



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 8, 2011

MEMORANDUM

To: The Commission

Through: Alec Palmer
Acting Staff Director

From: Patricia Carmona *PC*
Chief Compliance Officer

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Assistant Staff Director
Audit Division

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Audit Manager

By: Tesfai Asmamaw *TA*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Freedom's Defense Fund (FDF) (A09-21)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit Division recommends the Commission approve the finding as presented in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendation.

FDF declined the opportunity for an audit hearing and made no further comment on the finding.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

Should an objection be received, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed on Voting Ballot Matters. Should you have any questions, please contact Tesfai Asmamaw or Alex Boniewicz at 694-1200.

Attachment:

- Draft Final Audit Report on the Freedom's Defense Fund

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Freedom's Defense Fund

January 1, 2007 – December 31, 2008

Why the Audit Was Done

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

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to the matter discussed in this report.

About the Committee (p. 2)

Freedom's Defense Fund is a non-connected and multi-candidate committee headquartered in Washington, DC. For more information, see the chart on Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 2,215,319
○ Offsets to Operating Expenditures	7,056
Total Receipts	\$ 2,222,375
• Disbursements	
○ Operating Expenditures	\$ 2,079,920
○ Contributions to Federal Candidate Committees and Other Political Committees	62,894
○ Independent Expenditures	62,499
○ Refund of Contributions	2,600
○ Other Disbursements	24,000
Total Disbursements	\$ 2,231,913

Finding and Recommendation (p. 3)

- Disclosure of Independent Expenditures

¹ 2 U.S.C. §438(b).

**Draft Final Audit Report of the
Audit Division on
Freedom's Defense Fund**

January 1, 2007 - December 31, 2008

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Part I

Background

Authority for Audit

This report is based on an audit of Freedom's Defense Fund (FDF), 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 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. 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. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various risk factors and, as a result, this audit examined:

1. The consistency between reported figures and bank records;
2. The disclosure of individual contributors' occupation/name of employer; and,
3. The disclosure of disbursements.

Part II Overview of Committee

Committee Organization

Important Dates	Freedom's Defense Fund
• Date of Registration	June 7, 2004
• Audit Coverage	January 1, 2007 – December 31, 2008
Headquarters	Washington, DC
Bank Information	
• Bank Depositories	Three
• Bank Accounts	Four Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Scott B. Mackenzie
• Treasurer During Period Covered by Audit	Scott B. Mackenzie
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2007	\$ 22,538
Receipts	
○ Contributions from Individuals	\$ 2,215,319
○ Offsets to Operating Expenditures	7,056
Total Receipts	\$ 2,222,375
Disbursements	
○ Operating Expenditures	\$ 2,079,920
○ Contributions to Federal Candidate Committees and Other Political Committees	62,894
○ Independent Expenditures	62,499 ²
○ Refund of Contributions	2,600
○ Other Disbursements	24,000
Total Disbursements	\$ 2,231,913
Cash on hand @ December 31, 2008	\$ 13,000

² As a result of the committee's response to the interim audit report, this amount, as well as the amount for operating expenditures, has been revised. See page 4.

Part III Summary

Finding and Recommendation

Disclosure of Independent Expenditures

During audit fieldwork, the review of disbursements identified expenditures for media, which appeared to be independent expenditures that FDF disclosed as operating expenditures. In response to the Interim Audit Report recommendation, FDF provided additional information that established \$62,499 in independent expenditures. FDF amended its reports to disclose all but \$11,869 as independent expenditures. Appropriate 24/48-hour notices were not filed for independent expenditures totaling as much as \$43,498.

(For more detail, see p. 4)

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Part IV

Finding and Recommendation

Disclosure of Independent Expenditures

Summary

During audit fieldwork, the review of disbursements identified expenditures for media, which appeared to be independent expenditures that FDF disclosed as operating expenditures. In response to the Interim Audit Report recommendation, FDF provided additional information that established \$62,499 in independent expenditures. FDF amended its reports to disclose all but \$11,869 as independent expenditures. Appropriate 24/48-hour notices were not filed for independent expenditures totaling as much as \$43,498.

Legal Standard

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

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

Expressly advocating means any communication that:

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

B. Reporting Independent Expenditures. When independent expenditures to the same person exceed \$200 in a calendar year, the committee must report on Schedule E (Itemized Independent Expenditures):

- Amount;
- Date when the expenditures were made;
- Name and address of the payee;

- Purpose (a brief description of why the disbursement was made);
- A statement indicating whether the independent expenditure was in support of, or in opposition to, a particular candidate, as well as the name of the candidate and the office sought (including State and Congressional district, when applicable); and,
- A certification, under penalty of perjury, as to whether the independent expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of such committee. 2 U.S.C. §434(b)(6)(B)(iii) and 11 CFR §104.3(b)(3)(vii).

C. 24/48-Hour Reporting Notices for Independent Expenditures. Political committees and others making independent expenditures at any time during the calendar year—up to and including the 20th day before an election—must disclose this activity within 48 hours of the date on which the public communication is disseminated each time that the expenditures aggregate \$10,000 or more. In addition, independent expenditures that aggregate \$1,000 or more during the last 20 days—up to 24 hours—before an election require disclosure within 24 hours following the dissemination date. 2 U.S.C. §434(d) and (g); 11 CFR §104.4(b).

D. Requirements for Maintaining Records. Reporting committees are required to maintain records that provide, in sufficient detail, the information from which the filed reports may be verified. 11 CFR §104.14(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed FDF's disbursements to identify any independent expenditure that had not been properly reported. FDF disbursed \$97,896 for media buys, reporting \$19,001 as Independent Expenditures on Schedule E and in 24/48-hour notices, and \$78,895 as operating expenditures. A review and analysis of these expenditures revealed the following:

1. Media Buys – Independent Expenditures

An ad, titled "What Murtha Says, Out of Touch" (Murtha ad), was aired in Pennsylvania from 09/22/2008 to 11/03/2008, at a cost of \$60,397. Of this amount, FDF reported \$19,001 as independent expenditures and the remaining \$41,396 as operating expenditures. The ad clearly identified Rep. John Murtha and then-Presidential candidate Barack Obama, and expressly advocated their defeat. The ad also clearly identified then-Presidential candidate John McCain and Vice Presidential candidate Sarah Palin, and advocated their election. The Audit staff concluded that the Murtha ad was an independent expenditure and FDF should have reported it as such and filed the appropriate 24/48-hour notices.

The Murtha ad begins with a narrator's declaration that "Barack Obama and Jack Murtha have little respect for the people of Western Pennsylvania." It then contains audio clips of Obama and Murtha making negative statements about Western

Pennsylvanians. Murtha is heard saying: "There's no question that Western Pennsylvania is a racist area," and Obama is heard saying that Pennsylvanians "get bitter and cling to guns and religion." Next, the text on the screen reads "MURTHA AND OBAMA DON'T REPRESENT OUR VALUES," as the narrator says: "On election day, tell Jack Murtha and Barack Obama what we think of them." The narrator ends with the statement "Vote Republican" while a picture of McCain and Palin appears and the text on the screen reads "VOTE REPUBLICAN TUESDAY, NOVEMBER 4TH."³ The ad concluded with an appropriate disclaimer for an independent expenditure.

Murtha Ads with Dissemination Dates

Of the \$60,397, FDF provided dissemination information for Murtha ad costs totaling \$34,028. These ads ran from October 21 through November 3, 2008. Notices filed for reported independent expenditures of \$19,001 disclosed a communication date of October 29, 2008, indicating that these notices are related to ads for which dissemination dates were made available. However, the Audit staff was unable to associate the dissemination date and amounts on the 24/48-hour notices with dates and amounts on the supporting documentation. The Audit staff's review of the available information indicated that FDF failed to properly disclose independent expenditures and file 24-hour notices for Murtha ad costs totaling \$15,027 (\$34,028 - \$19,001).

Murtha Ads without Dissemination Dates

Dissemination information was not provided for the remaining \$26,369 (\$60,397 - \$34,028), which limited the Audit staff evaluation of the 24/48-hour notice requirements. Appropriate 24/48-notices appear to be required and were not filed. FDF should have disclosed these costs as independent expenditures rather than operating expenditures.

2. Undocumented Media Buys – Apparent Independent Expenditures

The Audit staff noted that media expenditures reported as operating expenditures, totaling \$37,499 (\$97,896 - \$60,397), lacked documentation and could not be associated with a specific ad or dissemination date.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff addressed these expenditures at the exit conference and provided the FDF representative with a schedule detailing these expenditures. The FDF representative stated he would review the expenditures and contact the media vendor to request detailed analysis of the media buys. Subsequent to the exit conference, FDF provided some additional documentation, which were considered in the above analysis.

³ "[I]t provides in effect a specific directive: vote for these pictured candidates. The fact that this message is marginally less direct than 'Vote for Smith' does not change its essential nature." *FEC v. Massachusetts Citizens for Life Inc.* ("MCFL") 479 U.S. 238, 239 (1986); 11 C.F.R. § 100.22(a).

In the Interim Audit Report, the Audit staff recommended that FDF take the following action:

- Provide any other documentary evidence that would demonstrate that these disbursements were not independent expenditures; or
- Provide documentation that details dissemination dates for those media buys that lack such information and, for those expenditures (\$37,499) for which no documentation has been made available;
- Provide documentation that associates these costs with specific media ads and, if the costs are related to the Murtha ad or communications that contain express advocacy, details dissemination dates;
- Submit and implement revised procedures for reporting independent expenditures and for tracking dissemination dates for such expenditures to allow for timely filing of 24/48-hour reporting notices, as required; and
- Amend its reports to correct the reporting of independent expenditures, as noted above.

C. Committee Response to the Interim Audit Report

With respect to the \$37,499 in expenditures lacking documentation to determine the nature of the expense, FDF provided information associating some of these costs with the Murtha ad (\$2,102) and demonstrating that the others (\$35,397) were not independent expenditures.

FDF submitted written procedures for reporting independent expenditures and for tracking dissemination dates for such expenditures to allow for timely filing of 24/48-hour notices, and indicated its intent to implement these procedures immediately.

FDF amended its reports to disclose independent expenditures totaling \$50,630.

D. Draft Final Audit Report

Based on the additional information submitted in FDF's response, the Audit staff concurs that of the previously undocumented \$37,499 in media expenditures, only \$2,102 relates to the Murtha ad and the rest of the disbursements were not independent expenditures. Given the information now available, independent expenditures related to the Murtha ad totaled \$62,499 (\$60,397 + \$2,102). FDF amended its reports to disclose independent expenditures of \$50,630, which included the \$19,001 that had been previously disclosed, as noted above. FDF did not disclose independent expenditures totaling \$11,869, as recommended. Audit staff advised FDF's representative of the difference but has received no further explanation from the committee.

In connection with the \$62,499 in independent expenditures for the Murtha ad, it appeared that FDF did not file appropriate 24/48-hour notices for independent expenditures totaling \$43,498 (\$62,499 less \$19,001 in notices filed, as noted above). FDF's response did not include dissemination dates for independent expenditures totaling \$28,471.