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FEDERAL ELECTION COMMISSION
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For the meeting of November 16, 2023

October 27, 2023

MEMORANDUM

To: The Commission

Through: Alec Palmer *DCB* for AP
Staff Director

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

Zuzana O. Pacious *ZOP*
Acting Assistant Staff Director
Audit Division

Rickida L. Morcomb *RM*
Audit Manager

By: William A. Antosz *WAA*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Oklahoma
Leadership Council (A21-07)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to the Oklahoma Leadership Council (OLC) on September 19, 2023 (see attachment). OLC did not request an audit hearing.

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

In response to the DFAR, OLC provided a general statement regarding all of the findings. OLC stated, "We have reviewed the draft final audit report and as we have previously stated we do not dispute any of the facts presented. As the health and the death of the Treasurer responsible for the transactions during the audit period does not change what resulted in that period we must accept what happened. We have made all corrective actions that we are

able to do and await the final audit result." The Audit staff notes OLC did not provide additional documentation and did not file amended reports to correct the public record.

Finding 1. Misstatement of Financial Activity

The Audit staff recommends that the Commission find that, in 2020, OLC understated its reported receipts and disbursements by \$216,154 and \$226,564, respectively.

Finding 2. Increased Activity

The Audit staff recommends that the Commission find that OLC understated its receipts and disbursements by \$829,858 and \$1,077,630, respectively, on the original reports filed, prior to audit notification, over the two-year reporting period ending December 31, 2020.

Finding 3. Contributions from Unregistered Political Organizations

The Audit staff recommends that the Commission find that OLC did not resolve contributions from unregistered political organizations, totaling \$16,981, by providing documentation demonstrating that these contributions were transferred to the non-federal account, refunded, or were received from permissible sources.

Finding 4. Reporting of Debts and Obligations

The Audit staff recommends that the Commission find that OLC failed to disclose debts and obligations to vendors, totaling \$230,595.

Finding 5. Recordkeeping for Communications

The Audit staff recommends that the Commission find that OLC failed to maintain records in sufficient detail, to verify the proper reporting for communication disbursements, totaling \$378,222.

Finding 6. Recordkeeping for Employees

The Audit staff recommends that the Commission find that OLC failed to maintain monthly payroll logs or equivalent records, totaling \$25,031, to document the percentage of time employees spent in connection with a federal election for years 2019 and 2020.

Finding 7. Reporting of Apparent Independent Expenditures

A. Reporting of Apparent Independent Expenditures

The Audit staff recommends that the Commission find that OLC failed to properly disclose apparent independent expenditures, totaling \$345,389, on Schedule E (Independent Expenditures), of which apparent independent expenditures, totaling \$62,915, should have been reported as memo entries and reported as corresponding debt on Schedule D (Debts and Obligations), based on the date in which the mail pieces were disseminated.

B. Failure to File 24/48-Hour Reports for Apparent Independent Expenditures

The Audit staff recommends that the Commission find that OLC failed to file 24/48-hour reports for apparent independent expenditures, totaling \$326,460.

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.

If this Audit Division Recommendation Memorandum is not approved on a tally vote, Directive No. 70 states that the 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 Bill Antosz or Rickida Morcomb at 694-1200.

Attachment:

- Draft Final Audit Report of the Audit Division on the Oklahoma Leadership Council

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Oklahoma Leadership Council

(January 1, 2019 - December 31, 2020)

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. 3)

Oklahoma Leadership Council is a state party committee headquartered in Oklahoma City, Oklahoma. For more information, see the Committee Organization chart, p. 3.

Financial Activity (p. 4)

• Receipts	
○ Contributions from Individuals	\$ 333,978
○ Contributions from Political Committees	680,872
○ Transfers from Affiliates	990,361
○ Other Federal Receipts	3,724
○ Transfers from Levin/Non-Federal Account	185,222
Total Receipts	\$ 2,194,157
• Disbursements	
○ Operating Expenditures	\$ 516,964
○ Transfers to Affiliates	585,813
○ Independent Expenditures	397,335
○ Other Federal Disbursements	202,892
○ Federal Election Activity	413,748
Total Disbursements	\$ 2,116,752
• Levin Receipts	\$ 0
• Levin Disbursements	\$394

Findings and Recommendations (p. 5)

- Misstatement of Financial Activity (Finding 1)
- Increased Activity (Finding 2)
- Contributions from Unregistered Political Organizations (Finding 3)
- Reporting of Debts and Obligations (Finding 4)
- Recordkeeping for Communications (Finding 5)
- Recordkeeping for Employees (Finding 6)
- Reporting of Apparent Independent Expenditures (Finding 7)

¹ 52 U.S.C. §30111(b).



Draft Final Audit Report of the Audit Division on the Oklahoma Leadership Council

(January 1, 2019 - December 31, 2020)

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Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Commission Guidance	1
Part II. Overview of Committee	
Committee Organization	3
Overview of Financial Activity	4
Part III. Summaries	
Findings and Recommendations	5
Part IV. Findings and Recommendations	
Finding 1. Misstatement of Financial Activity	7
Finding 2. Increased Activity	9
Finding 3. Contributions from Unregistered Political Organizations	10
Finding 4. Reporting of Debts and Obligations	12
Finding 5. Recordkeeping for Communications	14
Finding 6. Recordkeeping for Employees	15
Finding 7. Reporting of Apparent Independent Expenditures	17

Part I

Background

Authority for Audit

This report is based on an audit of the Oklahoma Leadership Council (OLC), 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 shall 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 and loans;
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;
9. the disclosure of independent expenditures; and
10. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," several state party committees unaffiliated with OLC requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed OLC representatives of the payroll requirement and the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. This audit report does

not include any findings or recommendations with respect to OLC employees paid with 100 percent federal funds and reported as such.

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Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	May 13, 1983
• Audit Coverage	January 1, 2019 - December 31, 2020
Headquarters	
Oklahoma City, Oklahoma	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Five Federal, Two Non-Federal, One Levin
Treasurer	
• Treasurer When Audit Was Conducted	John Elliott (8/30/2022 – Present) AJ Ferate (6/16/2022 – 8/29/2022) Dwaine Shroyer (11/10/2021 – 6/15/2022) Joe Hart (6/3/2021 – 11/9/2021)
• Treasurer During Period Covered by Audit	Rodd Moesel (9/27/2017 – 5/19/2019) Michael G. McCutchin (5/20/2019 – 5/12/2021)
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Treasurer

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2019	\$ 5,390
Receipts	
○ Contributions from Individuals	333,978
○ Contributions from Political Committees	680,872
○ Transfers from Affiliates	990,361
○ Other Federal Receipts	3,724
○ Transfers from Levin/Non-Federal Account	185,222
Total Receipts	\$ 2,194,157
Disbursements	
○ Operating Expenditures	516,964
○ Transfers to Affiliates	585,813
○ Independent Expenditures	397,335
○ Other Federal Disbursements	202,892
○ Federal Election Activity	413,748
Total Disbursements	\$ 2,116,752
Cash on hand @ December 31, 2020	\$ 82,795
Levin Cash on hand @ January 1, 2019	\$ 394
Total Levin Receipts	0
Total Levin Disbursements	394
Levin Cash on hand @ March 31, 2019	\$ 0

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of OLC's most recent reported financial activity with its bank records revealed a misstatement of receipts and disbursements for calendar year 2020. Specifically, OLC understated receipts by \$216,154 and disbursements by \$226,564. OLC did not provide a response to the Interim Audit Report recommendation. Absent the filing of amended reports or a Form 99 (Miscellaneous Electronic Submission), OLC's receipts and disbursements remain misstated. (For more detail, see p. 7.)

Finding 2. Increased Activity

A comparison of OLC's bank activity with its original reports filed with the Commission revealed that receipts were understated by \$829,858 and disbursements were understated by \$1,077,630 for calendar years 2019 and 2020. OLC did not provide a response to the Interim Audit Report recommendation. (For more detail, see p. 9.)

Finding 3. Contributions from Unregistered Political Organizations

During audit fieldwork, the Audit staff identified 15 contributions from unregistered political organizations, totaling \$16,981, that may have been made with impermissible funds. OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff maintains that OLC may have received impermissible funds from unregistered political organizations. (For more detail, see p. 10.)

Finding 4. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that OLC failed to disclose debts and obligations to eight vendors totaling \$230,595. OLC did not provide a response to the Interim Audit Report recommendation. Absent the filing of amended reports or a Form 99 (Miscellaneous Electronic Submission) or providing additional documentation, the public record remains incorrect with regard to OLC's disclosure of debt. (For more detail, see p. 12.)

Finding 5. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements for communications to verify the accuracy of the information and proper classification of transactions disclosed on OLC's disclosure reports. Of these disbursements, OLC reported 35 disbursements, totaling \$378,222, on Schedules B (Itemized Disbursements), Line 21(b) (Other Federal

Operating Expenditures) and Line 30(b) (Federal Election Activity Paid Entirely With Federal Funds) with purposes including, “Materials/Mail/Design-Non Candidate,” “Printing & Design Services: Banner,” “Voter Data Consulting,” “Trump signs/signs,” “GOTV Postcards,” “Online Advertising,” “Trump Products,” “Billboard,” “Pins for convention,” “GOTV Text Messages” and “Direct Mail Printing & Postage.” OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff maintains the disbursements cannot be verified. (For more detail, see p. 14.)

Finding 6. Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that OLC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2019 and 2020, the Audit staff identified 10 payments to OLC employees, totaling \$25,031, for which OLC did not maintain monthly payroll logs. This consisted of payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds. OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff concludes OLC did not maintain monthly payroll logs as required to document the percentage of time each employee spent in connection with a federal election.

(For more detail, see p. 15.)

Finding 7. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed expenditures, totaling \$345,389, that OLC disclosed on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures appear to be independent expenditures containing express advocacy and should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures). Of these expenditures, OLC did not properly disclose independent expenditures, totaling \$62,915, that were publicly disseminated prior to payment and therefore required reporting as memo entries on Schedule E and reporting as debt on Schedule D (Debts and Obligations).

Additionally, OLC did not provide documentation to support the dissemination dates, in order to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$326,460.

OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation or filing of amended reports, the public record remains incorrect with regard to OLC’s disclosure of apparent independent expenditures and 24/48-hour reports. (For more detail, see p. 17.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of OLC's most recent reported financial activity with its bank records revealed a misstatement of receipts and disbursements for calendar year 2020. Specifically, OLC understated receipts by \$216,154 and disbursements by \$226,564. OLC did not provide a response to the Interim Audit Report recommendation. Absent the filing of amended reports or a Form 99 (Miscellaneous Electronic Submission), OLC's receipts and disbursements remain misstated.

Legal Standard

Contents of 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 A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4), and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled OLC's most recent reported financial activity, filed prior to audit notification, with its bank records for calendar years 2019 and 2020. The reconciliation determined that OLC misstated receipts and disbursements for 2020. The following chart details the discrepancies between OLC's disclosure reports and its bank activity. The succeeding paragraphs explain why the discrepancies occurred.

2020 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2020	\$15,546	\$15,098	(\$448) Overstated
Receipts	\$1,816,120	\$2,032,274	(\$216,154) Understated
Disbursements	\$1,738,013	\$1,964,577	(\$226,564) Understated
Ending Cash on hand @ December 31, 2020	\$93,653	\$82,795	(\$10,858) Overstated

The beginning cash on hand balance was overstated by \$448 and the discrepancy resulted from prior period discrepancies.

The understatement of receipts resulted from the following:

• Contributions from individuals not reported	\$22,383
• Transfers from Non-federal account not reported	161,081
• Contributions from Political Committees not reported	28,344
• Other Receipts not reported	120
• Net Unitemized Contributions under reported	1,985
• Contribution under reported	10,000
• Contribution reported but did not clear bank	(750)
• Duplicate Contributions reported	(6,850)
• Unexplained differences	<u>(159)</u>
Net Understatement of Receipts	<u>\$216,154</u>

The understatement of disbursements resulted from the following:

• Disbursements not reported or reported incorrectly	\$225,008
• Disbursements reported, but did not clear bank	(2,151)
• Interaccount Transfer reported as disbursement	(100)
• Net Merchant Vendor Fees not reported correctly	3,776
• Disbursements reported with incorrect amounts	<u>31</u>
Net Understatement of Disbursements	<u>\$226,564</u>

The \$10,858 overstatement of the ending cash on hand balance was a result of the reporting discrepancies described above.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representatives during the exit conference and provided schedules detailing the misstatements of financial activity. The Audit staff explained each reporting error to the OLC representatives and answered a question regarding the dates of the reporting errors. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

The Interim Audit Report recommended that OLC amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)² to correct the misstatements noted above. In addition, the Interim Audit Report recommended that OLC reconcile the cash on hand balance on its most recently filed report and correct any subsequent discrepancies.

C. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation. Absent the filing of amended reports or a Form 99 (Miscellaneous Electronic Submission), OLC's receipts and disbursements remain misstated.

² OLC 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.

Finding 2. Increased Activity

Summary

A comparison of OLC's bank activity with its original reports filed with the Commission revealed that receipts were understated by \$829,858 and disbursements were understated by \$1,077,630 for calendar years 2019 and 2020. OLC did not provide a response to the Interim Audit Report recommendation.

Legal Standard

A. Reporting Requirements. All political committees other than authorized committees of a candidate shall file either:

- Quarterly reports. 52 U.S.C. § 30104(a)(4)(A); or
- Monthly reports in all calendar years shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with 52 U.S.C. § 30104(2)(A)(i), a post-general election report shall be filed in accordance with 52 U.S.C. § 30104(2)(A)(ii), and a year-end report shall be filed no later than January 31 of the following calendar year. 52 U.S.C. § 30104(a)(4)(B)

B. Contents of 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 A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. § 30104 (b)(1),(2),(3),(4) and (5).

Facts and Analysis

A. Facts

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

The Audit staff calculated that OLC understated its receipts by \$829,858 and disbursements by \$1,077,630 on the original reports filed over the two-year period ending December 31, 2020. Part of the understatements were due to OLC not reporting funds received from a joint fundraising committee totaling \$473,569 and the subsequent transfers of these funds (\$473,569) to the national party. In addition, these figures include the \$216,154 understatement of receipts and the \$226,564 understatement of disbursements discussed in Finding 1 (Misstatement of Financial Activity).

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representatives during the exit conference and provided the relevant schedule. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

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

C. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation.

Finding 3. Contributions from Unregistered Political Organizations

Summary

During audit fieldwork, the Audit staff identified 15 contributions from unregistered political organizations, totaling \$16,981, that may have been made with impermissible funds. OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff maintains that OLC may have received impermissible funds from unregistered political organizations.

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. 52 U.S.C §30116(a)(1)(D), 11 CFR §110.1(c)(5), 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 15 contributions, totaling \$16,981, from unregistered political organizations, which OLC reported as follows:

- Two contributions, totaling \$1,310 on Schedule A, Line 11(a)(i) (Contributions from Individuals Itemized);
- Four contributions, totaling \$230, on Schedule A, Line 11(a)(ii) (Contributions from Individuals Unitemized);
- Four contributions, totaling \$2,292, on Schedule A, Line 11(c) (Contributions from Other Political Committees);
- One contribution, totaling \$1,306, on Schedule A, Line 17 (Other Receipts); and
- Four contributions, totaling \$11,843, that were not reported.

The Audit staff considers the receipts noted above to be contributions. OLC did not provide any documentation to demonstrate that these contributions, from unregistered political organizations, were made with permissible funds. Similarly, OLC did not submit any evidence to show that these receipts were not contributions. To date, none of these contributions have been refunded to the contributors.

The contributions from unregistered political organizations were made either from Oklahoma local party committees or from Oklahoma local candidate committees, and does not appear to be from state political action committees (state PACs). Under Oklahoma state law, political party committees are prohibited from accepting contributions from corporations, labor unions and foreign nationals.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representatives during the exit conference and provided a schedule of the receipts. The OLC representatives stated that ten days would not be enough time to respond to this finding. The Audit staff advised OLC of each additional opportunity in the audit process to respond to the finding. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

The Interim Audit Report recommended that OLC:

- Provide evidence that the 15 contributions in question, totaling \$16,981, were made from permissible funds; or
- Provide evidence to show these items were not contributions; or
- Refund the impermissible funds and provide evidence of such refunds; or
- Transfer the impermissible funds to the non-federal account; or
- If funds were not available to make the necessary refunds or donations, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

C. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation. Absent additional documentation, the Audit staff maintains that OLC may have received impermissible funds from unregistered political organizations.

Finding 4. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that OLC failed to disclose debts and obligations to eight vendors totaling \$230,595. OLC did not provide a response to the Interim Audit Report recommendation. Absent the filing of amended reports or a Form 99 (Miscellaneous Electronic Submission) or providing additional documentation, the public record remains incorrect with regard to OLC's disclosure of debt.

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 OLC's disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to eight vendors, totaling \$230,595³, that OLC failed to report on Schedule D during the audit period. Based on a review of the records, these vendors provided media services, database services and cable and internet services. OLC reported debt totaling \$26,052 on Schedule D 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 four days to 149 days.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representatives at the exit conference and provided a schedule detailing transactions requiring disclosure on Schedule D. The OLC representatives questioned why there were media expenditures on the schedule, stating that these expenditures are normally paid immediately. The Audit staff explained that the media expenditures were considered debts if the amounts exceeded \$500 and were not paid by the end of the report period in which they were incurred. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

The Interim Audit Report recommended that OLC provide additional documentation demonstrating that the transactions, totaling \$230,595, were not obligations which required reporting on Schedule D. Absent such documentation, the Interim Audit Report recommended that OLC amend its reports or file a Form 99 (Miscellaneous Electronic Submission)⁴ to correctly disclose these debts and obligations.

C. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation. Absent the filing of amended reports, a Form 99 (Miscellaneous Electronic Submission), or the provision of additional documentation, the public record remains incorrect with regard to OLC's disclosure of debt.

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

⁴ See *supra* footnote 2.

Finding 5. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements for communications to verify the accuracy of the information and proper classification of transactions disclosed on OLC's disclosure reports. Of these disbursements, OLC reported 35 disbursements, totaling \$378,222, on Schedules B (Itemized Disbursements), Line 21(b) (Other Federal Operating Expenditures) and Line 30(b) (Federal Election Activity Paid Entirely With Federal Funds) with purposes including, "Materials/Mail/Design-Non Candidate," "Printing & Design Services: Banner," "Voter Data Consulting," "Trump signs/signs," "GOTV Postcards," "Online Advertising," "Trump Products," "Billboard," "Pins for convention," "GOTV Text Messages" and "Direct Mail Printing & Postage." OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff maintains the disbursements cannot be verified.

Legal Standard

- A. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).
- B. Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements for communications to verify the accuracy of the information and proper classification of transactions disclosed on the reports. Of these disbursements, OLC made 35 disbursements, totaling \$378,222, for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 21(b) and Schedule B, Line 30(b).

The Audit staff's analysis resulted in the following:

i. Disbursements – No Invoices or Copies of Communications Provided (\$13,602)

Seventeen disbursements, totaling \$13,602, were paid to nine vendors. Sixteen of these disbursements, totaling \$13,471, were disclosed on Schedule B, Line 21(b) with purposes of "Printing & Design Services: Banner," "Trump Signs," "Online Advertising," "Trump Products," "Billboard," "Trump Signs," and "Pins for Convention." One disbursement, in the amount of \$131, was disclosed on Schedule B, Line 30(b) with the purpose of "Signs." No invoices or associated communications were provided for these disbursements. Without sufficient

detail, the Audit staff is unable to verify OLC's reporting of these amounts as other operating expenditures or federal election activity. The Audit staff requested copies of the invoices and the associated communications for each of the disbursements. To date, these invoices and communications have not been provided.

ii. Disbursements – Invoices Provided – No Copies of Communications Provided (\$364,620)

Eighteen disbursements, totaling \$364,620, were paid to seven vendors. Ten of these disbursements, totaling \$43,376, were disclosed on Schedule B, Line 21(b) with purposes of "Materials/Mail/Design-Non Candidate" and "Signs." Eight disbursements, totaling \$321,244, were disclosed on Schedule B, Line 30(b) with purposes of "Voter Data Consulting," "GOTV Postcards," "Campaign Mailers," "GOTV Text Messages" and "Direct Mail Printing & Postage." For these disbursements, OLC provided invoices but did not provide information about the related communications. Without sufficient detail, the Audit staff is unable to verify OLC's reporting of these amounts as other operating expenditures or federal election activity. The Audit staff requested copies of the associated communications. To date, these communications have not been provided.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representative during the exit conference and provided a schedule of the disbursements for which further records were necessary to verify the accuracy of OLC's reporting. The OLC representatives stated the previous chairman did not keep the documentation; therefore, OLC will not be able to provide the documentation. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

The Interim Audit Report recommended that OLC provide, in sufficient detail, documentation that allowed for verification of proper reporting for the communication disbursements totaling \$378,222. The documentation should have included copies of invoices, along with identification of the associated communication, and if the communication was previously provided, information associating each communication with an invoice(s).

C. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff maintains the disbursements cannot be verified.

Finding 6. Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that OLC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee

spent in connection with a federal election. For 2019 and 2020, the Audit staff identified 10 payments to OLC employees totaling, \$25,031, for which OLC did not maintain monthly payroll logs. This consisted of payroll which was allocated with federal and non-federal funds and payroll paid exclusively with non-federal funds. OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff concludes OLC did not maintain monthly payroll logs as required to document the percentage of time each employee spent in connection with a federal election.

Legal Standard

- A. Maintenance of Monthly Logs.** Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election. Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:
- Employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
 - Employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and
 - Employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with state law. 11 CFR §106.7(d)(1).
- B. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements for payroll. OLC did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2019 and 2020, OLC did not maintain monthly logs for \$25,031 in payroll.⁵ This amount consisted of:

- Payroll, totaling \$22,676, for employees reported on Schedule H4 (Disbursements for Allocated Federal and Non-Federal Activity) and paid with an allocation of federal and non-federal funds during the same month; and

⁵ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, and Request for Early Commission Consideration of a Legal Question, Page 1). Payroll amounts are stated net of taxes and fringe benefits.

- Payroll, totaling \$2,355, for employees reported on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely With Federal Funds) and also paid with 100 percent non-federal funds during the same month.⁶

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representatives during the exit conference and provided a schedule of the payroll transactions. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

The Interim Audit Report recommended that OLC provide evidence that monthly logs were maintained to document the percentage of time employees spent in connection with a federal election. Absent the provision of monthly logs specific to employees paid with 100% non-federal funds, OLC could have provided evidence that records consistent with 11 CFR §104.14(b)(1) were maintained to document that certain employees were involved in exclusively non-federal activities. Additionally, OLC should have provided and implemented a plan to maintain monthly logs and other records consistent with 11 CFR §104.14(b)(1) in the future.

C. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the Audit staff concludes OLC did not maintain monthly payroll logs as required to document the percentage of time each employee spent in connection with a federal election.

Finding 7. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed expenditures, totaling \$345,389, that OLC disclosed on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures appear to be independent expenditures containing express advocacy and should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures). Of these expenditures, OLC did not properly disclose independent expenditures, totaling \$62,915, that were publicly disseminated prior to payment and therefore required reporting as memo entries on Schedule E and reporting as debt on Schedule D (Debts and Obligations).

Additionally, OLC did not provide documentation to support the dissemination dates, in order to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$326,460.

⁶ Employees who were paid with federal funds and non-federal funds in the same month.

OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation or filing of amended reports, the public record remains incorrect with regard to OLC's disclosure of apparent independent expenditures and 24/48-hour reports.

Legal Standard

A. Definition of Independent Expenditures. An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Expressly advocating means any communication that:

- Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on Line 30(b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The 24-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

- D. Last-Minute Independent Expenditure Reports (48-Hour Reports).** Any independent expenditure aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. The 48-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$10,000. 11 CFR §§104.4(f) and 104.5(g)(1).
- E. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).
- F. Allocation of Expenses between Candidates.** Expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit expected to be derived. In the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to all candidates. This method shall be used to allocate payments involving both clearly identified federal candidates and one or more clearly identified non-federal candidates. 11 CFR §106.1(a).

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff noted that OLC did not disclose any independent expenditures on Schedule E, however, it made apparent independent expenditures, totaling \$345,389, and disclosed them on Schedule B, Line 30(b) (Federal Election Activity Paid Entirely with Federal Funds). These expenditures were for 20 direct mail pieces that contained express advocacy. A breakdown analysis for these expenditures is as follows:

a. Apparent Independent Expenditures Reported as Federal Election Activity (FEA) Paid Entirely with Federal Funds (Associated Mailer and Invoice Provided under 11 CFR §100.22(a))

OLC made disbursements for eighteen mail pieces, totaling \$314,380, for which it provided copies of the mail pieces with associated invoices, and wire transfer documentation. The mail pieces were disclosed as “Campaign Mailers” on OLC’s disclosure reports and contained the phrases such as:

“Vote Stephanie Bice for Congress November 3rd,” “Vote Bice for Congress on Nov 3rd,” “Vote Early for Republican Stephanie Bice,” “Vote No on Kendra Horn Nov 3rd,” and “Oppose Kendra Horn November 3rd.” These communications contained language expressly advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a).

Further, two of these communications, totaling \$47,455, were publicly disseminated prior to payment and therefore required reporting as memo entries on Schedule E when the communications were disseminated in addition to the reporting at the time of payment. This amount should also be reported as a corresponding debt on Schedule D (Debts and Obligations).

b. Apparent Independent Expenditures Reported as Federal Election Activity (FEA) Paid Entirely with Federal Funds (Associated Mailer and Invoice Provided under 11 CFR §100.22(b))

OLC made disbursements for two mail pieces, totaling \$31,009, for which it provided copies of the mail pieces with associated invoices and wire transfer documentation. The mail pieces were disclosed as “Campaign Mailers” on OLC’s disclosure reports and contained the phrases such as: “We Can’t Have Kendra Horn in Congress,” and “Kendra Horn Puts Party Over People.” Based on the definition of express advocacy under 11 CFR §100.22(b), the Audit staff believes that these mailers could only be interpreted by a reasonable person as advocating the election or defeat of a clearly identified candidate.

Further, one of these communications, totaling \$15,460, was publicly disseminated prior to payment and therefore required reporting as a memo entry on Schedule E when the communication was disseminated in addition to the reporting at the time of payment. This amount should also be reported as a corresponding debt on Schedule D (Debts and Obligations).

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representatives during the exit conference and provided a schedule detailing these expenditures. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

The Interim Audit Report recommended that OLC provide documentation that apparent independent expenditures, totaling \$345,389, did not require reporting as independent expenditures. Absent such documentation or evidence, the Interim Audit Report recommended OLC amend its reports to disclose these disbursements as independent expenditures on Schedule E (Itemized Independent Expenditures) and provide documentation to support the date of public dissemination for each communication to determine whether a 24/48-hour report was required to be filed. The Interim Audit Report also recommended that OLC amend its reports to include the reporting of independent expenditures, totaling

\$62,915 (\$47,455 + \$15,460), as memo entries based on the date in which the mail pieces were disseminated. This amount should have also been reported as corresponding debt on Schedule D.⁷

3. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation or filing of amended reports, the public record remains incorrect with regard to OLC's disclosure of apparent independent expenditures.

B. Failure to File 24/48-Hour Reports for Apparent Independent Expenditures

1. Facts

In addition to not reporting the apparent independent expenditures during the audit period, OLC did not file any 24 or 48-hour reports.⁸ Of the \$345,389 in apparent independent expenditures reported as federal election activity,

- OLC failed to file 48-hour reports totaling \$182,168; and,
- OLC failed to file 24-hour reports totaling \$144,292.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with OLC representatives during the exit conference and presented a schedule detailing these expenditures. In its response to the exit conference, OLC did not provide any comments on this finding, but generally stated that it would be filing amended reports in response to the audit.

Absent documentation that the apparent independent expenditures, totaling \$345,389, did not require reporting as independent expenditures (per Part A above), the Interim Audit Report recommended that OLC provide documentation to support the date of public dissemination for each identified expenditure to determine whether 24/48-hour reports were required to be filed.

3. Committee Response to Interim Audit Report

OLC did not provide a response to the Interim Audit Report recommendation. Absent documentation, the public record remains incorrect with regard to OLC's disclosure of 24/48-hour reports.

⁷ This amount is not included in Finding 4 (Reporting of Debts and Obligations).

⁸ The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24/48-hour report filing requirements. In the absence of a known date for public dissemination, the Audit staff used the invoice date of incurrence to determine if a 24/48-hour report was required.