



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

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SUBJECT: Interim Audit Report – Democratic Executive Committee of Florida
(LRA 805)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report (“IAR”) on the Democratic Executive Committee of Florida (“DECF”).¹ Our comments in this memorandum focus on Finding 2 (Excessive Coordinated Party Expenditures), Finding 4 (Allocation of Expenditures) and Finding 6 (Disclosure of Disbursements). 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.

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed Report. 11 C.F.R. §§ 2.4(a) and (b)(6).

II. EXCESSIVE COORDINATED PARTY EXPENDITURES (Finding 2)

A. Background

The DECF made disbursements totaling \$95,108 on behalf of congressional candidate Annette Taddeo. Two disbursements for media ads 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 auditors concluded that the DECF exceeded its coordinated party expenditure limit with respect to Taddeo by \$35,108. Consequently, the auditors found that the DECF made an excessive in-kind contribution to Taddeo. 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. The DECF also states that it did not make an excessive in-kind contribution because it received additional coordinated spending authority from the DCCC.

Finding 2 presents three issues which we discuss below. The first issue is whether the DECF disbursements for two direct mail pieces qualify for the volunteer materials exemption. If the expenditures qualify for the exemption then the coordinated party expenditures issue would be immaterial pertaining to those disbursements. The second issue we discuss is whether the DECF made excessive coordinated party expenditures resulting in an excessive in-kind contribution to Taddeo. The third issue that we address is whether DECF received an assignment of the Democratic Congressional Campaign Committee's ("DCCC") coordinated party expenditure authority.

B. Direct Mail Expenditures May Qualify for Volunteer Materials Exemption

The proposed IAR finds that the DECF exceeded the coordinated party expenditure limitation, in part, because it paid \$12,708 for direct mail supporting Taddeo, which the auditors contend meets the standards for coordinated expenditures. See 11 C.F.R. §§ 109.37 and 109.21. The auditors conclude that the DECF's disbursements for the direct mail were excessive coordinated expenses because the disclaimers indicate that the mailers were paid for by the DECF and emails associated with invoices seeking approval of the direct mailers were copied to the Taddeo committee. The DECF states that the expenditures qualify for the volunteer materials exemption.²

² The only information addressing the volunteer materials exemption that the auditors possess is an email reply from the DECF's counsel. Counsel responded to a request for legal approval of the mailers stating, "OK as volunteer exempt." No other information or documentation was provided to support this statement.

Recently, the Commission addressed the applicability of the volunteer materials exemption in the Final Audit Report on the Tennessee Republican Party Federal Election Account. The Commission concluded that there exists a "lack of clarity regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption." While there exists a lack of clarity regarding the amount of volunteer involvement, we believe that some showing of volunteer involvement is necessary. Consequently, we conclude that the unsupported statement from the DECF's counsel does not entitle the DECF to the volunteer materials exemption. We recommend that the Audit Division give the DECF an opportunity to present information and/or documentation supporting its assertion that the direct mailers qualify for the volunteer materials exemption.

C. Committee Made Excessive Coordinated Party Expenditures

The proposed IAR found that the DECF made a total of four disbursements totaling \$95,108 (\$82,400 for media (television) ads + \$12,708 for direct mailers) on behalf of Taddeo. The DECF's coordinated party expenditure limit for Taddeo was \$60,000 (discussed in detail below). Thus, the auditors concluded that the DECF exceeded its coordinated spending limit by \$35,108. As previously discussed, however, we believe that the direct mail costs totaling \$12,708 may or may not qualify for the volunteer materials exemption. Therefore, we conclude that the issue is whether the DECF exceeded its coordinated spending limit by \$35,108 if the direct mailers do not qualify for the volunteer materials exemption or whether the DECF exceeded its coordinated spending limit by \$22,400 if the direct mailers qualify for the volunteer materials exemption.

Between October 28, 2008 and October 30, 2008, the DECF paid a total of \$82,400 for the cost of media ads. Candidate Taddeo appears in both media ads. The ad entitled "Two Pans" opens with an image of Taddeo and her voice-over stating, "I'm Annette Taddeo and I approve this message." The ad continues with a male voice-over speaker discussing the voting record of Taddeo's opponent on health care and taxes. The ad concludes with three unidentified individuals stating that Taddeo's opponent "has let us down;" "Bush is leaving;" and Taddeo's opponent "needs to go, too." In the ad entitled "My Father," Taddeo speaks directly into the camera and says, "I'm Annette Taddeo and I approve this message." She then discusses affordable health care and insurance. The ad also displays the address of her website: www.voteforTaddeo.com. Both ads also include the disclaimer statements: "Paid for by Florida Democratic Party and Taddeo for Congress. Approved by Annette Taddeo."³

³ The proposed IAR states that an email attached to the invoice for the media ads requested approval from the Taddeo campaign. The auditors, however, were not able to provide this Office with a copy of the email communication. We recommend that the proposed IAR remove the reference to the email if the auditors do not have or cannot obtain a copy of the email communication.

If the direct mailers do not qualify for the volunteer materials exemption, we must analyze whether they were coordinated party expenditures. Between September 30, 2008 and October 14, 2008, the DECF paid a total of \$12,708 for the costs of two direct mail pieces. One of the direct mailers was in English and the other in Spanish. The first part of the English-language mailer (Part A) states, "Inside: Annette Taddeo and Ileana Ros-Lehtinen Go Head-to-Head on the Economy. We can't change Washington unless we change who we send to Congress." It also displays images of stock market-type figures, a gas pump and a dollar bill. Part A of the mailer also states: "Economic Crisis, High Gas Prices, Rising Healthcare Costs. In These Tough Times, to Turn Our Economy Around?" The second side of the English-language mailer (Part B) features a photo of Taddeo and includes the statement, "Annette Taddeo, Business Leader, Real Life Experience." It includes the statement, "Annette Taddeo for Congress. For a New Beginning." Part B of the mailer also lists Taddeo's business accomplishments and position on several political issues. The mailer lists her opponent's voting record and states, "Vote NO on Ileana Ros-Lehtinen." The mailer states that it was "paid for by the Florida Democratic Party." The auditors provided this Office with what appears to be Part B of the Spanish-language version of the mailer. The auditors informed this Office that it does not possess Part A of the mailer. We believe that Part B of the Spanish-language mailer is the Spanish translation of the English version because the mailer is identical in layout, images and content.⁴ Email communications from the vendor to the DECF entitled "Taddeo Mail Piece-for Approval" were copied to the Taddeo campaign. The email states, "we will need approval so it can be translated into Spanish." The email communications do not include a response from the Taddeo campaign.

A State committee of a political party may make coordinated party expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party. 11 C.F.R. § 109.32(b)(1). The coordinated party expenditures shall not exceed the coordinated party expenditure limit. 11 C.F.R. § 109.32(b)(1). A coordinated party expenditure qualifying as an in-kind contribution must satisfy the three-prong test set forth in the Commission regulations at 11 C.F.R. § 109.37(a)(1)-(3). The first prong is that expenditures must be paid for by a political party committee or its agent. 11 C.F.R. § 109.37(a)(1). The second prong requires a communication that satisfies a content standard, and it must consist of either: (1) an electioneering communication; (2) a public communication that republishes campaign materials; (3) a public communication that contains express advocacy; or (4) a public communication that refers to a clearly identified candidate for Federal office or political party that is distributed in that jurisdiction within either 90 or 120 days of an election. 11 C.F.R. § 109.37(a)(2). The third prong, the conduct standard, is satisfied if: (1) the communication was created, produced, or distributed at the request/suggestion of the

⁴ The Spanish-language version reads: "Adelante: Annette Taddeo e Ileana Ros-Lehtinen se enfrentan en la economía. No podemos cambiar Washington a menos que cambiemos a quienes enviamos al Congreso. Crisis económica. Altos precios de la gasolina. Costos de atención médica por las nubes. En estos tiempos difíciles, para lograr encaminar nuestra economía por el rumbo correcto? Pagarado por el partido demócrata de Florida." A Google Translate search on this text, while imprecise, indicates that the text is extremely similar to the English version.

candidate, authorized committee, or political party committee; (2) there was material involvement; (3) there was substantial discussion between those paying for the communication and the candidate, authorized committee, or political party committee; (4) a common vendor was used; or (5) a former employee or independent contractor paid for the communication. 11 C.F.R. § 109.37(a)(3).

The DECF paid for two media ads and two direct mail pieces on behalf of Taddeo. Thus, the expenditures satisfy the payment prong for coordinated activity. 11 C.F.R. § 109.37(a)(1). The media ads and direct mail also satisfy the content prong for coordinated activity because they were public communications referring to clearly identified Federal candidates and were distributed within the 120 day period in which they were required to be distributed to qualify. 11 C.F.R. § 109.37(a)(2)(i) and (ii). A public communication is a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public or any other form of general public political advertising. 11 C.F.R. § 100.26. The media ads referred to clearly identified candidates for Federal office and were broadcast. The direct mail also referred to clearly identified candidates for Federal office and were mass mailed.⁵ The media ads and direct mail also satisfy the conduct prong because their disclaimers indicate that the communications were "approved by Annette Taddeo." Given that the media ads and mailers meet the three-prong test for coordination, we concur that the DECF's disbursements totaling \$95,108 for the media ads and direct mail were coordinated party expenditures (so long as the direct mail pieces do not qualify for the volunteer materials exemption) and that the DECF exceeded its coordinated party spending limit by \$35,108. As we noted, even if the mailers qualify for the volunteer materials exemption, DECF still exceeded the coordinated party expenditure limit by \$22,400.

D. Committee Did Not Have Additional Coordinated Party Spending Authority

The DECF states that the DCCC authorized additional spending totaling \$22,400 in addition to \$17,900 in coordinated party spending that it had previously authorized on behalf of Taddeo. The DECF states that with the DCCC's added spending authority of \$22,400, its total coordinated party expenditure limit for Taddeo was \$84,200. The DECF asserts that it did not make an excessive in-kind contribution to Taddeo because it spent only a total of \$82,400 on behalf of the candidate.⁶ The DCCC reported spending a

⁵ Mass mailing means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 11 C.F.R. § 100.27. The DECF sent by U.S. postal service a total of 16,553 of the English and Spanish-language mail pieces within a two-week period.

⁶ The DECF did not include its disbursements totaling \$12,708 for direct mail pieces on behalf of Taddeo in this amount because it believed the disbursements qualified for the volunteer materials exemption.

total of \$1,754 of its coordinated party spending authority. The DECF did not provide the auditors with written documentation showing that the DCCC transferred to it an additional \$22,400 in coordinated party spending authority.

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 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 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 did not provide any documentation showing that the DCCC authorized additional spending authority in the amount of \$22,400. Rather, the DECF 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.

A committee must show, in writing, that it received an assignment of spending authority. 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, there is at present no information suggesting that DECF had a record of the additional spending authority that it failed to keep. Rather, its own statements indicate that it apparently assumed that it had additional spending authority because the DCCC had spent so little. The content of the only 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. We believe that a portion of the DECF's coordinated expenditures, up to \$24,200, would have been permissible if the DECF had received a valid assignment of the DCCC's coordinated party expenditure authority. 11 C.F.R. § 109.33(a). We concur that the DECF's coordinated party expenditure limit totaled

\$60,000 in the absence of written authorization from the DCCC increasing the DECF's coordinated party expenditure limit.

III. ALLOCATION OF EXPENSES (Finding 4)

A. Background

The proposed IAR found that the DECF's non-federal account overfunded its share of allocable activity by \$106,299. The auditors conclude that the DECF improperly made expenditures directly from its non-federal account and that some other activity was improperly allocated. We dismiss audit's findings on the: (1) "absentee chase ballot;" (2) consulting fee invoice; (3) rent; and (4) employee time logs.

B. "Absentee Chase Ballot" Must Be Paid With Federal Funds

The auditors indicate that the DECF improperly paid with non-Federal funds \$3,745 for a mailer containing a clearly identified candidate for Federal office. Side One of the mailer includes a photograph of President Bush and Vice President Cheney with a caption stating, "We can't afford more of the same." Side Two of the mailer contains the caption, "Send the Republicans a Message - You Can Make the Difference." Side Two also states, "Vote Democrat" and lists a total of ten candidates for Federal, State, and municipal offices. An email from the Chair of the Leon County Democratic Executive Committee ("Leon County") to the DECF's Executive Director identifies the mailer as a "slate mailer." The DECF states that the mailer represents non-Federal activity but does not provide any additional information or explanation supporting its statement. The email between the Leon County Chair and the DECF, however, indicates that the DECF's payment of \$3,745 was for the "Federal candidates' portion of [the] mailer."⁷

The payment by a State party committee of the costs of preparation, display, or mailing or other distribution that it incurs with respect to a printed state card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State is not a contribution or expenditure. 11 C.F.R. §§ 100.80, 100.140. Mailers that criticize incumbent officials, however, do not fall within the slate card exemption. Advisory Opinion 2008-06 (Democratic Party of Virginia) and Advisory Opinion 1978-89 (Withers for Congress). The mailer criticizes incumbents Bush and Cheney with the statement that, "We can't afford more of the same." We conclude, therefore, that the mailer is not an exempt slate card.

We conclude that the DECF's payment totaling \$3,745 should have been paid with Federal funds because the email between the Leon County Chair and the DECF makes clear that the DECF's expenditure was in connection with a Federal election. All

⁷ The auditors determined that the Leon County committee paid the balance of the cost of the mailer totaling \$7,490. We note, however, that our analysis does not address any payments made for the mailer by the Leon County committee or the State and local candidates as they are not subject to this audit.

disbursements, contributions, and expenditures made wholly or in part by any State, district, or local party organization or committee in connection with a Federal election must be paid from either a Federal account or a separate allocation account. 11 C.F.R. § 300.30(b)(3)(iii). The auditors traced the DECF's payment for the mailer to its non-Federal account. Thus, we concur with the proposed IAR that the DECF improperly paid with non-Federal funds its portion of the mailer and that the Federal account must reimburse the non-Federal account \$3,745.

C. Consulting Fee Invoice Does Not Demonstrate Non-Federal Activity

The proposed IAR 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 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. Absent a printed copy of the item translated or other documentation regarding the services associated with the invoice, the auditors conclude that the expenditure was for a Federal purpose because the invoice describing the service indicates that it was for get-cut-the-vote activity ("GOTV") and, therefore, the auditors conclude that it must be paid with Federal funds. 11 C.F.R. § 300.33(c). We concur with the auditors so long as the activity represented by the invoice was a public communication that named a clearly identified Federal candidate. If the activity represented by the invoice did not name a clearly identified Federal candidate but was for GOTV and occurred within the FEA time period, the DECF could have allocated the expenditure between its Federal and Levin funds. 11 C.F.R. § 300.33(a)(2). We note, however, that the only way the DECF could have permissibly paid the costs associated with the invoice with 100% non-Federal funds (as the DECF reported), was if the invoiced activity named only non-Federal candidates and was not GOTV. Therefore, we recommend that the auditors provide the DECF with an opportunity to demonstrate that the invoiced activity named only a non-Federal candidate and was not GOTV. We further recommend that if the DECF is unable to make such a showing, the DECF be asked to produce 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.

D. DECF Improperly Allocated Rent

The proposed IAR 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. 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. During the exit conference, the DECF explained that it allocated the rent in this fashion because one-half

of the building is used by the State House and Senate Caucus ("Caucus"). In its exit conference response, the DECF said that the House and Senate caucuses are campaign committees that are "dedicated exclusively to the election and re-election of State Legislators" and that they deposit their income into the DECF's non-Federal account. The auditors sought additional information on the Caucus' activities. In response, DECF counsel stated that the Caucus is "considered an autonomous project of the state party ... they do not have a separate legal entity. Therefore, they did not sign the lease [to the DECF headquarters building]." Counsel also said that "the [C]aucus employees are on the payroll of the state party, so I would say that they would technically qualify as employees of the party." We do not have any other information regarding the specific activities of the Caucus.

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 allocable administrative cost. *Id.* Therefore, the DECF's rent payments must be allocated.

We recognize that one of the DECF's projects is the Caucus. The DECF provides office space in its headquarters building for Caucus activity. The Caucus engages in activity supporting the election and reelection of its State legislators. The DECF pays DECF staff to work on Caucus activities. In the Explanation and Justification for section 106.7(c), however, the Commission already recognizes that state party committees engage in multiple non-Federal activities, but the Commission determined that the administrative costs underlying a state party committee's activities should be allocated. The Explanation and Justification states that "while 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.

E. Employee Time Logs Provide Sufficient Verification for Salary Payments

The proposed IAR found that the DECF allocated as a shared administrative expense salary payments for a total of nine employees. The DECF allocated the salary payment as 28% Federal and 72% non-Federal with \$23,172 representing the non-Federal portion of the salary expenses. The proposed IAR states that the DECF failed to produce monthly time logs for the nine employees to document their time spent on Federal and

non-Federal activities. The auditors, therefore, concluded that the portion the DECF paid with non-Federal funds (totaling \$23,172) should have been paid with 100% Federal funds.

The auditors subsequently clarified with this Office that the DECF failed to submit any information (e.g., time logs, affidavits, declarations) addressing the Federal/non-Federal activities of six employees to support the allocation. The auditors concluded that in the absence of documentation, the salary expenses for the six employees should have been paid with 100% Federal funds. The auditors also clarified that the DECF only submitted partial information addressing the activities of three other employees. Specifically, the auditors indicated that the declaration the DECF submitted for three of its employees identified specific months within which each respective employee stated that he or she did not spend more than 25% of his or her time on "working on activity directly in connection with a federal election or federal election activities." The auditors determined that the DECF properly allocated salary expenses for the three employees during the time periods set forth in the declarations. However, the auditors determined that the salary payments to the three employees should have been made with Federal funds for the time periods the employees did not address in their respective declarations -- time periods for which the auditors verified that the employees were on DECF's payroll.

Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. 11 C.F.R. § 106.7(d)(1). Salaries paid for employees who spend 25% or less of their compensated time in a given month on Federal elections must either be paid only from the Federal account or be allocated as administrative costs. 11 C.F.R. § 106.7(d)(1)(i). In the past, the Commission has accepted declarations and affidavits from employees and supervisors attesting to the amount of time an employee spent on Federal elections. See Audit Report of the Missouri Democratic State Committee (2003-2004) (Commission accepted declaration from supervisor). In all cases in which the committee has agreed or reported that its employees worked at least some time on Federal election activity or activity in connection with a Federal election, the Commission has required some form of written statement or documentation from the committee to support its assertion that it permissibly treated its salary expenses as allocable administrative costs. Therefore, we concur with the auditors that, in the absence of documentation supporting the DECF's assertion that its salary payments were allocable, the DECF should have paid its salary expenses entirely with Federal funds.

IV. DISCLOSURE OF DISBURSEMENTS (Finding 6)

The proposed IAR identifies \$7,300,000 in disclosure errors due to inadequate or incorrect purposes. The auditors do not elaborate on why the purposes were inadequate or incorrect. Nor do the auditors provide examples. We recommend that the proposed IAR include more detail about the errors making clear whether items were misstated, incorrect or merely provided inadequate descriptions.