



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 2011

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

Joseph F. Stoltz
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Audit Division

FROM: Christopher Hughey *pch*
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SUBJECT: Interim Audit Report on National Campaign Fund (LRA # 847)

I. INTRODUCTION

The Office of General Counsel ("OGC") has reviewed the Interim Audit Report ("Proposed Report") on the National Campaign Fund ("NCF" or "Committee"). We concur with Finding 1 in the Proposed Report (Misstatement of Financial Activity). In its cover memorandum, the Audit Division requested a legal analysis of Finding 2 (Failure to File Notices

and Properly Disclose Independent Expenditures). We analyze this issue below.¹ If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

II. BACKGROUND

NCF made expenditures for direct mail letters that included fundraising requests.² Many of these letters included express advocacy. On its April 2008 Quarterly Report, NCF originally reported these types of expenditures as operating expenditures. NCF, however, amended that report to disclose such communications as independent expenditures, and NCF's subsequent reports also disclosed such communications as independent expenditures. NCF ultimately disclosed, in aggregate, approximately \$1.55 million in communications as independent expenditures on Schedule E of its reports, and it filed 24/48-hour notices. Audit's review determined that many of the letters disclosed as independent expenditures in these reports contained express advocacy and should also have been timely disclosed through 24/48-hour notices. Audit determined, however, that some of the letters disclosed as independent expenditures in the amended reports did not, in fact, contain express advocacy. As a result, Audit's review indicated that approximately \$1.18 million of the \$1.55 million in expenditures appeared to meet the definition of an independent expenditure. Audit's review also revealed that NCF reported the independent expenditures when the invoices were paid, rather than when the materials were disseminated. The draft interim audit report recommends that NCF provide evidence demonstrating that the disbursements were not independent expenditures and therefore did not require 24/48-hour notices, and submit and implement revised procedures for reporting independent expenditures and tracking dissemination dates for independent expenditures to ensure timely filing of 24/48-hour notices.

Though NCF disclosed the letters as independent expenditures, NCF advanced two main reasons why it believed the fundraising letters should not be categorized as independent expenditures: 1) Characterizing the mailings that include fundraising requests as independent expenditures "creates a costly regulatory burden for small donor committees like ours that do not have the financial backing, permanent staff, and infrastructure to keep up with the filings" and 2) It misleads the public by artificially inflating the amount spent on independent expenditures.

III. ANALYSIS

As a part of our analysis in this memorandum, we will: 1) examine whether fundraising letters can be independent expenditures as a matter of law, and 2) generally discuss the legal requirements to determine whether the costs for those letters are independent expenditures. This will provide the general framework and guidelines for the letters which we have reviewed and analyzed in terms of express advocacy. We have attached a table listing a description of all of the letters, their mailing codes and dates, and Audit's and OGC's classifications as to whether

² The only letter we reviewed that did not appear to include a fundraising request did not contain express advocacy because it pertains to the 2008 Presidential general election, and was mailed out after the election.

they contain express advocacy. This table includes a detailed description and analysis of each of the letters, explaining why each letter does or does not contain express advocacy.

A. Fundraising Communications as Independent Expenditures

The Commission has found that fundraising solicitations containing express advocacy should be reported as independent expenditures. In MUR 5809, the Christian Voter Project ("CVP") failed to file independent expenditure notices for the costs of fundraising letters that expressly advocated the election/defeat of candidates. The Commission found reason to believe that CVP's failure to file independent expenditure notices violated the Act, and accepted a conciliation agreement with the committee based on that violation. In MUR 5518 (Hawaii Democratic Party), a party communication contained at least three messages: an invitation to precinct meetings, express advocacy of the defeat of a clearly identified Federal candidate, and a fundraising appeal. The Office of General Counsel concluded the communication should have been reported either as an independent expenditure or as federal election activity, and recommended reason to believe findings. The Commission rejected our recommendation, not on grounds that solicitations could not be independent expenditures but on grounds that invitations to precinct meetings permitted treatment as a federal/non-federal allocated administrative expense under the exception to the definition of federal election activity for costs of local political conventions, 2 U.S.C. § 431(20)(B)(iii)). In particular, Commissioners von Spakovsky and Weintraub stated in their Statement of Reasons that "had this invitation been mailed more broadly than it was, and in sufficient numbers to raise questions about whether it was a bona fide invitation, or if it was really just a fundraising or advocacy piece masquerading as an invitation, this would be a different case." MUR 5518 (Hawaii Democratic Party), Statement of Reasons of Commissioners Hans A. von Spakovsky and Ellen L. Weintraub, at 3 (Feb. 23, 2007); cf. MURs 5511 and 5525 (Swift Boat Veterans for Truth) (fundraising solicitations containing express advocacy were expenditures that counted towards organization's threshold for political committee status).

B. General Guidance For Reviewing Fundraising Letters

For the purpose of this memorandum, and as general guidance, we will discuss examples of the types of letters that we would conclude contain express advocacy. We have reviewed the various types of letters mailed by NCF, which form the basis for Audit's finding that the Committee failed to file notices and properly disclose independent expenditures, and have attached a table that analyzes each of these letters in terms of express advocacy. While we generally agree with the auditors' finding, we recommend that the Audit Division review this memorandum and attached table, and adjust the Proposed Report in accordance with this Office's review and categorization of each individual letter with regard to whether the letter contains express advocacy.

1. Fundraising Letters That Would Contain Express Advocacy

We would conclude that letters containing phrases such as: "help elect John McCain," "make sure John McCain is elected in November," "Vote John McCain!" "help stop Hillary Clinton," and "John McCain for President!" contain express advocacy pursuant to section 100.22(a). An independent expenditure is a non-coordinated expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate.³ 2 U.S.C. § 431(17); 11 C.F.R. § 100.16(a). A communication that "expressly advocates" includes language such as "vote for the President," "re-elect your Congressman," "defeat," or other words, which in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. 11 C.F.R. § 100.22(a); see *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

We would also conclude that letters contain express advocacy if they included phrases that were marginally less direct than "Vote for John McCain" but did not change the "essential nature" of the letters. *FEC v. MCFL*, 479 U.S. 238, 249 (1986). Our attached table reflects which letters meet this provision. Additionally, we also would conclude that a letter contains express advocacy pursuant to section 100.22(b), if it meets the requirements. An advertisement satisfies the requirements for express advocacy pursuant to the Commission's regulations at 11 C.F.R. § 100.22(b) if, when taken as a whole and with limited reference to external events such as the proximity to the election, it could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because (1) the electoral position is unmistakable, unambiguous, and suggestive of only one meaning and (2) reasonable minds could not differ as to whether it encourages actions to elect or defeat the clearly identified candidates or encourages some other kind of action. Again, our attached table specifies which letters fall under this type of express advocacy.

³

We have no information that the communications were coordinated with any candidate.

2. Fundraising Letters That Do Not Contain Express Advocacy

We conclude that letters do not contain express advocacy if the requirements of sections 100.22(a) and 100.22(b) of the Commission's regulations are not met. A letter would not meet these requirements if it simply did not contain elements of express advocacy, or it contained some, but not all of the required elements. Our attached table indicates which letters do not meet the requirements for express advocacy pursuant to section 100.22(a) and section 100.22(b).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 10, 2011

MEMORANDUM

TO: Patricia Carmona
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Audit Division

FROM: Christopher Hugley *pch*
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SUBJECT: Interim Audit Report on National Campaign Fund (LRA 847)

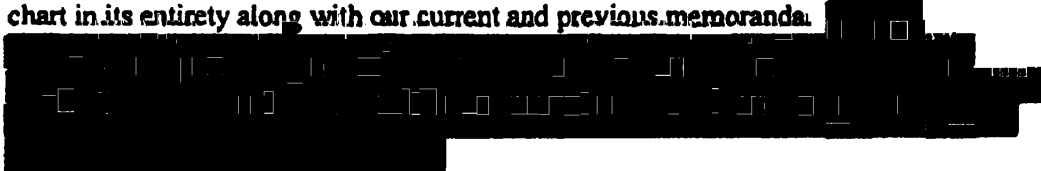
I. INTRODUCTION

The Office of General Counsel ("OGC") previously reviewed and submitted legal comments to the Interim Audit Report ("Proposed Report") on The National Campaign Fund. ("NCF"). These comments addressed Finding 2 of the Proposed Report, and primarily analyzed 61 fundraising letters to determine whether they expressly advocated the election or defeat of a clearly identified candidate, for the purpose of disclosing independent expenditures in applicable reports and notices. The Audit Division subsequently brought to our attention 28 additional communications for our legal review, and which we understand the auditors also plan to address in Finding 2 of the Proposed

Report. We analyze these additional communications below.¹ If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

II. ANALYSIS

Our comments here will supplement our memorandum dated June 17, 2011. We recommend that the Audit Division attach a copy of both this memorandum and our memorandum dated June 17, 2011 to its Interim Audit Report submitted to the Commission. Additionally, upon further review, we have modified some of the communications submitted in our previous comments, and recommended that you detach the chart previously submitted from our previous memoranda, and submit the attached chart in its entirety along with our current and previous memoranda.



We analyze whether the 28 additional communications expressly advocate the election or defeat of a clearly identified candidate. Our analysis is reflected in the attached chart, which includes all 89 communications (61 fundraising letters plus the 28 additional communications), and replaces the chart attached to our June 17, 2011 legal comments. Twenty-seven of the additional communications, which are communications 62-88 on our attached chart, were sent by NCF as a link embedded in emails to viewers. At present, we have only one example of the emails that were sent including the communications, which is classified in the attached chart as communication number 89. Apparently, NCF, as an advertiser, paid a magazine, Human Events, to send emails to a list or lists of email addresses, the further nature of which is unknown. In the original email message, Human Events asked the reader to open the link to read a message "from one of our advertisers," and those who did would see one of the messages noted as communications 62-88.

Additionally, the communications themselves contained additional hyperlinks, sometimes to video advertisements that appear to pertain to President Obama. At present, we have no examples of these underlying communications. The auditors requested these underlying communications from NCF, though it is our understanding that NCF maintains it no longer has access to these underlying communications. However, the Committee indicated that the content of these underlying communications "in general ... consisted primarily of forms with the Expose Obama Masthead at the top, and virtually the identical verbiage [sic] as on the letters. Otherwise, the pages simply contained forms for the people to input the required information if they made a



contribution..." Thus, our analysis of whether the communications expressly advocate the election or defeat of a clearly identified candidate is limited to the information we currently have. An underlying communication accessible by hyperlink and containing additional language expressly advocating the election or defeat of a clearly identified candidate would be a separate communication, and would be added to our attached chart if they were available. See MUR 4957 (Buchanan Reform, Inc.), First General Counsel's Report at 5.² We recommend that the auditors explain, in their Proposed Report to the Commission, their attempts to obtain additional information pertaining to these additional underlying communications, and the response from the Committee.

² In MUR 4957, each email and hyperlink constituted a separate communication for the purposes of providing a disclaimer. MUR 4957, FGCR at 5, see 11 C.F.R. § 110.11(a)(5)(ii). Each email and hyperlink were viewed as separate because a viewer or recipient "of an email communication may elect not to go on to a linked web site in order to obtain additional information or to make contributions." Additionally, another secondary consideration for viewing each email and hyperlink as separate involved the limitations of electronic communications at the time of MUR 4957. Specifically, as pointed out in the MUR, not all email systems permitted "clicking" to an Internet web site.

Direct Mail Letters

#	Direct Mail Code #	Direct Mail Subcode	Brief Description	2008 Dissemination Date	OGC's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
1	186	BL1380, BL1386, BL1421, BL1444, BL1446, BL1449, BL1452, BL1454, BL1455, BL1457	McCain Ballot	2/27/08 - 6/11/08	Express Advocacy	Express Advocacy	This is express advocacy pursuant to section 100.22(a) because it says "If you want honor, leadership, and conservative ideals preserved in Washington, I urge you to help me elect John McCain." 11 C.F.R. 100.22(a).
2	84814	BL1463	Two Silver Dollars	9/23/2008	Express Advocacy	Express Advocacy	Reply envelope says "John McCain for President." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
3	88412	BL1463	Priority Tube	9/5/2008	Express Advocacy	Express Advocacy	The recipient is asked to sign and return a document that could "ENSURE VICTORY FOR JOHN MCCAIN." This document is an "OFFICIAL NATIONAL CAMPAIGN FUND PETITION OF SUPPORT FOR THE REPUBLICAN NOMINEE FOR THE 44TH PRESIDENT OF THE UNITED STATES, SENATOR JOHN MCCAIN." By signing the document, the recipient is told that "YOU ARE ABOUT TO HELP JOHN MCCAIN PREVAIL." The recipient is also asked to send in a contribution. It also says "BUT IF JOHN MCCAIN IS TO BE VICTORIOUS ON NOVEMBER 4TH, YOU AND I MUST ACT WITH URGENCY TODAY." This letter urges the reader to support John McCain by making an explicit statement of support. 11 C.F.R. 100.22(a).
4	146	BL1380, BL1386, BL1421, BL1444, BL1446, BL1449, BL1452, BL1454, BL1455, BL1457, BL1465	Silver Star Alliance	2/25 - 9/22/2008	Express Advocacy	Express Advocacy	Carrier envelope says "Now is the time to elect Senator John McCain President of the United States." This is express advocacy under section 100.22(a). Text of the letter also says "Help me elect John McCain President of the United States to preserve honor, integrity and true leadership in the White House," and again in a post script: "Help me elect John McCain to the White House." This is express advocacy because "elect Senator John McCain President of the United States" is the same type of phrase as "re-elect your Congressman." 11 C.F.R. 100.22(a). Text of the letter also says "I ask you today to help John McCain become our next President." The letter also asks the recipient to "make a commitment to help elect John McCain." This is express advocacy pursuant to section 100.22(a) because "elect Senator John McCain President of the United States" and "help elect John McCain" are the same types of phrases as "re-elect your Congressman." 11 C.F.R. 100.22(a).
5	84811	BL1463	Flag Lapel Pin	6/13/2008	Express Advocacy	Express Advocacy	

Direct Mail Letters

Direct Mail		Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
#	Code #					
6	8nbg2	Emergency Budget	6/27/2008	Express Advocacy	Express Advocacy	This letter describes how the National Campaign Funds needs help in "If the NCF is to be a force in helping John McCain win the White House this year." It states that "the vital funds I'm counting on to help elect John McCain President this year are not there." It also says "If you and I do nothing, John McCain will lose, and Barack Obama will become the next President of the United States." The detachable reply coupon asks the recipient to make a generous contribution "to help the National Campaign Fund keep fighting to elect John McCain to the White House." This is express advocacy pursuant to Section 100.22(b). The electoral portions "if the NCF is to be a force in helping John McCain win the White House this year" and "the vital funds I'm counting on to help elect John McCain President this year" are unmistakable, unambiguous and suggestive of only one meaning. 11 C.F.R. 100.22(b)(1). Additionally, reasonable minds could not differ as to whether the phrase "help the National Campaign Fund keep fighting to elect John McCain to the White House" encourages actions to elect a clearly identified candidate. 11 C.F.R. 100.22(b)(2).
7	8nbg3	Independence Day	6/27/2008	Express Advocacy	Express Advocacy	"John McCain for President" appears at the top of the letter in big bold letters. This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
8	8nbg4	Simulated certified poll numbers	7/3/2008	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
9	8nbg1	Flag Lapel Pin		Express Advocacy	Express Advocacy	This appears to be the same as letter 5.
10	8nbg1	Sim Certified Crisis	7/11/2008	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
11	8nbg2	File folder	7/23/2008	Express Advocacy	Express Advocacy	Reply envelope says "John McCain for President." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
12	8nbg2	Certified	7/18/2008	Express Advocacy	Express Advocacy	Reply envelope says "John McCain for President." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
13	8nbg4	Dog Tags	7/29/2008	Express Advocacy	Express Advocacy	Reply envelope says "John McCain for President." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
14	8nbg1	One Month	8/7/2008	Express Advocacy	Express Advocacy	This letter states that there are only 30 days left before the Republican National Convention. It states that the NCF needs the recipient's help to ensure a Convention that is "ethical, rousing and effective." It also asks for a generous contribution, stating: "If you want a man of integrity, courage and conviction in the White House - the man that we will officially declare the Republican nominee for President of the United States in just 30 days - then please, give the most you possibly can." This is express advocacy, pursuant to section 100.22(b). It contains unambiguous references to the election ("November 4th" and "Election Day"). 11 CFR 100.22(b)(1). It also asks the recipient to make a "generous contribution" that will be used to, among other things, "launch advertising campaigns in key states to move swing voters to vote for John McCain on November 4th." Thus, reasonable minds cannot differ that it encourages an action to elect McCain in the form of such contributions. 11 CFR 100.22(b)(2).
15	8nbg2	Honorary McCain Wingman	8/13/2008	Express Advocacy	Express Advocacy	Reply envelope says "John McCain for President." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).

Direct Mail Letters

Direct Mail #	Direct Mail Subcode	Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
16	8nb16	BL1463	Truth About McCain	Express Advocacy	Express Advocacy	This letter discusses the "lies" proponents of Barack Obama have been telling, and then proceeds to describe the "facts" about John McCain. It asks the recipient to take two actions: make a generous contribution, and "[t]ell at least one person the truth about John McCain and Barack Obama. Give them this letter to read if you choose." At the close of the letter, it says "Please help the National Campaign Fund ensure that the most qualified, honest and courageous candidate wins on November 4th: John McCain." This statement is express advocacy pursuant to section 100.22(b). It contains unambiguous references to the election (November 4th). 11 CFR 100.22(b)(1). It also asks the recipient to take action to ensure that John McCain wins on November 4th. That action included as a generous contribution, and telling at least one other person about John McCain (and showing them this letter). 11 CFR 100.22(b)(2).
17	8nb17	BL1463	Certified Convention News	Express Advocacy	Express Advocacy	This letter references the Republican National Convention, which the letter says is to occur "within 48 hours." It conveys the hope that the recipient will tune in and watch John McCain speak. It also says "you and I must help make John McCain our next great American President." This sentence constitutes express advocacy within the meaning of section 100.22(a). Reply envelope says "John McCain for President!" This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
18	8nb18	BL1463	3/3/2003	Express Advocacy	Express Advocacy	This is anti-Obama. This "confidential election 2008 report" uses a "file folder," detailing in no uncertain terms why Barack Obama must not become the next President of the United States. It then goes on to describe what Barack Obama would do as president, including "higher taxes, weakened defenses and the most liberal domestic agenda in decades." This letter constitutes express advocacy because it purports to "detail ... why Barack Obama must not become the next President of the United States. Section 100.22(a) (marginally less direct, see MCF).
19	8nb19	Phyllis Woodger File Folder Obama's Plan		Express Advocacy	Express Advocacy	This is the same as Letter 19 (above). The reply envelope says "PROUDLY VOTING FOR JOHN MCCAIN!" The enclosed sticker, which the recipient is asked to wear on election day, also says "PROUDLY VOTING FOR JOHN MCCAIN!" This is express advocacy under section 100.22(a) because it is the same type of phrase as "Vote for the President." 11 C.F.R. 100.22(a).
20	8nb20	BL1463	9/16/2008	Express Advocacy	Express Advocacy	Same as letter 21 (above).
21	8nb21	BL1463	9/30/2008	Express Advocacy	Express Advocacy	Carrier envelope says "30 DAYS LEFT TO MAKE JOHN MCCAIN PRESIDENT!" Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
22	8nb22	BL1463	10/6/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
23	8nb23	BL1463	10/6/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
24	8nb24	BL1463	10/9/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
25	8nb25	BL1463	10/17/2008	Express Advocacy	Express Advocacy	The Carrier envelope says "ELECTION 2008 FINAL OVER THE TOP PUSH." This letter states that this is "[t]he last push to make John McCain President. And the last dollar." (It encloses a \$1 bill). The letter says "I will be working close to around the clock to push Senator John McCain and the Republican Party OVER THE TOP on November 4th." The letter asks the recipient to "[p]lease help push John McCain OVER THE TOP. And please help our Republican leadership surge to victory in the House and Senate." This is express advocacy pursuant to section 100.22(b). One of the several electoral portions is, "I will be working close to around the clock to push Senator John McCain and the Republican Party OVER THE TOP on November 4th," which is an unmistakable, unambiguous reference to electing McCain on November 4th (Election Day). 11 C.F.R. 100.22(b)(1). Additionally, reasonable minds could not differ as to whether the phrase "push Senator John McCain and the Republican Party OVER THE TOP on November 4th," in the context of the previous statement, encourages actions to elect a clearly identified candidate. 11 C.F.R. 100.22(b)(2). References to money being used generically in House and Senate races could arguably permit allocation of this piece between those parts that are independent expenditures on behalf of McCain and the generic messages pursuant to 11 CFR 106.1. See AO 2010-10 (National Right to Life PAC).
26	8nb26	BL1463	Over The Top	Express Advocacy	Express Advocacy	

Direct Mail Letters

#		Direct Mail #	Direct Mail Subcode	Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
27	8nbj8	BL1463		File Folder Endorse Palin	10/14/2008	Express Advocacy	Express Advocacy	Carrier envelope says "HELP ELECT JOHN MCCAIN AND SARAH PALIN. Reply envelope says "ELECT MCCAIN-PALIN 2008." Also, what appears to be a sign (or perhaps the file folder) included with the materials says "ELECT MCCAIN-PALIN." This is express advocacy because it is the same type of phrase as "re-elect your congressman." 11 C.F.R. 100.22(b). Letter includes a sign that says "ELECT MCCAIN-PALIN." The recipient is asked to place this sign in "the window of your car, your yard, or the window of your home." This is express advocacy because it is the same type of phrase as "re-elect your congressman." 11 C.F.R. 100.22(b).
28	8nbj9	BL1463		Priority Tube	10/21/2008	Express Advocacy	Express Advocacy	This has the same direct mail code as "Sim Certified Debt," so they will be categorized the same. This letter is NOT express advocacy. It is dated after the election, and it asks the recipient to help pay off the committee's debt.
29	8nbk1	BL1463		One Million Americans Follow Up	11/7/2008	Not Express Advocacy	Not Express Advocacy	This letter was mailed out after the election, and for that reason is not express advocacy. This letter assumes that John McCain won the election, referring to Cindy McCain as "the next First Lady of the United States of America."
30	8nbk2	BL1463		Letter to Cindy - Happy Thanksgiving	11/24/2008	Not Express Advocacy	Not Express Advocacy	This letter was mailed after the Presidential general election. This letter says that there is one more chance, after the election, to "stop Barack Obama." The letter explains that there is still a "FINAL ELECTION RUNOFF" in December in Georgia. The letter names the contenders, "incumbent Senator Saxby Chambliss and Democratic challenger Jim Martin." The letter explains that if the Democrats win this seat, then they will have 58 votes, and they only need "60 votes to railroad all of their liberal legislation in the Senate." The letter asks the recipient to "stand with Senator McCain and Governor Palin in one final rally." It asks for a generous contribution. "I am asking you to help take this final seat for the Republicans and show the Democrats that our voices will not be silenced..." This mailer is express advocacy under 11 C.F.R. 100.22(b). It contains an unmistakable electoral portion by referring specifically to the Georgia Senate runoff election. 11 C.F.R. 100.22(b)(1). And it asks the reader to "help take this final seat for the Republicans" by contributing to NCF. Thus, by asking the reader to "help take this final seat for the Republicans," it says in language about which reasonable minds cannot disagree that the reader is urged to take action to elect Chambliss and defeat Martin. But see South Dakota Republican Party Audit (Commission discussed, but did not affirmatively decide on the implications of fundraising letters sent out of state).
31	8nbk3	BL1463	41 Cents		11/25/2008	Not Express Advocacy	Express Advocacy	This letter was mailed out after the Presidential general election. This letter says that there is "one final chance to stop Barack Obama!" This letter is very similar to Letter 31 (above), in that it references the Georgia Senate runoff election, and asks for a contribution to help prevent Barack Obama from succeeding with this politics. The language here is stronger than in Letter 30, in that it says "THE DEMOCRATS MUST NOT TAKE THIS SEAT" and "unless Republican Senator Chambliss has the resources needed, the Democrats will take it." This letter constitute express advocacy under section 100.22(b), for the December Georgia Senate runoff. The electoral portion of the communication, which says, "In December, in Georgia there will be a final runoff election..." is unmistakable, unambiguous and suggestive of only one meaning. 11 C.F.R. 100.22(b)(1). Additionally, reasonable minds could not differ as to whether the phrases (taken together) "THE DEMOCRATS MUST NOT TAKE THIS SEAT" and "unless Republican Senator Chambliss has the resources needed, the Democrats will take it" encourages actions to elect or defeat a clearly identified candidate. 11 C.F.R. 100.22(b)(2).
32	8nbk4	BL1463	\$100 March		11/28/2008	Not Express Advocacy	Express Advocacy	This letter was mailed out after the 2008 Presidential General Election, and addresses counting of votes the Minnesota Senate seat after the general election. The letter says "[you] and I cannot allow the Democrats to steal this Senate seat and be so close to absolute control of power." This is not express advocacy, because this is not an election, it is asking for contributions to help support Republicans in the recount of the Minnesota Senate seat.
33	8nbk5	BL1463	\$60 Check & \$1.00 Bill		1/2/2009	Express Advocacy	Not Express Advocacy	

Direct Mail Letters

Direct Mail #	Direct Mail Subcode	Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
34	8nb16	270/52.70 (Creative Lynn)		Not Express Advocacy	Express Advocacy	This letter, assuming it was mailed in 2008 and prior to the Presidential General Election, it is express advocacy because the letters says that includes two envelopes: one says "JOHN MCCAIN FOR PRESIDENT" and the other says "SARAH PALIN FOR VICE PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a). It also appears to include a sign that says "ELECT MCCAIN-PALIN." This is express advocacy because it is the same type of phrase as "re-elect your congressman." 11 C.F.R. 100.22(a).
35	8e6	Hillary Battle Plan	1/28/2008, 1/29/2008	Express Advocacy	Express Advocacy	Carrier envelope says "What You and I Must Do To Defeat Hillary Clinton." Enclosure with Letter says "Confidential Battle Plan: To Defeat Hillary Clinton." Letter says: "Will you agree to help me put the Stop Hillary Clinton Battle Plan into action" and "I don't need to tell you why Hillary Clinton CANNOT and MUST NOT become President." 11 C.F.R. 100.22(a).
36	hnb6	McCain Will Prevail	2/26/2008 - 10/14/2008	Express Advocacy	Express Advocacy	Carrier envelope and reply envelope both say "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
37	hpb6	Profile in Courage	2/28/2008 - 7/18/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
38	hqb6	Choose Award	3/4/2008 - 7/18/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).

Direct Mail Letters

#	Direct Mail #	Direct Mail Subcode	Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
39	hw6	BL1342,	Navy Hymn	3/3/2008 - 7/14/2008	Express Advocacy	Express Advocacy	Carrier envelope and reply envelope both say "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
		BL1380,					
		BL1384,					
		BL1386,					
		BL1421,					
40	hw6	BL1444,	Trust Rudy	1/16/2008 - 11/29/2008	Express Advocacy	Express Advocacy	This package qualifies as express advocacy under 100.22(b). The references to Giuliani's candidacy for President create the unambiguous electoral portion, 11 C.F.R. 100.22(b)(1); the letter asks the reader "to stand with Rudy Giuliani in this crucial time for America," and the accompanying envelope's query, "Can I count on you to make Rudy Giuliani President?" makes unmistakably clear that in context, "standing with" Giuliani means taking actions "to make [him] President." 11 C.F.R. 100.22(b)(2).
		BL1446,					
		BL1449,					
		BL1452,					
		BL1454,					
41	hw6	BL1455,	Charter Member	1/15/2008 - 1/29/2008	Express Advocacy	Express Advocacy	The letter says that "[n]ow is the time for you and I to make history again: by electing Rudy Giuliani President." This is express advocacy under section 100.22(a).
		BL1457,					
		BL1463,					
		BL1386,					
		BL1446,					
42	hw6	BL1449,	Ballot	1/15/2008 - 1/25/2008	Express Advocacy	Express Advocacy	This letter says, "Now let us, together make history and make Rudy Giuliani President of the United States of America." It also says and repeats twice: "Now is the time to help Rudy Giuliani become President of the United States." Near the end of the letter, it says "You and I must help elect Rudy as President of the United States." This is express advocacy pursuant to section 100.22(a).
		BL1457,					
		BL1463,					
		BL1386,					
		BL1446,					
43	hw6	BL1449,	True American Hero	6/11/2008 - 6/26/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
		BL1457,					
		BL1463,					
		BL1386,					
		BL1446,					
44	hw6	BL1449,	Cross in Sand	6/24/2008 - 7/3/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
		BL1457,					
		BL1463,					
		BL1386,					
		BL1446,					
45	hw6	BL1449,	Your Town	6/19/2008 - 7/29/2008	Express Advocacy	Express Advocacy	Reply Envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
		BL1455,					
		BL1457,					
		BL1463,					
		BL1386,					

Direct Mail Letters

#	Direct Mail Code #	Direct Mail Subcode #	Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
46	IX6	BL1386, BL1446, BL1449, BL1457, BL1463	Reagan, My Hero	6/19/2008 - 8/1/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT" and carrier envelope says "SUPPORT JOHN MCCAIN FOR PRESIDENT." This is express advocacy under section 100.22(a) because it is the same type of phrase as "Smith for Congress." 11 C.F.R. 100.22(a).
47	IK-533	ExposeOb ama.com	Obama Global Tax	6/25/2008	Express Advocacy	Express Advocacy	The carrier envelope says "Will you help us stop Senator Barack Obama's <u>Global Tax Bill</u> here in 2008? AND HELP KEEP HIM FROM BECOMING <u>PRESIDENT BARACK OBAMA</u> IN 2009?" This letter encourages the recipient to sign an enclosed "NO GLOBAL POVERTY TAX PETITION" that it says will oppose global poverty tax legislation sponsored by Senator Obama. The letter says this Global Poverty Tax would result in US Citizens paying taxes to the global community. However, the letter also says "I also hope you will agree to help us defeat his [Obama's] bid for the White House in November." The latter sentence is express advocacy pursuant to section 100.22(a). 9. 2008, but it asks the recipient to complete and return an enclosed "2009 OFFICIAL NATIONAL SURVEY ON PRESIDENT BARACK OBAMA." It also appears to be a draft, because it has the word "Elect" written in after the word "PRESIDENT" (i.e., reading as "PRESIDENT-ELECT"). The letter lists a number of issues that it claims Obama will act on, that are presented as "socialist schemes." The letter explains that an entity called "ExposeObama.com" has been formed, whose "main mission is to put up a solid and united conservative defense against the coming socialist reign of Barack Obama." This letter appears to assume that Obama has won the election, or will soon become President (i.e., he is President or President-elect). Because the wording indicates this communication, if it was disseminated at all, was disseminated after the election, we do not believe it should be considered express advocacy at this stage. We recommend the Audit Division verify the dissemination dates, and indeed whether this apparent draft communication was disseminated at all, prior to the Commission's finally addressing this communication at a later stage of the audit.
48	IK-534	ExposeOb ama.com	Tell the Truth	10/9/2008	Express Advocacy	Not Express Advocacy	This letter states "Together we can and will ... prevent the election of Barack Hussein Obama to the Presidency of the United States." This is express advocacy pursuant to 11 C.F.R. 100.22(a).
49	IK-559	ExposeOb ama.com	IK-559 (Expose Obama)	5/20/2008	Express Advocacy	Express Advocacy	This letter is similar to the previous one (letter 49), in that it introduces the author as the creator of the 1988 Willie Horton TV ad against Michael Dukakis. This letter encloses three envelopes for three separate contributions to be returned in September, October and November. The letter explains that the contributions will be used "to ensure that we can run hard-fighting, no-nonsense TV ads exposing the REAL Barack Hussein Obama to the American people as often as possible, right up to Election Day." The letter also states that "Barack Hussein Obama is without question the most liberal and the most dangerous major candidate to EVER run for President of the United States. And frankly, we fail to prevent his election at our own peril." The letter says that running their ads will "expose" Obama and as a result "he will never see the light of day in the oval office." The letter contains an electoral portion that is unmistakable, unambiguous and suggestive of only one meaning because it states "we fail to prevent his election..." 11 CFR 100.22(b)(1). The phrase "we fail to prevent his election at our own peril" combined with the intent that Obama "never see the light of day in the Oval Office" is express advocacy because reasonable minds could not differ as to whether it encourages actions to defeat Obama. 11 CFR 100.22(b)(2).
50	IK-584	ExposeOb ama.com	Three Envelopes	8/18/2008	Express Advocacy	Express Advocacy	This letter contains express advocacy pursuant to 11 C.F.R. 100.22(b). It asks for a contribution to NCF, but states that "We need a 100% response [to this fundraising appeal] to ... deny [Obama] the Presidency of the United States." The reference to "denying" Obama "the Presidency" is an unmistakable reference to the presidential election, 11 C.F.R. 100.22(b)(1), and reasonable minds cannot disagree that the letter describes a positive response to the fundraising appeal as an action that will "deny [Obama] the Presidency. Section 100.22(b)(2).
51	IK-595	ExposeOb ama.com	2008 Chain	8/5/2008	Express Advocacy	Express Advocacy	This letter says: "Together we can and will ... prevent the election of Barack Hussein Obama to the Presidency of the United States." This is express advocacy under Section 100.22(a).
52	IK-597P	ExposeOb ama.com	Obama Unmasked	9/12/2008	Express Advocacy	Express Advocacy	This letter says: "Together we can and will ... prevent the election of Barack Hussein Obama to the Presidency of the United States." This is express advocacy under Section 100.22(a).

Direct Mail Letters

Direct Mail # (Code #)	Direct Mail Subcode #	Brief Description	2008 Dissemination Date	Auditor's Classification	OSC's Classification	Express Advocacy Letter Descriptions and Rationale
53	K-598	GRAM	10/14/2008	Express Advocacy	Express Advocacy	This letter says "together we can and will... prevent the election of Barack Hussein Obama to the Presidency of the United States." This is express advocacy under Section 100.22(a).
54	K-652	Obama Global Ph2	9/11/2008	Express Advocacy	Express Advocacy	This appears to be the same as letter 47 (Obama Global Fund), but appears to have been mailed at a different time.
55	K-720	November Debt	11/18/2008	Not Express Advocacy	Not Express Advocacy	This letter was mailed after the 2008 General Election and it asks for a contribution to pay off campaign debt.
56	K-730	Special Election Gram	11/18/2008	Express Advocacy	Express Advocacy	This letter is similar to Letters 31 and 32, in that it was mailed out after the November General Election and asks for a contribution for the December 2 "pivotal special election" in Georgia. It names both candidates in the special election (Chambliss and Martin). The letter states that Expose Obama's first priority in the new leftist reign of Obama is TO HOLD THAT SEAT FOR THE REPUBLICAN PARTY! In a post-script, the letter says "And we need your help today to give us the financial ammunition we need to win this battle and hold both Sazby Chambliss Senate seat and the GOP's ability to block the Obama agenda with the filibuster." This letter constitutes express advocacy under section 100.22(b) for the December Georgia Senate runoff. The electoral portion of the communication, "[o]n December 2 - just 14 days from today - a pivotal special election will be held in Georgia," is unmistakable, unambiguous, and suggestive of only one meaning. 11 C.F.R. 100.22(b)(1). Additionally, reasonable minds could not differ as to whether the phrase "we need your help today to give us the financial ammunition we need to win this battle and hold both Sazby Chambliss Senate seat and the GOP's ability to block the Obama agenda" encourages actions to elect or defeat a clearly identified candidate. 11 C.F.R. 100.22(b)(2). But see South Dakota Republican Party Audit (Commission discussed, but did not affirmatively decide on the implications of fundraising letters sent out of state).
57	K-534	Tell the Truth Ph.2	8/25/2008	Not Express Advocacy	Express Advocacy	This letter, on the carrier envelope, says "INSIDE: The Two Faces of Barack Hussein Obama... His soothing Words Hide the Dangerous Agenda Of A Left-Wing Extremist... AND WHY IT'S NOT TOO LATE TO STOP HIM!" [emphasis in original.] The letter itself refers to Obama's candidacy for President at several points, including referring to him as "the favorite to be our next President." It specifically asks the reader "for the best contribution you can make" and states that the funds raised will be used to "put into motion" a campaign of television and radio advertisements, newspaper advertisements, "voter education" mail, an Internet campaign, and "media outreach" consisting of direct contacts with members of the news media perceived as sympathetic to HCF's positions. The point of these communications, the letter says, will be "to introduce voters to the real Barack Obama" [emphasis in original]. It also asks the recipient to complete a "Time for Truth National Poll," the reproduction of which is incomplete in our copy of the letter; the letter says the results of the poll will be used to "counter the media's phony image of Barack Obama as the candidate who can unite Americans around a two-word agenda of 'change' and 'hope.'" The various explicit references to Obama's candidacy for President constitute an electoral portion that is unmistakable, unambiguous, and suggestive of only one meaning. Thus, the question is whether reasonable minds could differ as to whether the communication urges action to defeat Obama or some other sort of action. Certainly, the envelope in which the letter arrives says, in capital letters, that it is "not too late to stop" Obama. Given the electoral portion, there does not appear to be anything else in the letter itself that the reader could be understood as "stopping" Obama from doing except becoming President. The specific actions urged are to make a contribution and complete a poll. The letter indicates that any contributions will be used to communicate specific negative information about Obama through the media (although it does also say that "Expose Obama is an independent political committee in full compliance with federal law.

Direct Mail Letters

Direct Mail Code #	Direct Mail Subcode #	Brief Description	2008 Dissemi- nation Date	Audit's Classi- fication	OGC's Classi- fication	Express Advocacy Letter Descriptions and Rationale
58 8nbh3	8L1463	ama.com Tell the Truth Poll	7/17/2008	Not Express Advocacy	Express Advocacy	This letter is very similar to the previous one, and all of the portions discussed in our previous analysis are essentially identical; thus, the same analysis applies to this communication.
59 8nbh3	8L1463	Poll In Box	8/18/2008	Express Advocacy	Express Advocacy	This letter asks the reader to fill out and return a "National Campaign Fund Pre-Convention Comprehensive Poll ELECTION 2008," and to make a contribution. The letter closes: "Without the information provided in your poll - the truth; and your generous financial contribution - Barack Obama is headed for victory. I am counting on you. John McCain is counting on you." The top of the first page of the "poll" return device says: "Before I complete this Poll, please know you have my complete support in the fight for GOP victory, with John McCain in the White House and a Republican House and Senate." The communication urges the reader to show "support" for "John McCain in the White House," and is thus express advocacy within the meaning of 11 C.F.R. 100.22(a); some allocation for the reference to "a Republican House and Senate" may be required. Alternatively, the various references to the election constitute an unmistakable and unambiguous electoral portion, 11 C.F.R. 100.22(b)(1), and urges the reader to return the "poll" and send a contribution in order to avoid "victory" by Barack Obama. Reasonable minds cannot disagree that this calls for action to defeat Obama. 11 C.F.R. 100.22(b)(2).
60 8nbh4	8L1463	Convention Bills	8/21/2008	Express Advocacy	Express Advocacy	This letter says "I am asking you to tirelessly fight for John McCain to defeat Barack Obama by sending your urgent contribution today." Expressly calling for an action to "defeat" Obama is express advocacy under 11 C.F.R. 100.22(a).
61 8nbh5	8L1463	\$3.00	8/26/2008	Express Advocacy	Express Advocacy	Reply envelope says "JOHN MCCAIN FOR PRESIDENT." This is express advocacy under 11 C.F.R. 100.22(a).

Direct Mail Letters

#	Direct Mail Code #	Direct Mail Subcode #	Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
62	26H		Was Economic Crash Obama-Soros Plot?	9/7/08			The dates provided by the Audit Division for distribution of this communication do not match the text. The text refers to specific events that occurred in the stock market on October 1 and October 10, 2008, and thus the communication, at least in the form we have it, could not have been distributed before those dates. Moreover, the communication we have states, "Now that Barack Hussein Obama is President of the United States: it's more important than ever to read <i>Obama Unmasked</i> ." The mail dates, however, indicate dissemination dates prior to the election. Because the wording indicates it was likely disseminated after the election, we do not believe it should be considered express advocacy at this stage (the election already occurred, according to the wording). We recommend that the Audit Division verify the dissemination dates prior to the Commission's finally addressing this communication at a later stage of the audit. Additionally, the only action called for is to order and read the book.
				9/11/08			
				9/16/08			
				9/17/08			
				9/18/08			
63	0H		President Barack Hussein Obama, 4 scarlet words	9/23/08			Early in this communication, which was disseminated prior to the election, the phrase "President Barack Hussein Obama" is described as "the scarlet four words in the English language." No words in this communication would constitute express advocacy within the meaning of 11 C.F.R. 100.22(a). However, we believe that reference to the phrase "Barack Hussein Obama" as "the scarlet four words in the English language" constitutes express advocacy under 11 C.F.R. 100.22(b). The reference to "President Barack Hussein Obama," as made prior to the election, provides an electoral portion that is "unmistakable, unambiguous, and suggestive of only one meaning," 11 C.F.R. 100.22(b)(1). Moreover, we do not believe that a reference to that phrase, prior to the election, as "the scarlet four words in the English language" is susceptible of any interpretation other than that an Obama presidency must be prevented. The complicating factor for this message is whether "reasonable minds can ... differ as to whether [this communication] encourages action to defeat [Obama] or encourages some other kind of action." 11 C.F.R. 100.22(b)(2). The communication urges the reader to take the following specific actions: clicking on a hyperlink to view a proposed television ad; making a contribution to NCF so that the advertisement, which "will expose Barack Hussein Obama to the American people," can be broadcast; and, if the reader cannot "join us in this effort right now," emailing the communication to ten of the reader's friends. In the context of the message that "President Barack Hussein Obama" are "the scarlet four words in the English language," these specific actions are understandable only as actions that will assist in defeating Obama. Thus, the specific actions urged raise no questions as to whether the communication "encourages some other kind of action."
				10/1/08			
				10/2/08	Express Advocacy	Not Express Advocacy	
				10/13/2008			
				4/23/08			
64	1H		Obama Signs \$8500 Per Household Tax	4/25/08	Not Express Advocacy	Express Advocacy	This communication begins by stating "President Obama Signs \$8500.00 Per Household Tax Into Law: Funds To Go To The United Nations To Combat Global Poverty! Make no mistake, the headline above is a lot closer to fact than you may think! And, just in case you're wondering just what an Obama presidency would be like, look no further than the above headline!" The rest of the communication, however focuses on "The Global Poverty Act (S. 2433), and asks the viewer to click on the hyperlink to send 50 faxes to President George W. Bush and the Republican members of the Senate with a message, that apparently references opposition to this legislation, though, because we do not have access to the hyperlink, we do not know if it the hyperlinked material includes express advocacy. This communication identifies Obama as a presidential candidate, and therefore contains an electoral portion that is unmistakable, unambiguous and suggestive of only one meaning. 11 C.F.R. 100.22(b)(1). This communication does not contain express advocacy because it calls for the viewer to click on a button that will send faxes to officeholders urging them to oppose specific legislation. 11 C.F.R. 100.22(b)(2). The communication also encourages the viewer, even if the viewer "can not join us in this effort right now ... [to send] this email to at least 10 of your friends."
				5/28/08			
				5/30/08	Express Advocacy	Not Express Advocacy	
				6/2/2008			

Direct Mail Letters

Direct Mail		Brief Description	2008 Dissemination Date	Auditor's Classification	OGC's Classification	Express Advocacy Letter Descriptions and Rationale
#	Code #					
65	2H	Keep Reading for Sneak Preview	6/10/08, 6/20/08, 6/24/2008	Not Express Advocacy	Not Express Advocacy	This communication does not contain express advocacy. It contains no statements that would constitute express advocacy within the meaning of 11 C.F.R. 100.22(a). It does contain unambiguous references to the upcoming presidential election, see 11 C.F.R. 100.22(b)(1); it quotes and criticizes statements Obama made in a January 2008 debate and "on the campaign trail" in Iowa, as well as statements released by the Obama campaign and posted on the Obama campaign website. It also quotes an article from <i>Insight</i> magazine that asked, "Are the American people ready for an elected president who was educated in a Madrassa[?]" It also raises questions about Obama's character, in that it asserts that Obama had made contradictory statements about whether he had been raised a Muslim as a child, and then repeatedly asks the question, "CAN WE TRUST HIM?" However, it does not go further to expressly answer the question it poses. It specifically asks the reader only to click on a hyperlink to view a video advertisement (which we do not have); it informs the reader that "if you agree that EVERYONE must see this explosive commercial before liberals in the media have a chance to spin it, then you can TAKE IMMEDIATE AND DIRECT ACTION;" and encourages the reader, "if you can not join us in this effort right now," to forward the email to at least 10 friends. The words "TAKE IMMEDIATE AND DIRECT ACTION" appear to have been a hyperlink in the original, but we do not have the material linked to, and nothing in the message further describes precisely what "IMMEDIATE AND DIRECT ACTION" is called for. Thus, because the communication is not entirely clear what it is asking for, reasonable minds could differ on whether it encourages actions to elect or defeat a clearly identified candidate. This communication purports to describe the Committee's own fight against Obama and his supporters. It says "We refuse to be intimidated or silenced! We're ready for this fight!" The communication also references Obama's allegedly unsavory "associates" whom it casts in a negative light. By asking what we can expect of Obama "if he is actually elected President of the United States," the communication contains an electoral portion that is unmistakable, unambiguous, and suggestive of only one meaning. 11 C.F.R. 100.22(b)(1). However, the major thrust of the communication appears to be to criticize and characterize as "thuggish" certain actions by persons who are allegedly Obama supporters, including emails sent by these persons to the Committee. The "call to action," involves clicking a link to send faxes to a number of major newspapers, including <i>The New York Times</i> , <i>The Los Angeles Times</i> and <i>The Washington Post</i> , "DEMANDING that Obama condemn the thuggish behavior of his partisans." It also may involve a monetary contribution, though it is unclear from the information we have, The third part of the call is included as a Post-Script: "Even if you can not join us in this effort right now, you can still help us expose Barack Hussein Obama by sending this e-mail to at least 10 of your friends." Reasonable minds could differ as to whether the communication calls for actions to defeat Obama or merely actions to generate pressure on Obama to renounce certain actions by people allegedly his supporters. Accordingly, this communication is not express advocacy. 11 C.F.R. 100.22(b)(2).
66	3H	[We are so going to kick your a	6/24/08, 7/1/2008	Not Express Advocacy	Not Express Advocacy	This communication attacks Obama's energy policies. The closest it comes to an electoral portion is referencing "the Carter legacy of deprivation [sic] and a diminished United States! Everyone needs to know where Barack Hussein Obama stands and I am counting on you to help us get the word out!" There are numerous references to Obama's presidential campaign, so it satisfies the requirements for an electoral portion. 11 C.F.R. 100.22(b)(1). The call to action involves three parts--it: (1) includes a hyperlink to a commercial that purports to "EXPOSE OBAMA'S REAL ENERGY POLICY;" (2) asks for contributions to fund the broadcast of this commercial; and (3) requests that the viewer, if they cannot join in the effort, send this email to at least 10 friends. None of these actions expressly advocates the election or defeat of a clearly identified candidate. 11 C.F.R. 100.22(b)(2). Rather, it advocates against Obama's energy policies.
67	4H	[Update	7/9/08, 7/11/2008	Not Express Advocacy	Not Express Advocacy	

Direct Mail Letters

Direct Mail		Brief Description	2008 Dissemination Date	Audit's Classification	OGE's Classification	Express Advocacy Letter Descriptions and Rationale
#	Code #					
68	5H	But understand this	7/17/08, 7/19/2008	Not Express Advocacy	Not Express Advocacy	This communication attacks Obama's character, but lacks any electoral portion. 11 C.F.R. 100.22(b)(1). It begins with a quote, attributed to Obama, where he says "But understand this...you need to make sure your child can speak Spanish." It then includes a hyperlink to a commercial that the viewer clicks on to "see Barack Hussein Obama swagger across with (sic) stage and DEMAND that people make sure their children learn Spanish." It asks the viewer if it is worth a contribution "to help us broadcast Barack Hussein Obama's solution to the problem of millions of illegal aliens who REFUSE to learn English to the American people." The communication claims that Obama accused law enforcement of "terrorizing" entire communities. It also describes people Obama associates with: William Ayers, "who advocated a dozen bombings, including the bombing of the U.S. Capitol building in 1971 and the Pentagon in 1972;" Jodie Evans, an "anti-American activist who facilitated over \$600,000 in aid to Islamic radicals in Iraq;" Frank Marshall Davis, "the anti-Christian radical and known member of the Communist Party USA who Obama looked upon as a 'father,'" and "The Rev. Jeremiah 'God D _____ America' Wright." The communication claims that when Obama spoke of law enforcement "terrorizing" communities, it was in a speech to "La Raza" which is described in the communication as a pro-illegal immigration organization with a "takeover plan ... of the Western U.S. and it features ethnic cleansing of Americans, Europeans, and African Americans and Asians." However, there is no specific reference to the Presidential election at all. Consequently, because of the lack of an electoral portion, the communication is not express advocacy. 11 C.F.R. 100.22(b)(1).
69	6H	Global Poverty Act of 2007	7/21/08, 7/27/08, 7/30/08, 8/2/08, 8/5/08	Not Express Advocacy	Not Express Advocacy	This communication asks the viewer to click on a hyperlink or a "join the fight" button that will send 50 faxes to President Bush and the Republican Members of the Senate, to demand that they "derail Barack Obama's Global Poverty Act." It also asks, in a Post-Script: "Even if you can not join us in this effort right now, you can still help us expose Barack Hussein Obama by sending this e-mail to at least 10 of your friends." This appears to be an effort to urge the reader to take actions opposing specific legislation, not electoral action, and therefore does not appear to contain express advocacy.
70	7H	Lifting the Prohibition	7/29/08, 7/31/2008	Not Express Advocacy	Not Express Advocacy	This communication opposes Obama's (and Reid's and Pelosi's) position on off-shore drilling. It encourages the viewer to use a hyperlink or "join the fight" button "to send 40 faxes to President George W. Bush and EACH and EVERY Member of the Leadership of the United States House of Representatives and the United States Senate (to) Tell them to stop the obstruction, stalls and evasions. Tell them there's absolutely NO EXCUSE NOT to lift the ban on offshore drilling." This also appears to be an effort to urge the reader to take actions opposing specific legislation, not electoral action, and therefore does not appear to contain express advocacy.
71	8H	Obama Spend-o-meter	8/5/2008	Not Express Advocacy	Not Express Advocacy	This communication primarily opposes Obama's position on taxes. It claims that Obama will increase middle class taxes to pay for his agenda. It makes several electoral references: "So who is going to pay for President Barack Hussein Obama's grand income redistribution scheme?" "Remember what happened the last time a Democrat running for President promised a middle-class tax cut? And like Bill Clinton, Barack Hussein Obama was never shy about taxes." 11 C.F.R. 100.22(b)(1). The communication asks the viewer to click on a button to send 22 personalized faxes to each member of the Republican leadership of the United States Senate and House of Representatives, telling them to make the Bush tax cuts permanent, and the repeal of the "death tax" permanent. The communication also states, in a Post-Script, "Even if you can not join us in this effort right now, you can still help us expose Barack Hussein Obama by sending this e-mail to at least 10 of your friends." It also offers the viewer an opportunity to subscribe to this "newsletter" and to make a financial contribution "to support our mission of Exposing Obama." While this communication contains an electoral portion, reasonable minds could differ on whether it encourages actions to elect or defeat a clearly identified candidate or encourages some other kind of action. This communication arguably encourages some other kinds of action because it supports contacting the Congressional Republican Leadership and telling them to push a legislative agenda regarding tax cuts.

Direct Mail Letters

#	Direct Mail Code #	Direct Mail Subcode #	Brief Description	2008 Dissem-ination Date	Audit's Classifi-cation	OGC's Classifi-cation	Express Advocacy Letter Descriptions and Rationale	
							This communication opposes Obama's (and Reid's and Pelosi's) position on legislation involving broadcast content. The communication opposes the Fairness Doctrine, and supports the Broadcaster Freedom Act. It states "Don't let Barack Hussein Obama, or Nancy Pelosi or Harry Reid legislate a monopoly of liberal thought on the airwaves. Use this hyperlink or the button below to send 27 FAXES to President George W. Bush and EACH and EVERY Member of the Leadership of the United States House of Representatives. Tell them that the American people should be free to decide whether they want to listen to Rush Limbaugh, or Sean Hannity or Laura Ingraham." It includes a "special added bonus" by offering an opportunity to "secure a PERSONALLY AUTOGRAPHED copy of Floyd Brown's explosive new book: Obama Unmasked." It also includes, in a Post-Script, a request to "still help us expose Barack Hussein Obama by sending this e-mail to at least 10 of your friends." This communication contains a glancing reference to the election in that it quotes the Obama campaign press secretary regarding Obama's position on the Fairness Doctrine, but it appears principally to be an effort to urge the reader to take actions supporting specific legislation, not electoral action; thus reasonable minds could disagree as to the action encouraged. Accordingly, the communication is not express advocacy. 11 C.F.R. 100.22(b)(2).	This communication, similar to communication number 70, "exposes" Obama's (and Pelosi's) position on drilling for oil, and his energy policy in general. It refers to Obama as a "messiah" when describing Obama's "solutions" which the communication opposes. The communication contains an electoral portion, as there are some references to the election, including one about the election being 90 days away, and a quote by Obama's general election opponent, John McCain. 11 C.F.R. 100.22(b)(1). The communication, however, requests that the viewer use a hyperlink or "join the fight" button to send 41 faxes to President George W. Bush, Speaker Nancy Pelosi, and the remaining Members of the Leadership of the U.S. House of Representatives and Senate, telling them to lift the ban on offshore drilling. Thus, it appears principally to be an effort to urge the reader to take action in support of specific legislation, rather than electoral action, and accordingly is not express advocacy. 11 C.F.R. 100.22(b)(2).
72	9H		Silence Rush	8/10/2008	Not Express Advocacy	Not Express Advocacy		
73	10H		Opposes New Drilling	8/20/08, 8/22/08, 8/29/2008	Not Express Advocacy	Not Express Advocacy		
74	11H		born and raised a Muslim	8/29/2008	Not Express Advocacy	Express Advocacy		

This communication begins with a boxed quote by Daniel Pipes (who is not otherwise identified): "... if he was born and raised a Muslim and is now hiding that fact, this points to a major deceit, a fundamental misrepresentation about himself that has profound implications about his character and his suitability as president." Later, it quotes Pipes again, with emphasis provided by the author of the communication: "As Barack Obama's candidacy comes under increasing scrutiny, his account of his religious upbringing deserves careful attention for what it tells us about the candidate's integrity. Is Barack Hussein Obama side-stepping questions about his Muslim childhood? [Emphasis Mine]."⁴¹ The communication goes on to resolve the doubt raised by Pipes about "if he was born and raised a Muslim" by reframing the question several times as, "WHY WON'T OBAMA TELL THE TRUTH ABOUT HAVING BEEN A MUSLIM?" By concluding that Obama was once a Muslim and that Obama is not telling the truth about it, and asking only why, the communication is telling the reader that, in the formulation of the quotation that begins the message, Obama does not have the "character" or "suitability" to be president. The explicit references to Obama's suitability to be president provide an electoral portion that is unmistakable, unambiguous, and susceptible of only one meaning. 11 C.F.R. 100.22(b)(1). Because the communication concludes that Obama does not have the "character" or "suitability" to be president, the communication is susceptible of no other interpretation than as urging Obama's defeat. As with communication 63, the communication urges certain specific actions: it asks the viewers to click on a hyperlink to view a video advertisement, which is itself entitled "Why Won't Obama Tell the Truth About Being a Muslim"; it asks the viewer to make a contribution to help broadcast the commercial on television; and requests that if the reader cannot "join us in this effort right now," the reader forward the message to at least 10 friends. As with communication 63, we believe in context reasonable minds could not disagree as to whether these specific requests are for actions to help defeat Obama, or for some other kind of action. 11 C.F.R. 100.22(b)(2). Accordingly, we conclude this message contains express advocacy.

Direct Mail Letters

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75 12H		speech limits	9/5/08, 9/11/2008	Not Express Advocacy	Not Express Advocacy	This communication is very similar to communication number 72. It takes a position against the Fairness Doctrine, and in support of the "Broadcaster Freedom Act" — which is specifically designed to STOP the imposition of the so-called "Fairness Doctrine." It says "it's up to each and every one of us to turn up the heat before a President Obama and a liberal Congress have the chance to make the so-called "Fairness Doctrine" the law of the land and DICTATE TO YOU WHAT YOU CAN READ ON THE RADIO OR READ ON THE INTERNET!" It also says that "We can stop ultra-liberals like B. Hussein Obama and Nancy Pelosi from legislating away our First Amendment rights." It asks the viewer to click on a hyperlink or "Join the fight" button to send 27 faxes to President George W. Bush and the Congressional Leadership, telling them to bring the Broadcaster Freedom Act up for a vote. It also includes a Post-Script asking that if the viewer cannot join them, they "still help us expose Barack Hussein Obama by sending this e-mail to at least 10 of your friends." This communication primarily encourages the viewer to contact political leaders about a legislative issue. While it makes electoral references to "a President Obama and a liberal Congress," it is in the context of a legislative agenda. Accordingly, reasonable minds could disagree as to whether the communication advocates Obama's defeat or specific actions to support a piece of legislation, and the communication therefore is not express advocacy. 11 C.F.R. 100.22(b)(2). This communication is similar to communications 70 and 73, in that it supports domestic oil drilling. It describes a "sham bill" that Speaker Nancy Pelosi submitted. It then says "Expect more of this Soviet-style hijacking of the legislative process if Barack Hussein Obama is elected President and Nancy Pelosi is his Speaker of the House. That's why NOW is the time to tell our elected officials in one resounding avalanche of FAXES that WE WON'T LET THEM GET AWAY WITH IT!" It then includes a hyperlink and "Join the fight" button, that, if clicked, will purportedly send 50 faxes to President Bush and every Republican member of the U.S. Senate, telling them that "drill here and drill now" means just that." It also says "Exposing the Real Obama Agenda! It's About the Socialism Stupid!" In a Post-Script, it asks that the viewer send this e-mail to at least 10 friends, if they can not "join us" right now. This communication contains an electoral portion because it states what could happen if Obama is President, and it states that the election is 60 days away. 11 C.F.R. 100.22(b)(1). In referring to more "Soviet-style hijacking of the legislative process" if Obama is elected president, it is close to calling for the defeat of Obama. However, the specific action called for is for the reader to click a hyperlink to send faxes to President Bush and Republican Senators urging them to defeat the very bill passed in the House through the alleged "Soviet-style hijacking of the legislative process." Thus, reasonable minds could disagree as to whether the communication calls for electoral or legislative action. 11 C.F.R. 100.22(b)(2). Accordingly, the communication is not express advocacy. This communication assigns "B. Hussein Obama" the blame as "one of the main culprits" of the economic crisis and bailout of large corporations. It asks the viewer to use a hyperlink or "Join the fight" button to send faxes to President Bush, Senator Barack Hussein Obama, Senator John McCain and the House and Senate Leadership, telling them that the "REAL solutions to the crisis" involves a specific legislative agenda (suspending the Capital Gains tax, strengthening the dollar, and privatizing Freddie Mac and Fannie Mae). In a Post-Script, it asks that the viewer send this e-mail to at least 10 friends, if they can not "join us" right now. It does not contain an electoral portion, though it does name both major presidential candidates (Obama and McCain) as persons who would receive the faxes on the economic legislative agenda. Because it does not refer to the election and calls on the reader to take action supporting a particular legislative or policy agenda, this communication does not meet either part of the test for express advocacy at 11 CFR 100.22(b).
76 13H		for drilling	9/17/08, 9/20/08, 9/21/2008	Not Express Advocacy	Not Express Advocacy	
77 14H		Mikie Muchabee	9/26/08, 9/27/08, 9/29/2008	Not Express Advocacy	Not Express Advocacy	
78 15H		Dick Morris	10/1/2008	Not Express Advocacy	Not Express Advocacy	This communication contains an electoral portion, in that it describes Obama using what appears to be his campaign slogan, the "Candidate of change," as "the candidate of business as usual," and names both major presidential candidates (Obama and McCain) 11 C.F.R. 100.22(b)(1). However, the communication specifically calls on the reader to click on a hyperlink to send faxes to Obama, McCain, President Bush, and the bipartisan Congressional Leadership; the reader is told that the faxes will support a particular legislative agenda on economic and financial issues advanced by "Mike Pence and the Republican Study Committee." Because this communication urges the reader to support legislative, rather than electoral, action, it does not contain express advocacy. 11 C.F.R. 100.22(b)(2).

Direct Mail Letters

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79 16H		ACORN	10/12/08, 10/15/08, 10/19/08, 10/22/08, 10/23/08, 10/24/08, 10/28/08	Not Express Advocacy	Not Express Advocacy	This communication begins by referring to an alleged criminal conspiracy involving ACORN, and asks for the reader's "help RIGHT NOW to STOP B. Hussein Obama's surrogates from 'STEALING' the election!" It asserts that Obama would "be the beneficiary of most, if not all, of these new votes" resulting from the alleged conspiracy. It then describes Obama's alleged connections with ACORN, including his alleged work "as executive director of ACORN's voter-registration arm." It then says that despite all of these connections, "B. Hussein Obama has the unmitigated gall to deny his connection to this far-left (some say socialist) organization." The communication asks the viewer to use the "Yes Floyd: Send My Faxes" button to send faxes to President Bush and the Members of the House and Senate Leadership, demanding that they call Congress back into session to pass emergency legislation requiring all voters to present valid state or federal IDs when voting, and demanding an investigation into alleged questionable campaign contributions and into GOTV efforts being waged by organizations for the benefit of Obama. After this call for a specific action, it shifts subjects, criticizing Obama's alleged relationship with Bill Ayers, identified as a Weather Underground leader and domestic terrorist. The request for the reader's "help RIGHT NOW to STOP B. Hussein Obama's surrogates from 'STEALING' the election" provides an electoral portion that is unmistakable and unambiguous, 11 C.F.R. 100.22(b)(1), but the particular action specified as necessary to stop the "stealing of the election" is for the reader to click a hyperlink that will generate faxes that will demand emergency legislative action on ballot security. Accordingly, reasonable minds can disagree as to whether the communication advocates electoral or legislative action, 11 C.F.R. 100.22(b)(2), and the communication is therefore not express advocacy.
80 17H		Obama Caught On Tape	18-Oct	Not Express Advocacy	Express Advocacy	This communication also asks for the reader's "help RIGHT NOW to STOP B. Hussein Obama's surrogates from 'STEALING' the election!" However, rather than ask the reader to take legislative action, the methods identified to help Obama's surrogates from stealing the election are for the reader: 1) to click on a link "to watch the video showing B. Hussein Obama promising ACORN and far left-wing community organizers a seat at the table during his presidential administration," and 2) for the reader to forward the message to, variously, "at least ten of your friends!" or "everyone you know." As in the preceding ad, the reference to stopping Obama's surrogates from stealing the election is an electoral portion that is unmistakable, unambiguous, and suggestive of only one meaning. 11 CFR 100.22(b)(1). The only way in which it is apparent that watching the video, and forwarding the message, could "help stop Obama's surrogates from stealing the election" would be if all who read the message or watched the video were moved to vote against Obama. Otherwise, the specific "calls to action" in this communication would be non sequiturs. Accordingly, reasonable minds could not disagree as to whether the communication encourages actions to defeat Obama, 11 C.F.R. 100.22(b)(2), and the communication therefore contains express advocacy.
81 18H		Watch the Video	10/20/08, 10/30/08, 10/31/08, 11/1/2008	Not Express Advocacy	Not Express Advocacy	This communication contains elements of both communications 79 and 80: It calls for the reader's "help RIGHT NOW to STOP B. Hussein Obama's surrogates from 'STEALING' the election!" It urges the reader to "Watch The Video" and forward the email, but also asks that the reader click the button to send faxes demanding emergency ballot security legislation. Because reasonable minds can disagree, based on the context of the rest of the communication, whether it is encouraging actions to defeat Obama or to support particular legislative action, 11 CFR 100.22(b)(2), this communication is not express advocacy.

Direct Mail Letters

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82	19H		2 ministers	10/29/2008	Not Express Advocacy	Not Express Advocacy	While beginning with an attack on Obama's "multiple associations with people and organizations of questionable character," including ACORN, alleged terrorist Bill Ayers, the Rev. Jeremiah Wright, and others, this communication ultimately asks again for your help RIGHT NOW to STOP B. Barack Hussein Obama's surrogates from "STEALING" the election!" by clicking a button to generate faxes to President Bush and every Member of the Leadership of the Senate and House of Representatives, demanding that they call Congress back into session and pass emergency legislation requiring all voters to present valid state or federal IDs when voting. The analysis is the same as for communication 81.	
83	20H		Peter Kirsanow	11/18/08	Not Express Advocacy	Not Express Advocacy	This communication occurred after the election.	
84	21H		Gows Rick Perry and Mark Sanford	11/22/2008	Not Express Advocacy	Not Express Advocacy	This communication occurred after the election.	
85	22H		Gary Bauer	12/10/2008	Not Express Advocacy	Not Express Advocacy	This communication occurred after the election.	
86	23H		Phyllis Schlafly	12/20/2008	Not Express Advocacy	Not Express Advocacy	This communication occurred after the election.	
87	24H		Investor's Business Daily	12/26/2008	Not Express Advocacy	Not Express Advocacy	This communication begins by quoting "Investor's Business Daily" as alleging that "the Obamas" plan to "hard American youth into government-funded reeducation camps where they'll be brainwashed into thinking America is a racist, oppressive place in need of 'social change.'" The communication then explains that the reference in the quote is to an organization called "Public Allies," which had allegedly been compared to the "Hitler Youth Corp" [sic], and alleges that Obama features the organization "on his campaign web site as the model for a national service corps." It also alleges that "50% of Public Allies' budget" is already taxpayer-funded "through Bill Clinton's AmeriCorps program," and urges the reader to click on a hyperlink that will generate faxes to President Bush and every member of the Republican congressional leadership, telling them "you don't want your tax dollars used to support an organization that's out to destroy America." The reference to an alleged "plan" by "the Obamas" that could only be accomplished if they were elected, as well as the reference to Obama's campaign web site, provide unmistakable electoral portions. 11 C.F.R. 100.22(b)(1). However, the action ultimately called for is the generation of faxes calling on President Bush and the Republican congressional leadership to take legislative action to defund Public Allies. Because reasonable minds could disagree as to whether the communication urges electoral or legislative action, 11 C.F.R. 100.22(b)(2), the communication does not contain express advocacy.	

Direct Mail Letters

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88	25H	2 secrets	8/12/08, 8/15/2008, 8/17/08, 8/29/08, 9/7/08, 9/9/08	Not Express Advocacy	Express Advocacy	This communication is a message from Lee Trotter, co-author with Floyd Brown of the book <i>Obama Unmasked</i>, urging the reader to buy the book; a link is even provided which reads, "Order now." It also suggests that "if everyone who gets a copy passes it to someone else before the election, then maybe we can stop the radical left from putting Obama in the White House and their socialist stamp on our nation" (emphasis in original). The reference to the election is unmistakable and unambiguous. 11 C.F.R. 100.22(b)(3). Thus, the question is whether reasonable minds could differ as to whether the communication urges action to defeat Obama or whether it urges some other kind of action. 11 C.F.R. 100.22(b)(2). A call to buy a book, without more, does not urge any sort of electoral activity; it is a solicitation to a commercial transaction. However, in this case there is more. There is a call to buy, and then to share, the book expressly as a means of "stop[ping] the radical left from putting Obama in the White House." We do not believe that read together, these statements can be read as anything other than a call to take action – specifically, sharing the book – to help defeat Obama. We also note that although the Commission has found on numerous occasions that purely commercial activity, no matter what language has been used in the activity, is not for the purpose of influencing an election and therefore is not an expenditure of any sort, independent or otherwise. However, the message here would appear not to meet two of the criteria the Commission has applied in those cases. Specifically, the message that buying and sharing the book is a means of "stop[ping] the radical left from putting Obama in the White House" tends to undermine any conclusion that the activity was engaged in for genuinely commercial purposes and not for the purpose of influencing an election. Moreover, another factor analyzed by the Commission in those cases is whether the good or service offered is offered for the usual and normal charge; here, however, the communication asserts that "our publisher has also made an effort to keep the book price low, so it's not a burden to get a copy." See generally MURS 5474/5539 (Dog Eat Dog); AOs 1994-30 (Conservative Concepts), 1989-21 (Create-a-Craft).
89		Human Events	Unknown		Not Express Advocacy	This communication is an email from "Human Events," indicating that the hyperlink is from one of their advertisers, ExposeObama.com. The communication does not contain any electoral references, nor does it contain any reference to any clearly identified candidate. 11 C.F.R. 100.22(b). Instead, this appears to be the initial message that would be seen by readers who opened the emails from Human Events containing hyperlinks paid for by NCF and containing communications 62-68. ¹ The reference to "Emphasis Mine" in Communication 74 is a part of the original communication.