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September 6, 2017

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AGENDA ITEM
FOR HEARING OF 9-14-17

MEMORANDUM

To: The Commission

Through: Alec Palmer AP
Staff Director

From: Patricia C. Orrock PCO
Chief Compliance Officer

Thomas E. Hintermister TH
Assistant Staff Director
Audit Division

Rickida L. Morcomb RM
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By: William Antosz RM for
Lead Auditor

Subject: Audit Hearing for the Conservative Majority Fund (A13-17)

Attached for your information is a copy of the Draft Final Audit Report (DFAR) and Office of General Counsel legal analysis that was mailed to the Conservative Majority Fund (CMF) on June 28, 2017. The CMF Treasurer responded to the DFAR on July 14, 2017, and requested a hearing before the Commission to discuss DFAR Finding 1 (Misstatement of Financial Activity) and DFAR Finding 3 (Reporting of Apparent Independent Expenditures). The hearing was granted on July 27, 2017, and has been scheduled for September 14, 2017.

Finding 1 – Misstatement of Financial Activity

Finding 1 is based on CMF's failure to comply with 52 U.S.C. §30104(b)(4) and (5). The Federal Election Campaign Act ("Act") and related regulations require each political committee to report its financial activity (receipts, disbursements, and cash on hand) in accordance with the correct reportable bank activity.

In the Interim Audit Report (IAR), Finding 1 noted that CMF had misstated its disbursements for calendar year 2012. Although disbursements were only understated by $1,486 at the end of 2012, when evaluating the identified errors, regardless of whether the errors were positive or negative (absolute value), the Audit staff determined that CMF misstated its disbursements by $2,163,830 throughout the year. In other words, during the period from CMF's inception through October 23, 2012, the Audit staff was unable to match vendor payments to the disbursement amounts disclosed on reports.

In response to the IAR recommendation, the CMF Treasurer stated that CMF strongly disagreed that it had misstated its disbursements by $2,163,830. CMF did agree that some payee names and some dates were reported incorrectly; therefore, the CMF Treasurer said amended 2012 disclosure reports were filed to correct the payee names, incorrect dates, and the reporting of the bank service charges only.

The DFAR concluded that no amended reports had been filed by CMF to correct the public record, and absent the filing of amended reports, CMF disbursements remained misstated by $2,163,830.

In response to the DFAR, the CMF Treasurer stated that CMF stands by its prior response to the Interim Audit Report with one caveat: that CMF has not yet amended its reports to comply with the Audit staff's recommendations. Further, the CMF Treasurer said the reports would be amended.

Finding 3 - Reporting of Apparent Independent Expenditures

Finding 3 is based on CMF's failure to comply with 11 CFR §§104.3(b)(3)(vii), 104.4(a), 104.4(f), and 104.5(g)(1) and (g)(2). The Federal Election Campaign Act ("Act") and related regulations require the filing of independent expenditure reports and provide the disclosure requirements of independent expenditures.

In the IAR, Finding 3 noted that CMF disclosed disbursements as operating expenditures on Schedule B, Line 21b (Operating Expenditures) totaling $469,136 which appeared to be independent expenditures. Also independent expenditures totaling $185,663 were disclosed with an incorrect vendor name. With respect to the filing of 24/48-hour reports required for certain independent expenditures, CMF did not file 24-hour reports totaling $90,260 in a timely manner and did not file 24/48-hour reports for the apparent independent expenditures totaling $469,136.

In response to the IAR recommendation, the CMF Treasurer stated that CMF did not agree with the Audit staff's calculation that it had understated independent expenditures by $469,136, and provided a new calculation that reduced its independent expenditures from the original reported amount of $1,347,233 to $914,856. Further, CMF filed new and amended 24/48-hour reports for independent expenditures totaling $764,082. CMF provided an explanation of how it determined whether an expenditure was an operating expenditure or an independent expenditure, as well as 20 additional vendor invoices.

The DFAR concluded that the Audit staff accepted that expenditures totaling $195,839 were not independent expenditures, based upon further review of documentation provided by

CMF, and reduced the apparent independent expenditures not reported to $273,297 ($469,136 - $195,839).[1] The Audit staff noted that CMF had not filed any amended disclosure reports concerning the apparent independent expenditures and considered the expenditures totaling $273,297 reportable as independent expenditures. Further, CMF had not complied with the recommendation to correct the disclosure for 51 independent expenditures totaling $185,663.

The Audit staff also noted that the CMF Treasurer did not specifically address the 24-hour reports totaling $90,260 that were filed untimely. The Audit staff was not able to verify if the 24/48-hour reports filings CMF made in response to the IAR had addressed these apparent independent expenditures. Absent evidence that the expenditures totaling $273,297 did not require reporting as independent expenditures, the Audit staff maintains these expenditures may have required filing of 24/48-hour reports.

In response to the DFAR, the CMF Treasurer stated that CMF stands by its prior response to the Interim Audit Report with one caveat: that CMF has not yet amended its reports to comply with the Audit staff's recommendations. Further, the CMF Treasurer said the reports would be amended.

Attachments:
- Draft Final Audit Report of the Audit Division on the Conservative Majority Fund
- Office of General Counsel's Legal Analysis dated May 12, 2017
- CMF Response to the Draft Final Audit Report, dated July 14, 2017

cc: Office of General Counsel

[1] CMF has indicated that the two telephone scripts, two follow-up letters, and four television advertisements in the Audit staff's possession represent the entire universe of communications that were made during the audit period. Based on the content of the communications, one telephone script, one follow-up letter, and two advertisements contained express advocacy.

Draft Final Audit Report of the Audit Division on the Conservative Majority Fund
(July 9, 2012 - December 31, 2012)

Why the Audit Was Done
Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.[1] The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

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

About the Committee (p. 2)
The Conservative Majority Fund is a non-connected committee, headquartered in Arlington, Virginia. For more information, see the chart on Committee Organization, p. 2.

Financial Activity (p. 2)

• **Receipts**	
o Contributions from Individuals	$ 2,814,766
Total Receipts	**$ 2,814,766**
• **Disbursements**	
o Operating Expenditures	$ 1,398,617
o Independent Expenditures	1,347,233
Total Disbursements	**$ 2,745,850**

Findings and Recommendations (p. 3)
- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation and Name of Employer (Finding 2)
- Reporting of Apparent Independent Expenditures (Finding 3)
- Reporting of Debts and Obligations (Finding 4)
- Recordkeeping for Communications (Finding 5)

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[1] 52 U.S.C. §30111(b).

Draft Final Audit Report of the Audit Division on the Conservative Majority Fund

(July 9, 2012 - December 31, 2012)

Table of Contents

Part I
Background

Authority for Audit
This report is based on an audit of the Conservative Majority Fund (CMF), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit
Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:
1. the disclosure of contributions received;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of debts and obligations;
4. the consistency between reported figures and bank records;
5. the completeness of disbursement records;
6. the disclosure of independent expenditures; and
7. other committee operations necessary to the review.

Part II
Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 9, 2012
• Audit Coverage	July 9, 2012 - December 31, 2012
Headquarters	Arlington, Virginia
Bank Information	
• Bank Depositories	One
• Bank Accounts	One Checking Account
Treasurer	
• Treasurer When Audit Was Conducted	Scott Mackenzie
• Treasurer During Period Covered by Audit	Scott Mackenzie July 9, 2012 - December 31, 2012
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Treasurer

Overview of Financial Activity
(Audited Amounts)

Cash-on-hand @ July 9, 2012	**$ 0**
Receipts	
o Contributions from Individuals	2,814,766
Total Receipts	**$ 2,814,766**
Disbursements	
o Operating Expenditures	1,398,617
o Independent Expenditures	1,347,233
Total Disbursements	**$ 2,745,850**
Cash-on-hand @ December 31, 2012	**$ 68,916**

Part III
Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

The Audit staff's comparison of CMF's financial activity with its bank records revealed a material misstatement of disbursements in calendar year 2012. CMF misstated its disbursements by $2,163,830. In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF did not agree that it had misstated its disbursements by $2,163,830, and it had amended its 2012 disclosure reports to correct some of the errors for incorrect dates and names. However, as of the date of this report, no amended reports have been filed by CMF to correct the public record. Absent the filing of amended reports, CMF disbursements remain misstated by $2,163,830.
(For more detail, see p. 5.)

Finding 2. Disclosure of Occupation and Name of Employer

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 527 contributions totaling $86,745 lacked adequate disclosure of the contributor's occupation and name of employer. CMF did not demonstrate "best efforts" to obtain, maintain and submit this information. In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF had amended its disclosure reports to correct the errors. However, as of the date of this report, no amended disclosure reports have been filed by CMF to correct the public record. Absent the filing of amended reports, the amount of contributions lacking adequate disclosure of occupation and name of employer remains as $86,745.
(For more detail, see p. 7.)

Finding 3. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed disbursements to verify the independent expenditures that CMF reported on Schedule E (Itemized Independent Expenditures) were accurately and completely disclosed.

The Audit staff identified disbursements totaling $469,136 which were not reported as apparent independent expenditures. Also independent expenditures totaling $185,663 were disclosed with an incorrect vendor name.

With respect to the filing of 24/48-hour reports required for certain independent expenditures, CMF did not file 24-hour reports totaling $90,260 in a timely manner and did not file 24/48-hour reports for apparent independent expenditures totaling $469,136 noted above.

In response to the Interim Audit Report recommendation, the CMF Treasurer stated that the actual amount of independent expenditures was $914,856 and CMF has filed new and amended 24/48-hour reports for independent expenditures totaling $764,082. After reviewing additional vendor invoices that were provided, the Audit staff has accepted that expenditures totaling $195,839 were not independent expenditures, and reduced the apparent independent expenditures not reported to $273,297 ($469,136 - $195,839). Also, CMF's response mentioned that it had filed amended reports to correct the reporting of the 51 independent expenditures totaling $185,663 disclosed with the incorrect vendor name. However, even though the CMF Treasurer said that amended reports were filed, as of the date of this report, CMF has not filed any amended disclosure reports concerning the independent expenditures. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considers the expenditures totaling $273,297 to be independent expenditures, and CMF has not complied with the recommendation to correct the disclosure for 51 independent expenditures totaling $185,663.
(For more detail, see p. 9.)

Finding 4. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff identified debts totaling $67,800 that were not disclosed on Schedule D (Debts and Obligations) as required. CMF contended that it was not liable for a portion of the expenses, as they were incurred by another committee. In response to the Interim Audit Report recommendation, the CMF Treasurer provided a check copy (front only) written by a 527 organization for payment of $93,990 along with ten invoices billed to the 527 organization, and concluded that all debts and obligations owed have been properly reported. The Audit staff does not consider this adequate documentation to demonstrate that the debts totaling $67,800 did not require disclosure by CMF. Absent further documentation, the amount of debts required to be disclosed on Schedule D remains as $67,800.
(For more detail, see p. 15.)

Finding 5. Recordkeeping for Communications

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. The Audit staff identified $304,399 for which sufficient records were not provided. Without a copy of the invoices and the associated communications, the Audit staff was unable to determine how CMF should have reported these disbursements. In response to the Interim Audit Report recommendation, the CMF Treasurer provided two media vendor invoices, four television advertisements, and stated that CMF believed that all documentation needed by the Audit staff has been provided. The Audit staff concludes that the records provided by CMF demonstrated that disbursements totaling $224,768 were operating expenditures and disbursements totaling $79,631 were insufficiently documented. In addition, disbursements totaling $38,302, which were originally included in the apparent independent expenditure finding, are not sufficiently documented. Absent further documentation, the Audit staff considers the remaining disbursements totaling $117,933 ($79,631 + $38,302) to be insufficiently documented.
(For more detail, see p. 18.)

Part IV
Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary
The Audit staff's comparison of CMF's financial activity with its bank records revealed a material misstatement of disbursements in calendar year 2012. CMF misstated its disbursements by $2,163,830. In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF did not agree that it had misstated its disbursements by $2,163,830, and it had amended its 2012 disclosure reports to correct some of the errors for incorrect dates and names. However, as of the date of this report, no amended reports have been filed by CMF to correct the public record. Absent the filing of amended reports, CMF disbursements remain misstated by $2,163,830.

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 CMF's reported financial activity with its bank records for calendar year 2012. The reconciliation determined that CMF misstated disbursements for 2012. The following chart outlines the discrepancies between CMF's disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

2012 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ July 9, 2012	$0	$0	$0
Receipts	$2,814,767	$2,816,253	($1,486) Understated
Disbursements	$2,745,851	$2,747,337	($1,486) Understated
Ending Cash Balance @ December 31, 2012	$68,916	$68,916	$0

CMF understated its disbursements by $1,486 in 2012. However, when evaluating the identified errors, regardless of whether the errors were positive or negative (absolute value), the Audit staff discovered that CMF misstated its disbursements by $2,163,830 as follows:

The misstatement of disbursements resulted from the following differences:

• Expenditures under-reported or not reported[2]	$1,081,176
• Expenditures over-reported or not supported by bank payments	1,081,172
• Bank charges not reported	1,482
Sum of Reporting Adjustments	**$2,163,830**

Although the chart demonstrated that overall CMF had only understated its disbursements by $1,486 in 2012, the Audit staff found that CMF did not properly report the majority of its disbursements. The disbursements were reported in such a manner that, during the period from CMF's inception through October 23, 2012, the Audit staff was unable to match vendor payments to any disclosed disbursement. The continued over-reporting and under-reporting on its disclosure reports resulted in CMF over-reporting expenditures of $1,081,172 and under-reporting expenditures and bank charges of $1,082,658.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided schedules of the misstated activity and discussed the reporting errors that caused the misstatement. The CMF Treasurer had no additional comments.

The Interim Audit Report recommended that CMF amend its reports to correct the misstatements for 2012 as noted above.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF strongly disagreed that it had misstated its disbursements by $2,163,830. Also, the CMF Treasurer stated that "[t]he discrepancy of $1,486 was a simple case of bank charges mistakenly being reported as contra-receipts (not-sufficient-funds checks or credit card chargebacks, that reduce receipts) instead of as bank service charges." CMF did agree that some payee names and some dates were reported incorrectly; therefore, the CMF Treasurer said amended 2012 disclosure reports were filed to correct the payee names, incorrect dates, and the reporting of the bank service charges only (see Finding 3 – Reporting of Apparent Independent Expenditures). However, as of the date of this report, the Audit staff determined that no amended reports have been filed by CMF to correct the public record. Absent the filing of amended reports, CMF disbursements remain misstated by $2,163,830.

[2] This amount includes two expenditures totaling $79,631 for which documentation was insufficient to make a determination pertaining to how these disbursements should be reported. See Recordkeeping for Communication Finding, p.18.

Finding 2. Disclosure of Occupation and Name of Employer

Summary
During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 527 contributions totaling $86,745 lacked adequate disclosure of the contributor's occupation and name of employer. CMF did not demonstrate "best efforts" to obtain, maintain and submit this information. In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF had amended its disclosure reports to correct the errors. However, as of the date of this report, no amended disclosure reports have been filed by CMF to correct the public record. Absent the filing of amended reports, the amount of contributions lacking adequate disclosure of occupation and name of employer remains as $86,745.

Legal Standard

A. **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).

B. **Best Efforts Ensure 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).

C. **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.
     - Note: The request and statement must appear in a clear and conspicuous manner on any response material included in a solicitation.
   - Within 30 days of 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).

Facts and Analysis

A. Facts

A review of all contributions from individuals requiring itemization indicated that 527 contributions totaling $86,745, or 30% of total contributions from individuals required to be itemized by CMF, lacked disclosure of the contributor's occupation and name of employer. For most of these entries, the contributor's occupation and name of employer information (455 of 527) were blank on the Schedule A (Itemized Receipts) filed with the Commission.

The Audit staff reviewed the receipt records provided by CMF to determine if it had utilized "best efforts" to obtain, maintain and submit the missing information.

- CMF did not provide documentation showing it made follow-up best efforts requests for 48 contributions totaling $9,340 ($86,745 - $77,405).

- CMF had the required information for 479 contributions totaling $77,405; however, this information was not disclosed on its disclosure reports.

In response to the audit, CMF submitted written procedures of "best efforts" requirements: (i) within thirty days of the receipt of the contribution, a letter would be sent, clearly asking for the missing information, without soliciting a contribution; (ii) contributors would be informed of the requirements of federal law for the reporting of such information; and (iii) a pre-addressed return envelope, a fax number and an email address would be provided to the contributor. The Treasurer stated that upon receipt of the information, CMF would amend its reports to provide the new information. Although occupation and name of employer information was obtained for the majority of its contributors, CMF did not provide confirmation that these follow up letters were sent to contributors.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided schedules and discussed the omission of the contributor's occupation and name of employer. The CMF Treasurer commented that he had obtained a lot of the missing occupation and name of employer information. In response to the exit conference, CMF provided documentation detailing the contributor's occupation and name of employer information for $45,369 of the errors, however amended disclosure reports were not filed.[3] This amount is included in the $77,405 noted above.

The Interim Audit Report recommended that CMF establish "best efforts" by amending its reports to disclose the missing information relating to the 479 contributions totaling $77,405.

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[3] CMF's database contained the occupation and name of employer information for an additional 203 contributions totaling $32,036.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF had obtained occupation and name of employer information for all but 30 of its contributors and restated its "best efforts" procedures. The response also included a listing of the 30 contributors for whom CMF was unable to obtain the missing occupation and name of employer information. In addition, 478 "best efforts" letters were provided. Further, the response mentioned that CMF had amended its disclosure reports to correct the majority of the errors. However, as of the date of this report, the Audit staff determined that no amended reports have been filed by CMF to correct the public record. Absent the filing of amended reports, the amount of contributions lacking adequate disclosure of occupation and name of employer remains as $86,745.

Finding 3. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed disbursements to verify the independent expenditures that CMF reported on Schedule E (Itemized Independent Expenditures) were accurately and completely disclosed.

The Audit staff identified disbursements totaling $469,136 which were not reported as apparent independent expenditures. Also independent expenditures totaling $185,663 were disclosed with an incorrect vendor name.

With respect to the filing of 24/48-hour reports required for certain independent expenditures, CMF did not file 24-hour reports totaling $90,260 in a timely manner and did not file 24/48-hour reports for apparent independent expenditures totaling $469,136 noted above.

In response to the Interim Audit Report recommendation, the CMF Treasurer stated that the actual amount of independent expenditures was $914,856 and CMF has filed new and amended 24/48-hour reports for independent expenditures totaling $764,082. After reviewing additional vendor invoices that were provided, the Audit staff has accepted that expenditures totaling $195,839 were not independent expenditures, and reduced the apparent independent expenditures not reported to $273,297 ($469,136 - $195,839). Also, CMF's response mentioned that it had filed amended reports to correct the reporting of the 51 independent expenditures totaling $185,663 disclosed with the incorrect vendor name. However, even though the CMF Treasurer said that amended reports were filed, as of the date of this report, CMF has not filed any amended disclosure reports concerning the independent expenditures. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considers the expenditures totaling $273,297 to be independent expenditures, and CMF has not complied with the recommendation to correct the disclosure for 51 independent expenditures totaling $185,663.

Legal Standard

A. Definition of Independent Expenditures. The term "independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. 11 CFR §100.16.

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 (b) of 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 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. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating $10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate $10,000 or more. The reports must be received by the Commission within 48 hours after the expenditure is made. 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. Definition of Expressly Advocating. The term "expressly advocating" means any communication that;

- Uses phrases such as "vote for the President," "re-elect your Congressman," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements; or

- When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because:
  - the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
  - reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of reaction. 11 CFR §100.22(a) and (b).

F. 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 check for accuracy and completeness. 11 CFR §104.14(b)(1).

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure the proper reporting of independent expenditures. The Audit staff identified the following:

- Apparent independent expenditures not reported totaling $469,136.
- Vendor name incorrectly reported on Schedule E totaling $185,663.

Background Information

The Audit staff was unable to match vendor invoices or payments to any disbursements disclosed on either Schedule B (Itemized Disbursements) or Schedule E. The Audit staff asked CMF to explain how it classified communications and how it reported the associated disbursements, as well as, if any documentation was available to verify the reported amounts. CMF stated that portions of some disbursements were reported as independent expenditures and the remaining portions as operating expenditures. However, CMF did not explain its methodology for determining how the disbursements were disclosed.

Absent documentation of how disbursements were disclosed, the Audit staff used the following approach to determine the amount[4] that should have been reported as apparent independent expenditures:

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[4] The Audit staff originally included in its calculation of the total costs attributed to independent expenditures a variety of other types of cost described on the invoices, such as, postage of "fulfillment letters"; costs associated with credit card processing connected with "fulfillment letters" and with "acquisition and processing"; check debiting for "acquisition and processing"; "rental lists"; "prospecting"; "lockbox services," and costs associated with creating and sending "premiums" such as a flag and bumper sticker. These costs described on the invoices are not defined in terms of how they are related to the communications, but the descriptions might raise questions whether some of them should

- Communications such as the telephone calls, follow-up letters, and television advertisements containing express advocacy of a clearly identified candidate were considered to have most likely disseminated before the date of the general election. 11 CFR §100.22(a)

- Based on communications that the Audit staff determined were disseminated before the November 6, 2012 general election, any associated costs were considered independent expenditures.

- Based on communications that the Audit staff determined were disseminated after the general election, any associated costs were considered operating expenditures.[5]

a. Apparent Independent Expenditures (Copy of Invoice and Communication Made Available)

The Audit staff determined that CMF made apparent independent expenditures totaling $1,816,369. However, CMF only reported independent expenditures totaling $1,347,233. Therefore, the Audit staff calculated an under-reported amount of apparent independent expenditures totaling $469,136, for which CMF provided the associated communications which included phone scripts and call dates, advertisements, and solicitation letters. This amount included $328,250 that CMF had not paid and for which CMF should have disclosed memo entries on Schedule E when the communications were disseminated. The corresponding debt owed[6] also should have been disclosed on Schedule D (Debts and Obligations). The phone calls and television advertisements contained language expressly advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a), while the follow up letters contained language advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(b) .[7]

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be considered costs for the communications. See 11 C.F.R. § 100.16. Upon further review after CMF's response to the Interim Audit Report, the Audit staff deducted costs associated with credit card processing connected with fulfillment letters and acquisition/processing, lockbox services, and flags since these are not directly associated with producing and distributing the communications.

5 The Audit staff used the range of dates listed on each invoice to estimate the date on which CMF's vendor completed the services. The Audit staff treated the last day of the date range as the date of completion for all invoices, except for those invoices in which the date range occurred partly before and partly after the general election date. In that case, the Audit staff chose to pro-rate the cost of the service according to the proportion of the date range occurring before and after the general election.

6 Only $67,800 of the $328,250 would be required to be disclosed as debt, since CMF disclosed debt owed to this vendor totaling $260,450 on its 2012 year-end report. See Finding 4 - Reporting of Debts and Obligations, p.15.

7 CMF has indicated that the two telephone scripts, two follow-up letters, and three television advertisements in the Audit staff's possession represent the entire universe of communications that were made during the audit period. However, invoices indicate there was an additional 2 television advertisements, see Finding 5 - Recordkeeping for Communications, p. 18. Based on the content of the communications, one telephone script, one follow-up letter, and two television advertisements contained express advocacy.

b. Independent Expenditures Reported on Schedule E (Independent Expenditure Schedule) – Disclosure Errors

CMF disclosed 51 independent expenditures totaling $185,663 with an incorrect vendor name. These expenditures were disclosed as paid to the media vendor. However, CMF did not make direct payments to this vendor. The media vendor's services were billed to CMF through invoices from another vendor, and CMF made direct payments to that vendor instead of the media vendor.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented schedules of apparent independent expenditure reporting errors. In response to the exit conference, the CMF Treasurer provided an email addressing $301,972 of the expenses billed but not paid in section A. 1 (a) above. The email showed that June 2012 expenses totaling $92,411 that were billed to CMF were actually incurred by another committee and should have been paid by that committee.[8] Other than the email provided by CMF, the CMF Treasurer did not provide any other documentation to support that the other committee is liable for $92,411.

The Interim Audit Report recommended that CMF:

- Provide documentation and evidence that apparent independent expenditures totaling $469,136 did not require reporting as independent expenditures. Absent such evidence, CMF should have amended its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.
- Amend its reports to correct the vendor name for the 51 independent expenditures totaling $185,663.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF believed that the actual amount of independent expenditures was $914,856 and that this amount was reflected on the amended disclosure reports. CMF provided an attachment that explained how it determined whether an expenditure was an operating expenditure or an independent expenditure, along with 20 additional vendor invoices.

CMF considered the following costs as independent expenditures: all costs associated with the media vendor ($629,730), 20% of all outbound phone calls ($153,256) since approximately one minute of an average five minute call contained a taped anti-Obama message, 50% of all rental list costs ($50,223) since the lists were used for outbound calls which had a dual purpose of delivering a political message and soliciting a contribution, and all bumper sticker costs incurred before the general election ($2,087), since the costs contained a political message. Costs totaling

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[8] The other committee that CMF contends is liable for the $92,411 debt is not registered with the Commission.

$92,411 were considered to be costs associated with a 527 organization[9] (see Finding 4 - Reporting of Debts and Obligations), and all other costs[10] were considered to be either fundraising or administrative in nature. CMF did not provide any new phone scripts.[11]

The Audit staff maintains the script used for the telephone calls, the follow-up letters sent, and the media television advertisements provided by CMF and made before the general election contained express advocacy, making the costs for these and all other related costs independent expenditures. CMF's statement that some of the costs were fundraising only does not take into account that fundraising letters with express advocacy language are not excluded from the regulation definition at 11 CFR §100.16.[12] Also, CMF's response mentioned that it had filed amended reports to correct the reporting of the 51 independent expenditures totaling $185,663 disclosed with the incorrect vendor name. However, as of the date of this report, CMF has not filed any amended disclosure reports concerning the independent expenditures.

After reviewing additional vendor invoices that were provided by CMF, the Audit staff reduced the apparent independent expenditure total by $195,839. The Audit staff accepted that legal and accounting expenditures totaling $64,160 were not independent expenditures. Also, the Audit staff accepted that costs relating to the purchase and mailing of American flags ($13,122), costs relating to lock box services ($4,650), and credit card processing and fulfillment charges ($75,605) were not apparent independent expenditures. In total, the Audit staff removed disbursements of $157,537 from its apparent independent expenditures costs and now considers these to be operating expenditures. Further, costs totaling $38,302 have been removed from the apparent independent expenditure total and moved to the recordkeeping finding because the documentation provided for these expenditures is not sufficient to determine how these expenditures should have been reported (See Finding 5 – Recordkeeping for Communications).

In total, the Audit staff reduced the amount of apparent independent expenditures to $1,620,530 ($1,816,369 - $195,839). As previously stated, CMF reported independent expenditures in the amount of $1,347,233. Therefore, CMF has not demonstrated that apparent independent expenditures totaling $273,297 ($1,620,530 - $1,347,233) did not require reporting as independent expenditures. Absent evidence that the expenditures in question did not require reporting as independent expenditures, the Audit staff considers these expenditures to be independent expenditures.

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9 See footnote 15.

10 See footnote 4.

11 CMF provided one more television advertisement, bringing the total provided by CMF to four. The CMF Treasurer stated this television advertisement is an independent expenditure. However the Audit staff does not consider this particular television advertisement to be an independent expenditure because it does not contain express advocacy. And the cost is not a part of this finding.

12 See the Final Audit Report of the Commission on the Legacy Committee Political Action Committee, Finding 2 (2008 election cycle).

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

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to determine whether 24/48-hour reports were properly filed.[13] The Audit staff determined that CMF filed untimely 24-hour reports for 13 independent expenditures totaling $90,260. For these expenditures, 24-hour reports were filed 13 to 27 days after the dissemination date. As noted above, the Audit staff also identified apparent independent expenditures totaling $469,136 which may also require filing of 24/48-hour reports.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented schedules of untimely and possible 24/48-hour reports that were not filed. The CMF Treasurer had no additional comments.

Absent documentation and evidence that apparent independent expenditures totaling $469,136 did not require reporting as independent expenditures (per section A.1.(a) above), the Interim Audit Report recommended that CMF provide documentation to support the date of public dissemination for the communications to determine whether a filing of a 24/48-hour report was required. The Interim Audit Report also recommended that CMF provide documentation to demonstrate that the 24-hour reports totaling $90,260 were filed timely.

3. Committee Response to the Interim Audit Report

In response to the Interim Audit Report recommendation, the CMF Treasurer stated that the actual amount of independent expenditures was $914,856 and CMF has filed new and amended 24/48-hour reports for independent expenditures totaling $764,082.

The CMF Treasurer did not specifically address the 24-hour reports totaling $90,260 that were filed untimely. The Audit staff restates that CMF under-reported the reduced apparent independent expenditures totaling $273,297. The Audit staff was not able to verify if the 24/48-hour reports filings CMF made addressed these apparent independent expenditures. Absent evidence that the expenditures totaling $273,297 (as determined in section A.3. above) did not require reporting as independent expenditures, the Audit staff considers these expenditures may have required filing of 24/48-hour reports.

Finding 4. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff identified debts totaling $67,800 that were not disclosed on Schedule D (Debts and Obligations) as required. CMF contended that it was not liable for a portion of the expenses, as they were incurred by another committee. In

[13] See footnote 5.

response to the Interim Audit Report recommendation, the CMF Treasurer provided a check copy (front only) written by a 527 organization for payment of $93,990 along with ten invoices billed to the 527 organization, and concluded that all debts and obligations owed have been properly reported. The Audit staff does not consider this adequate documentation to demonstrate that the debts totaling $67,800 did not require disclosure by CMF. Absent further documentation, the amount of debts required to be disclosed on Schedule D remains as $67,800.

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) and104.11(a).

B. 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).

C. Reporting Disputed Debts. A political committee shall report a disputed debt in accordance with 11 CFR 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Until the dispute is resolved, the political committee shall disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. The political committee may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor. 11 CFR §116.10(a).

Facts and Analysis

A. Facts

The Audit staff reviewed invoices and disclosure reports for proper reporting of debts and obligations. During the election cycle, CMF over-reported debt owed to one vendor except for the 2012 Year-End Report, which did not include $67,800[14] owed to the vendor. This vendor provided media services for CMF.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided a schedule and discussed the debt reporting matter with the CMF Treasurer. In response to the exit conference, the CMF

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[14] The Audit staff identified payments owed to this vendor totaling $328,250. See Finding 3 – Reporting of Apparent Independent Expenditures, p. 9. Only $67,800 of the $328,250 would be required to be disclosed as debt, since CMF disclosed debt owed to this vendor totaling $260,450 on its 2012 year-end report. CMF contends that invoices totaling $92,411 of the $328,250 billed were incurred by another committee.

Treasurer provided an email showing that June 2012 expenses totaling $92,411 that were billed to CMF were actually incurred by another committee and should have been paid by that committee. However, no further documentation or explanation was provided to associate these expenses with another committee. The Audit staff was not able to verify that the other committee is actually liable for the debt. As a result, the debt that CMF did not report on its Schedule D remained as $67,800.

The Interim Audit Report recommended that CMF provide documentation demonstrating that these expenditures did not require reporting on Schedule D and documentation to support that the expenses totaling $92,411 were billed erroneously to CMF. Absent such documentation, it was further recommended that CMF amend its reports to disclose the unreported debts totaling $67,800.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CMF Treasurer stated that CMF's executive director was also the Treasurer of a 527 organization[15] and that ten invoices should have been billed to the 527 organization in July 2012 when the 527 organization was terminating[16] and CMF was just beginning. The CMF Treasurer maintained the vendor mistakenly billed the ten invoices to CMF instead of the 527 organization. A check copy (front only) written by the 527 organization for payment of the ten invoices totaling $93,990[17] was provided, and CMF concluded that all debts and obligations owed to the vendor were properly reported.

In a conference held after the Interim Audit Report response, the CMF Treasurer stated that he had requested the front and back of the check copy written by the 527 organization and would request the 527 organization's bank statements in an attempt to demonstrate that the 527 organization received the benefit of the services provided on the ten invoices. Subsequent to the conference, CMF provided ten more invoices. The invoices were identical to the invoices previously provided totaling $93,990, except that the new invoices now contained the 527 organization's name and address instead of CMF's name and address.

The Audit staff maintains the invoices provided by CMF and correctly billed to CMF contained the same descriptions, the same costs, and used the same calendar dates of service for billing purposes as services on the invoices CMF claimed should have been billed to the 527 organization. If CMF continues to contend it did not receive the service

[15] Entities organized under section 527 of the tax code are considered "political organizations," defined generally as a party, committee or association that is organized and operated primarily for the purpose of influencing the selection, nomination or appointment of any individual to any federal, state or local public office, or office in a political organization. All political committees that register and file reports with the FEC are 527 organizations, but not all 527 organizations are required to file with the FEC. Some file reports with the Internal Revenue Service (IRS).

[16] IRS records indicate that the 527 organization dissolved on August 29, 2012.

[17] The CMF Treasurer stated that only $92,411 of the $93,990 billed was incurred by the 527 organization. And that the difference of $1,579 ($93,990 - $92,411) was a CMF media expense that would be considered to be an in-kind contribution from the 527 organization, with the excessive portion of $579 ($1,579 - $1,000) payable as a refund.

on the invoices in question and that the $92,411 is the debt of the 527 organization, then CMF could report it as disputable debt per 11 CFR §116.10(a).

The Audit staff concludes that although the amount of the check copy provided agreed with the total of the 10 invoices in question, CMF has not demonstrated that this check was successfully negotiated and that the $92,411 billed to CMF was not incurred by CMF. Absent further documentation, such as a bank statement supporting the check in question was negotiated or a statement from the vendor that the 10 invoices in question should have been billed to the 527 organization or documentation that CMF did not receive the services noted on the invoices, the debt CMF has not reported on Schedule D remains as $67,800.

Finding 5. Recordkeeping for Communications

Summary

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. The Audit staff identified $304,399 for which sufficient records were not provided. Without a copy of the invoices and the associated communications, the Audit staff was unable to determine how CMF should have reported these disbursements. In response to the Interim Audit Report recommendation, the CMF Treasurer provided two media vendor invoices, four television advertisements, and stated that CMF believed that all documentation needed by the Audit staff has been provided. The Audit staff concludes that the records provided by CMF demonstrated that disbursements totaling $224,768 were operating expenditures and disbursements totaling $79,631 were insufficiently documented. In addition, disbursements totaling $38,302, which were originally included in the apparent independent expenditure finding, are not sufficiently documented. Absent further documentation, the Audit staff considers the remaining disbursements totaling $117,933 ($79,631 + $38,302) to be insufficiently documented.

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 check 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 to verify the accuracy of the information reported on the disclosure reports.

The Audit staff's analysis resulted in the following:

i. **Disbursements – No Invoices or Copies of Communications Provided ($79,631)**

   CMF made two disbursements to a media vendor totaling $79,631[18] for which documentation was insufficient to make a determination of how these disbursements should be reported. Available documentation included the disbursement database, canceled check copies, and bank statements. Without a copy of the invoices and the associated communications, the Audit staff was unable to determine how CMF should have reported these disbursements. The Audit staff requested the invoices, payment documentation, and copies of the communications.

ii. **Disbursements – Invoices Provided – Incomplete Copies of Communication Provided ($224,768)**

   Disbursements totaling $224,768 for television advertisements were paid to one media vendor. The invoices provided by CMF indicated there was an additional television advertisement not provided to the Audit staff. Without a copy of the communication, the Audit staff was unable to verify CMF's reporting of these costs. The Audit staff requested copies of the associated communication.

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented a schedule of the disbursements for which further records were necessary. The CMF Treasurer did not provide any comments.

The Interim Audit Report recommended that CMF provide the necessary records so the Audit staff could determine the proper reporting for the disbursements totaling $304,399 ($79,631 + $224,768) on the recommended amendments. Such records should have included copies of invoices, along with identification of the associated communication, and if the communication had already been provided, information associating each communication with an invoice(s).

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, the CMF Treasurer provided the two missing invoices for the disbursements for which no invoices or copies of communications were provided ($79,631). Although the two invoices were provided, the invoices do not indicate what advertisements were run and CMF did not provide a copy of the relative communications. Therefore, the Audit staff still considers the

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[18] This amount is a part of the expenditures not reported which is addressed in Finding 1 – Misstatement of Financial Activity, p. 5.

disbursements for which originally no invoices or copies of communications were provided ($79,631) to be insufficiently documented.

Also, the CMF Treasurer provided four television advertisements for the disbursements for which invoices were provided but the Audit staff questioned whether there was an additional television advertisement ($224,768). Of the four television advertisements provided, three advertisements had already been provided to the Audit staff during audit fieldwork. CMF did not provide the fifth advertisement implied in an invoice.[19] The CMF Treasurer stated that the media vendor had confirmed that there was only one Obama-care television advertisement, even though the invoices indicated that there was an Obama-care advertisement and a Repeal Obamacare advertisement. Therefore, according to the CMF Treasurer, there were only four television advertisements, and CMF had provided all four of the advertisements. After review of the television advertisements provided, the Audit staff deemed expenditures totaling $224,768 as operating expenditures, and that the costs for all of the television advertisements have been sufficiently documented.

In addition, the Audit staff has moved to this finding expenditures totaling $38,302 that it had previously considered to be apparent independent expenditures (See Finding 3 – Reporting of Apparent Independent Expenditures). The expenditures included web related expenses totaling $28,901, interactive voice response telephone call costs of $9,276, a sample premium charge of $25, and a prospecting-other charge of $100. Although invoices had been provided for these expenditures, the documentation was not sufficient to determine how these expenditures should have been reported.

The Audit staff concludes that CMF has provided documentation for disbursements totaling $224,768 that demonstrates that the disbursements were operating expenditures and should be reported as operating expenditures. The Audit staff considers the remaining disbursements totaling $117,933 ($79,631 + $38,302) to be insufficiently documented.

[19] See Footnote 7.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 12, 2017

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson LP for LJS
Acting General Counsel

Lorenzo Holloway LP
Assistant General Counsel
Compliance Advice

Joshua Blume LP for JB
Attorney

SUBJECT: Draft Final Audit Report on the Conservative Majority Fund (LRA 986)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Draft Final Audit Report ("DFAR") on the Conservative Majority Fund ("the Committee"). The DFAR contains five findings: Misstatement of Financial Activity (Finding 1); Disclosure of Occupation and Name of Employer (Finding 2); Failure to File Reports and Properly Disclose Independent Expenditures (Finding 3); Reporting of Debts and Obligations (Finding 4); and Recordkeeping for Communications (Finding 5). Our comments address Findings 3 and 4. We have no comments regarding the other findings. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

II. FAILURE TO FILE REPORTS AND PROPERLY DISCLOSE INDEPENDENT EXPENDITURES (Finding 3)

The Interim Audit Report ("IAR") concluded that the Committee failed to report $469,136 in disbursements as independent expenditures. The Committee responded to the IAR and submitted a detailed itemization of its costs according to several categories of media-related expenses identified in the invoices it received from Infocision, Inc. – its principal media vendor. The Committee disagreed with the Audit Division's characterization of its media-related expenses as independent expenditures in several respects. Following an analysis of the Committee's response to the IAR, the Audit Division subtracted $64,160 from its original total, and now concludes that the Committee failed to report $404,976 in independent expenditures. The Audit Division did not otherwise modify its previous conclusions in the IAR.[1]

Fundraising Communications as Independent Expenditures

The Committee contends it considered the cost of the communications at issue, regardless of whether the communications contained express advocacy, to be allocable between independent expenditures and fundraising expenses or wholly a fundraising expense on the basis that a communication that was intended to solicit contributions should not be categorized wholly as an independent expenditure.

The Audit Division concludes, in contrast, that if a communication contains express advocacy, it must be deemed an independent expenditure regardless of the purposes that the Committee intended the communication to fulfill. We agree with the Audit Division. The factors causing a communication to qualify as express advocacy in the Commission's regulation defining that term do not include an examination of the speaker's subjective intent or purpose. *See* 11 C.F.R. § 100.22; see also Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35291, 35295 (Jul. 6, 1995) ("[T]he subjective intent of the speaker is not a relevant consideration" under section 100.22). The Commission has arrived at this conclusion in previous audits. *See* Final Audit Report on National Campaign Fund, at 9, 12-13 (approved Oct. 22, 2012); Final Audit Report on Legacy Committee Political Action Committee ("Legacy PAC"), at 8, 10 (approved Jul. 31, 2012). We noted in comments on the audit of the Legacy PAC that the communicator's subjective intent is not a factor the Commission considers when determining whether a communication contains express advocacy. *See* Memorandum from Christopher Hughey to Patricia Carmona, Draft Final Audit Report on the Legacy Committee Political Action Committee (LRA 815) at 3-4 (Jan. 24, 2012). Thus, to the extent that a communication that is the subject of a disbursement contains express advocacy, all of the costs associated with producing and disseminating or distributing that communication must be considered independent expenditures, regardless of whether the communications were motivated partly or wholly by a fundraising purpose.

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[1] Some categories of communication described in the Committee's response to the IAR, such as "fulfillment letters," "follow-up letters," and "thank you calls," appear to raise a question as to whether the Audit Division currently possesses all of the Committee's communications that were used to fulfill these functions. However, the Committee has represented that the Audit Division does currently possess all of the communications that the Committee used. The Audit Division therefore based its independent expenditure analysis upon this representation.

Categories of Media Expenses That Should Not Be Deemed Independent Expenditures

We have identified two categories of expenditures that should not be classified as independent expenditures. First, the expenditures that the Committee incurred to process contributions should not be classified as independent expenditures. The Audit Division classified certain categories of media expenses associated with the Committee's receipt and processing of contributions as independent expenditures because the contributions that were received were made in response to Committee communications containing express advocacy. For example, the Audit Division deemed costs incurred by the Committee to accept and process credit card information received from contributors, collectively denominated "Credit Card Processing" costs in the Committee's response to the IAR, to be independent expenditures because the contributions were purportedly submitted in response to a communication that contained express advocacy. The same rationale informs the Audit Division's classification of "Flags and Mailing Costs" and the subcategories of "Lock Box Services," "PO Box Rental Fees," and "Credit Card Fulfillment Charges"[2] within the broader category of "Direct Mail Related Costs."

We believe, however, that these costs are different from the costs directly associated with the production and distribution of the communications containing express advocacy that prompted the submission of contributions. An independent expenditure is an expenditure made specifically "*for a communication* expressly advocating the election or defeat of a clearly identified candidate." 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a) (emphasis added). The expenditures made by the Committee to process credit card contributions or to reserve a lock box or a post office box to receive contributions are not expenditures made for communications *per se*. We recommend, therefore, that the Audit Division revise the DFAR to deduct the costs associated with "Credit Card Processing," "Flags and Mailing Costs,"[3] "Lock Box Services," and "PO Box Rental Fees" from the independent expenditure total.[4]

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2 "Credit Card Fulfillment Charges" do not appear as such in the Committee's response to the IAR. Rather this is one of three components of the subcategory "Miscellaneous," appearing under the broad heading of "Direct Mail Related Costs" in the response. It is our understanding from the Audit Division that the credit card fulfillment charges are essentially a form of credit card processing cost, and therefore, their classification should be the same as the credit card processing charges.

3 We believe that this is so even though the flags in particular were offered to potential contributors as premiums during the course of the same communication containing express advocacy that solicited the contributions. Even though the flags were offered as incentives to contribute as part of the express advocacy communication, we understand the cost identified here to refer to the cost of sending the flag to the contributor after the contribution is received. The flags, in and of themselves, are not communications expressly advocating the election or defeat of clearly identified candidates. *See* 11 C.F.R. §§ 100.16, 100.22.

4 Further, while we agree with the classification of costs associated with the category of "Bumper Stickers" as independent expenditures, that agreement is not premised on the theory that the bumper stickers were sent in response to the receipt of contributions inspired by express advocacy communications, but rather on the express advocacy content of the bumper stickers themselves. The bumper stickers contain the words "Romney – Believe in America" and "For 2012," words similar to the words listed in 11 C.F.R. § 100.22(a) as examples of express advocacy.

Second, the costs associated with the Committee's interactive voice response ("IVR") program should not be classified as independent expenditures. The Committee describes this program as an automated telephone protocol device that was used to screen callers and direct potential contributors to the live telephone operators conducting inbound telephone calls on behalf of the Committee. According to the Committee, the IVR included a pre-recorded statement informing the caller that the Committee tried to reach them and that it was locating people opposed to then- President Obama's re-election. The caller was then given the options of being transferred to a live communicator, entering his or her telephone number into the "Do Not Call" list, or hanging up. It is our understanding that the Audit Division classified the expenditures associated with the IVR Program as independent expenditures because at least some portion of the callers would have elected transfer to a live communicator, who would have made express advocacy communications in conjunction with a solicitation of funds.

The question of whether the costs associated with the creation and operation of the IVR Program may be characterized as independent expenditures is a closer one than the question of how to categorize the costs for credit card processing, discussed above. At least a portion of the callers are directed by means of the IVR Program to live telephone operators who conduct colloquies with the callers that include express advocacy as part of the inbound telephone call program. However, a practical difficulty exists. We understand that the Audit Division lacks sufficient information to enable it to allocate the costs of the IVR Program in accordance with the actual proportions of callers who exercise each of the options that the IVR Program makes available. Given this practical difficulty, we recommend that the IVR Program disbursements be deducted from the independent expenditure total in the finding.

Categories of Media Expense That Should be Moved to Finding 5 – Recordkeeping for Communications[5]

We recommend that Audit Division move two categories to the recordkeeping finding. The first of these is included within the subcategory of "Outside Services," which itself is a sub-

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[5] The Audit Division has also asked whether one disbursement currently located in Finding 5 and one disbursement currently located in Finding 3 should remain in these findings, or should otherwise be considered operating expenditures. These disbursements are: (1) $79,334 for a television advertisement reflected in invoices as "Repeal Obamacare" in Finding 5; and (2) $100 to open an escrow bank account in Finding 3. As to the first disbursement, invoice descriptions appear to reflect both an "Obama/Care" advertisement and a "Repeal Obamacare" advertisement, however the Audit Division has a copy of only one advertisement with this theme, entitled "ConMaj Obamacare – SD Video Sharing". The Audit Division concludes that this advertisement does not constitute express advocacy and we agree with this conclusion. We recommend that the Audit Division accept the Committee's representation in this matter and consider the $79,334 expenditure to be an operating expenditure. Such action would be consistent with the Audit Division's acceptance of the Committee's representation that the Audit Division has in its possession all of the communications that the Committee used. It is also conceivable that the different invoice descriptions reflect the same advertisement insofar as both describe the theme of the advertisement. As to the second disbursement, the $100 charge is reflected on the pertinent invoice only as "outside-prospecting" and the Audit Division has indicated that it has no bank documentation to verify the charge. Because of the absence of documentation to verify the nature of the expense, we recommend that this disbursement be relocated to Finding 5. We note also, however, that if the Committee does provide verifying documentation, the $100 disbursement would not be an independent expenditure under the same rationale that we have set forth in connection with the credit card processing costs, above, and therefore would not properly be placed in Finding 3 in any event.

classification of the "Other Vendors" category in the Committee's response to the IAR, and consists of commissions paid to a firm known as Political Media Company. The second of these is a subcategory of "Direct Mail Related Costs" denominated "Sample Premium Charge." These costs are not linked to any particular communications on any invoices. *See* Memorandum from Lisa J. Stevenson to Patricia C. Orrock, IAR on the Colorado Republican Committee (LRA 961) (rec'd by Audit Division Dec. 11, 2015); Memorandum from Lisa J. Stevenson to Patricia C. Orrock, IAR on the Conservative Campaign Committee (LRA 996) (Nov. 25, 2015); Memorandum from Lisa J. Stevenson to Patricia C. Orrock, IAR on TeaPartyExpress.Org (LRA 995) (Dec. 1, 2015); and Memorandum from Lisa J. Stevenson to Patricia Orrock, IAR on the Illinois Republican Party (LRA 1006) (Dec. 22, 2015). Given the absence of the underlying communications, we recommend that the Audit Division move these expenditures to the recordkeeping finding.

III. REPORTING OF DEBTS AND OBLIGATIONS (Finding 4)

In its response to this finding, the Committee argues that although its creditor submitted an invoice to the Committee containing charges totaling $92,411, the actual responsibility for paying those amounts rested with a separate, independent entity organized under section 527 of the Internal Revenue Code known as the New Conservative Coalition ("NCC").[6] The Committee submitted a copy of the face of a check payable to Infocision, Inc. executed by the NCC for $93,990,[7] which was intended to satisfy the outstanding invoice erroneously directed to the Committee. The Audit Division observes in the DFAR that there is insufficient evidence that this check was actually negotiated and, therefore, concludes that there is insufficient evidence to indicate that these debts were not the responsibility of the Committee.

The Committee's attribution of these invoice charges to NCC rather than to itself suggests the possibility that the Committee may have been required to report this debt as disputed debt pursuant to 11 C.F.R. § 116.10(a). *See also* 11 C.F.R. § 116.1(d) ("disputed debt" defined in pertinent part to include bona fide disagreement between creditor and debtor regarding existence of obligation). A necessary condition of a requirement to report disputed debt, however, is the receipt by the debtor committee of something of value from the creditor. 11 C.F.R. § 116.10(a) (political committee shall report disputed debt if creditor has provided something of value to committee). *See also* Matter Under Review ("MUR") 6654 (Friends of Weiner), Factual and Legal Analysis, at 4, 6 (Feb. 5, 2014) (to show a disputed debt, there must be information that indicates the creditor provided something of value to the committee).

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6 Finding 4 reflects the Audit Division's calculation that the Committee failed to report $67,800 in debt to Infocision. The Audit Division has explained to us that it derived this amount by subtracting the debt to Infocision that the Committee did report ($260,450) from the sum of the amounts charged in Infocision invoices ($328,250). The Committee asserts, however, that $92,411 of the total amount of Infocision invoices of $328,250 were actually the responsibility of the NCC. Thus, the Committee contends that it only bore responsibility for reporting $235,839 ($328,250 - $92,411) in debt to Infocision. If the Committee's representation is accurate, this would signify that the Committee reported all of its debt owed to Infocision and, in fact, over-reported that debt.

7 The difference of $1,579 ($93,990-$92,411) reflects a media expense that the Committee concedes it incurred itself, but that NCC apparently paid. According to the DFAR, the Committee treated NCC's payment of this Committee expense as an in-kind contribution to the Committee, with the excessive portion ($579) payable as a refund.

Here, the Audit Division has informed us that the service charges reflected on the relevant invoices were for the same types of activities that Infocision unequivocally undertook on behalf of the Committee. Nevertheless, the Audit Division does not have sufficient information to determine whether the services reflected in the invoice were provided to NCC or to the Committee. In the absence of that information, we are unable to conclude at this time whether the Committee had an obligation to report the charges as disputed debt.

If the Committee received the services, there is also the possibility that the Committee received an in-kind contribution. If NCC incurred the charges for the benefit of the Committee, or were for services that the Committee, rather than NCC, received, then NCC in so doing would have made an in-kind contribution to the Committee. 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a), (d) (contribution includes, in pertinent part, "anything of value" given for the purpose of influencing an election, and "anything of value" includes goods or services provided without charge or at less than the usual and normal charge).

To determine if the invoice at issue reflects a disputed debt and to determine if the Committee received an in-kind contribution, the Audit Division may wish to inquire whether the Committee received the services at issue in the invoice, or the benefit of the services, rather than NCC.

Finally, the Audit Division has suggested to us the possibility that the NCC and the Committee may in fact be the same entity. The DFAR identifies certain connections between NCC and the Committee. The DFAR notes that the Committee's executive director was also the treasurer of NCC, and that Infocision's alleged billing error transpired during the month of July 2012, during which the NCC was dissolving and the Committee was forming. The Audit Division has also noted that the invoices erroneously billed to the Committee, and which would have been properly directed to NCC, contain the same descriptions of services, the same costs, and used the same calendar dates of service for billing purposes, as do the invoices properly billed to the Committee.

If the relationships between NCC and the Committee were so extensive as to render them essentially the same entity, then the Committee might be deemed responsible for reporting debts incurred by NCC. The Commission has in the past considered the question of whether a party committee's control of an ostensibly separate legal entity was so pervasive as to warrant considering the party committee and the ostensibly separate entity to be in fact a single entity. *See* MUR 1503, General Counsel's Brief in the Matter of Jefferson Marketing, Inc. and the National Congressional Club, at 5-6 (Aug. 17, 1984); MUR 1503, Consent Order, at 3, par. V (May 15, 1986); MUR 4250, First General Counsel's Report, at 6-8[8] (May 8, 1997).[9] While the

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8 The Commission did not approve this office's recommendation in MUR 4250 to find that the ostensibly separate entities were in fact a single entity by the required four votes. *See* Statement of Reasons of Commissioner Scott E. Thomas and Commissioner Danny Lee McDonald in MUR 4250 (Jan. 28, 2000); Statement of Reasons of Commissioner Lee Ann Elliott in MUR 4250 (Mar. 10, 2000).

9 With respect to reporting violations, these MURs were principally concerned with the making and receiving of contributions and the associated failure to report contributions, rather than with the failure to report debt. MUR 4250 also was concerned with the proper allocation of nonfederal and federal spending. Nevertheless,

entities at issue in the MURs existed simultaneously whereas the NCC and the Committee existed sequentially, we do not view this difference as detracting from the principle that reporting obligations of one entity may be imputed to another entity where it can be demonstrated that the ostensibly separate entities in fact share a single identity.

We note, however, that in the above MURs, the Commission pursued an extensive inquiry into the relationships between the entities that employed considerations similar to those used by the Commission to ascertain whether genuinely separate entities or their committees are affiliated. *See* 11 C.F.R. § 100.5(g)(4) (containing multiple factors to be employed in determining affiliation where *per se* affiliation is not present). Given this, we do not believe that the facts identified by the Audit Division above would suffice to establish that NCC and the Committee were not independent entities. If the Audit Division wishes to pursue this inquiry, we would be available to advise it regarding the factual questions that would be necessary to ask the Committee.

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the principle of avoiding potential circumvention of reporting obligations generally, would also apply here if such a relationship did in fact exist.

CONSERVATIVE MAJORITY FUND
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July 14, 2017

Federal Election Commission
Audit Division
Ms. Rickida Morcomb
999 E Street, NW
Washington, DC 20463

Re: Draft Audit Report

Dear Ms. Morcomb:

I am in receipt of the Draft Audit Report for Conservative Majority Fund and in response to that report, will simply say that the committee stands by its prior response to the Interim Audit Report with one caveat.

The committee has not yet amended its reports to comply with the audit recommendations as the Treasurer is dealing with a serious medical condition that has greatly restricted his capacity to complete the task. The reports will however, be amended in short order.

Request for Commission Hearing:

Per the Commission's ruling that a committee being audited may request a hearing prior to the adoption of the Final Audit Report, I Scott B. Mackenzie as the Treasurer of Conservative Majority Fund request such a hearing. The topics I wish to discuss are the Audit Report assertions that the committee misstated its financial activity and under-reported its Independent Expenditures.

Sincerely,

Scott B. Mackenzie
Treasurer