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February 15, 2008

MEMORANDUM

To: Thomasenia P. Duncan
General Counsel

Through: Patrina M. Clark
Staff Director

From: John D. Gibson
Chief Compliance Officer

Joseph F. Stoltz
Assistant Staff Director
Audit Division

Alex Boniewicz
Audit Manager

By: Kendrick Smith
Lead Auditor

Subject: 21st Century Democrats (A05-39) - Referral Matters

AUDIT REFERRAL # 08-12

On January 31, 2008, the final audit report on 21st Century Democrats (21CD) was forwarded to the Commission. The final audit report includes the following matters that meet the criteria for referral to your office:

- Finding 1. Documentation for Receipts - 21CD did not maintain adequate documentation for 37.5% of contributions from individuals in excess of \$50.
- Finding 2. Reporting of Debts and Obligations - 21CD did not report most of its debts and obligations on Schedules D (Debts and Obligations) during the audit period. From just one vendor, the Audit staff identified debts and obligations totaling \$638,361 that were not reported. In its response to the interim audit report, 21CD agreed with the Audit staff and is reviewing its vendor records in preparation for amending its disclosure reports; however, no amendments have been filed to date.

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- **Finding 4. Misstatement of Financial Activity - A comparison of 21CD's reported figures to its bank records revealed that receipts for calendar year 2004 were understated by \$32,308. In its response to the interim audit report, 21CD accepted the Audit staff's recommendation and agreed to amend its disclosure reports to correct the misstatement; however, no amendments have been filed to date.**

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Kendrick Smith or Alex Boniewicz at 694-1200.

Attachments:

Finding 1 – Documentation for Receipts

Finding 2 – Reporting of Debts and Obligations

Finding 4 – Misstatement of Financial Activity

**cc: Lorenzo Holloway
Lawrence Calvert**

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Finding 1. Documentation for Receipts

Summary

21CD did not maintain adequate documentation for its contributions from individuals in excess of \$50. In an attempt to locate the necessary records, 21CD authorized the Audit staff to obtain contribution records directly from its bank. Through its bank, the Audit staff was able to obtain some additional contribution records. Further, in its response to the interim audit report, 21CD provided documentation for additional contributions. The required records still have not been provided for 37.5% of contributions from individuals.

Legal Standard

A. Recordkeeping. The treasurer of a political committee shall keep an account of:

- All contributions received by or on behalf of such political committee;
- The name and address of any person who makes any contribution in excess of \$50, together with the date and amount of such contribution by any person. In addition, a full-size photocopy or digital image of each check or written instrument must be maintained;
- The identification of any person who makes a contribution or contributions aggregating more than \$200 during a calendar year, together with the date and amount of any such contribution; and
- The identification of any political committee which makes a contribution, together with the date and amount of any such contribution.

2 U.S.C. §432(c) and 11 CFR §102.9(a)(1), (2), (3) and (4).

B. Preservation of Records. The treasurer shall preserve all records required to be kept for 3 years after the report is filed. 2 U.S.C. §432(d).

Facts and Analysis

During the inventory of 21CD records prior to the start of fieldwork, it became apparent to the Audit staff that a majority of contributor check copies and documentation for credit card contributions had not been maintained by 21CD. The receipts database provided by 21CD contained more than 150,000 contributions from individuals, yet only 1 ½ boxes of contribution records were made available to the Audit staff. Most records maintained appeared to be contributions greater than or equal to \$100. It should be noted that while most contributions to 21CD were in amounts less than \$50, its receipts database indicated that more than 13,700 contributions were greater than \$50. A sample review of contributions from individuals indicated that 90% of contributors check copies were not maintained for contributions greater than \$50¹.

The Audit staff discussed this matter with 21CD representatives during the audit and at the exit conference. 21CD representatives stated that most contribution records had been

¹ 21CD's receipts database did not distinguish credit card contributions, and, because nearly all of its receipts were from deposits of contribution checks, the Audit staff initially treated all sample items as contributions by check.

destroyed by the vendor responsible for entering all contributions into its main database, Data Direct, Inc. They stated that the only copies maintained were of contributions \$100 or larger which were received directly by the committee. 21CD was unable to provide a vendor contract for Data Direct, Inc. to establish what records were supposed to be kept.

Subsequently, 21CD authorized the Audit staff to contact its bank in an attempt to obtain copies of the missing contributor checks for the contributions included in the sample. The bank was only able to locate and provide check copies for 58% of those contributions². The bank did not indicate that its search had determined that any of these items were contributions made by credit card (see footnote 3, below). Bank representatives, using the provided deposit date³, indicated they visually scanned microfilm copies of deposits in an attempt to locate these items. Some of these deposits contained hundreds of checks making the review difficult. In addition, bank representatives stated that no deposits were made on some dates indicated in 21CD's contribution database. This suggests that dates were not consistently or accurately recorded by 21CD.

A list of the sample contributions which were not located by the bank was provided to 21CD.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that 21CD further attempt to locate the missing contributor records by contacting its bank and/or credit card processing companies and having all copies produced in the search sent directly to the Audit staff. Also, it was recommended that 21CD implement practices to ensure the maintenance of receipt documentation and provide any comments it may yet have relative to this matter.

In its response to the interim audit report, 21CD was able to determine that some of the missing contribution records were for contributions made by credit card. 21CD was also able to trace some of these contributions to deposits. However, 21CD was unable to provide any credit card processing records, solicitation devices, etc. for these contributions. As such, 21CD failed to provide the required documentation for its credit card contributions.

For contributions made by check, 21CD provided some supporting check copies. However, the Audit staff had already obtained this documentation from 21CD's bank for nearly all of those contributions. In summary, the required check copies were not provided for 12% of contributions in the sample that appear to have been made by check. However, over all the required documentation was not provided for 37.5% of contributions in excess of \$50.

² Although the available documentation provided no indication that any of the sample contributions were made by credit card, some sample items may be credit card contributions which would explain why the bank could not locate contributor check copies. The Audit staff estimates that approximately 14% of all contributions were made by credit card.

³ 21CD's contribution records did not afford the Audit staff an opportunity to verify that the date utilized for reporting was the deposit date.

In addition, 21CD's response outlined recently implemented practices to ensure the maintenance of receipt documentation.

Finding 2. Reporting of Debts and Obligations

Summary

21CD did not report most of its debts and obligations on Schedules D (Debts and Obligations) during the audit period. From just one vendor, the Audit staff identified debts and obligations totaling \$638,361 that were not reported. In its response to the interim audit report, 21CD agreed with the Audit staff and is reviewing its vendors in preparation of amending its disclosure reports.

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. 2 U.S.C. §434(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

During a review of 21CD's operating expenditures, the Audit staff became aware that very limited debts and obligations had been reported during the audit period. The review indicated that debts should have been reported for many vendors, such as OMP, Sheads, Strategic Marketing and Mailing, Data Direct, and Integral Resources. Of these vendors, 21CD only reported debts to Integral Resources. A further review of one of these vendors, OMP, indicated that debts and obligations totaling \$638,361 should have been reported during the audit period.

The Audit staff discussed this matter with 21CD representatives at the Exit Conference and provided them with a schedule of the OMP debts noted above. They stated that the debt reporting issues stem from their monthly reporting practice, and they added that they would review this matter.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that 21CD amend its reports to include debts of \$638,361 to OMP. In addition, it was recommended that 21CD review other vendors for possible

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reportable debts and obligations, and if any such debts were determined, these should also be included in the amended reports. In its response to the interim audit report, 21CD accepted the Audit staff's recommendation and agreed to amend its reports to include the debts to OMP of \$638,361 as well as other vendors to which debts were owed. To date, no amended reports have been filed.

Finding 4. Misstatement of Financial Activity

Summary

A comparison of 21CD's reported figures to its bank records revealed that receipts for calendar year 2004 were misstated. 21CD had both receipts which were not reported and receipts which were reported in error. This resulted in a net understatement of receipts totaling \$32,308. In its response to the interim audit report, 21CD accepted the Audit staff's recommendation and agreed to amend its disclosure reports to correct the misstatement.

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), Schedule B (Itemized Disbursements) or Schedule H-4 (Joint Federal/Non-federal Activity Schedule). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

Facts and Analysis

The Audit staff reconciled 21CD's reported activity to bank records for calendar year 2004. The reconciliation revealed that reported receipts were understated by \$32,308.

The net understatement of receipts resulted from the following:

• Transfers from Non-federal Accounts not reported	\$179,761
• Erroneously reported Transfers from Non-federal Accounts	(106,448)
• Other Political Committee Contributions not reported	15,805
• Unexplained Difference	<u>(56,810)⁴</u>
Total Net Understatement of Receipts	<u>\$ 32,308</u>

The Audit staff discussed this matter with 21CD representatives at the exit conference and provided a schedule outlining the misstatement. 21CD representatives stated they would further review this matter and respond appropriately.

⁴ It should be noted that this Unexplained Difference is the result of 21CD's failure to maintain adequate receipt and deposit records (see Limitations, p.1 and Finding 1, p.4). With 150,000+ contributions and very limited receipt records, any differences were extremely difficult and time consuming to explain. 21CD acknowledged its reporting and recordkeeping shortcomings and has taken steps to comply with these requirements in the future.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that 21CD amend its reports to correct the misstatement noted above. In its response to the interim audit report, 21CD accepted the Audit staff's recommendation and agreed to amend its reports to correct the misstatement. To date, no amended reports have been filed.

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