



Interim Audit Report of the Audit Division on the 21st Century Democrats

(January 1, 2017 - December 31, 2018)

Why the Audit Was Done

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

Future Action

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

About the Committee (p. 2)

21st Century Democrats is a non-connected committee. It qualified for multi-candidate status and is headquartered in Washington, District of Columbia. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 2,339,645
○ Offsets to Operating Expenditures	240
○ Other Receipts	20,131
Total Receipts	\$ 2,360,016
• Disbursements	
○ Operating Expenditures	\$ 2,089,234
○ Other Disbursements	148,822
Total Disbursements	\$ 2,238,056

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation and Name of Employer (Finding 2)
- Disclosure of Disbursements (Finding 3)
- Reporting of Debts and Obligations (Finding 4)
- Reporting of Apparent Independent Expenditures (Finding 5)

¹ 52 U.S.C. §30111(b).



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Part I

Background

Authority for Audit

This report is based on an audit of the 21st Century Democrats (21CD), 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 disbursements, debts and obligations;
3. the consistency between reported figures and bank records;
4. the completeness of records;
5. the disclosure of independent expenditures; and
6. other committee operations necessary to the review.

Commission Guidance

Request for Legal Consideration by the Commission

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," 21CD requested early consideration of two legal questions raised during the audit. The first question pertained to whether the cost of email communications may be considered independent expenditures as a matter of law. The second question was whether the cost of fundraising communications may be deemed independent expenditures as a matter of law.

The Commission failed, by a vote of 3-3, to conclude that the cost of 21CD's email communications and fundraising communications may be independent expenditures. In addition, the Commission failed, by a vote of 3-3, to conclude that the cost of 21CD's emails were not independent expenditures.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 28, 1988
• Audit Coverage	January 1, 2017 - December 31, 2018
Headquarters	Washington, District of Columbia
Bank Information	
• Bank Depositories	Five
• Bank Accounts	Five Federal Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Bill Combs
• Treasurer During Period Covered by Audit	Bill Combs (7/28/1988 – Present)
Management Information	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2017	\$ 230,780
Receipts	
○ Contributions from Individuals	2,339,645
○ Offsets to Operating Expenditures	240
○ Other Receipts	20,131
Total Receipts	\$ 2,360,016
Disbursements	
○ Operating Expenditures	2,089,234
○ Other Disbursements	148,822
Total Disbursements	\$ 2,238,056
Cash on hand @ December 31, 2018	\$ 352,740

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of 21CD's reported financial activity with its bank records revealed a misstatement of the beginning cash, receipts and disbursements for calendar year 2017 and the receipts and disbursements for calendar year 2018. For 2017, 21CD understated beginning cash by \$20,358, receipts by \$77,667 and disbursements by \$87,805. For 2018, 21CD understated receipts by \$48,312 and disbursements by \$61,489. The Audit staff recommends that 21CD amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements. (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 1,258 contributions totaling \$202,744 lacked or inadequately disclosed the required occupation and/or name of employer information. 21CD did not sufficiently demonstrate "best efforts" to obtain, maintain and submit the required information. In response to audit fieldwork, 21CD provided some documentation of "best efforts," however, 21CD has not filed amendments to disclose and report the missing or inadequate information. The Audit staff recommends that 21CD amend its reports or file a Form 99 (Miscellaneous Electronic Submission) to correctly disclose the required information. (For more detail, see p. 7.)

Finding 3. Disclosure of Disbursements

During audit fieldwork, the Audit staff identified 55 disbursements totaling \$640,998 that either had inadequate or inaccurate disclosure information. This includes four disbursements to a former 21CD employee totaling \$130,500, which 21CD disclosed with an inadequate purpose of "transfer." The Audit staff recommends that 21CD amend its reports to correctly disclose these transactions on Schedule B (Itemized Disbursements) or file a Form 99 (Miscellaneous Electronic Submission) to include the adequate or correct information. (For more detail, see p. 10.)

Finding 4. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that 21CD failed to disclose debts and obligations to five vendors totaling \$362,600. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D (Debts and Obligations), 21CD amend its reports or file a Form 99 (Miscellaneous Electronic Submission) to disclose these debts. (For more detail, see p. 12.)

Finding 5. Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed expenditures totaling \$945,225 that 21CD disclosed on Schedule B, Line 21(b) (Other Federal Operating Expenditures) and \$106,563 that 21CD did not report. These expenditures appear to be apparent independent expenditures containing express advocacy and should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures).

Additionally, 21CD did not provide sufficient documentation, pertaining to dissemination dates, to verify whether 24/48-hour reports were required to be filed for these apparent independent expenditures totaling \$1,051,788.²

If 21CD believes that the apparent independent expenditures, totaling \$1,051,788, did not require reporting as independent expenditures, the Audit staff recommends that 21CD provide documentation to support its conclusion. Absent such documentation, the Audit staff recommends that 21CD amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures in the future. Lastly, the Audit staff recommends that 21CD provide documentation to support the date of public dissemination for each communication to determine whether a 24/48-hour report was required to be filed. (For more detail, see p. 14.)

² \$945,225 + \$106,563 = \$1,051,788.

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of 21CD's reported financial activity with its bank records revealed a misstatement of the beginning cash, receipts and disbursements for calendar year 2017 and the receipts and disbursements for calendar year 2018. For 2017, 21CD understated beginning cash by \$20,358, receipts by \$77,667 and disbursements by \$87,805. For 2018, 21CD understated receipts by \$48,312 and disbursements by \$61,489. The Audit staff recommends that 21CD amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission) to correct the misstatements.

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 21CD's reported financial activity with its bank records for calendar years 2017 and 2018. The reconciliation determined that 21CD misstated beginning cash, receipts and disbursements for 2017, and receipts and disbursements for 2018. The following charts detail the discrepancies between 21CD's disclosure reports and bank activity. The succeeding paragraphs explain why the discrepancies occurred.

2017 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2017	\$210,422	\$230,780	\$20,358 Understated
Receipts	\$948,435	\$1,026,102	\$77,667 Understated
Disbursements	\$1,078,893	\$1,166,698	\$87,805 Understated
Ending Cash on hand @ December 31, 2017	\$79,964	\$90,184	\$10,220 Understated

The beginning cash on hand was understated by \$20,358 and the discrepancy resulted from prior period misstatements.

The understatement of receipts resulted from the following:

• Contributions from individuals not reported	\$71,356
• Unexplained difference	<u>6,311</u>
Understatement of Receipts	<u>\$77,667</u>

The understatement of disbursements resulted from the following:

• Disbursements not reported	\$81,951
• Credit card fees not reported	3,063
• Bank fees not reported	321
• Unexplained difference	<u>2,470</u>
Understatement of Disbursements	<u>\$87,805</u>

The \$71,356 in unreported contributions from individuals and \$81,951 in unreported disbursements were the result of 21CD discovering a bank account shared with one of its media vendors, Gordon and Schwenkmeyer, Inc. (GSI). On behalf of 21CD, GSI used this account to solicit and deposit contributions and pay for media production. The 21CD representative informed the Audit staff that it discovered this account during audit fieldwork and that it did not report any of the transactions from this account during the audit period.

The \$10,220 understatement of the ending cash on hand was a result of the reporting discrepancies described above.

2018 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2018	\$79,964	\$90,184	\$10,220 Understated
Receipts	\$1,285,601	\$1,333,913	\$48,312 Understated
Disbursements	\$1,009,868	\$1,071,357	\$61,489 Understated
Ending Cash on hand @ December 31, 2018	\$355,697	\$352,740	\$2,957 Overstated

The understatement of receipts resulted from the following:

• Contributions from individuals not reported	\$46,717
• Unexplained difference	<u>1,595</u>
Understatement of Receipts	<u>\$48,312</u>

The understatement of disbursements resulted from the following:

• Disbursements not reported	\$55,869
• Credit card fees not reported	2,930
• Bank fees not reported	265
• Unexplained difference	<u>2,425</u>
Understatement of Disbursements	<u>\$61,489</u>

The \$46,717 in unreported contributions from individuals and \$55,869 in unreported disbursements were due to the unreported GSI bank account transactions, as mentioned above.

The \$2,957 overstatement of the ending cash on hand was a result of the reporting discrepancies described above.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with 21CD representatives during the exit conference and provided schedules detailing the misstatement of financial activity. The 21CD representatives stated that they intended to file amendments. In response to the exit conference, 21CD provided no further comments regarding this matter and to date no amendments have been filed.

The Audit staff recommends that, within 30 calendar days of service of this report, 21CD amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)³ to correct the misstatements noted above. In addition, the Audit staff recommends that 21CD reconcile the cash balance on its most recently filed report and correct any subsequent discrepancies.

Finding 2. Disclosure of Occupation and Name of Employer

Summary

During audit fieldwork, a review of all contributions from individuals requiring itemization indicated that 1,258 contributions totaling \$202,744 lacked or inadequately disclosed the required occupation and/or name of employer information. 21CD did not sufficiently demonstrate “best efforts” to obtain, maintain and submit the required information. In response to audit fieldwork, 21CD provided some documentation of “best efforts,” however, 21CD has not filed amendments to disclose and report the missing or inadequate information. The Audit staff recommends that 21CD amend its reports or file a Form 99 (Miscellaneous Electronic Submission) to correctly disclose the required information.

³ If 21CD chooses to file a Form 99 instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

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.
- 11 CFR §§100.12 and 104.3(a)(4) and 52 U.S.C. §30104(b)(3)(A).
- C. Best Efforts Ensure Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 52 U.S.C. §30102(i).
- 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.
 - 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

21CD did not disclose or inadequately disclosed the required occupation and/or name of employer information for contributions requiring itemization on its FEC reports, as of the date of the audit notification letter.

Contributions Requiring Itemization – Missing or Inadequate Occupation and/or Name of Employer	
Number of Contributions	1,258
Dollar Value of Contributions	\$202,744
Percent of Contributions	50%

1. Contributor Information Provided but Amendments Not Filed:

Before audit fieldwork, 21CD provided the Audit staff with the required contributor occupation and/or name of employer information; however, 21CD did not file the required amendments for the following:

Contributor Information Provided but Amendments Not Filed	
Number of Contributions	1,217 ⁴
Dollar Value of Contributions	\$190,988

2. Best Efforts Documentation Not Provided:

21CD did not provide the Audit staff records to document “best efforts” for the following:

Best Efforts Documentation Not Provided by Committee	
Number of Contributions	41
Dollar Value of Contributions	\$11,756

3. Additional Information:

21CD disclosed the following unacceptable entries on Schedule A (Itemized Receipts):

- “Information Requested” for 1,139 contributions totaling \$175,970,
- Inadequate occupation and/or name of employer for 105 contributions totaling \$20,669, and
- No information for 14 contributions totaling \$6,105.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with 21CD representatives during audit fieldwork and during the exit conference and provided the schedule detailing these disclosure

⁴ 21CD’s updated documentation, provided to the Audit staff prior to fieldwork, contained the occupation and name of employer information.

errors. 21CD representatives stated during fieldwork that they intended to file amendments. In response to the exit conference, 21CD provided no further comments regarding this matter and to-date no amendments have been filed.

The Audit staff recommends that, within 30 calendar days of service of this report, 21CD amend its reports or file a Form 99 (Miscellaneous Electronic Submission)³ to report and submit the occupation and/or name of employer information for the 1,258 contributions.

Finding 3. Disclosure of Disbursements

Summary

During audit fieldwork, the Audit staff identified 55 disbursements totaling \$640,998 that either had inadequate or inaccurate disclosure information. This includes four disbursements to a former 21CD employee totaling \$130,500, which 21CD disclosed with an inadequate purpose of “transfer.” The Audit staff recommends that 21CD amend its reports to correctly disclose these transactions on Schedule B (Itemized Disbursements) or file a Form 99 (Miscellaneous Electronic Submission) to include the adequate or correct information.

Legal Standard

- A. Reporting Operating Expenditures.** When expenditures to the same person exceed \$200 in a calendar year, the committee must report the:
- Amount;
 - Date when the expenditures were made;
 - Name and address of the payee; and
 - Purpose (a brief description of why the disbursement was made - see below). 52 U.S.C. §30104(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

B. Examples of Purpose.

- Adequate Descriptions. Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs. 11 CFR §104.3(b)(3)(i)(B).
- Inadequate Descriptions. The following descriptions do not meet the requirement for reporting “purpose”: advance, election day expenses, expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(3)(i)(B).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 55 disbursements totaling \$640,998 that either had inadequate or inaccurate disclosure information. The majority of the disclosure errors, totaling \$480,248, involved the disclosure of an inaccurate address for payments to a single vendor. Additional information is provided in the table below.

Disclosure Errors	
Type of Review	100%
Incorrect Address	\$480,248
Inadequate Purpose	\$130,500
Incorrect Purpose	\$28,480
Incorrect Payee Name	\$1,770
Total Disclosure Errors	\$640,998

During the audit period, 21CD discovered that a former employee misappropriated committee funds totaling \$130,500. 21CD disclosed the purpose of each misappropriated disbursement as a “transfer” to the former employee in its disclosure reports and included a supplemental miscellaneous memo text for each disbursement, stating, “This payment is believed to be an unauthorized expenditure to payee [the former employee]. The committee is continuing to investigate the circumstances of this payment and will advise the Commission of any additional information as soon as it is received or determined by the committee.” 21CD later determined that \$36,020 of the \$130,500 was reimbursement to the former employee for legitimate campaign related expenses. Based on records provided by 21CD during audit fieldwork, the Audit staff concurs that the \$36,020 appear to be campaign related reimbursements. 21CD was unable to locate any documentation to support the remaining \$94,480 and determined that this amount was misappropriated by its former employee.

The Audit staff inquired about restitution and whether 21CD notified law enforcement concerning the misappropriation. According to 21CD, law enforcement was not notified and there is no expectation of repayment by the former employee. In addition, 21CD did not file amended reports to disclose its determination that \$94,480 was misappropriated by the former employee and \$36,020 were deemed to be legitimate reimbursements to the former employee for campaign related expenses. A review of the internal controls questionnaire completed by 21CD regarding the 2017–2018 audit period showed that 21CD had no written controls or operations manual and no defined procedures limiting the number of people who had access to its accounting functions, assets, or records systems. 21CD further indicated on the questionnaire that the former employee had, “total control over financial transactions.”

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with 21CD representatives during the exit conferences and provided a schedule detailing these transactions. The 21CD representatives stated they would review their records and verify the accuracy of information disclosed. In subsequent discussions, the Audit staff inquired about the disbursements to the former employee. In response to the inquiries, 21CD stated that it “attempted to enter into negotiations with [the former employee] regarding restitution but

she cut off communications with the committee and the committee was unable to locate her.” As a result, the committee decided to “cease pursuit of restitution and considers the matter closed based upon these difficulties and the committee’s understanding of the former employee’s financial situation.” In response to the Audit staff’s inquiry as to what internal control changes have been implemented to prevent future unauthorized expenditures, 21CD advised that all disbursements now require the approval of either two staff members or one staff member and the Board Chair. Additionally, 21CD accountants now provide the Director and Board Chair a weekly report of all income and expenditures, “to ensure correct finances.”

The Audit staff recommends that, within 30 calendar days of service of this report, 21CD amend its reports or file a Form 99 (Miscellaneous Electronic Submission)³ to correctly disclose the 55 disbursements totaling \$640,998 on Schedule B (Itemized Disbursements). For the disbursements related to the former employee, totaling \$130,500, the Audit staff recommends that 21CD amend its disclosure reports or file a Form 99 (Miscellaneous Electronic Submission)³ to:

- Disclose the correct purpose for the \$36,020 in legitimate campaign related expense reimbursements to the former employee, including memo entries for the payments the former employee made to vendors which aggregated > \$200; and
- Disclose the unauthorized disbursements to the former employee, totaling \$94,480, as "Other Disbursements" on Schedule B, Line 21 and clarify the public record to confirm that the funds were misappropriated in supplemental miscellaneous memo texts. Previously filed miscellaneous memo texts state that 21CD “believed” the payments were unauthorized expenditures to the former employee and it was “continuing to investigate the circumstances” of the payments and would “advise the Commission of any additional information as soon as it is received or determined”; and,
- Continue to review its procedures and make any additional changes to its internal controls and operation procedures to prevent future fraudulent activity.

Finding 4. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that 21CD failed to disclose debts and obligations to five vendors totaling \$362,600. The Audit staff recommends that, absent documentation demonstrating that these expenditures did not require reporting on Schedule D (Debts and Obligations), 21CD amend its reports or file a Form 99 (Miscellaneous Electronic Submission) to disclose these debts.

Legal Standard

- A. Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).
- B. Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement

explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed 21CD's disbursement records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to five vendors totaling \$362,600⁵ that 21CD failed to report on Schedule D during the audit period. Based on a review of the records, four of the vendors provided phone call, emailing, and mailing services and one vendor provided rental leasing services. 21CD reported no incurred debts during the audit period.

The Audit staff calculated the debts owed to the vendors based on the invoice date and the subsequent payment date. Debts were outstanding for periods ranging from 20 days to 99 days.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the 21CD representatives during the exit conference and provided a schedule detailing the transactions requiring disclosure on Schedule D. The 21CD representatives stated they would review the records and verify the accuracy of information on the schedule. In response to the exit conference, a 21CD representative confirmed that the disbursements to the rental leasing service provider were rent payments. Additionally, the 21CD representative stated that rent payments were not reportable as debts. In response, the Audit staff referred the representative to 11 CFR §104.11(b) which outlines the debt reporting requirements for rental payments.

The Audit staff recommends that, within 30 calendar days of service of this report, 21CD provide documentation demonstrating that these transactions totaling \$362,600 were not obligations which required reporting on Schedule D. Absent such documentation, the Audit staff recommends that 21CD amend its reports or file a Form 99 (Miscellaneous Electronic Submission)³ to correctly disclose these debts and obligations.

⁵ Each debt in this amount was counted only once, even if it was required to be disclosed over multiple periods.

Finding 5. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed expenditures totaling \$945,225 that 21CD disclosed on Schedule B, Line 21(b) (Other Federal Operating Expenditures) and \$106,563 that 21CD did not report. These expenditures appear to be apparent independent expenditures containing express advocacy and should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures).

Additionally, 21CD did not provide sufficient documentation, pertaining to dissemination dates, to verify whether 24/48-hour reports were required to be filed for these apparent independent expenditures totaling \$1,051,788.

If 21CD believes that the apparent independent expenditures, totaling \$1,051,788, did not require reporting as independent expenditures, the Audit staff recommends that 21CD provide documentation to support its conclusion. Absent such documentation, the Audit staff recommends that 21CD amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures in the future. Lastly, the Audit staff recommends that 21CD provide documentation to support the date of public dissemination for each communication to determine whether a 24/48-hour report was required to be filed.

Legal Standard

A. Definition of 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. 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) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.
- C. Last-Minute Independent Expenditure Reports (24-Hour Reports).** Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The 24-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).
- D. Independent Expenditure Reports (48-Hour Reports).** Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The 48-hour report must be filed on a Schedule E. 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. The reports must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).
- E. 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 checked 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 proper reporting. The Audit staff noted that 21CD did not disclose any independent expenditures on Schedule E, however, it made apparent independent expenditures totaling \$945,225 for 110 communications which include mailers, emails, telephone

scripts, and a podcast⁶, and disclosed them on Schedule B, Line 21(b) (Other Federal Operating Expenditures). Additionally, 21CD made apparent independent expenditures totaling \$106,563⁷ for nine telephone scripts but did not disclose the disbursements in its reports. Each of the 119 communications contained express advocacy. A breakdown analysis for these expenditures is as follows:

a. Apparent Independent Expenditures Reported as Other Federal Operating Expenditures or Not Reported (under 11 CFR §100.22(a))

21CD made disbursements totaling \$139,690 to five media vendors for 42 communications for apparent independent expenditures. The communications contained phrases like, “help re-elect Elizabeth Warren today,” “Dump Trump”, and “Support Rob Quist for Congress.” 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).

b. Apparent Independent Expenditures Reported as Other Federal Operating Expenditures or Not Reported (under 11 CFR §100.22(b))

21CD made disbursements for 77 communications totaling \$912,098. The communications contained phrases like, “we need someone like Elizabeth Warren there fighting back,” “take back the senate,” “senator Amy Klobuchar is exactly the type of Senator we need to push back against,” and “take back the house.” Based on the definition of express advocacy under 11 CFR §100.22(b), the Audit staff believes that these communications could only be interpreted by a reasonable person as advocating the election or defeat of a clearly identified candidate.

The Audit staff notes that of the \$912,098 in apparent independent expenditures, four telephone scripts only expressly advocated the election or defeat of one or more clearly identified candidates if the caller reached a specified point in the scripts provided by 21CD.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the 21CD representatives during the exit conference and provided schedules detailing these expenditures. The 21CD representatives stated the communications were for fundraising purposes and therefore, the disbursements were not independent expenditures. In response to the exit conference, a 21CD representative discussed the matter with the Audit staff and the Commission’s Office of General Counsel (OGC) and reiterated that

⁶ The cost of the podcast may be exempt from the definition of “expenditure” under the media or press exemption. See 11 CFR §100.132.

⁷ These communications were created by GSI, and as noted in Finding 1, the GSI transactions were not reported by 21CD. 21CD provided some invoices for the communications; however, the Audit staff was not able to determine which invoices correlated to which communications. When asked, 21CD was also unable to correlate the invoices to the specific communications. As such, the Audit staff determined the communication costs based on the bank statements provided by 21CD. The communication costs may change if 21CD provides additional records and information to support the costs of the apparent independent expenditures, such as invoices which correlate to the specific communications, as well as the dissemination dates of the communications.

the communications were for fundraising purposes. OGC provided the representative with Commission-approved independent expenditure findings that contained expenditures for fundraising communications. The 21CD representative stated that he would review the findings but added that he may seek guidance from the Commission on the matter. 21CD subsequently filed a Request for Consideration of a Legal Matter by the Commission. (For more detail, see p. 1., Commission Guidance)

The Audit staff maintains that the costs of fundraising communications are not categorically exempt from being treated as independent expenditures and, therefore, may be independent expenditures, provided the communications contain express advocacy, as illustrated in the Facts section above. As such, the Audit staff recommends that, within 30 calendar days of service of this report, 21CD provide documentation that apparent independent expenditures, totaling \$1,051,788, did not require reporting as independent expenditures. For the four telephone scripts which only expressly advocate the election or defeat of one or more clearly identified candidates if the caller reached a specified point in the scripts, the documentation should demonstrate that the scripts either were not used or callers reading the scripts did not reach the point in the scripts where the communication included express advocacy. Regarding the podcast, the Audit staff recommends that 21CD provide evidence demonstrating that the press exemption applies to this expenditure, if applicable. Absent such documentation, the Audit staff recommends that 21CD amend its reports to disclose these disbursements as independent expenditures on Schedule E and provide documentation to support the date of public dissemination for each communication to determine whether a 24/48-hour report was required to be filed.

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

1. Facts

In addition to not reporting the apparent independent expenditures totaling \$1,051,788 identified above, 21CD did not file any 24/48-hour reports, which may have been required.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the 21CD representatives during the exit conference and presented schedules detailing these expenditures which may require the filing of 24/48-hour reports. The 21CD representatives stated the communications were for fundraising purposes, and therefore, the disbursements were not independent expenditures. In response to the exit conference, 21CD provided no further comments regarding this matter.

The Audit staff likewise maintains that the costs of fundraising communications are not categorically exempt from being treated as independent expenditures and, therefore, may be independent expenditures if they contain express advocacy. Absent documentation that the apparent independent expenditures, totaling \$1,051,788, did not require reporting as independent expenditures (per Part A above), the Audit staff recommends that, within 30 calendar days of service of this report, 21CD provide documentation to support the date of public

dissemination for each communication to determine whether a 24/48-hour report was required to be filed.