



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**Statement on Proposed Final Audit Report  
on the Kansas Republican Party  
(A08-02)**

**Chair Cynthia L. Bauerly and Commissioner Ellen L. Weintraub**

Today, the Federal Election Commission approved the Proposed Final Audit Report (“the Report” or “PFAR”) of the Kansas Republic Party (“KRP”).<sup>1</sup> We write to explain why we supported all of the Audit Division’s recommendations regarding disbursements by KRP for expenses related to the 2008 Republican National Convention and other Federal activity.

Disbursements for Federal activity must be reported to the Commission and made with funds subject to the limitations and prohibitions of the Federal Election Campaign Act (“the Act”). We therefore supported the Audit Division’s recommendations that KRP misstated its financial activity, received prohibited contributions, and paid Federal expenses from its non-federal accounts.<sup>2</sup> Our colleagues disagreed with portions of each of these recommended findings.

As explained more fully below, the major area of disagreement on the disputed portions of all three recommended findings concerns the disbursement of approximately \$255,000 to pay for national convention costs.<sup>3</sup> We believe that disbursements for the expenses of delegates to a national nominating convention plainly are for the purpose of influencing a Federal election. We similarly believe that the other \$79,736 in expenses — for administrative costs, voter drive activities, and printed materials and pins — must be paid with Federal funds. To find otherwise would be a significant departure from the Act, Commission regulations, and longstanding precedent.

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<sup>1</sup> The Commission adopted the Report today by a vote of 6-0. This Report is based on the Audit Division’s previous recommendations that the Commission adopt certain findings regarding the financial activity of the Kansas Republic Party between January 1, 2007 and December 31, 2008. The vote on those recommendations determined the content of this Report. *See* Certification in Audit Division Recommendation Memorandum on Kansas Republic Party, dated March 3, 2011.

<sup>2</sup> Chair Bauerly and Commissioners Walther and Weintraub voted affirmatively for all of the proposed findings. Vice Chair Hunter and Commissioners McGahn and Petersen dissented from portions of each of the three findings. Since our colleagues disagreed with portions of each of the recommended findings, the Report discusses those issues in the “Additional Issues” section rather than in the Report’s “Findings.”

<sup>3</sup> Draft Final Audit Report (“DFAR”) at 4-8, 10; PFAR at 12-17.

Convention Delegate Expenses

In 2008, KRP disbursed approximately \$250,000 for expenses associated with the Republican National Convention.<sup>4</sup> Specifically, KRP disbursed funds to pay for hotel rooms, breakfasts, and entertainment for delegates to the Republican National Convention.<sup>5</sup> KRP disbursed an additional \$5,000 for lodging related to the Republican National Convention.<sup>6</sup>

The term “expenditure” is defined in the Act as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. §431(9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). The Act and regulations include in the definition of election a caucus or convention of a political party if the caucus or convention has the authority to select a nominee for Federal office on behalf of that party. 2 U.S.C. §431(1)(B); 11 CFR 100.2(e). The Commission’s regulations state that disbursements by national convention delegates or by delegate committees for delegate travel and subsistence costs associated with attending a national nominating convention are expenditures. 11 CFR 110.14(e)(1) and (h)(1). In a series of advisory opinions over the past thirty years, the Commission has consistently concluded that disbursements for national convention delegate expenses are expenditures.<sup>7</sup>

Because the Republican National Convention has the authority to select the Presidential nominee, the convention is an election as defined by the Act and Commission regulations. The attending delegates vote in the election and disbursements for delegate travel and subsistence costs at the Convention are therefore expenditures. We agree that delegates engage in activities at national conventions other than the selection of the Federal candidate. That does not, however, affect whether disbursements for delegate convention expenses are expenditures. By that logic, disbursements in connection with any Federal election in which voters also choose state or local officeholders on the same ballot would not qualify as expenditures. Congress expressly rejected that approach in adopting the Act. *See* 2 U.S.C. §431(1). When a convention selects the Federal candidate, disbursements for that convention are expenditures. In fact, KRP has already filed amended reports to include this activity as Federal activity in response to the recommendation in the Interim Audit Report.

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<sup>4</sup> The account had deposits totaling \$256,674 and disbursements totaling \$256,668. Included in these deposits were \$52,498 in contributions from three corporations and one LLC that filed taxes as a corporation. Corporations are prohibited by the Act from making contributions for the purpose of influencing a Federal election. We thus voted to approve the finding that KRP should have either transferred the corporate contributions to a non-Federal account or refunded those contributions. DFAR at 6-8; PFAR at 13-15; *see* 11 CFR 103.3(b).

<sup>5</sup> DFAR at 4-6; PFAR at 12-13.

<sup>6</sup> DFAR at 10; PFAR at 16-17.

<sup>7</sup> *See* AO 2000-38 (Democratic Party of Puerto Rico) (concluding that disbursements for delegate expenses by a party committee would be expenditures); AO 1996-20 (Lucas) (concluding that disbursements for delegate expenses by a campaign committee would be expenditures); AO 1996-19 (Walsh) (same); AO 1995-47 (Underwood) (same); AO 1980-64 (National Education Association) (concluding that donations for delegate expenses by a labor organization would be expenditures).

### Other Federal Expenses

Our colleagues also objected to the Audit Division's recommendation concerning \$79,736 of additional disbursements. The Audit Division recommended that KRP amend its reports to disclose these disbursements because KRP failed to demonstrate that the disbursements were for non-Federal activity.<sup>8</sup> The purpose of the audit process is to ensure that the committee is conducting its Federal activity in accordance with the Act. In that process, the Commission verifies the records supporting the committee's reporting and Federal activity. When an audited committee is unable to provide information establishing that certain activity is non-Federal, the Commission's regulations require the committee to pay those expenses with Federal funds. We disagree with our colleagues' position that, in the absence of documentation, a committee may pay expenses solely with non-Federal funds. Not only is such a position contrary to the Commission's regulatory requirements, but such an approach would also create perverse incentives for committees to avoid keeping appropriate records.

During the audited period, KRP disbursed \$63,738 from a non-Federal account for administrative expenses (including postage, consulting, travel and printing) and non-candidate specific voter drive expenses. KRP also disbursed \$14,359 from a non-Federal account for printed materials and \$1,639 for pins. The pins were purchased in close temporal proximity to the Republican National Convention and other payments made to the same vendor were for convention gifts, indicating that the pins were likely for Federal activity. In response to the Interim Audit Report, the Committee has already filed amendments to report these disbursements as Federal activity.

Our regulations make clear that committees have an obligation to maintain appropriate records. The Commission has been quite flexible about what type of documentation it will accept to demonstrate that activity is non-Federal. In this case, KRP has been unable to provide either copies of the materials in question or affidavits from staff attesting that the activity was non-Federal; indeed, by amending its reports to bring them into material compliance with all of the Audit Division's recommendations, KRP appears to have conceded that the activity was indeed Federal. We thus voted to approve the Audit Division's recommendation that these disbursements be treated as Federal activity.

### Conclusion

We appreciate that KRP has been extremely cooperative with the Audit Division throughout the audit process. It is also worth noting that in response to the Interim Audit Report, KRP made amendments to its reports bringing it into material compliance with all of the Audit Division's recommendations. Nevertheless, cooperation after the fact cannot substitute for appropriate record-keeping or contemporaneous payment with appropriate funds. Furthermore, despite the fact that KRP has already made amendments in response to the recommendations of the auditors, our colleagues have nonetheless taken it upon themselves to pursue a contorted interpretation of the statute to find that convention-related expenses do not require payment with

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<sup>8</sup> DFAR at 9-11; PFAR at 16-17.

Federal funds. Since we believe that disbursements for the expenses of delegates to a national convention are for the purpose of influencing a Federal election and that non-Federal activity must be appropriately documented, we supported the proposed recommendations of the Audit Division.

May 26 2011  
Date

Cynthia L. Bauerly  
Cynthia L. Bauerly  
Chair

5/26/11  
Date

Ellen L. Weintraub  
Ellen L. Weintraub  
Commissioner