

# SANDLER, REIFF & YOUNG, P.C.

September 15, 2008

Ms. Wanda Thomas  
Acting Assistant Staff Director  
Audit Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Ms. Thomas:

This letter, and attached exhibits will serve as the response of the Tennessee Democratic Party ("TDP") to the Interim Audit Report ("Audit Report") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the TDP's financial activities for 2005 and 2006.

The response to each of the Audit Division's two recommendations is as follows:

## Recommendation #1

The Audit Report identifies various activities that were disclosed as "federal election activity" and requests documentation that the expenditures were, in fact, allocable federal election activity. This response will identify and discuss each activity in turn:

## Polls

The interim audit report identifies two polls for a total cost of \$24,500 that was disclosed on Schedule H6. The report indicates that the polls cannot be allocated because they identify a clearly identified federal candidate.

In response to the Audit report, the committee acknowledges that the costs of these polls were incorrectly disclosed on Schedule H6. In fact, the polls did not qualify as a federal election

activity and should have been disclosed on Schedule H4 as an operating expense. A copy of the polls is attached as Exhibit I.

These polls were for the sole purpose of tracking information regarding both federal and non-federal elections during the 2006 election campaign. The poll selected a small cross section of voters and was designed to give a sense of issues and voting trends based upon general polling principles. The polling information was not shared with any federal candidate and was used internally by the TDP. The polls did not promote, support, attack or oppose any federal candidate (11 C.F.R. § 100.24(b)(3)), the poll did not constitute generic campaign activity (11 C.F.R. § 100.24(a)(3)), the polls did not constitute voter registration activity (11 C.F.R. § 100.24(a)(2)), the polls did not constitute get-out-the-vote activity (11 C.F.R. § 100.24(a)(3)), and most importantly, the polls did not constitute voter identification activity (11 C.F.R. § 100.24(a)(4)). Specifically, the poll was intended to get general information regarding the views and opinions of Tennessee voters for general planning purposes and none of the information collected was appended to any voter list or voter file maintained by the TDP as contemplated by section 100.24(a)(4). Simply put, a general tracking poll undertaken by a state party committee does not qualify as a federal election activity. Therefore, the committee should have disclosed these polls on Schedule H4, Line 21(a). The TDP, at the request of the Commission, will amend its reports to properly reflect the polls on Schedule H4.

#### Automated Phone Calls

The TDP acknowledges that the automated phone calls in question include advocacy for Harold Ford, Jr. who was the candidate for United States Senate in Tennessee in 2006. The TDP will remove these expenses from Schedule H6, and it is our belief that, despite their disclosure on Schedule H6, no allocation transfer was made in connection with these expenditures. It should be noted that, in the case of the call from Governor Bredeson, only a portion of the call need be allocated to Harold Ford, Jr. To be sure, the script is read by Governor Bredesen, who was himself a non-federal candidate in 2006. Furthermore, the call calls for listeners, to vote for Governor Bredesen, Harold Ford and the rest of the Democratic Ticket. Utilizing the principles set forth in both FEC Advisory Opinion 2006-11, as well as 11 C.F.R. § 106.8, the committee intends to allocate 50% of the costs of this phone call to its 441a(d) authority and the remainder of the call to Schedule B, Line 30(b) as generic campaign activity. Although only a small portion of the Call by Governor Clinton discusses Harold Ford, Jr., the committee will allocate the entire call to 441a(d) authority absent any further guidance from the Commission. The committee hopes that the Commission can clarify, through the final audit report or the final rules on its pending rulemaking regarding hybrid communications (72 Fed. Reg. 26569 (May 10, 2007)) as to whether any portion of the Clinton call need not be allocated to the TDP's 441a(d) authority.

#### Campaign Rallies

The Interim Audit report questions the payment of twelve expenses paid for by the TDP for campaign rallies that appear to be expenses for activities on behalf of Harold Ford, Jr. for U.S. Senate. The report bases this position on the fact that the invoices either reference or are sent to the attention of the Ford campaign. The TDP has, and continues to assert, that these expenses were, in fact, for generic campaign activities. During a campaign, it is not uncommon for vendors to

confuse a party organization for the campaign of a prominent candidate in the state. It is the TDP's belief that each of these invoices were for generic TDP activity and that each invoice, which reflects a very small percentage of the total number of invoices received by the TDP during the 2006 campaign, were incorrectly invoiced to the Harold Ford campaign. Attached to this response is a signed affidavit from Randy Button (attached as Exhibit II) that reasserts, and demonstrates, the TDP's contention that, with one exception, the list of expenses provided by Commission were not expenditures for the benefit of the Ford campaign or for rallies featuring a federal candidate.

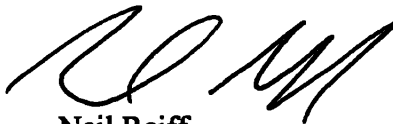
The TDP will amend its report to move one invoice from Exodus Products to Schedule F, Line 25. Otherwise, the TDP believes that all other expenses questioned by the Commission were properly reported as generic get-out-the-vote activities.

### Recommendation #2

The second recommendation of the Interim Audit Report requests that the TDP amend its reports to include missing addresses for several payees. These missing addresses generally relate to the payment of election day workers where the acquisition of such information proved to be quite difficult. The TDP has made extensive efforts to locate this missing information and will file amendments to its reports to include those addresses which it has located. The TDP will continue to search for any additional missing addresses and file amended reports as soon as possible.

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,

A handwritten signature in black ink, appearing to read 'NR', is written over the typed name 'Neil Reiff'.

Neil Reiff

Counsel to the Tennessee Democratic Party