Interim Audit Report
of the Audit Division on
Freedom's Defense Fund

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. The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

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
  o Contributions from Individuals $2,215,319
  o Offsets to Operating Expenditures 7,056
  Total Receipts $2,222,375
- Disbursements
  o Operating Expenditures $2,123,418
  o Contributions to Federal Candidate Committees and Other Political Committees 62,894
  o Independent Expenditures 19,001
  o Refund of Contributions 2,600
  o 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).
Interim 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

<table>
<thead>
<tr>
<th>Important Dates</th>
<th>Freedom's Defense Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Date of Registration</td>
<td>June 7, 2004</td>
</tr>
<tr>
<td>• Audit Coverage</td>
<td>January 1, 2007 – December 31, 2008</td>
</tr>
</tbody>
</table>

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)

<table>
<thead>
<tr>
<th>Cash on hand @ January 1, 2007</th>
<th>$ 22,538</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts</td>
<td></td>
</tr>
<tr>
<td>• Contributions from Individuals</td>
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</tr>
<tr>
<td>• Offsets to Operating Expenditures</td>
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</tr>
<tr>
<td>Total Disbursements</td>
<td>$ 2,231,913</td>
</tr>
<tr>
<td>Cash on hand @ December 31, 2008</td>
<td>$ 13,000</td>
</tr>
</tbody>
</table>

2 This amount, as well as the amount for operating expenditures, may change as a result of the finding on page 4.
Part III
Summary

Finding and Recommendation

Disclosure of Independent Expenditures
The Audit staff reviewed disbursements and noted expenditures for media totaling $78,895, which appeared to be independent expenditures that FDF disclosed as operating expenditures. Absent evidence to the contrary, the Audit staff recommends FDF amend its reports to disclose these disbursements as independent expenditures.
(For more detail, see p. 4)
Part IV
Finding and Recommendation

Disclosure of Independent Expenditures

Summary
The Audit staff reviewed disbursements and noted expenditures for media totaling $78,895, which appeared to be independent expenditures that FDF disclosed as operating expenditures. Absent evidence to the contrary, the Audit staff recommends FDF amend its reports to disclose these disbursements as independent expenditures.

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 only be interpreted by a reasonable person as containing advocacy of 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 which indicates 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 by that candidate (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)(5)(A) and 11 CFR §104.3(b)(3)(vii).

C. 24/48-Hour Reporting Notices for Independent Expenditures. Political
committees and other persons who make 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 date on which the
public communication is disseminated. 2 U.S.C. §434(b), (d) and (g); 11 CFR §104.4(b).

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

Facts and Analysis
The Audit staff reviewed FDF’s disbursements to identify any independent expenditure
that had been made and not properly reported. FDF disbursed $97,896 for media buys of
which $19,001 was reported as Independent Expenditures on Schedule E and for which
24/48-hour notices were filed. However, the remaining $78,895 was reported as
operating expenditures. A review and analysis of these expenditures revealed the
following:

A. Media Buys – Independent Expenditures

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

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 Barack Obama (Obama) and U.S. Representative John P. “Jack”
Murtha (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, while the text on the screen says “MURTHA AND OBAMA
DON'T REPRESENT OUR VALUES,” 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 the Republican presidential ticket (John McCain and Sarah Palin) appears, and the text on the screen says “VOTE REPUBLICAN TUESDAY, NOVEMBER 4TH.” 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 thru November 3, 2008. Notices filed for reported independent expenditures of $19,001 disclosed a communication date of October 29, 2008, suggesting 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. Therefore, our review of the available information indicated that FDF failed to properly disclose as independent expenditures and failed to 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 our determination of 24/48-hour notice requirements. However, appropriate 24/48-notices appear to be required and were not filed. In addition, these costs should have been disclosed as independent expenditures rather than operating expenditures.

B. Undocumented Media Buys – Apparent Independent Expenditures
The Audit staff also 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.

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 will 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 was considered in the analysis presented above.

Interim Audit Report Recommendation
The Audit staff recommends that, within 30 calendar days of service of this report, FDF take the following action:
- Provide any other documentary evidence that would demonstrate that these disbursements were not independent expenditures; or

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).
• Provide documentation which details dissemination dates for those media buys which lack such information; and, for those expenditures ($37,499) for which no documentation has been made available, provide documentation which 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, as well as 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.