



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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March 19, 2024

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director *AP*

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

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

Kendrick Smith *KDS*
Audit Manager

By: Brenda Wheeler *KDS*
Lead Auditor

Subject: Proposed Final Audit Report on Madison Project Inc. (A21-11)

Attached for your approval is the subject report. The report has been written in accordance with Directive 70. Documents related to this audit report can be viewed in the Voting Ballot Matters folder.

This report is being circulated on a 72-hour no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session.

If you have any questions, please contact Kendrick Smith (x 1344) or Brenda Wheeler at (x 1212).

Attachment:
Proposed Final Audit Report on Madison Project Inc.

AGENDA DOCUMENT NO. 24-13-A
AGENDA ITEM
For the meeting of March 27, 2024



Proposed Final Audit Report on Madison Project Inc.

(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 the matter discussed in this report.

About the Committee (p. 2)

Madison Project Inc. is a non-connected Political Action Committee with a non-contribution account and is headquartered in Merrifield, Virginia. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 1,349,514
○ Other Federal Receipts	585
Total Receipts	\$ 1,350,099
• Disbursements	
○ Operating Expenditures	\$ 1,033,548
○ Contributions to Federal Candidates and Committees	50,000
○ Contribution Refunds	6,770
○ Other Disbursements	7,297
Total Disbursements	\$ 1,097,615

Commission Finding (p. 3)

- Disclosure of Occupation and Name of Employer

¹ 52 U.S.C. §30111(b).



Proposed Final Audit Report on Madison Project Inc.

(January 1, 2019 - December 31, 2020)

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Part I

Background

Authority for Audit

This report is based on an audit of Madison Project Inc. (MPI), 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 disclosure of individual contributors' occupation and name of employer;
2. the consistency between reported figures and bank records;
3. the completeness of records;
4. the disclosure of independent expenditures; and
5. other committee operations necessary to the review.

Audit Hearing

MPI declined the opportunity for a hearing before the Commission on the matter presented in this report.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	September 12, 1994
• Audit Coverage	January 1, 2019 - December 31, 2020
Headquarters	
Merrifield, Virginia	
Bank Information	
• Bank Depositories	Four
• Bank Accounts	Eight Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Kelly Amorin
• Treasurer During Period Covered by Audit	Kelly Amorin (5/6/20 – Present) Paul Kilgore (12/30/09 – 5/5/20)
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, 2019	\$ 29,054
Receipts	
○ Contributions from Individuals	1,349,514
○ Other Federal Receipts	585
Total Receipts	\$ 1,350,099
Disbursements	
○ Operating Expenditures	1,033,548
○ Contributions to Federal Candidates and Committees	50,000
○ Contribution Refunds	6,770
○ Other Disbursements	7,297
Total Disbursements	\$ 1,097,615
Cash on hand @ December 31, 2020	\$ 281,538

Part III

Summary

Commission Finding

Disclosure of Occupation and Name of Employer

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 514 contributions, totaling \$184,782, lacked or inadequately disclosed the required occupation and/or name of employer information. MPI did not sufficiently demonstrate “best efforts” to obtain, maintain and submit the required information. MPI stated it sent follow-up letters for 377 contributions, totaling \$130,960; however, MPI did not show that any of its efforts to obtain the missing information were timely. For the remaining 137 contributions, totaling \$53,822, MPI had occupation and/or name of employer information within its records, however, MPI did not disclose it in amended reports. Subsequent to the exit conference, MPI filed amended disclosure reports that materially corrected the public record.

In response to the Interim Audit Report recommendation, Counsel representing MPI (Counsel) stated that the “lone finding, concerning the Committee’s demonstration of its treasurer’s so called ‘best efforts,’ is premised on Audit’s faulty characterization of the record before it and should be corrected.” Counsel’s fundamental objection was that “the [Interim Audit Report] appears to be trying to make new law” regarding how a committee may show that it satisfied best efforts, for which “no such requirement exists in the text of the barebones statutory provision itself”.

In response to the Draft Final Audit Report, Counsel continued to dispute the legal validity of the finding, as well as the mathematical accuracy of the errors. Counsel stated that the subparts of the finding contain “common math errors”. The Audit staff reviewed the errors and confirmed that 514 contributions, totaling \$184,782, lacked or inadequately disclosed the required occupation and name of employer information.

The Commission approved a finding that MPI failed to disclose or inadequately disclosed the occupation and name of employer information for 514 contributions from individuals, totaling \$184,782. (For more detail, see p. 4.)

Part IV

Commission Finding

Disclosure of Occupation and Name of Employer

Summary

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 514 contributions, totaling \$184,782, lacked or inadequately disclosed the required occupation and/or name of employer information. MPI did not sufficiently demonstrate “best efforts” to obtain, maintain and submit the required information. MPI stated it sent follow-up letters for 377 contributions, totaling \$130,960; however, MPI did not show that any of its efforts to obtain the missing information were timely. For the remaining 137 contributions, totaling \$53,822, MPI had occupation and/or name of employer information within its records, however, MPI did not disclose it in amended reports. Subsequent to the exit conference, MPI filed amended disclosure reports that materially corrected the public record.

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In response to the Draft Final Audit Report, Counsel continued to dispute the legal validity of the finding, as well as the mathematical accuracy of the errors. Counsel stated that the subparts of the finding contain “common math errors”. The Audit staff reviewed the errors and confirmed that 514 contributions, totaling \$184,782, lacked or inadequately disclosed the required occupation and name of employer information.

The Commission approved a finding that MPI failed to disclose or inadequately disclosed the occupation and name of employer information for 514 contributions from individuals, totaling \$184,782.

Legal Standard

- A. Itemization Required for Contributions from Individuals.** A political committee other than an authorized committee must itemize any contribution from an individual if it exceeds \$200 per calendar year, either by itself or when combined with other contributions from the same contributor. 52 U.S.C. §30104(b)(3)(A).
- B. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:
- the contributor’s full name and address (including zip code);
 - the contributor’s occupation and the name of his or her employer;
 - the date of receipt (the date the committee received the contribution);

- the amount of the contribution; and
- the calendar year-to-date total of all contributions from the same individual. 52 U.S.C. §30104(b)(3)(A) and 11 CFR §§100.12 and 104.3(a)(4)(i).

C. Best Efforts Ensures Compliance. When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i) and 11 CFR §104.7(a).

D. Definition of Best Efforts. The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
 - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
 - The statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

E. Reporting Missing Information. If any of the contributor information is received after the contribution has been disclosed on a regularly scheduled report, the political committee shall either:

- File with its next regularly scheduled report, an amended memo Schedule A listing all contributions for which contributor identifications have been received and an indication of the previous report(s) to which the memo Schedule A relates; or
- File amendments which include the contributor identifications together with the dates and amounts of the contributions. 11 CFR §104.7(b)(4)(i).

F. Accounting for Contributions. In performing recordkeeping duties, the treasurer shall use his or her best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. 11 CFR §102.9(d).

Facts and Analysis

A. Facts

MPI did not disclose or inadequately disclosed the required occupation and/or name of employer information for contributions requiring itemization on its FEC reports, as of the date of the audit notification letter.

Contributions Requiring Itemization - Missing or Inadequate Occupation and/or Name of Employer Disclosure	
Number of Contributions	514
Dollar Value of Contributions	\$184,782
Percent of Contributions	51%

For contributions requiring itemization on Schedule A (Itemized Receipts), MPI disclosed the following 514 unacceptable entries totaling \$184,782:

- “Information Requested Per Best Efforts” or “N/A” for 509 contributions totaling \$182,202; and
- Inadequate occupation and/or name of employer for 5 contributions totaling \$2,580.

1. Untimely Efforts Made:

MPI provided the Audit staff listings of contributors that were sent follow-up letters requesting missing occupation and name of employer information during 2019 and 2020. The listings did not include the dates when the letters were sent to contributors. The Audit staff asked the Treasurer if the letters were sent within 30 days of receipt of the contributions. The Treasurer indicated that the letters “were generally not mailed within 30 days.” The Audit staff’s comparison of the errors and the listings resulted in the following:

Untimely Efforts Made	
Follow-up Letters Sent to Contributors, <i>Untimely</i>	377
Dollar Value of Contributions	\$130,960

2. Contributor Information Obtained but Not Disclosed:

During audit fieldwork, MPI provided the Audit staff with the required occupation and/or name of employer information for some of its contributors; however, MPI did not disclose the information on its reports for the following:

Contributor Information Obtained but Not Disclosed	
Contributor Information in MPI’s Records (no record of when the information was obtained)	137 ²
Dollar Value of Contributions	\$53,822

² MPI’s receipt database for the audit period contained the occupation and name of employer information for these contributors.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MPI representatives during audit fieldwork and at the exit conference and provided the schedule detailing these disclosure errors. In response to the exit conference, Counsel stated MPI would “file amendments with the information at the appropriate time” for 137 contributions, totaling \$53,822.

Regarding the untimely efforts for the 377 contributions, totaling \$130,960, Counsel noted that the current treasurer became treasurer in May 2020 and stated, “...the treasurer did send follow-up letters within thirty days of being aware of the particular contribution with outstanding information.” Counsel further stated, “[t]he company that the Madison Project hired to create the solicitations, mail them, and receive any resulting contributions, only provided the Madison Project with contributor information every thirty days. As soon as the treasurer received notice of omitted contributor information, she would send the requisite letter to the contributor within thirty days.”

The Audit staff concluded that MPI did not satisfy the requirements of “best efforts” because no evidence was provided to demonstrate that the treasurer sent follow-up requests within 30 days of “receiving” the contributions, in accordance with 11 CFR §104.7(b)(2). Counsel’s statement appeared to support the untimely nature of the follow-up requests, given that the company provided contributor information to MPI “every thirty days” and “[a]s soon as the treasurer received notice..., she would send the requisite letter...within thirty days.” As such, the treasurer sent follow-up requests as soon as she was given notice that there was missing contributor information; however, this did not appear to be within 30 days of “receiving” the contribution.

The Audit staff noted Counsel’s response did not appear to include a critical component of 52 U.S.C. §30102(i) and 11 CFR §104.7(a). Specifically, a committee’s reports and records would be considered in compliance with the Act, when the treasurer of a political committee *shows* that the committee used best efforts to obtain, maintain, and submit the information required by the Act. While the Act does not specify how a committee may *show* that it satisfied best efforts, something must be preserved which demonstrates a committee’s attempt to satisfy the requirements. In this case, Counsel stated “...the treasurer made the separate follow-up request required by regulation.” The Audit staff further noted that MPI did provide some records of its untimely follow-up efforts, in the form of lists disclosing contributors to whom it sent follow-up letters, and a sample letter to whom it sent other contributors. However, no evidence of timely follow-up requests was provided to the Audit staff.

On May 18, 2023, MPI filed amended disclosure reports that materially corrected the public record. MPI’s amended disclosure reports included the occupation and name of employer information for 134 contributions, totaling \$53,292 of the 137 contributions totaling \$53,822 in the *Contributor Information Obtained but Not Disclosed* chart above.

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

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, Counsel stated “the [Interim Audit Report] repeatedly misrepresents the Committee’s showing of its use of ‘best efforts’ to report occupation and employer information...efforts which were sufficient

under the law.” Counsel cited the Interim Audit Report’s claim that MPI did not provide evidence of best efforts for the 191 contributions totaling \$57,111 and the lack of evidence of follow-up requests or any other best efforts attempts for these contributions. Counsel stated that this is “[n]ot true” given that, “to the best of the treasurer’s knowledge and belief,” (1) MPI’s solicitations contained the requisite best efforts language seeking the relevant information, (2) follow-up letters, consistent with 11 CFR §104.7(b), were sent to contributors missing this information, and (3) MPI provided a copy of the template letter it sent to contributors. Counsel further stated, “as the Commission is already aware, the Committee produced a mountain of solicitations that clearly informed potential contributors that the Committee was seeking their occupation and employer information” and “[t]hat alone demonstrates at least some very real evidence of ‘best efforts’”. Counsel further questioned, “if the Committee’s treasurer did not use ‘best efforts’ to obtain the missing contributor information in the regular course, as the [Interim Audit Report] claims, how did the Committee come about the information for the majority of its receipts—including the 142 contributions ...disclosed by amendments that have ‘materially corrected the public record’?”

Counsel’s fundamental objection was that “the [Interim Audit Report] appears to be trying to make new law” regarding how a committee may show that it satisfied best efforts, when “no such requirement exists in the text of the barebones statutory provision itself. 52 U.S.C. § 30102(i)”. Counsel further stated:

...while there are implementing regulations that go far beyond the language of the statute, they too say nothing of the recordkeeping duties the [Interim Audit Report] appears to seek to create. *See* 11 C.F.R. § 104.7. To the contrary, any such obligation runs counter to the text of the regulation, which only imposes a preservation requirement on oral requests—without imposing a similar requirement to maintain a copy of each and every letter sent, the maintenance of a log of letters, or whatever else [the] [Interim Audit Report] now seeks to impose.

Counsel contended that, “Any such recordkeeping obligation would also contradict the purpose of the ‘best efforts’ requirement.” Counsel stated that when the Commission first issued a regulation interpreting “best efforts”, it explained that “[i]n determining whether or not a committee has exercised ‘best efforts,’ ...*[t]he main concern [is merely] whether the committee has in place a systemized method for complying with the Act’s disclosure requirements.*”³ Counsel contended that, “Commission efforts to impose additional regulatory burdens in this area have flared up before, and not fared well.” Based on court rulings, Counsel stated, the law “only requires committees to use their *best efforts* to gather the information and then report to the Commission whatever information donors choose to provide.”⁴ Lastly, Counsel asserted that “Commission [Matters Under Review] have directly addressed this issue and contradict the [Interim Audit Report].”⁵

³ Explanation & Justification, *Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress*, 45 Fed. Reg. 15,080, 15086 (Mar. 7, 1980) (emphasis added).

⁴ *Republican National Committee v. FEC*, 76 F.3d 400 (1996).

⁵ *See, e.g.*, MUR 6438 (Art Robinson for Congress), Factual & Legal Analysis at 15–16 (relying on committee’s sample letters and statement of “procedure” in sending those letters in the regular course of operations as sufficiently showing “best efforts”); MUR 5840 (Simon), Factual & Legal Analysis at 2 (finding committee had shown “best efforts” by “submitt[ing] sample letters that it states were used throughout the campaign”).

To adequately address Counsel’s response to the Interim Audit Report recommendation, it is important to clarify some statements made by Counsel. The Audit staff’s position was, for both categories of contributions presented in this finding, MPI did not meet *all* the requirements of “best efforts” as set forth in 11 CFR §§102.9(d) and 104.7. As Counsel indicated in his response, and the Audit staff agreed, some of the requirements of “best efforts” were met. However, the “best efforts” regulation specifies that the treasurer and the political committee will only be deemed to have exercised best efforts to obtain, maintain and report the required information if —first, they requested the information in its solicitation materials that prompted the contribution *and*, second, if the information is not obtained, in a follow-up request. 11 CFR §104.7(b)(1) and (2). Furthermore, if the requested information is not received until after the contribution has been reported, the committee *must* report the information using one of the procedures outlined in 11 CFR §104.7(b)(4).

While Counsel has presented a robust discussion on the interpretation of “best efforts”, it should be noted that there was little discussion on the:

- Timeliness requirement, i.e., follow up requests must be made no later than 30 days after the receipt of the contribution. 11 CFR §104.7(b)(2); or
- Reporting requirement, i.e., any requested occupation and/or name of employer information received after the contribution has been disclosed on a report, must be disclosed as memo entries on a subsequent report or via amendments to the original reports. 11 CFR §104.7(b)(4); and
- Recordkeeping requirement, i.e., the treasurer (or agent) shall use his or her best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. 11 CFR §102.9(d).

Each of these requirements must be met to satisfy “best efforts” and are the primary requirements on which the Audit staff’s position is based upon. Specifically:

- For the 377 contributions totaling, \$130,960, MPI did not meet all the requirements of best efforts because its efforts to obtain the missing contributor information were untimely. The treasurer’s efforts to obtain this missing information were not made within 30 days after receipt of the contributions. As noted above, the vendor responsible for receiving contributions “only provided [MPI] with contributor information every thirty days. As soon as the treasurer received notice of omitted contributor information, she would send the requisite letter to the contributor within thirty days.” Because the vendors forwarded the contributions to MPI every 30 days, the follow up letters appeared to have been sent later than 30 days after the vendor’s receipt. In addition, if any missing information was obtained, the treasurer did not amend MPI’s disclosure reports to include the missing information and correct the public record.
- For the 137 contributions, totaling \$53,822, MPI did not meet all the requirements of best efforts because the treasurer did not amend MPI’s disclosure reports, prior to audit notification, to include the missing information and correct the public record. On May 18, 2023, MPI filed amended disclosure reports that included the occupation and name of employer information for 134 of these contributions, totaling \$53,292, in response to the audit.

In summary, the Interim Audit Report maintained that 514 contributions, totaling \$184,782, lacked or inadequately disclosed the required occupation and/or name of employer information. As stated previously, while the Act does not specify how a committee may *show* that it satisfied best efforts, records which demonstrate a committee's attempt to satisfy the requirements must be maintained. Since MPI had materially corrected the public record, the Audit staff recommended that MPI provide any additional comments it deems relevant to this matter.

D. Draft Final Audit Report

The Draft Final Audit Report restated Counsel's contentions that MPI's efforts satisfied the requirements of "best efforts" under the law. The Draft Final Audit Report maintained that MPI did not meet all the requirements of "best efforts" to obtain, maintain, and submit the required disclosure information.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, Counsel submitted a narrative, continuing to dispute the validity of the finding. Counsel stated, "We urge the Commission to reject the DFAR's findings, which contain several misstatements of law and fact."

According to Counsel, during the audit period, MPI received contributions from individuals of which "at least three-quarters" did not require to be itemized. In addition, MPI "regularly chose" to disclose contributions aggregating to less than \$200 per calendar year even though such contributions did not require itemization.

Counsel stated that the subparts of the finding were "flawed" and mathematically "incorrect." In addition, Counsel stated that there was a "significant disagreement over the findings" and the Draft Final Audit Report "ignores both the applicable statutory and regulatory text and past Commission enforcement matters defining what is required to show 'best efforts.'" Counsel further reiterated that several contributions did not require itemization and that these contributions "did not trigger best efforts follow-up obligations."

- Regarding the contributions for which MPI did not provide the "best efforts" documentation, Counsel stated, "This is wrong on both the applicable law and the underlying facts." The Counsel cited *Republican Nat'l Committee v. FEC*, 76 F.3d 400, 406 (1996) and referenced MURs 5840 and 6438, to assert that contributors are not required to provide the occupation and name of employer information; that it is unlawful to require such information; that MPI satisfied the "best efforts" requirements; and that a sample letter was sufficient to demonstrate "best efforts." Counsel also stated that, per 11 CFR §104.7(b), "there is no additional record-keeping requirement beyond making a single written request." Further, Counsel stated that 11 CFR §104.7, and not 11 CFR §102.9, governs the recordkeeping requirements for best efforts.
- Finally, Counsel stated that the subparts of the finding contain "common math errors" and that there are contributions included in the finding that did not require itemization, but MPI chose to itemize them voluntarily. Counsel provided several examples of such contributors.

The Draft Final Audit Report maintained that MPI did not satisfy the requirements of "best efforts" to obtain, maintain, and submit the required disclosure information.

Commission Conclusion

On February 8, 2024, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MPI failed to disclose or inadequately disclosed the occupation and name of employer information for 514 contributions from individuals, totaling \$184,782.⁶

The Commission approved the Audit staff's recommendation.

⁶ The Draft Final Audit Report reported errors for 558 contributions, totaling \$188,852. After receiving MPI's response to the Draft Final Audit Report, the Audit staff reassessed these errors and removed 44 contributions, totaling \$4,070. Specifically, as noted in the Audit Division Recommendation Memorandum, dated January 9, 2024, four errors, totaling \$440, were removed due to the inclusion of contributions that did not require itemization. An additional 40 errors, totaling \$3,630, were removed due to MPI's reporting of the aggregate year-to-date totals for multiple contributions received from contributors on the same day, indicating a requirement to disclose occupation and name of employer information. The removal of these contributions from the calculation of errors resulted in 514 contributions, totaling \$184,782 ($558 - 4 - 40 = 514$ and $\$188,852 - \$440 - \$3,630 = \$184,782$).