the media advertisements totaling \$82,400 were coordinated party expenditures, it also argues that it did not make an excessive in-kind contribution because, although no written records exist, the DCCC intended to assign additional coordinated spending authority to the DECF and had not made any additional coordinated expenditures on behalf of Taddeo. In support of this argument, the DECF has provided a letter dated September 22, 2011 from the Chief Operating Officer of the DCCC, which states that the DCCC "[knows] of no reason why any requested or needed transfer of authority would have been withheld at the time" and "affirm[s] [the DECF's] authority to make an additional \$23,258 in coordinated expenditures in support of Ms. Taddeo, up to what would have been the remainder of our limit in this election."<sup>1</sup>

Finding 1 presents two issues, which we discuss below. The first issue is whether the DECF disbursements for two direct mail pieces qualify for the volunteer materials exemption. The second issue is whether DECF received an additional assignment of the DCCC's coordinated party expenditure authority.

### **B. Direct Mail Expenditures Should Not Be Counted towards the Coordinated Party Expenditure Limit**

The proposed DFAR concludes that the two direct mail pieces supporting Taddeo qualify for the volunteer materials exemption. See 11 C.F.R. §§ 109.37 and 109.21.

---

<sup>1</sup> In its response to the IAR, the DECF states that it is providing a letter from Brian Svoboda, counsel to the DCCC. However, the letter attached to the response is from Kristie L. Mark, Chief Operating Officer of the DCCC, not Mr. Svoboda.

Specifically, the auditors conclude that the DECF's disbursements for the direct mail pieces should not be counted towards the coordinated party expenditures limit because the DECF demonstrated that volunteers were used for each mail piece.

The DECF has provided a cell phone picture provided by an individual who stated via e-mail that he was present at the mailings of the direct mail pieces. The picture appears to show volunteers sorting and bundling unidentifiable mail pieces. The DECF claims that this documentation is sufficient to demonstrate "for each mailing identified by the Audit Division, that sufficient volunteer activity occurred, including the bundling and sorting of the mail and placing the mail in trays for delivery to the post office."

Rather than conclude that the DECF demonstrated that the mailers qualified for the volunteer materials exemption, we think the better approach would be to decline to reach a conclusion on the issue, consistent with the Commission's statement in the Final Audit Report ("FAR") on the Tennessee Republican Party Federal Election Account. In that FAR, the Commission concluded that there existed a "lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption" and did not approve a finding that certain mail pieces qualified for the exemption. The Commission has subsequently considered the volunteer materials exemption in the enforcement context, and has still not reached a consensus on what amount of volunteer involvement and documentation qualify mail pieces for the exemption. See MUR 6434 (Indiana Democratic Party). Moreover, the picture here was not accompanied by any affidavits or sworn statements by the individual who took it, and the specific mail pieces in question are not identifiable in the picture. In the absence of any additional Commission guidance clarifying the application of the volunteer materials exemption, we do not think a finding concerning the exemption should be pursued here, but we also do not think there is a basis for firmly concluding that the exemption applied. Accordingly, we recommend that the auditors simply note in the audit report that there exists a "lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption," and for that reason, the disbursements for the two direct mail pieces have not been counted towards the coordinated party expenditure limit.

### C. DECF Did Not Have Additional Coordinated Party Spending Authority

The proposed DFAR concludes that the DECF exceeded its coordinated party expenditure limit by \$22,400.

A political party committee may assign its coordinated party expenditure authority to another political party committee as long as the assignment is made in writing, states the amount of authority assigned, and is received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment. 11 C.F.R. § 109.33(a). A political party committee that is assigned authority to make coordinated party expenditures must maintain the written assignment for at least three years. 11 C.F.R. § 109.33(c).

The DECF has provided the auditors with written documentation showing that the DCCC authorized the DECF to spend \$17,900 of the DCCC's coordinated party expenditure limit. A letter from the DCCC's Chief Operating Officer to the DECF's Executive Director, dated October 28, 2008, assigns the DECF up to \$17,900 of its coordinated spending authority. The letter states that it "sets forth in full the agreement ... concerning [the assigned coordinated party spending authority]." The DCCC's Chief Operating Officer asks the DECF's Executive Director to confirm the agreement by signing two copies of the letter and returning one to the DCCC. The DECF's Executive Director signed and dated the letter on November 6, 2008.

The DECF has not provided any other documentation showing that the DCCC properly authorized additional spending authority in the amount of \$22,400. Rather, the DECF has stated only that it believed that it had additional spending authority because it had been coordinating with the DCCC and because the DCCC had spent only \$1,754 of its coordinated party expenditure limit, and because it obtained a letter dated September 22, 2011 from the DCCC's Chief Operating Officer, which "affirm[s] [the DECF's] authority to make an additional \$23,258 in coordinated expenditures in support of Ms. Taddeo, up to what would have been the remainder of our limit in this election."

A committee must show, in writing, that it received an assignment of spending authority from the assignor committee before any coordinated party expenditure was made. 11 C.F.R. § 109.33(a). If an assignment letter between the DCCC and the DECF existed but the DECF failed to keep its own copy, then this might be an issue of inadequate recordkeeping. The Explanation and Justification for section 109.33 notes that "recordkeeping [rather than reporting] is less burdensome for political party committees and should provide sufficient documentation of assignments of coordinated party expenditure authority should questions arise...." Explanation and Justification for 11 C.F.R. § 109.33 (May a Political Party Committee Assign Its Coordinated Party Expenditure Authority to Another Political Party Committee?), 68 Fed. Reg. 445 (Jan. 3, 2003). In this case, however, not only has the DECF acknowledged that it has no contemporaneous record of receiving additional spending authority, but the DCCC has no such contemporaneous record either, even though its apparent practice was to require state party officials to sign and return one copy of letters assigning coordinated spending authority. Indeed, the DECF's own statements made prior to the IAR indicated that it had apparently assumed that it had additional spending authority because the DCCC had spent so little. The content of the only contemporaneous written record presented (the October 28, 2008 letter) makes clear that the DECF was authorized to spend only \$17,900 while also noting that the authorization letter represented the full agreement between the two committees. While the DECF has provided a letter from the DCCC's Chief Operating Officer affirming the DECF's authority to make an additional \$23,258 in coordinated party expenditures in support of Taddeo, this assignment was received by the DECF over three years after the expenditures in question were made, and therefore was not a valid assignment. See 11 C.F.R. § 109.33(a). Thus, we concur with the auditors that the DECF's coordinated party expenditure limit totaled \$60,000 in the absence of

contemporaneous written authorization from the DCCC increasing the DECF's coordinated party expenditure limit.

### III. ALLOCATION OF EXPENSES (Finding 3)

#### A. Background

The proposed DFAR concludes that the DECF's non-federal account overfunded its share of allocable activity by \$71,951. The auditors conclude that the DECF improperly made expenditures directly from its non-federal account and that some other activity was improperly allocated. Finding 3 presents two issues that we discuss below: (1) the proper allocation of a consulting fee for translation services; and (2) the proper allocation of rent for the DECF's headquarters.

#### B. DECF Improperly Allocated Consulting Fee

The DFAR identified an invoice for activity described as "Consulting Fee for Creole Translators/Haitian American G.O.T.V." The invoice for \$17,240 also had an email communication attached. Neither the invoice nor the email set forth the specific services or product provided. The DECF originally stated that the \$17,240 expenditure was for non-Federal activity. It did not, however, provide a copy of any particular item that was translated or any other description of the work performed. The IAR concluded that, absent a printed copy of the item translated or other documentation regarding the services associated with the invoice, the expenditure should have been paid with Federal funds.<sup>2</sup> 11 C.F.R. § 300.33(c). The IAR provided the DECF with an opportunity to demonstrate that the invoiced activity named only a non-Federal candidate and was not get-out-the-vote activity ("GOTV"). The IAR further provided that if the DECF was unable to make such a showing, the DECF could provide a copy of the specific communications translated or describe the services provided to enable the Commission to determine whether the activity should have been paid with allocated or 100% Federal funds.

In response to the IAR, the DECF now acknowledges that the expense should not have been paid from its non-Federal account, but argues that the appropriate Federal allocation should have been 28% Federal funds and 72% non-Federal funds. The DECF states that the purpose of the expense was to send translators to polling places "to provide non-partisan translation assistance to Creole and Haitian speaking voters who were already at the polling place and required English translation services." The DECF argues that because the translators "were there merely as a bridge between voters already present at the polls that needed a translator to understand voting procedures and voting rights, or to interact with voting officials," the activity was not GOTV as defined by the Commission during the 2008 election cycle, but rather an ordinary operating expense that

---

<sup>2</sup> While 11 C.F.R. § 300.33(c) allows state party committees to allocate certain GOTV expenses between their Federal and Levin accounts, the DECF did not maintain a Levin account.

was subject to the allocation ratio at 11 C.F.R. § 106.7(d)(2). The auditors have accepted this argument, and the proposed DFAR concludes that the DECF has demonstrated that the expense was a shared activity that should have been allocated based on the administrative ratio of 28% Federal and 72% non-Federal.

In 2008, GOTV was defined as “contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting.” 11 C.F.R. § 100.24(a)(3) (2008). The Commission regulations went on to provide two examples of GOTV activity: (1) providing voters with information such as the date of the election, when polling places were open, and where polling places were located; and (2) offering to transport voters to the polls. *Id.* This list, however, was non-exhaustive. Explanation and Justification for Definition of Federal Election Activity, 71 Fed. Reg. 8,926, 8,928-30 (Feb. 22, 2006).

Here, it appears that the DECF was engaged in the act of contacting registered voters and offering them translation services. While the Commission regulations and regulatory history do not define the term “contact,” the plain meaning of the word suggests that it encompasses any method intended to reach out to voters on an individualized basis and offer to assist them in the act of voting. Because the DECF does not claim that it was acting in conjunction with any Florida State program or Florida voting officials, it appears that the DECF’s translators would either have to approach individual voters to inquire if they would like translation assistance, or otherwise make known to individual voters in some way, most likely outside of the polling place, that translation assistance was available. We believe that this type of activity qualifies as “contacting.”

Moreover, while the Commission’s regulations in 2008 excluded the mere “encouragement” to vote from the definition of GOTV, they still included the basic requirement that the activity be to “assist” registered voters in the act of voting. *See id.* Contrary to the DECF’s arguments, nothing in the regulatory history suggests that the definition of GOTV was limited to the actual acts of *getting* voters to the polls. Rather, the definition of GOTV was limited to the act of *assisting* registered voters in the act of voting.

Accordingly, we believe that providing translation assistance at the polls to help voters “understand voting procedures and voting rights” was contacting registered voters for the purpose of assisting them in the act of voting, and therefore, fell under the Commission’s definition of GOTV during the 2008 election cycle. We disagree with the auditors’ conclusion that the DECF has demonstrated that the expense was a shared activity that should have been allocated based on the administrative ratio of 28% Federal and 72% non-Federal. We conclude that the expenditure was for GOTV activity, and therefore, should have been paid with 100% Federal funds given that the DECF did not maintain a Levin account.

### C. DECF Improperly Allocated Rent

The DFAR found that the DECF paid rent on its headquarters totaling \$212,313. The DECF paid 50% of the rent (or \$106,156.50) with a check drawn on its non-Federal account. The DECF paid the remaining 50% of the rent (\$106,156.50) with a check drawn on its Federal account but as an allocated payment containing 28% Federal funds and 72% non-Federal funds. As a result, the DECF paid 86% of the rent for its headquarters with non-Federal funds. The auditors conclude that 100% of the rent (or \$212,313) should be allocated 28% Federal and 72% non-Federal because the entire building is used by the DECF for both Federal and non-Federal activity. The auditors further conclude that the DECF's non-Federal account overpaid its share of the rent by \$28,482.

In response to the IAR, the DECF states that it properly paid the rent on its headquarters. It asserts that the allocation regulations are inapplicable to the portion of rent paid from its non-Federal account because the Florida State House and Senate caucus committees are not party committees. The DECF states that the caucus committees are autonomous units of the DECF and that their sole purpose is to influence non-federal elections. The DECF asserts that there exists a distinction between "party staff" and "caucus staff" and states that the allocation regulations cover only those activities undertaken by party staff and therefore cannot be applied to office space utilized by caucus committee staff. The DECF argues that the Commission should make this conclusion notwithstanding the fact that Florida law requires it to serve as "fiscal agent" for the caucus committees.<sup>3</sup>

A state party committee may either pay administrative costs, including rent, from its Federal account, or allocate such expenses between its Federal and non-Federal accounts, except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from the Federal account. 11 C.F.R. § 106.7(c)(2). The DECF rents the building that houses its headquarters. The DECF's rent payments for its headquarters are an administrative cost. A state party committee's rent payments are explicitly enumerated in the regulations as an allowable administrative cost. *Id.* The DECF's rent payments, therefore, must be allocated.

While we recognize that the "caucus committees" engage in activity supporting the election and reelection of state legislators, it appears that the caucus committees here are merely projects or activities of the DECF rather than separate legal entities. *See*

---

<sup>3</sup> The DECF notes that in 2011, Florida revised its statutes to permit a caucus committee to establish a legal existence (as an affiliated committee) separate from the state executive committee of its political party. The Florida law in effect during the time period covered by the audit (2007-2008), however, did not provide for the establishment of affiliated party committees. Therefore, the 2011 provisions cited by the DECF are inapplicable. More importantly, the 2011 Florida legislation underscores an important point in this case: prior to that legislation, caucus committees were not separate legal entities, like the Democratic Senatorial Campaign Committee or the National Republican Congressional Committee at the Federal level, but instead were merely activities or projects of the state party committees.

*supra* n.3. The DECF has not provided any contrary information to the auditors. In fact, according to the DECF, it provides office space in its headquarters building, and "each staff member for each Caucus Committee is an employee of the DECF." The allocation regulations specifically identify rent as an allocable administrative expense of state party committees and provide a fixed allocation ratio; they do not provide for any different ratio based on the actual amount of space dedicated to particular projects or activities, with the exception that any administrative expense directly attributable to a clearly identified Federal candidate must be paid with entirely Federal funds. "[W]hile the Commission recognizes that non-Federal activity consumes a large portion of State party time and finances, there is no doubt that Federal candidates benefit from such party committees' efforts to reach and motivate potential voters. Therefore, the [regulations] require allocation of administrative costs." *Explanation and Justification for Allocation of Expenses between Federal and Non-Federal Accounts by Party Committees, Other Than for Federal Election Activities*, 67 Fed. Reg. 49,078 (July 29, 2002). Thus, we concur with the auditors that the DECF failed to properly allocate the rent for its headquarters resulting in the non-Federal account overpaying its share of the rent by \$28,482.