Report of the Audit Division on the Tennessee Democratic Party

January 1, 2005 – December 31, 2006

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act. The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

The Tennessee Democratic Party is a state party committee headquartered in Nashville, TN. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

- **Federal Receipts**
  - Contributions from Individuals — $ 1,771,653
  - Contributions from Other Political Committees — 234,775
  - Transfers from Affiliated Party Committees — 3,022,463
  - Transfers from Non-federal and Levin Funds — 797,430
  - Other Receipts — 48,176
  - **Total Federal Receipts** — **$ 5,874,497**
- **Federal Disbursements**
  - Operating Disbursements — $1,691,580
  - Transfers to Affiliated Committees — 211,950
  - Independent Expenditures — 912,496
  - Coordinated Party Expenditures — 712,459
  - Federal Election Activity — 2,237,958
  - Other Disbursements — 160,981
  - **Total Federal Disbursements** — **$5,927,424**
- **Levin Receipts** — **$319,869**
- **Levin Disbursements** — **$319,869**

Findings and Recommendations (p. 3)

- Non-allocable Federal Election Activity Disclosed on Schedule H6 (Finding 1)
- Disclosure of Disbursements (Finding 2)

[1] 2 U.S.C. §438(b).

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Part I
Background

Authority for Audit

This report is based on an audit of the Tennessee Democratic Party (TDP), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must 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. 2 U.S.C. §438(b).

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The disclosure of expenses allocated between federal, non-federal, and Levin accounts.
6. The consistency between reported figures and bank records.
7. The completeness of records.
8. Other committee operations necessary to the review.

Part II
Overview of Committee
Committee Organization

Important Dates	Tennessee Democratic Party
• Date of Registration	May 18, 1983
• Audit Coverage	January 1, 2005 - December 31, 2006
Headquarters	Nashville, Tennessee
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Seven Federal, Three non-Federal, One Levin
Treasurer	
• Treasurer When Audit Was Conducted	Chip Forrester
• Treasurer During Period Covered by Audit	Robert Tuke & Delainia Davis
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity
(Audited Amounts)

Federal Cash on hand @ January 1, 2005	**$128,779**
o Contributions from Individuals	$1,771,653
o Contributions from Other Political Committees	234,775
o Transfers from Affiliated Party Committees	3,022,463
o Transfers from Non-federal and Levin Funds	797,430
o Other Receipts	48,176
Total Federal Receipts	**$5,874,497**
o Operating Disbursements	$1,691,580
o Transfers to Affiliated Committees	211,950
o Independent Expenditures	912,496
o Coordinated Party Expenditures	712,459
o Federal Election Activity	2,237,958
o Other Federal Disbursements	160,981
Total Federal Disbursements	**$5,927,424**
Federal Cash on hand @ December 31, 2006	**$75,852**
Levin Cash on hand @ September 26, 2006	**$0**
Total Levin Receipts	**$319,869**
Total Levin Disbursements	**$319,869**
Levin Cash on hand @ December 31, 2006	**$0**

Part III
Summaries

Findings and Recommendations

Finding 1. Non-allocable Federal Election Activity Disclosed on Schedule H6

A review of disbursements revealed that non-allocable federal election activity was paid with Levin funds and reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). Payments, totaling $[illegible]21, for polls, automated phone banks, and campaign rallies were allocated as 21% federal and 79% Levin. As a result, the Levin fund paid $77,674. However, a clearly identified candidate running for federal office was addressed in each of the above activities/programs. In response, TDP agreed that the automated phone banks were not allocable federal election activity, but disagreed with the recommendation concerning the polls and the campaign rallies. (For more detail, see p. 4)

Finding 2. Disclosure of Disbursements

A sample review of itemized expenditures revealed that for approximately 18% of the items tested TDP did not disclose the payees' address. In response, TDP filed amended reports that materially disclosed the missing information. (For more detail, see p. 11)

Part IV
Findings and Recommendations

Finding 1. Non-allocable Federal Election Activity Disclosed on Schedule H6

Summary

A review of disbursements revealed that non-allocable federal election activity was paid with Levin funds and reported on Schedule H6 (Disbursements of Federal and Levin Funds for Allocated Federal Election Activity). Payments totaling $98,321, for polls, automated phone banks, and campaign rallies were allocated as 21% federal and 79% Levin. As a result, the Levin fund paid $77,674. However, a clearly identified candidate running for federal office was addressed in each of the activities/programs. In response, TDP agreed that the automated phone banks were not allocable federal election activity, but disagreed with the recommendation concerning the polls and the campaign rallies.

Legal Standard

A. **Reporting Allocable Expenses between Federal Funds and Levin Funds.** A State, district, or local political party committee that makes a disbursement for Federal election activity that is allocated between Federal funds and Levin funds must state the category of Federal election activity for which each allocable disbursement was made. 11 CFR §300.36(b)(2)(i)(B).

B. **Categories of Allocable Federal Election Activity.** A State, district, or local political party committee may allocate disbursements between Federal funds and Levin funds for:
   - Voter Registration Activity;
   - Voter Identification;
   - Get-Out-The-Vote Activity; and
   - Generic Campaign Activity. 11 CFR §300.33(a)(1) and (2).

C. **Categories of Non-Allocable Federal Election Activity.** The following costs incurred by State, district, and local party committees and organizations must be paid for only with federal funds:
   - A public communication that refers to a clearly identified candidate for federal office and that promotes, attacks, supports or opposes any candidate for federal office. 11 CFR §300.33(c).

D. **Coordinated Party Expenditures.** National party committees and state party committees are permitted to purchase goods and services on behalf of candidates in the general election—over and above the contributions that are subject to contribution limits.

Such purchases are referred to as "coordinated party expenditures." They are subject to the following rules:

- The amount spent on "coordinated party expenditures" is limited by statutory formulas that are based on the Cost of Living Adjustment (COLA) and the voting age population.
- Party committees are permitted to coordinate the spending with the candidate committees.
- The parties may make these expenditures only in connection with the general election.
- The party committees—not the candidates—are responsible for reporting these expenditures.
- If the party committee exceeds the limits on coordinated party expenditures, the excess amount is considered an in-kind contribution, subject to the contribution limits.
- A national or state party committee may assign all or part of its coordinated party spending authority to another party committee. 2 U.S.C. §441a(d) and 11 CFR §§109.32(b) and 109.33(a).

E. Assignment of Coordinated Party Expenditure Limit. A political party may assign its authority to make coordinated party expenditures authorized by 11 CFR §109.32 to another political party committee. Such an assignment must be made in writing, must state the amount of the authority assigned, and must be received by the assigned committee before any coordinated party expenditures is made pursuant to assignment. 11 CFR §109.33(a).

Facts and Analysis

The Audit staff identified payments, totaling $98,321, for polls, automated phone banks, and campaign rallies. TDP considered these expenditures to be allocable federal election activity and allocated each payment as 21% federal and 79% Levin. As a result, the Levin fund paid $77,674.

The poll questions and the automated phone bank scripts both refer to a clearly identified candidate for federal office. Invoices for expenses associated with campaign rallies were billed to the federal candidate's campaign but paid by TDP. It is the opinion of the Audit staff that these types of expenditures, some of which appear to represent coordinated party expenditures, do not qualify as allocable federal election activity and should have been paid entirely by the federal account.

Polls – TDP paid $24,500 for two statewide tracking polls conducted during the period October 14, 2006 through October 28, 2006. Poll questions related to candidates running for election to the United States Senate and candidates for the Governor of Tennessee. The majority of the questions related to the senate election. The cost of the polls can not be allocated between the federal account and Levin fund since both polls refer to a clearly identified candidate running for federal office. As such, the cost should have been paid entirely by the federal account. The federal account should reimburse the Levin fund $19,355 ($24,500 x 79%).

Automated Phone Banks – TDP paid $36,400 for two automated phone bank programs. The phone scripts for both programs refer to a clearly identified candidate running for federal office. As such, this cost can not be considered allocable federal election activity and paid for, in part, with Levin funds. The federal account should reimburse the Levin fund $28,756 ($36,400 x 79%).

Further, the cost of this program appeared to represent coordinated party expenditures on behalf of Harold Ford, Jr., candidate for the United States Senate. The first phone script was narrated by the Governor of Tennessee (Governor Script), who was running for re-election. He asked for "your support and your vote." He also asked that "you support Harold Ford, Jr.", and continued to speak on his behalf. He closed by stating, "vote for me, Harold Ford, Jr., and all of our great democratic candidates running for election." The script concluded with a second speaker stating, "paid for by the Tennessee Democratic Party" and "approved and authorized by Harold Ford, Jr. for Tennessee."

The second phone bank script was narrated by former president Bill Clinton (Clinton Script). He asked that "everyone go to the polls and take someone with you who hasn't voted." He also stated that "Tennessee has an historic chance to send Harold Ford, Jr. to the United States Senate," and continued talking on his behalf. He ended by telling "everyone to go to the polls and vote." The script concluded with a second speaker stating, "paid for by the Tennessee Democratic Party" and "approved and authorized by Harold Ford, Jr. for Tennessee."

It appears that the automated phone program was coordinated with Harold Ford, Jr. for Tennessee (Ford Committee) since the caller stated that the candidate approved and authorized each phone script. Further, the contracts for each phone bank program were signed by Jim Hester, representing TDP. His email addresses at both TDP and at the candidate's campaign headquarters were listed on one of the contracts. Finally, prior to the date of each contract, Mr. Hester was employed by the Ford Committee.

The Audit staff has allocated the cost of the Governor Script one-third (Governor), one-third (Harold Ford, Jr.), and one-third to all other (unnamed) candidates running for election. Therefore, $6,300 ($18,900 x 33%) represented a coordinated expenditure on behalf of Harold Ford, Jr. Further, since Harold Ford, Jr. is the only candidate named in the Clinton Script, the entire cost ($17,500) represents a coordinated expenditure on behalf of Harold Ford, Jr.

Campaign Rallies - The Audit staff identified payments, associated with 12 invoices, totaling $37,421, which were dated in October 2006 and addressed to Harold Ford's campaign. The invoices denoted, "Bill to Harold Ford Jr." or "Prepared for Harold Ford for Senate Campaign" or "Sold to Harold Ford Jr. Campaign." Each disbursement was reported as get-out-the-vote activity and disclosed on Schedule H6 as allocable federal election activity.

These payments do not appear to represent the cost of get-out-the-vote activities since the rallies appear to benefit Harold Ford, Jr. Therefore, the cost of this activity should have been paid entirely by the federal account. As such, the federal account should reimburse the Levin fund $29,363 ($37,421 x 79%).

Further, the Audit staff believes these disbursements represent coordinated party expenditures on behalf of Harold Ford, Jr. As previously stated, the invoices contained notations as either billed to, prepared for, or sold to the Ford Committee. The invoices represented expenditures for Ford Committee rallies, such as, tents, staging, refreshments, audio, parking and clean-up. One invoice was for custom labeled bottled water – label name "Ford for Tennessee Bottled Water." Another invoice described the event name as a "Political Rally for Harold Ford, Jr."

Coordinated Party Expenditure Limit – TDP's coordinated expenditure limit for a United State Senate candidate from the state of Tennessee was $762,200. The national party committee has the same limit; which was assigned to TDP. Therefore, TDP could make coordinated expenditures of behalf of Harold Ford, Jr. in the amount of $724,400.

TDP reported on Schedule F (Itemized Coordinated Party Expenditures Made by Political Party Committees or Designated Agent(s) on Behalf of Candidates for Federal Office) coordinated party expenditures on behalf of Harold Ford, Jr. totaling $712,459. With the addition of the cost for the automated phone bank ($23,800 [$6,300 + $17,500]) and campaign rallies ($37,421), it appeared that TDP exceeded the limitation by $49,280 ($773,680 - $724,400). The normal remedy would have been for the Ford Committee to reimburse TDP $49,280. However, since the Ford Committee transferred $154,000 in excess campaign funds to TDP on November 6, 2006, the Audit staff considered this matter to be timely resolved, requiring no further action.

This matter was discussed at the exit conference. TDP representatives received copies of the documentation in order to further review these issues.

In response to the exit conference, the former director of Tennessee Victory 2006 submitted a signed statement that addressed four campaign rally invoices, totaling $17,401. With regard to each, he stated Tennessee Victory 2006 expenditures were incorrectly invoiced to the Harold Ford Jr. campaign; the expenditures were related to get-out-the-vote activities; activities were not planned or conducted in coordination with any federal candidates; and, no federal candidates attended these events. The response did not address the polls or automated phone banks.

Two of the invoices addressed in the response, Jackson Centre ($1,522) and Royal Reed Catering (Jackson Centre Menu - $8,120) contained references to Harold Ford, Jr. The Jackson Centre invoice referred to the event name as "Political Rally for Harold Ford, Jr." The Royal Reed Catering invoice "order info" section appeared to have had Harold Ford, Jr.'s name on the first line but that information had been redacted.

Interim Audit Report Recommendation

The Audit staff recommended that TDP demonstrate that expenditures:

- For polls, automated phone banks, and campaign rallies represented allocable federal election activity; or

  Absent such evidence, the federal account should have reimbursed the Levin Fund $77,674 (polls $19,355, automated phone banks $28,756, campaign rallies $29,563) and filed amended reports disclosing the expenditures on Schedule B or Schedule F as appropriate (see below).

- For automated phone banks and campaign rallies did not represent coordinated party expenditures on behalf of Harold Ford, Jr.; or

  Absent such evidence, TDP should have filed amended reports disclosing expenditures for the automated phone banks $23,800 ($6,300 + $17,500) and campaign rallies ($37,421) as coordinated party expenditures on Schedule F.

Committee Response to Recommendation and Audit Staff's Assessment

In response, Counsel for TDP (Counsel) stated:

Polls – Counsel acknowledged that the cost of the polls should not have been reported on Schedule H6 but indicated this cost should have been reported on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity); as shared operating expenditures. Counsel further stated, the tracking polls were conducted to get a sense of issues and voting trends based on general polling principals; the polls did not promote, support, attack or oppose any federal candidate; the polls did not constitute generic campaign activity; the polls did not constitute voter registration activity; the polls did not constitute get-out-the-vote activity; and, most importantly the polls did not constitute voter identification activity. TDP amended its reports to reflect the cost for the polls on Schedule H4; allocating $5,145 (21%) to the federal account and $19,355 (79%) to the non-federal account.

It remains the opinion of the Audit staff that the cost of the polls represented federal election activity that should have been paid solely by the federal account and not allocable as a shared activity. The telephone interviews of 1,000 likely voters occurred (in October 2006) within the FEA time frame; represented a public communication that referred to a clearly indentified candidate for federal office that promotes, attacks, supports or opposes such candidates.

Both polls referred to clearly identified candidates running for federal office. Among the questions asked of callers were: if they favored either of the federal candidates; whether they would vote for a certain federal candidate if the election were held today; their opinion of attack ads against one of the federal candidates; and their opinions of various positions of each federal candidate.

Automated Phone Banks – Counsel acknowledged that the automated phone calls included advocacy for a Federal candidate and should not have been disclosed on Schedule H6. TDP filed amended reports to disclose 50% of the cost of the Governor Script on Schedule B ($9,450) and 50% on Schedule F. The entire cost of the Clinton Script was disclosed on Schedule F. According to Counsel, it is TDP's belief that, despite their disclosure on Schedule H6, no allocation transfer was made in connection with these expenditures.

The Audit staff and Counsel agree that the expenditures were coordinated and reportable on Schedule F, although TDP has concluded that 50% of the cost of the Governor's Script represents coordinated spending, whereas, the Audit staff concluded a lesser percentage (33%). As previously stated, the Audit staff allocated the cost of the Governor's Script on a 1/3 basis since the script concluded "vote for me, Harold Ford, Jr., and all of our great democretic candidates running for election." Therefore, we allocated 1/3 of the cost to each the Governor, Harold Ford, Jr. and all other democratic candidates running for election. The TDP's allocation is also acceptable.

Campaign Rallies – Counsel stated that TDP believed the invoices represented generic campaign activity; that it was not uncommon for vendors to confuse a party organization with the campaign of a candidate; and, that the invoices were incorrectly sent to the Harold Ford campaign. The response also included a declaration from the Director of Tennessee Victory 2006, a project of the Tennessee Democratic Party.[2] He attested that of the twelve invoices, eleven were incorrectly invoiced to the Harold Ford campaign. TDP agreed that the remaining invoice for custom-labeled bottled water was a coordinated expenditure and amended its reports to disclose this expense on Schedule F.

The following was noted with respect to the 11 invoices in question:

The Jackson Centre and Royal Reed Catering invoices. The Jackson Centre invoice indicated in three places that the event was a "Political Rally for Harold Ford Jr." The client name and contact person noted on the invoice was also named in reports filed by the Ford Committee as receiving travel reimbursements in October and November 2006;[3] the same time frame as the rally. A second Jackson Centre invoice indicated technical/production services rendered for: Harold Ford Jr. The Royal Reed Catering invoice, which represented the menu for the event, had "For Harold Ford Campaign" redacted.

Jason's Deli – There were three invoices. The name Harold Ford was redacted on one invoice. The other two invoices were billed to Harold Ford, Jr. at a Memphis, Tennessee address. Further, the Ford Committee reported a payment to Jason's Deli on September 13, 2006. The reported purpose was "Food for Campaign Event."

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[2] This individual also submitted a similar declaration in response to the exit conference. That declaration only addressed invoices from four of the vendors.

[3] This individual was also disclosed in reports filed by TDP as receiving travel reimbursements.

Grand Events & Party Rentals – This invoice was addressed to Harold Ford, Jr. Campaign at a Memphis, Tennessee address (same as Jason's Deli). TDP' is located in Nashville, Tennessee.

STC – Memphis, Inc. – Four invoices were billed to Harold Ford Jr. for US Senate at the same Memphis address discussed above. On three of the invoices, Harold Ford, Jr. for US Senate had been crossed out.

The Memphis, Tennessee address is for the Park Place Center that rents office space. The Ford Committee, located at different address in Memphis, disclosed this mailing address on Schedule B (Itemize Disbursements) for at least two individuals who received airfare reimbursements. This address was not recorded in TDP's electronic files.

Little Porky's – The invoice contained the following: Catering – "Family BBQ for Harold Ford Jr."

Victor Chatman Productions – This invoice indicated sold to "Harold Ford Jr. Campaign." Description – "Harold Ford Jr. Campaign Rally at Swing Time Golf Range on October 14, 2006."

W.C. Hunter – This invoice indicated that the vendor would prepare sandwiches for the "Harold Ford, Jr., Campaign on Saturday, October 14, 2006. It should also be noted that the invoice for the Ford for Tennessee bottled water was delivered to a location on October 14, 2006.

Southern Rents & Sells – The name on the invoice had been redacted.

B & B Cleaning Services – This invoice indicated sold to "Ford's."

Based on the above it does not appear as if the vendors mistakenly invoiced the Ford Committee (instead of the TDP). The vendors use of the phrases - Political Rally for Harold Ford Jr. - For Harold Ford Campaign - Family BBQ for Harold Ford Jr. - Harold Ford Jr. Campaign Rally at Swing Time Golf Range on October 14, 2006 - Harold Ford, Jr., Campaign on Saturday, October 14, 2006, as well as, three vendors used a billing address that the Ford Committee also disclosed on its reports supports the conclusion that the above events benefited the Ford Committee. Therefore, it is the opinion of the Audit staff that the payments, for these events, by TDP represented coordinated party expenditures that should have been disclosed on Schedule F.

TDP's assertion that the Levin Fund may not have made a transfer of funds for the automated phone bank cost could be correct and also applicable to the cost of the polls and campaign rallies. TDP reported on Schedule H6 shared activity totaling $715,056; the Levin Fund portion being $564,894 ($715,056 x 79 %). However, the Levin Fund reported only $319,399[4] in transfers to the federal account for its portion of shared

[4] TDP reported Levin Fund receipts and disbursements totaling $319,869.

activity. It is not possible to determine specifically which expenses were reimbursed. Therefore, unreimbursed Levin activity totaled $245,495 ($564,894 – $319,399); that amount was paid by the federal account. The overpayment by the federal account is greater than the Levin activity in question ($77,673) and eliminates the need for any reimbursements to the Levin Fund for the cost of the automated phone banks, poll, or campaign rallies.

Conclusion

TDP filed amended reports that disclosed the cost of automated phone banks on Schedule F. However, it remains the opinion of the Audit staff that the cost of the polls should have been disclosed on Schedule B and the cost of campaign rallies should have been disclosed on Schedule F; they were not.

Finding 2. Disclosure of Disbursements

Summary

A sample review of itemized expenditures revealed that for approximately 18% of the items tested TDP did not disclose the payees' address. In response, TDP filed amended reports that materially disclosed the missing information.

Legal Standard

Reporting Operating Expenditures. When operating expenditures to the same person exceed $200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

Facts and Analysis

A sample review of itemized expenditures revealed that for 18% of the items tested, TDP did not disclose the payees' address. The majority of the disbursements lacking addresses related to canvassers whose mailing address was noted in TDP's records. This issue was discussed during the exit conference. TDP representatives had no significant comments.

Interim Audit Report Recommendation and Committee's Response

The Audit staff recommended that TDP file amended reports to disclose the missing information. In response, Counsel wrote that they have, "engaged extensive efforts to locate the missing information and will file amendments to include the address[es] which it has located." TDP filed amended reports that materially disclosed the missing information.