

January 27, 2017

MEMORANDUM

To:

Kathleen Guith

Associate General Counsel

AUDIT REFERRAL# 17-02

Jeff S. Jordan

Assistant General Counsel

Through:

Alec Palmer

Staff Director

From:

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Chief Compliance Officer

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Zuzana O. Pacious

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By:

Chris Carrell

Lead Auditor

Chris Carrell

Compliance out (C.

Subject:

TeaPartyExpress.org Committee (A13-19) - Referral Matters

On January 6, 2017, the Commission approved the Proposed Final Audit Report on the TeaPartyExpress.org. The report was released to the public on January 23, 2012. In accordance with the Materiality Thresholds for Unauthorized Committees, the Final Audit Report of the Commission includes findings that meet the criteria for referral to the Office of General Counsel.

Finding 3 B – Reporting of Apparent Independent Expenditures/ Failure to File 24/48-Hour Reports: Amount in Violation \$876,525; Calendar Years 2011/2012.

Finding 5 – Failure to Itemize Debts and Obligations: Amount in Violation \$310,561; Calendar Years 2011/2012.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding these matters, please contact Christopher Carrell or Zuzana Pacious at 694-1200.

Attachments: Finding 3B – Reporting of Apparent Independent Expenditures/Failure to File 24/48-Hour Reports

Finding 5 – Failure to Itemize Debts and Obligations

Finding 3. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed independent expenditures totaling \$680,735 that TPE disclosed on Schedule E (Itemized Independent Expenditures). However, the Audit staff identified additional expenditures totaling \$848,522 (845,310 + 3,212) which appeared to be media-related independent expenditures that TPE disclosed on Schedule B, Line 21b (Operating Expenditures) and Line 29 (Other Disbursements).

Of the \$680,735 independent expenditures reported on Schedule E, TPE did not file 24/48-hour reports for seven expenditures totaling \$28,003. Additionally, of the \$848,522 disclosed as operating expenditures and other disbursements which appeared to be independent expenditures, TPE did not file any 24/48-hour reports.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated that the identified communications in question were for fundraising and not electioneering purposes. TPE did not address the 24/48-hour reports specifically but stated that the bulk of the activity was towards fundraising and that the identified communications were for fundraising and not for electioneering purposes.

The Commission approved a finding that TPE failed to properly disclose independent expenditures totaling \$848,522. In addition, the Commission approved a finding that TPE did not file 24/48-hour reports totaling \$28,003 for independent expenditures reported on Schedule E; and that TPE did not file 24/48-hour reports for additional apparent independent expenditures totaling \$848,522.

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 payer 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 for each additional \$1,000 that aggregates. 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 disclose this activity within 48 hours each time that 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. 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. 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 the reporting completeness and accuracy of independent expenditures that TPE disclosed on Schedule E. The Audit staff noted that TPE correctly disclosed independent expenditures totaling \$680,735 on Schedule E, however, made additional media-related expenditures totaling \$848,522 and disclosed them as operating expenditures or other disbursements that may be considered independent expenditures. A breakdown of the analysis for these expenditures is as follows:

a) Independent Expenditures Reported as Operating Expenditures and Other Disbursements (Associated Invoice Provided)

TPE made 235 apparent independent expenditures totaling \$845,310 for which it provided supporting documentation such as invoices, scripts, ads, solicitation letters, etc.

- For apparent independent expenditures totaling \$829,427, the communication contained language expressly advocating the election or defeat of clearly identified candidates. 11 CFR §100.22(a). This amount mostly consists of costs associated with 17 fundraising letters each containing express advocacy.
- ii) For apparent independent expenditures totaling \$15,883, the communication could only be interpreted as containing the advocacy of election or defeat of one clearly identified candidate. 11 CFR§ 100.22 (b).
- b) Independent Expenditures Reported as Operating Expenditures and Other Disbursements (No Invoice Associated)

TPE made fifteen apparent independent expenditures which were reported as operating expenditures or other disbursements. The Audit staff considers the disbursements to be apparent independent expenditures for the following reasons:

- i) Communications Without Invoice -TPE provided eight telecommunication scripts; however, the Audit staff was not able to associate these scripts with any invoices or with a particular disbursement. Therefore, the amount spent for these eight telecommunications scripts is unknown. These scripts contain express advocacy language by calling for the "defeat of Barack Obama", "elect a new president", or "put Romney and Paul in White House." 11 CFR §100.22(a).
- ii) Details on Invoice- There were seven independent expenditure emails totaling \$3,212 that were supported by an invoice, however, the invoice could not be traced to the disbursement database or bank. Five of these independent expenditure emails totaling \$2,288 contained express advocacy language calling for the "defeat of Dick Lugar." 11 CFR §100.22(a). Two independent expenditure emails totaling \$924 could only be interpreted as containing the advocacy of

Discrepancies between actual and reported disbursements are discussed in Finding 1. (See p.5.)

election or defeat of one clearly identified candidate. 11 CFR§ 100.22 (b).

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented the schedule of disclosure errors for apparent independent expenditures. The TPE representative had no immediate comments, however, in response to the exit conference, provided additional e-mail communications and invoices which the Audit staff reviewed and incorporated into this finding.

The Interim Audit Report recommended that TPE provide:

- Documentation and evidence that apparent independent expenditures noted above did not require reporting as independent expenditures. Evidence should have included invoices with the corresponding communications and, where applicable, TPE's payment information; or
- Absent such evidence, TPE should have amended its reports to disclose these
 disbursements as independent expenditures on Schedule E and should have
 submitted revised procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report, nor did it file amended disclosure reports. Absent evidence that the expenditures in question did not require reporting as independent expenditures, the Audit staff considers these expenditures to be independent expenditures.

4. Draft Final Audit Report

The Draft Final Audit Report noted that no documentation or evidence was provided by TPE to substantiate that apparent independent expenditures totaling \$848,522 did not require reporting as independent expenditures. In addition, TPE did not amend its reports to disclose these disbursements as independent expenditures on Schedule E.

5. Committee Response to Draft Final Audit Report

In response to the Draft Final Audit Report, TPE stated that the identified communications in question were for fundraising and not electioneering purposes. Absent evidence that these expenditures are not independent expenditures and do not require reporting as independent expenditures, the Audit staff maintained that these expenditures were independent expenditures.

Commission Conclusion

On November 2, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TPE did not properly disclose independent expenditures totaling \$848,522.

The Commission approved the Audit staff's recommendation.

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

1. Facts

The Audit staff reviewed 24/48-hour reports filed by TPE, as well as the apparent independent expenditures noted above, to determine whether additional reporting of a 24/48-hour report was required.² The following was noted:

a) Independent Expenditures Reported on Schedule E (Independent Expenditure Schedule)

TPE failed to file 24-hour reports totaling \$15,539 and 48-hour reports totaling \$12,464. For each of these communications, records indicate that TPE publicly disseminated the communication within the 24/48-hour reporting period.

b) Apparent Independent Expenditures Reported as Operating Expenditures and Other Disbursements

For apparent independent expenditures totaling \$848,522 (845,310 + 3,212) noted above, TPE did not file 24 or 48-hour reports. No documentation or information was available pertaining to the date of public dissemination for these communications; therefore, the Audit staff was not able to determine whether or not such reports were required to be filed.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided the TPE representative with a schedule of undisclosed 24/48-hour reports. The TPE representative did not provide any comments at that time.

The Interim Audit Report recommended that TPE provide documentation to support that the 24/48-hour reports, totaling \$848,522 were timely filed or that the reports were not required. Such documentation should have included support for the dates of public dissemination to determine whether a filing of a 24/48-hour report was required.

3. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considers these expenditures as requiring 24/48-hour reports.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TPE did not provide documentation to support that the 24/48-hour reports totaling \$848,522 were timely filed or that the filing of these reports was not required.

² The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24/48-hour report filing requirement. In the absence of a known date for public dissemination, the Audit staff used the invoice date or date of incurrence to determine if a 24/48-hour report was required.

5. Committee Response to Draft Final Audit Report.

In response to the Draft Final Audit Report, TPE did not address the 24/48-hour reports specifically but stated that the bulk of the activity was towards fundraising and that the identified communications were for fundraising and not for electioneering purposes.

Commission Conclusion

On November 2, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TPE did not file 24/48-hour reports totaling \$28,003 for independent expenditures reported on Schedule E; and that TPE did not file 24/48-hour reports for additional apparent independent expenditures totaling \$848,522.

The Commission approved the Audit staff's recommendation.

Finding 5. Failure to Itemize Debt and Obligations

Summary

During audit fieldwork and in the course of review of independent and apparent independent expenditures, the Audit staff noted that TPE failed to properly disclose debts and obligations pertaining to these expenditures totaling \$310,561.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated it was willing to amend its reports as needed, however, has not done so as of yet. As such, TPE has not complied with the recommendation.

The Commission approved a finding that TPE failed to itemize debts and obligations totaling \$310,561.

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. 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. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, and in course of the review of independent and apparent independent expenditures, the Audit staff noted that TPE failed to properly disclose debts and obligations owed to 19 vendors totaling \$310,561.³ The amounts were outstanding for a range of between 34 to 207 days and were mostly for advertising, media, printing,

³ Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

and mailing services. The incorrect disclosure consists of vendors with debts not reported as well as vendors for which the reported debt amount was understated.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff presented this matter to the TPE representative at the exit conference and provided schedules detailing the debt amounts which were incorrectly reported or unreported during the audited period. The TPE representative offered no comments in response to the exit conference.

The Interim Audit Report recommended that TPE provide documentation demonstrating that these expenditures did not require reporting or were properly reported on Schedules D. Absent such documentation, TPE should have amended its reports to correct the disclosure of debts and obligations totaling \$310,561.

C. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report, nor did it file amended disclosure reports. Absent the filing of amended reports to include the debts owed, the Audit staff considered the matter unresolved.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that TPE did not provide documentation demonstrating that expenditures totaling \$310,561 did not require reporting or were properly reported on Schedules D; and that TPE did not file amended reports to correct the disclosure of these debts and obligations.

E. Committee's Response to Draft Final Audit Report

In response to the Draft Final Audit Report, TPE stated it was willing to amend its reports as needed, however, has not done so as of yet.

Commission Conclusion

On November 2, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TPE failed to itemize debts and obligations totaling \$310,561.

The Commission approved the Audit staff's recommendation.