



THE FEDERAL ELECTION COMMISSION  
Washington, DC 20463

FEDERAL ELECTION COMMISSION  
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**MEMORANDUM**

To: The Commission

Through: Alec Palmer *swt/af*  
Staff Director

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Thomas E. Hintermister *TH*  
Assistant Staff Director  
Audit Division

Martin L. Favin *MLF*  
Audit Manager

By: William A. Antosz *WAA*  
Lead Auditor

Subject: Proposed Final Audit Report on the Freedom's Defense Fund (A13-14)

Attached for your approval is the subject report. The report has been written in accordance with Directive 70. Documents related to this audit report can be viewed in the Voting Ballot Matters folder.

This report is being circulated on a 72 hour no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Bill Antosz or Marty Favin at 694-1200.

Attachment:  
Proposed Final Audit Report on the Freedom's Defense Fund



## **Proposed Final Audit Report on the Freedom's Defense Fund**

(January 1, 2011 - December 31, 2012)

### **Why the Audit Was Done**

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

### **Future Action**

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

### **About the Committee** (p. 2)

The Freedom's Defense Fund is a non-connected committee, headquartered in Arlington, Virginia. For more information, see the chart on Committee Organization, p.2.

### **Financial Activity** (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 3,626,052
○ Other Receipts	54,481
<b>Total Receipts</b>	<b>\$ 3,680,533</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 2,353,611
○ Contributions to Candidates/Committees	107,900
○ Independent Expenditures	1,244,507
○ Other Disbursements	14,728
<b>Total Disbursements</b>	<b>\$ 3,720,746</b>

### **Commission Findings** (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation and Name of Employer (Finding 2)
- Reporting of Apparent Independent Expenditures (Finding 3)
- Recordkeeping for Communications (Finding 4)

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<sup>1</sup> 52 U.S.C. §30111(b).

# **Proposed Final Audit Report on the Freedom's Defense Fund**

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(January 1, 2011 - December 31, 2012)



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the 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 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

### **Scope of Audit**

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

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of debts and obligations pertaining to independent expenditures;
3. the consistency between reported figures and bank records;
4. the completeness of disbursement records;
5. the disclosure of independent expenditures; and
6. other committee operations necessary to the review.

### **Audit Hearing**

FDF requested a hearing before the Commission. The request was granted and the hearing was held on September 14, 2017. At the hearing, FDF addressed one issue, Reporting of Apparent Independent Expenditures. (For more detail, see Finding 3, p.11.)

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	June 7, 2004
• Audit Coverage	January 1, 2011 - December 31, 2012
<b>Headquarters</b>	Arlington, Virginia
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Accounts	Three checking accounts
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Scott Mackenzie
• Treasurer During Period Covered by Audit	Scott Mackenzie
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Treasurer

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2011</b>	<b>\$ 46,043</b>
<b>Receipts</b>	
○ Contributions from Individuals	3,626,052
○ Other Receipts	54,481
<b>Total Receipts</b>	<b>\$ 3,680,533</b>
<b>Disbursements</b>	
○ Operating Expenditures	2,353,611
○ Contributions to Candidates/Committees	107,900
○ Independent Expenditures	1,244,507 <sup>2</sup>
○ Other Disbursements	14,728
<b>Total Disbursements</b>	<b>\$ 3,720,746</b>
<b>Cash-on-hand @ December 31, 2012</b>	<b>\$ 5,830</b>

<sup>2</sup> This amount, as well as the amount for operating expenditures, has been revised as a result of the Commission's final consideration of Finding 3.

## **Part III**

### **Summaries**

#### **Commission Findings**

##### **Finding 1. Misstatement of Financial Activity**

The Audit staff's comparison of FDF's reported financial activity with its bank records revealed that, for 2011, FDF understated its reported disbursements by \$52,357, and overstated its ending cash-on-hand balance by \$62,220. In response to the Interim Audit Report recommendation, the FDF Treasurer stated that FDF would amend its reports to correct the discrepancies. In response to the Draft Final Audit Report, FDF filed amended reports that materially corrected the misstatements for 2011.

The Commission approved a finding that FDF misstated its financial activity for calendar year 2011 as stated above.

(For more detail, see p. 5.)

##### **Finding 2. Disclosure of Occupation and Name of Employer**

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 2,911 contributions totaling \$378,639 lacked adequate disclosure of occupation and name of employer. FDF did not demonstrate "best efforts" to obtain, maintain and submit this information. In response to the Interim Audit Report recommendation, the FDF Treasurer provided a schedule containing missing occupation and name of employer information. He stated that FDF had obtained approximately 95% of the missing information and would amend its reports to include this information. In response to the Draft Final Audit Report, FDF filed amended reports that materially corrected the disclosure of occupation and name of employer information.

The Commission approved a finding that FDF failed to disclose occupation and name of employer information for 2,629 contributions from individuals totaling \$351,798.

(For more detail, see p. 7.)

##### **Finding 3. Reporting of Apparent Independent Expenditures**

During audit fieldwork, the Audit staff reviewed disbursements to verify that the independent expenditures that FDF disclosed on Schedule E (Itemized Independent Expenditures) were reported accurately. FDF disclosed independent expenditures totaling \$385,619. The Audit staff identified additional disbursements disclosed as operating expenditures on Schedule B, Line 21b (Operating Expenditures) totaling \$868,015 which appeared to be independent expenditures and for which no 24/48 hour reports were filed.

In response to the Interim Audit Report recommendation, the FDF Treasurer stated that these expenditures were properly reported as operating expenditures since the primary purpose for the expenditures was to raise funds for FDF. The Treasurer also referred to similar mailings that were not considered to be independent expenditures when the Audit staff audited FDF for the 2008 election cycle. In response to the Draft Final Audit Report, FDF restated its position and filed amended reports disclosing the expenditures in question as independent expenditures.

The Audit staff acknowledged that some of the 2008 election cycle mailers contained similar language to the language contained in mailers used during the 2012 election cycle. However, the 2008 election cycle mailers were not reviewed for potential independent expenditures; and therefore, were not included in a finding.

The Commission approved a finding that FDF failed to report apparent independent expenditures totaling \$868,015, and failed to file 24/48-hour reports for these apparent independent expenditures.  
(For more detail, see p. 9.)

#### **Finding 4. Recordkeeping for Communications**

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. FDF reported 13 expenditures totaling \$90,814 on Schedule B, Line 21b (Operating Expenditures) with purposes of “direct mail – creative” and “direct mail – postage.” Documentation that was provided by FDF was insufficient to make a determination pertaining to the purpose for these expenditures and verification as an operating expense. In response to the Interim Audit Report, the FDF Treasurer stated that FDF was attempting to obtain the missing documentation from its vendors, however, it asserted that these expenses have been properly reported as operating expenditures. In response to the Draft Final Audit Report, FDF acknowledged that it was not able to obtain the necessary documentation, and filed amended reports disclosing the expenditures as independent expenditures. Absent the provision of records, the Audit staff considered the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

The Commission approved a finding that FDF did not provide the necessary records pertaining to 13 disbursements totaling \$90,814.  
(For more detail, see p. 15.)



## Part IV

# Commission Findings

### Finding 1. Misstatement of Financial Activity

#### Summary

The Audit staff's comparison of FDF's reported financial activity with its bank records revealed that, for 2011, FDF understated its reported disbursements by \$52,357, and overstated its ending cash-on-hand balance by \$62,220. In response to the Interim Audit Report recommendation, the FDF Treasurer stated that FDF would amend its reports to correct the discrepancies. In response to the Draft Final Audit Report, FDF filed amended reports that materially corrected the misstatements for 2011.

The Commission approved a finding that FDF misstated its financial activity for calendar year 2011 as stated above.

#### Legal Standard

**Contents of Reports.** Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4), and (5).

#### Facts and Analysis

##### A. Facts

During audit fieldwork, the Audit staff reconciled FDF's reported financial activity with its bank records for calendar years 2011 and 2012. The reconciliation determined that FDF misstated disbursements and ending cash-on-hand for 2011. The following chart outlines the discrepancies between FDF's disclosure reports and its bank records. The succeeding paragraphs explain why the discrepancies occurred.

<b>2011 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash-on-Hand @ January 1, 2011	\$43,781	\$46,043	(\$2,262) Understated
Receipts	\$1,324,490	\$1,312,365	\$12,125 Overstated
Disbursements	\$1,293,431	\$1,345,788	(\$52,357) Understated
Ending Cash-on-Hand @ December 31, 2011	\$74,840	\$12,620	\$62,220 Overstated

The understatement of disbursements resulted from the following differences:

• Contributions to candidates/committees not reported	\$ 51,650
• Vendor payment not reported	2,900
• Unexplained differences	<u>(2,193)</u>
<b>Net Understatement of Disbursements</b>	<b>\$ 52,357</b>

The \$62,220 overstatement of the ending cash-on-hand balance primarily resulted from the misstatements described above.

#### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff provided work papers and discussed the reporting errors that caused the misstatements. The FDF Treasurer stated that amended reports would be filed to correct the misstatements.

The Interim Audit Report recommended that FDF amend its reports to correct the misstatements for 2011 as noted above.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, the FDF Treasurer stated that FDF would amend its reports to correct the discrepancies. However, as of the date of this report, no amended reports have been filed.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report reiterated that FDF did not file amended reports to correct the misstatement of financial activity.

#### **E. Committee Response to the Draft Final Audit Report**

In response to the Draft Final Audit Report, FDF filed amended disclosure reports that materially corrected the misstatement of financial activity.

#### **F. Audit Hearing**

FDF did not address this finding during the Audit Hearing.

#### **Commission Conclusion**

On October 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that FDF misstated its financial activity for calendar year 2011 as stated above.

The Commission approved the Audit staff's recommendation.

## **Finding 2. Disclosure of Occupation and Name of Employer**

### **Summary**

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 2,911 contributions totaling \$378,639 lacked adequate disclosure of occupation and name of employer. FDF did not demonstrate “best efforts” to obtain, maintain and submit this information. In response to the Interim Audit Report recommendation, the FDF Treasurer provided a schedule containing missing occupation and name of employer information. He stated that FDF had obtained approximately 95% of the missing information and would amend its reports to include this information. In response to the Draft Final Audit Report, FDF filed amended reports that materially corrected the disclosure of occupation and name of employer information.

The Commission approved a finding that FDF failed to disclose occupation and name of employer information for 2,629 contributions from individuals totaling \$351,798.

### **Legal Standard**

**A. Itemization Required for Contributions from Individuals.** A political committee other than an authorized committee must itemize any contribution from an individual if it exceeds \$200 per calendar year, either by itself or when combined with other contributions from the same contributor. 52 U.S.C §30104(b)(3)(A).

**B. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:

- the contributor’s full name and address (including zip code);
- the contributor’s occupation and the name of his or her employer;
- the date of receipt (the date the committee received the contribution);
- the amount of the contribution; and
- the calendar year-to-date total of all contributions from the same individual. 52 U.S.C. §30104(b)(3)(A) and 11 CFR §§ 100.12 and 104.3(a)(4)(i).

**C. Best Efforts Ensures Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee’s reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i).

**D. Definition of Best Efforts.** The treasurer and the committee will be considered to have used “best efforts” if the committee satisfied all of the following criteria.

- All written solicitations for contributions included:
  - a clear request for the contributor's full name, mailing address, occupation, and name of employer; and
  - the statement that such reporting is required by Federal law.
  - Note: The request and statement must appear in a clear and conspicuous manner on any response material included in a solicitation.

- Within 30 days of receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

## **Facts and Analysis**

### **A. Facts**

A review of all contributions from individuals requiring itemization indicated that 2,911 contributions totaling \$378,639, or 41% of total contributions from individuals required to be itemized by FDF, lacked disclosure of occupation and name of employer. The majority of the contributor entries (2,669 of 2,911) that lacked the required information were blank on the Schedules A (Itemized Receipts) filed with the Commission.

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

- FDF did not provide documentation showing it made follow-up best efforts for 282 contributions totaling \$26,841 (\$378,639 - \$351,798).
- FDF had the required information for 2,629 contributions totaling \$351,798; however, this information was not subsequently disclosed on the Commission disclosure reports.

### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff provided schedules and discussed the omission of occupation and name of employer information from the disclosure reports. The FDF Treasurer commented that he had obtained some of the missing occupation and name of employer information. In its response to the exit conference, FDF provided a work paper demonstrating that FDF had obtained most of the missing occupation and name of employer information. FDF also provided copies of letters that it had sent to contributors to obtain the missing occupation and name of employer information. This additional documentation demonstrated that FDF had obtained occupation and name of employer information for \$256,451 of the errors; however, amended disclosure reports were not filed.<sup>3</sup> This amount is included in the \$351,798 noted above.

The Interim Audit Report recommended that FDF demonstrate that it complied with the "best efforts" requirements by amending its reports to disclose the missing information relating to the 2,629 contributions totaling \$351,798 (\$95,347 + \$256,451).

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<sup>3</sup> FDF's database contained the occupation and name of employer information for an additional 420 contributions totaling \$95,347.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, the FDF Treasurer stated that FDF had obtained approximately 95% of the missing occupation and name of employer information and would amend its reports to include this information. FDF provided an attachment containing this information. The Audit staff reviewed this schedule and concurred that FDF had obtained more than 95% of the missing information, but as of the date of this report, no amended reports were filed.

**D. Draft Final Audit Report**

The Draft Final Audit Report reiterated that FDF had obtained more than 95% of the missing information, but FDF did not file amended reports to correct the disclosure of occupation and name of employer information.

**E. Committee Response to the Draft Final Audit Report**

In response to the Draft Final Audit Report, FDF filed amended disclosure reports that materially corrected the disclosure of occupation and name of employer information.

**F. Audit Hearing**

FDF did not address this finding during the Audit Hearing.

**Commission Conclusion**

On October 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that FDF failed to disclose occupation and name of employer information for 2,629 contributions from individuals totaling \$351,798.

The Commission approved the Audit staff's recommendation.

**Finding 3. Reporting of Apparent Independent Expenditures****Summary**

During audit fieldwork, the Audit staff reviewed disbursements to verify that the independent expenditures that FDF disclosed on Schedule E (Itemized Independent Expenditures) were reported accurately. FDF disclosed independent expenditures totaling \$385,619. The Audit staff identified additional disbursements disclosed as operating expenditures on Schedule B, Line 21b (Operating Expenditures) totaling \$868,015 which appeared to be independent expenditures and for which no 24/48 hour reports were filed.

In response to the Interim Audit Report recommendation, the FDF Treasurer stated that these expenditures were properly reported as operating expenditures since the primary purpose for the expenditures was to raise funds for FDF. The Treasurer also referred to similar mailings that were not considered to be independent expenditures when the Audit staff audited FDF for the 2008 election cycle. In response to the Draft Final Audit Report,

FDF restated its position and filed amended reports disclosing the expenditures in question as independent expenditures.

The Audit staff acknowledged that some of the 2008 election cycle mailers contained similar language to the language contained in mailers used during the 2012 election cycle. However, the 2008 election cycle mailers were not reviewed for potential independent expenditures; and therefore, were not included in a finding.

The Commission approved a finding that FDF failed to report apparent independent expenditures totaling \$868,015, and failed to file 24/48-hour reports for these apparent independent expenditures.

### **Legal Standard**

- A. Definition of Independent Expenditures.** The term “independent expenditure” means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. No expenditure shall be considered independent if the person making the expenditure allows a candidate, a candidate’s authorized committee or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the cost of production or dissemination with any such person. 11 CFR §100.16.
- B. Disclosure Requirements – General Guidelines.** An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.
- C. Last-Minute Independent Expenditure Reports (24-Hour Reports).** Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20<sup>th</sup> day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).
- D. Independent Expenditure Reports (48-Hour Reports).** Any independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each

time the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. A 48-hour report is required each time additional independent expenditures aggregate \$10,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$10,000. 11 CFR §§104.4(f) and 104.5(g)(1).

**E. Definition of Expressly Advocating.** The term “expressly advocating” means any communication that;

- Uses phrases such as “vote for the President,” “re-elect your Congressman,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent,” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements; or
- When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because:
  - the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
  - reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of reaction. 11 CFR §100.22(a) and (b).

**F. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and check for accuracy and completeness. 11 CFR §104.14(b)(1).

## **Facts and Analysis**

### **A. Reporting of Apparent Independent Expenditures**

#### **1. Facts**

During audit fieldwork, the Audit staff reviewed disbursements to ensure that independent expenditures were disclosed correctly on Schedule E. FDF disclosed independent expenditures totaling \$385,619 on Schedule E. However, FDF also made media-related expenditures totaling \$868,015 and disclosed them as operating expenditures on Schedule B, Line 21b (Operating Expenditures), when it appears that they should have been reported as independent expenditures on Schedule E.

According to vendor invoices, FDF was billed \$868,015 for mailers. The invoices contained the mailer identification codes, the quantity of pieces mailed, the date that

the pieces were mailed, and the cost of each mailing. A review of the mailers that were made available indicated that they contained language expressly advocating the election or defeat of a clearly identified candidate, which is Federal Election Activity that is required to be reported on Schedule E as defined under 11CFR §100.22(a).

A breakdown of the analysis for these expenditures is as follows:

**Apparent Independent Expenditures Reported as Operating Expenditures  
(Copy of Communication Made Available)**

FDF made 137 apparent independent expenditures totaling \$868,015 for which it provided supporting documentation such as invoices and the associated mailers for each invoice. All of these communications contained language expressly advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a).

The majority of the mailers advocated the defeat of Barack Obama in the 2012 general election. Some of the mailers included statements directly advocating defeat such as, “Barack Obama must be defeated,” and “It’s going to take a Herculean effort to defeat Barack Obama...this bully must be exposed and defeated.” Other mailers contained language such as, “we conservatives need to start attacking Barack Obama’s re-elect efforts NOW...if we’re going to...do what’s necessary to make Barack Hussein Obama a one-term president.” and “It goes without saying that Barack Obama must be defeated...Together, you and I must take Barack Obama and his liberal-progressive hacks head-on. This is the only way that they will be defeated!”

**2. Interim Audit Report & Audit Recommendation**

At the exit conference, the Audit staff presented schedules of apparent independent expenditure reporting errors. In response to the exit conference, the FDF Treasurer stated that FDF’s position would be that these expenditures were fundraising expenditures and not independent expenditures.

The Interim Audit Report recommended that FDF provide documentation and evidence that apparent independent expenditures totaling \$868,015 did not require reporting as independent expenditures. Absent such evidence, it was further recommended that FDF amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

**3. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, the FDF Treasurer stated that these expenditures were properly reported as operating expenditures since the primary purpose for the expenditures was to raise funds for FDF. The Treasurer explained that these direct mail pieces were sent to “like-minded individuals” who had previously contributed to FDF or another conservative committee and that the purpose of these mailings was not to influence their vote, as FDF already knew with



nearly 100% certainty how these individuals would vote. FDF's goal was to solicit a contribution. The Treasurer acknowledged that the mailers may contain language such as "Barack Obama must be defeated," but stated that this language was used to touch a raw nerve in the reader to solicit a contribution and not to persuade them to vote FDF's way.

The Treasurer also referred to similar mailers that were not considered to be independent expenditures when the Audit staff audited FDF for the 2008 election cycle. The Treasurer claimed that since the Audit staff determined that the mailers were properly reported for the 2008 election cycle, the Audit staff should not determine that the similar 2012 mailers were reportable as independent expenditures.

The Audit staff acknowledged that some of the 2008 election cycle mailers contained similar language to the language contained in mailers used during the 2012 election cycle. However, the 2008 election cycle mailers were not reviewed for potential independent expenditures; and therefore, were not included in a finding.

#### **4. Draft Final Audit Report**

The Draft Final Audit Report reiterated that FDF did not file amended reports to disclose the expenditures in question as independent expenditures .

#### **5. Committee Response to the Draft Final Audit Report**

In response to the DFAR, FDF restated its Interim Audit Report position that the expenditures were properly reported as operating expenditures. FDF filed amended reports disclosing the expenditures in question as independent expenditures.

#### **6. Audit Hearing**

At the audit hearing, the FDF Treasurer stated that since the audit of FDF from the 2008 election cycle did not result in recommendations that similar transactions be reported as independent expenditures, FDF continued to report these items as operating expenditures. As a result, FDF believed that the apparent independent expenditures identified by the Audit staff totaling \$868,015, should not be subject to a fine.

#### **Commission Conclusion**

On October 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that FDF failed to report apparent independent expenditures totaling \$868,015.

The Commission approved the Audit staff's recommendation.

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

#### **1. Facts**

During audit fieldwork, the Audit staff reviewed independent expenditures reported by FDF, as well as the apparent independent expenditures noted above, to determine

whether additional reporting of 24/48-hour reports was required.<sup>4</sup> As noted above, the Audit staff identified apparent independent totaling \$868,015 which may also require filing of 24/48-hour reports.

## **2. Interim Audit Report & Audit Recommendation**

At the exit conference, the Audit staff presented schedules of independent expenditure reporting errors. The FDF Treasurer stated that FDF's position would be that these expenditures were fundraising expenditures and not independent expenditures.

Absent documentation and evidence that apparent independent expenditures totaling \$868,015 did not require reporting as independent expenditures (per Part A above), the Interim Audit Report recommended that FDF provide documentation to support the date of public dissemination for the communications to determine whether a filing of a 24/48-hour report was required.

## **3. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report recommendation, the FDF Treasurer stated that FDF has reported and filed 24/48-hour reports for expenditures for broadcast media and targeted voter contact mail totaling \$385,619. Further, the Treasurer stated that the expenditures totaling \$868,015 have been properly reported as operating expenditures.

Absent the provision of documentation to support the public dissemination of the mailers, the Audit staff maintained that 24/48-hour reports for apparent independent expenditures totaling \$868,015 should have been filed.

## **4. Draft Final Audit Report**

The Draft Final Audit Report reiterated that FDF did not file 24/48-hour reports for apparent independent expenditures totaling \$868,015.

## **5. Committee Response to the Draft Final Audit Report**

In response to the DFAR, FDF restated its Interim Audit Report position that the expenditures were properly reported as operating expenditures.

## **6. Audit Hearing**

At the audit hearing, the FDF Treasurer stated that since the audit of FDF from the 2008 election cycle did not result in recommendations that similar transactions be reported as independent expenditures, FDF continued to report these items as operating expenditures. As a result, FDF believed that the apparent independent expenditures identified by the Audit staff totaling \$868,015, should not be subject to a fine.

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<sup>4</sup> The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the 24/48-hour reports. FDF provided a master list of all mailers that included the mail date for each mailer on the list.

**Commission Conclusion**

On October 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that FDF failed to file 24/48-hour reports for these apparent independent expenditures.

The Commission approved the Audit staff's recommendation.

**Finding 4. Recordkeeping for Communications****Summary**

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. FDF reported 13 expenditures totaling \$90,814 on Schedule B, Line 21b (Operating Expenditures) with purposes of "direct mail – creative" and "direct mail – postage." Documentation that was provided by FDF was insufficient to make a determination pertaining to the purpose for these expenditures and verification as an operating expense. In response to the Interim Audit Report, the FDF Treasurer stated that FDF was attempting to obtain the missing documentation from its vendors, however, it asserted that these expenses have been properly reported as operating expenditures. In response to the Draft Final Audit Report, FDF acknowledged that it was not able to obtain the necessary documentation, and filed amended reports disclosing the expenditures as independent expenditures. Absent the provision of records, the Audit staff considered the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

The Commission approved a finding that FDF did not provide the necessary records pertaining to 13 disbursements totaling \$90,814.

**Legal Standard**

- A. Formal Requirements Regarding Reports and Statements.** Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and check for accuracy and completeness. 11 CFR §104.14(b)(1).
- B. Preserving Records and Copies of Reports.** The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 52 U.S.C. §30102(d).

**Facts and Analysis****A. Facts**

During audit fieldwork, the Audit staff reviewed disbursements to verify the accuracy of the information and proper classification of transactions disclosed on reports. FDF reported expenditures totaling \$90,814 for which documentation was insufficient to make

a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 21b (Operating Expenditures).

The Audit staff's analysis resulted in the following:

**Disbursements – Invoices Provided – Not Able to Associate with Copies of Communications (\$90,814)**

Disbursements totaling \$90,814 were paid to two direct mail vendors and were disclosed on Schedule B with purposes of “direct mail – creative” and “direct mail – postage.” For these disbursements, FDF provided invoices but did not provide information about the related mail communications. Without a copy of the associated communications, the Audit staff is unable to determine how FDF should have reported these disbursements. During audit fieldwork, the Audit staff requested copies of the mail communications. To date these records have not been provided.

**B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff presented a schedule of the disbursements for which further records were necessary to verify the accuracy of FDF's reporting. The Audit staff requested copies of the mail communications. The FDF Treasurer stated that he would contact the vendors to find the missing mail communications, or find out if the invoices had incorrect mailer job identifiers, and would provide the Audit staff with any documentation that was obtained.

The Interim Audit Report recommended that FDF provide, in sufficient detail, the necessary information from which the reported operating expenditures totaling \$90,814 may be verified or explained. Such records should have included:

- Copies of communications that could be associated to the vendor invoices, and
- If the communication had already been provided, information associating each communication with an invoice(s).

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, the FDF Treasurer stated that FDF was attempting to obtain the missing documentation from its vendors, however, it asserted that these expenses have been properly reported as operating expenditures. Absent the provision of records, the Audit staff considered the matter a violation of the recordkeeping requirements at 11 CFR §104.14(b)(1).

**D. Draft Final Audit Report**

The Draft Final Audit Report reiterated that FDF did not provide the necessary information from which the reported operating expenditures totaling \$90,814 could have been verified or explained.

**E. Committee Response to the Draft Final Audit Report**

In response to the Draft Final Audit Report, FDF did not provide any new documentation relating to these expenditures. FDF filed amended reports that disclosed these expenditures as independent expenditures.

**F. Audit Hearing**

FDF did not address this finding during the Audit Hearing.

**Commission Conclusion**

On October 25, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that FDF did not provide the necessary records pertaining to 13 disbursements totaling \$90,814.

The Commission approved the Audit staff's recommendation.