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FEDERAL ELECTION COMMISSION
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For the meeting of August 22, 2019

August 7, 2019

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP by MAM*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Dayna C. Brown *DCB*
Acting Assistant Staff Director
Audit Division

Martin L. Favin *MLF*
Audit Manager

By: Ryan S. Krogen
Lead Auditor *RK*

Subject: Audit Division Recommendation Memorandum on the
South Dakota Democratic Party (A17-21)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to the South Dakota Democratic Party (SDDP) on **July 1, 2019 (see attachment)**. SDDP did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

On July 19, 2019, SDDP provided additional documentation and information in response to the DFAR, resulting in a change in the amount in violation for Finding 2: Contributions from Unregistered Organizations, as noted below.

Finding 1. Misstatement of Financial Activity – Increased Activity

In response to the DFAR, SDDP reiterated that there was no intent to understate disbursements on the original reports filed.

The Audit staff recommends that the Commission find that SDDP understated disbursements by \$2,500,147 on the original reports filed over the two year period ending December 31, 2016.

Finding 2. Contributions from Unregistered Organizations

In response to the DFAR, SDDP submitted additional documentation demonstrating permissibility from unregistered organizations, as follows:

Contributions for which permissibility was demonstrated for unregistered organizations (\$24,165)

Statements were provided from 17 unregistered organizations attesting to the permissibility of 61 contributions, totaling \$24,165.

Contributions for which sufficient permissibility documentation was not provided for state PACs (\$11,500)

Statements were provided from two state PACs attesting to the permissibility for six contributions, totaling \$11,500. However, these statements continue to lack information on how it was determined that sufficient permissible funds were on hand when the contributions were made.

Contributions for which no documentation or additional information was provided in response to the Draft Final Audit Report

- 23 contributions, totaling \$11,652, from unregistered organizations
- Two contributions, totaling \$675, from state PACs

Thus, the amount of contributions from impermissible sources noted in the DFAR totaling \$47,992 would be reduced by \$24,165, to \$23,827.¹

SDDP also stated in its response to the DFAR that contributions for which no permissibility statements were provided will be refunded to the donor organizations and disclosed on its reports as refunds or debts owed. To date, no evidence of such action has been demonstrated.

The Audit staff recommends that the Commission find that SDDP received impermissible contributions totaling \$23,827.²

¹ \$23,827 = \$47,992 (see DFAR, page 7) - \$24,165.

² \$23,827 = \$11,500 + \$11,652 + \$675.

Finding 3. Reporting of Debts and Obligations

In response to the DFAR, SDDP stated that it had filed amended disclosure reports to correct debts and obligations. However, to date, the Audit staff, in consultation with the Reports Analysis Division, determined that no such amended reports were filed.³

The Audit staff recommends that the Commission find that SDDP failed to disclose debts and obligations to vendors totaling \$46,097.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

If this memorandum is approved, the Proposed Final Audit Report will be prepared and circulated within 30 days of the Commission's approval.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum matter will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Ryan Krogen or Marty Favin at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the South Dakota Democratic Party

cc: Office of General Counsel

³ The Audit staff also informed SDDP via email and telephone correspondence that no amended reports had been filed with the FEC.

SDDP responded to the July 1, 2019 DFAR on July 19, 2019, resulting in a change to the amount in violation for Finding 2, as enumerated in the ADRM.



Draft Final Audit Report of the Audit Division on the South Dakota Democratic Party

(January 1, 2015 - December 31, 2016)

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.¹ 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 South Dakota Democratic Party is a state party committee headquartered in Sioux Falls, South Dakota. For more information, see the chart on the Committee organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 391,785
○ Contributions from Political Committees	136,576
○ Transfers from Affiliated Committees	2,691,498
○ Transfers from Non-Federal Account	2,275
○ Other Receipts	16,598
Total Receipts	\$ 3,238,732
• Disbursements	
○ Operating Expenditures	\$ 329,937
○ Transfers to Affiliated Committees	2,494,343
○ Federal Election Activity	371,481
○ Other Disbursements	19,360
Total Disbursements	\$ 3,215,121

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity – Increased Activity (Finding 1)
- Contributions from Unregistered Organizations (Finding 2)
- Reporting of Debts and Obligations (Finding 3)

¹ 52 U.S.C. §30111(b).



Draft Final Audit Report of the Audit Division on the South Dakota Democratic Party

(January 1, 2015 - December 31, 2016)

Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Part II. Overview of Committee	
Committee Organization	2
Overview of Financial Activity	2
Part III. Summaries	
Findings and Recommendations	3
Part IV. Findings and Recommendations	
Finding 1. Misstatement of Financial Activity – Increased Activity	4
Finding 2. Contributions from Unregistered Organizations	5
Finding 3. Reporting of Debts and Obligations	7

Part I

Background

Authority for Audit

This report is based on an audit of the South Dakota Democratic Party (SDDP), 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 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. 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. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the disclosure of disbursements, debts and obligations;
6. the disclosure of expenses allocated between federal and non-federal accounts;
7. the consistency between reported figures and bank records;
8. the completeness of records; and
9. other committee operations necessary to the review.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	April 24, 1982
• Audit Coverage	January 1, 2015 - December 31, 2016
Headquarters	
Sioux Falls, South Dakota	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Two Federal, One Non-Federal
Treasurer	
• Treasurer When Audit Was Conducted	Bill Nibbelink
• Treasurer During Period Covered by Audit	Bill Nibbelink (7/15/00 - Present)
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2015	\$ 21,496
Receipts	
○ Contributions from Individuals	391,785
○ Contributions from Political Committees	136,576
○ Transfers from Affiliated Committees	2,691,498
○ Transfers from Non-Federal Account	2,275
○ Other Receipts	16,598
Total Receipts	\$ 3,238,732
Disbursements	
○ Operating Expenditures	329,937
○ Transfers to Affiliated Committees	2,494,343
○ Federal Election Activity	371,481
○ Other Disbursements	19,360
Total Disbursements	\$ 3,215,121
Cash on hand @ December 31, 2016	\$ 45,107

Part III Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity - Increased Activity

A comparison of SDDP's bank activity with its original reports filed with the Commission revealed that disbursements were understated by \$2,500,147 for calendar years 2015 and 2016. In response to the Interim Audit Report recommendation, SDDP stated it overlooked filing procedures, required better training on reporting to the Commission and there was no intent to understate disbursements on the original reports filed.

(For more detail, see p. 4.)

Finding 2. Contributions from Unregistered Organizations

During audit fieldwork, the Audit staff identified 144 contributions from unregistered organizations totaling \$67,182 that may have been made with impermissible funds. In response to the Interim Audit Report recommendation, SDDP submitted statements from the unregistered organizations attesting to the permissibility of 52 contributions, totaling \$19,190. As a result, 92 contributions, totaling \$47,992, remain impermissible.

(For more detail, see p. 5.)

Finding 3. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that SDDP failed to disclose debts and obligations to nine vendors, totaling \$46,097. In response to the Interim Audit Report recommendation, SDDP filed amended disclosure reports to disclose these debts and obligations, however, these transactions were disclosed incorrectly.

(For more detail, see p. 7.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity – Increased Activity

Summary

A comparison of SDDP's bank activity with its original reports filed with the Commission revealed that disbursements were understated by \$2,500,147 for calendar years 2015 and 2016. In response to the Interim Audit Report recommendation, SDDP stated it overlooked filing procedures, required better training on reporting to the Commission and there was no intent to understate disbursements on the original reports filed.

Legal Standard

Contents of Federal Reports. Each report must disclose:

- the amount of cash on hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule B (Itemized Disbursements). 52 U.S.C. 30104 (b) (4) and (5).

Facts and Analysis

A. Facts

During audit fieldwork, in addition to examining SDDP's most recent reports filed prior to audit notification, the Audit staff also compared its originally filed reports with its bank records. The purpose of this additional reconciliation was to identify the degree to which SDDP had misstated its original filings.

The Audit staff calculated that SDDP understated disbursements by \$2,500,147 on the original reports filed over the two year period ending December 31, 2016. Most of the disbursements that were understated (\$2,494,000) related to transfers to the Democratic National Committee which were not disclosed on the originally filed reports.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the SDDP representative during the exit conference and provided the relevant work paper. In response to the exit conference, SDDP stated that the increased activity was due to reporting changes.

The Interim Audit Report recommended that SDDP provide any comments it deemed relevant to this matter.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, SDDP stated it overlooked filing procedures and required better training on reporting to the Commission. SDDP added that there was no intent to understate disbursements on the original reports filed.

Finding 2. Contributions from Unregistered Organizations

Summary

During audit fieldwork, the Audit staff identified 144 contributions from unregistered organizations totaling \$67,182 that may have been made with impermissible funds. In response to the Interim Audit Report recommendation, SDDP submitted statements from the unregistered organizations attesting to the permissibility of 52 contributions, totaling \$19,190. As a result, 92 contributions, totaling \$47,992, remain impermissible.

Legal Standard

- A. Party Committee Limits.** A party committee may not receive more than a total of \$10,000 per year from any one individual. This limit is shared by the state, district, and local party committees. 52 U.S.C. §30116(a)(1)(D) and 11 CFR §110.9.
- B. Organizations Not Registered With the Commission.** Any organization that makes contributions and expenditures, but that does not qualify as a political committee under 11 CFR §100.5, must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission. The organization must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution or expenditure. 11 CFR §102.5(b).
- C. Questionable Contributions.** It is the Treasurer's responsibility to ensure that all contributions are lawful. 11 CFR §103.3(b). If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:
1. within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow steps below). 11 CFR §103.3(b)(1).
 2. if the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3 (b)(4).
 3. the committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).

4. within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. within these 30 days, the committee must either:
 - confirm the legality of the contribution; or
 - refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 144 receipts, totaling \$67,182, from unregistered organizations, which SDDP reported as follows:

- 129 receipts, totaling \$62,062, on Line 11 (Contributions) of Schedule A (Itemized Receipts) from individuals and political committees;
- 14 receipts, totaling \$3,620, that were not itemized on Schedule A; and
- 1 receipt, in the amount of \$1,500, on Line 17 (Other Federal Receipts) of Schedule A.

SDDP received eight contributions, noted above, totaling \$12,175 from three unregistered political organizations which appear to be state political action committees (state PACs). These state PACs could have accepted corporate and union contributions under South Dakota state law which may have been federally impermissible.

The Audit staff considered the receipts noted above to be contributions. SDDP did not have any records available to show that these contributions from unregistered organizations were made with permissible funds or other evidence to show they were not contributions. To date, none of these contributions have been refunded to the contributors.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the SDDP representative during the exit conference and provided a schedule of the receipts noted above. In response to the exit conference, SDDP stated it was in the process of collecting letters from the contributors regarding the permissibility of the funds.

The Interim Audit Report recommended that SDDP:

- Provide evidence that the 144 receipts in question were made from permissible funds, including information on how it was determined that sufficient permissible funds were on hand when eight contributions from three state PACs were made; or

- Provide evidence to show the receipts were not contributions; or
- Refund the impermissible funds and provide evidence of such refunds (copies of front and back of the refund check); or
- Transfer the impermissible funds to the non-federal account; or
- Disgorge the impermissible funds to a governmental entity (federal, state or local) or to a qualified charitable organization described in 26 U.S.C. §170© and provide evidence of such disgorgement; or
- If funds were not available to make the necessary refunds or disgorgement, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, SDDP submitted the following documentation:

Contributions for which permissibility was demonstrated for unregistered organizations (\$19,190)

Statements were provided from 26 unregistered organizations attesting to the permissibility of 52 contributions, totaling \$19,190.

Contributions for which sufficient permissibility documentation was not provided for state PACs (\$11,500)

Statements were provided from two state PACs attesting to the permissibility for six contributions, totaling \$11,500. However, these statements did not include information on how it was determined that sufficient permissible funds were on hand when the contributions were made.

Contributions for which documentation was not provided in response to the Interim Audit Report

- 84 contributions, totaling \$35,817, from unregistered organizations
- Two contributions, totaling \$675, from state PACs

As a result, SDDP did not demonstrate that 92 contributions, totaling \$47,992, were made from permissible funds.²

Finding 3. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that SDDP failed to disclose debts and obligations to nine vendors, totaling \$46,097. In response to the Interim Audit Report recommendation, SDDP filed amended disclosure reports to disclose these debts and obligations, however, these transactions were disclosed incorrectly.

² (\$11,500 + \$35,817 + \$675).

Legal Standard

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).
- B. Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).
- C. Itemizing Debts and Obligations**
- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
 - A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed SDDP's disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to nine vendors, totaling \$46,097,³ which SDDP failed to report on Schedule D during the audit period. Based on a review of the records, these vendors mainly provided printing and catering services. SDDP reported no debts during the audit period.

The Audit staff calculated the debts owed to the vendors based on the invoice date and the subsequent payment date. Debts were outstanding for periods ranging from 9 days to 187 days.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the reporting of debts and obligations with the SDDP representative at the exit conference and provided a schedule of transactions not disclosed on Schedule D. In response to the exit conference, SDDP stated that it reported debts incorrectly and will amend its disclosure reports.

The Interim Audit Report recommended that SDDP provide documentation demonstrating that these transactions were not obligations which required reporting on Schedule D. Absent such documentation, the Interim Audit Report further recommended that SDDP amend its reports or file a Form 99⁴ to correctly disclose these debts and obligations.

³ Each debt in this amount was counted only once, even if it was required to be disclosed over multiple periods.

⁴ SDDP was advised by the Audit staff that if it chose to file a Form 99, instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

C. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, SDDP filed amended Schedule D's for 2015 and 2016 in an attempt to properly disclose the debts and obligations discussed above. However, these transactions were not disclosed correctly. All debts and obligations contained inadequate purposes and were not disclosed in the correct reporting periods through extinguishment.

Draft