

1 **FEDERAL ELECTION COMMISSION**

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3 **FIRST GENERAL COUNSEL'S REPORT**

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5 Audit Referral: AR 17-02  
6 DATE REFERRED: January 30, 2017  
7 DATE OF NOTIFICATION: February 2, 2017  
8 DATE OF LAST RESPONSE: April 17, 2017  
9 DATE ACTIVATED: April 18, 2017

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11 ELECTION CYCLE: 2012  
12 EXPIRATION OF SOL: January 1, 2017 –  
13 June 8, 2021

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15 **SOURCE:** Audit Referral  
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17 **RESPONDENTS:** TeaPartyExpress.org and Kelly Lawler in her  
18 official capacity as treasurer  
19  
20 **INTERNAL REPORTS CHECKED:** Audit Documents  
21 Disclosure Reports  
22  
23 **FEDERAL AGENCIES CHECKED:** None  
24  
25 **RELEVANT STATUTES** 52 U.S.C. § 30104(b)(4)(H)(iii)  
26 **AND REGULATIONS:** 52 U.S.C. § 30104(g)  
27 52 U.S.C. § 30104(b)(8)  
28  
29 **INTERNAL REPORTS CHECKED:** Audit Report  
30 Disclosure Reports

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32 **I. INTRODUCTION**

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34 This matter arises from the Commission's audit of the 2012 election cycle activity of  
35 TeaPartyExpress.org and Kelly Lawler in her official capacity as treasurer ("the Committee").<sup>1</sup>  
36 On January 6, 2017, the Commission approved the Final Audit Report and the Audit Division  
37 referred two findings to the Office of General Counsel ("OGC") for possible enforcement action:  
38 1) failure to file 24-Hour and 48-Hour Reports of independent expenditures ("IEs") totaling  
39 \$876,525, and 2) failure to itemize \$310,561 in debts and obligations.

<sup>1</sup> See Attach. 1, Final Audit Report.

1 For the reasons that follow, and based on the facts, analysis, and findings set forth in the  
2 Final Audit Report, which is herein incorporated by reference, we recommend that the  
3 Commission open a MUR and find reason to believe that the Committee violated 52 U.S.C.  
4 § 30104(b)(4)(H)(iii) and (g) by failing to file 24-Hour and 48-Hour Reports of independent  
5 expenditures, and violated 52 U.S.C. § 30104(b)(8) by failing to itemize debts and obligations.  
6 Additionally, we recommend that the Commission authorize pre-probable cause conciliation and  
7 approve the attached conciliation agreement.

## 8 II. FACTUAL AND LEGAL ANALYSIS

### 9 A. Reporting of Independent Expenditures

10 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
11 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.  
12 § 30104(b).<sup>2</sup> This requirement includes reporting independent expenditures ("IEs") made by  
13 political committees other than authorized committees.<sup>3</sup> Every political committee that makes  
14 IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.  
15 § 104.3(b)(3)(vii).<sup>4</sup> In addition, political committees that make IEs aggregating \$1,000 or more  
16 with respect to a given election after the 20th day, but more than 24 hours before the date of that  
17 election, must disclose them within 24 hours following the date of dissemination.<sup>5</sup> These

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<sup>2</sup> 52 U.S.C. § 30104(a)(1).

<sup>3</sup> 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

<sup>4</sup> 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an IE by the reporting committee. The report also must disclose the date, amount, and purpose of any such IE and include a statement that indicates whether such IE is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*, *see also* 11 C.F.R. § 104.3(b)(3)(vii).

<sup>5</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

1 reports, known as 24-Hour Reports, must be filed within 24 hours after each time it makes or  
2 contracts to make IEs aggregating an additional \$1,000.<sup>6</sup>

3 A political committee that makes or contracts to make IEs aggregating \$10,000 or more  
4 for an election in any calendar year, up to and including the 20th day before an election, must  
5 report these expenditures within 48 hours.<sup>7</sup> These reports, known as 48-Hour Reports, must be  
6 filed by the end of the second day "following the date on which a communication that constitutes  
7 an independent expenditure is publicly distributed or otherwise publicly disseminated."<sup>8</sup>

8 During the 2012 election cycle, the Committee disclosed \$680,735 as IEs on its quarterly  
9 reports, but failed to file 24-Hour or 48-Hour Reports for \$28,003 of those IEs.<sup>9</sup> The Committee  
10 also reported \$848,522 of apparent IEs as operating expenditures or other disbursements on its  
11 quarterly reports, but failed to file 24-Hour or 48-Hour Reports for any of them.<sup>10</sup>

12 The Interim Audit Report recommended that the Committee provide documentation to  
13 show that the 24-Hour or 48-Hour Reports for the \$848,522 in apparent IEs were timely filed or  
14 not required.<sup>11</sup> The Committee, however, did not submit a response to the Interim Audit Report.  
15 In response to the Draft Final Audit Report, the Committee stated that many of the  
16 communications identified as IEs were actually fundraising communications that were not  
17 reportable as IEs, but no documentation was provided to support this assertion.<sup>12</sup>

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<sup>6</sup> 11 C.F.R. § 104.4(c).

<sup>7</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

<sup>8</sup> 11 C.F.R. § 104.4(b)(2).

<sup>9</sup> Attach. 1, Final Audit Report at 10-12.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.*

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1 The Commission approved a finding that the Committee did not file 24-Hour or 48-Hour  
2 Reports for IEs totaling \$848,522 that were reported as operating expenditures or other  
3 disbursements, and failed to file 24-Hour or 48-Hour Reports for an additional \$28,003 in IEs  
4 reported on Schedule E.<sup>13</sup> The Audit Division referred these findings to OGC for possible  
5 enforcement action.

6 In its Response to the Notice of Referral,<sup>14</sup> the Committee asserted that the total IEs the  
7 Committee failed to disclose in 24-Hour or 48-Hour Reports is actually \$337,561.68.<sup>15</sup> The  
8 Committee also reiterated its argument that the communications were not “public  
9 communications” but were instead fundraising solicitations sent to its prior donors.<sup>16</sup> However,  
10 the Committee, despite repeated opportunities, has not provided documentation, including the  
11 actual communications in question, or other information to support its assertion that the IEs  
12 identified by the Audit Division were not required to be reported on 24-Hour or 48-Hour  
13 Reports. Accordingly, we recommend that the Commission find reason to believe that the  
14 Committee violated 52 U.S.C. § 30104(b)(4)(H)(iii) and (g) by failing to file 24-Hour and 48-  
15 Hour Reports for \$876,525 in IEs.

16 **B. Failure to Itemize Debts and Obligations**

17 The Act and Commission regulations require political committees to disclose the amount  
18 and nature of its outstanding debts and obligations until those obligations are extinguished.<sup>17</sup> A  
19 political committee must file separate schedules for debts owed by and to the committee with a

<sup>13</sup> *Id.*

<sup>14</sup> Notice of Referral, AR 17-02 (Feb. 2, 2017).

<sup>15</sup> *See* TeaPartyExpress.org Resp. (Apr. 17, 2017).

<sup>16</sup> *Id.* at 1-2.

<sup>17</sup> 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

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1 statement explaining the circumstances and conditions under which each debt and obligation was  
2 incurred and extinguished.<sup>18</sup> A debt of \$500 or less must be reported at the time that payment  
3 was made or within 60 days of the date the political committee incurs the debts, whichever  
4 comes first, and a debt exceeding \$500 must be disclosed in the report that covers the date on  
5 which the debt was incurred.<sup>19</sup>

6 The Audit Division identified \$310,561 in debts and obligations pertaining to IEs that the  
7 Committee did not disclose in its disclosure reports.<sup>20</sup> The amounts were owed to 19 vendors,  
8 ranged from 34 to 207 days outstanding, and included both unreported and understated debts.<sup>21</sup>  
9 The Committee did not respond to the Interim Audit Report, which recommended that the  
10 Committee provide documentation to demonstrate that the debts did not require reporting, were  
11 properly reported, or amend its filings to properly disclose its debts.<sup>22</sup> The Commission  
12 approved the Audit Divisions findings, and they were referred to OGC for possible enforcement  
13 action.

14 In its Response to the Notice of Referral, the Committee does not dispute the Audit  
15 Division's findings, but states that the reporting error arose out of an issue between it and its  
16 direct mail vendors which has since been corrected.<sup>23</sup> Throughout the audit process the  
17 Committee has been repeatedly instructed to amend its filings, and it indicated its willingness to

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<sup>18</sup> See 11 C.F.R. § 104.11(a).

<sup>19</sup> 11 C.F.R. § 104.11(b).

<sup>20</sup> Attach. 1, Final Audit Report at 18.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 19.

<sup>23</sup> Resp. at 2-3.

1 do so, but has not made the necessary amendments.<sup>24</sup> Accordingly, we recommend that the  
2 Commission find there is reason to believe the Committee failed to properly disclose its debts  
3 and obligations in violation of 52 U.S.C. § 30104(b)(8).

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<sup>24</sup> See *id.* at 2.

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**IV. RECOMMENDATIONS**

1. Open a MUR in AR17-02;
2. Find reason to believe that TeaPartyExpress.org and Kelly Lawler in her official capacity as treasurer violated § 30104(b)(4)(H)(iii) and(g);
3. Find reason to believe that TeaPartyExpress.org and Kelly Lawler in her official capacity as treasurer violated § 30104(b)(8);
4. Approve the attached Factual and Legal Analysis;
5. Authorize pre-probable cause conciliation with TeaPartyExpress.org and Kelly Lawler in her official capacity as treasurer;
6. Approve the attached proposed conciliation agreement; and

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1           7. Approve the appropriate letters.

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Lisa J. Stevenson  
Acting General Counsel

5/26/17  
Date

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Attachments:

1. Final Audit Report
3. Factual & Legal Analysis

00001-10001





# Final Audit Report of the Commission on the TeaPartyExpress.org (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)

TeaPartyExpress.org is an unauthorized, qualified, non-party political action committee headquartered in Willows, California. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 10,135,860
○ Refunds of Contributions Made to Federal Candidates	\$2,500
○ Other Receipts	32,666
<b>Total Receipts</b>	<b>\$ 10,171,026</b>
• Disbursements	
○ Operating Expenditures	\$ 8,320,177
○ Contributions to Federal Candidates/Other Committees	259,500
○ Independent Expenditures	680,735
○ Contribution Refunds	19,685
○ Other Disbursements	77,827
<b>Total Disbursements</b>	<b>\$ 9,357,924</b>

## Commission Findings (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Disclosure of Occupation/Name of Employer (Finding 2)
- Reporting of Apparent Independent Expenditures (Finding 3)
- Recordkeeping for Communications (Finding 4)
- Failure to Itemize Debts and Obligations (Finding 5)

<sup>1</sup> 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 TeaPartyExpress.org<sup>2</sup> (TPE), 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 consistency between reported figures and bank records;
2. the disclosure of individual contributors' occupation and name of employer;
3. the disclosure of independent expenditures;
4. the disclosure of debts and obligations pertaining to independent and apparent independent expenditures;
5. the completeness of records; and
6. other committee operations necessary to the review.

### Audit Hearing

TPE declined the opportunity for a hearing before the Commission on the matters presented in this report.

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<sup>2</sup> The committee's name during the audit period was Our Country Deserves Better TeaPartyExpress.Org and was subsequently changed on May 15, 2015.

## Part II Overview of Committee

### Committee Organization

<b>Important Dates</b>	
• Date of Registration	August 18, 2008
• Audit Coverage	January 1, 2011 - December 31, 2012
<b>Headquarters</b>	Willows, California
<b>Bank Information</b>	
• Bank Depositories	Three
• Bank Accounts	Three Checking; One Savings
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Kelly Lawler
• Treasurer During Period Covered by Audit	Betty Presley (1/1/2011 – 4/7/2011) Kelly Lawler (4/8/2011 – Present)
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2011</b>	<b>\$20,252</b>
<b>Receipts</b>	
○ Contributions from Individuals	10,135,860
○ Refunds of Contributions Made to Federal Candidates/Other Committees	2,500
○ Other Receipts	32,666
<b>Total Receipts</b>	<b>\$10,171,026</b>
<b>Disbursements</b>	
○ Operating Expenditures	7,474,867
○ Contributions to Federal Candidates/Other Committees	259,500
○ Independent Expenditures	1,529,257 <sup>3</sup>
○ Contribution Refunds	19,685
○ Other Disbursements	74,615
<b>Total Disbursements</b>	<b>\$9,357,924</b>
<b>Cash-on-hand @ December 31, 2012</b>	<b>\$833,354</b>

<sup>3</sup> This amount, as well as the amount for operating expenditures and other disbursements, 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**

A comparison of TPE's reported figures with its bank records indicated that in 2011, receipts and ending cash-on-hand were understated by \$133,667 and \$127,193, respectively. In 2012, beginning cash-on-hand was understated by \$127,193, receipts were overstated by \$129,547, disbursements were understated by \$5,244, and ending cash-on-hand was overstated by \$65,710. Subsequent to audit notification, TPE amended its disclosure reports and partially corrected certain misstatements.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE explained that during the time of activity it experienced challenges with the data. TPE stated it was willing to amend 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 misstated its financial activity for the calendar years 2011 and 2012. (For more detail, see p. 5.)

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

A review of all contributions from individuals requiring itemization indicated that 2,896 contributions totaling \$549,694 lacked disclosure of occupation/name of employer. During the audit, TPE demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since TPE's corrective action occurred after audit notification, the matter was included in the Interim Audit Report.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated it has significantly improved its process for collecting and reporting occupation/name of employer from individuals and that it has always practiced "best efforts." TPE stated it created a system internally which obtains the information faster and in time for the new report filings.

The Commission approved a finding that TPE failed to disclose occupation/name of employer information from individuals totaling \$549,694. (For more detail, see p. 8.)

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

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. (For more detail, see p. 10.)

#### **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. TPE reported 340 (237+103) expenditures totaling \$3,792,648 (2,302,864 + 1,489,784), on Schedule B, Line 21b (Operating Expenditures) or Line 29 (Other Disbursements) with purposes such as "Postage & Delivery", "Printing & Mailshop" or "PAC Fundraising Postage & Delivery." Documentation provided by TPE was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating or other expense.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated that it has provided copies of invoices and payments made but experienced challenges collecting further information from its consultants and email vendor. TPE added that it has changed its collection process pertaining to the details of the communications.

The Commission approved a finding that TPE did not provide the necessary records pertaining to disbursements totaling \$3,792,648. (For more detail, see p. 15.)

#### **Finding 5. Failure to Itemize Debts and Obligations**

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. (For more detail, see p. 17.)

## Part IV

# Commission Findings

### Finding 1. Misstatement of Financial Activity

#### Summary

A comparison of TPE's reported figures with its bank records indicated that in 2011, receipts and ending cash-on-hand were understated by \$133,667 and \$127,193, respectively. In 2012, beginning cash-on-hand was understated by \$127,193, receipts were overstated by \$129,547, disbursements were understated by \$5,244, and ending cash-on-hand was overstated by \$65,710. Subsequent to audit notification, TPE amended its disclosure reports and partially corrected certain misstatements.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE explained that during the time of activity it experienced challenges with the data. TPE stated it was willing to amend 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 misstated its financial activity for the calendar years 2011 and 2012.

#### 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 TPE's reported financial activity with its bank records for calendar years 2011 and 2012. The reconciliation determined that TPE misstated receipts and ending cash-on-hand for 2011, and receipts, disbursements and ending cash balance for 2012. The following charts outline the discrepancies between TPE'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 Balance @ January 1, 2011	\$21,661	\$20,252	\$1,409 Overstated
Receipts	\$3,668,329	\$3,801,996	\$133,667 Understated
Disbursements	\$3,617,405	\$3,622,469	\$5,064 Understated
Ending Cash Balance @ December 31, 2011	\$72,585	\$199,779	\$127,194 Understated

The beginning cash balance was overstated by \$1,409 and is unexplained, but likely resulted from prior-period discrepancies.

The understatement of receipts resulted from the following:

• Unitemized contributions from individuals, not reported on TPE's 2011 Mid-Year report	+	\$103,315
• Returned contributions not reported as negative receipts	-	1,015
• Unexplained differences	+	<u>31,367</u>
<b>Net Understatement of Receipts</b>	<b>+</b>	<b><u>\$133,667</u></b>

The \$127,193 understatement of the ending cash balance resulted from the misstatements described above.

<b>2012 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2012	\$72,586	\$199,779	\$127,193 Understated
Receipts	\$6,498,577	\$6,369,030	\$129,547 Overstated
Disbursements	\$5,730,211	\$5,735,455	\$5,244 Understated
Ending Cash Balance @ December 31, 2012	\$899,064	\$833,354	\$65,710 Overstated

The overstatement of receipts resulted from the following:

• Contributions from individuals not traced to bank	-	\$125,487
• Credit card contribution chargebacks for previously reported contributions	-	<u>4,060</u>
<b>Overstatement of Receipts</b>	<b>-</b>	<b><u>\$129,547</u></b>

The understatement of disbursements resulted from the following:

• Disbursements clearing bank, not reported	+	\$350,475
• Reported disbursements not traced to bank	-	341,136
• Credit card contribution chargebacks reported as disbursements	-	4,060
• Unexplained differences	-	<u>35</u>
<b>Net Understatement of Disbursements</b>	<b>+</b>	<b><u>\$5,244</u></b>

The majority of disbursements TPE failed to report cleared the bank in November 2012 and should have been disclosed on TPE's 2012 Post-General report. During the same period, TPE reported a single transaction of \$334,091 which did not clear the bank. Based on the available information, the Audit staff was unable to determine whether the reporting of the single transaction of \$334,091 was in relation to those disbursements identified as not reported on the 2012 Post-General report.

The net overstatement of the ending cash balance resulted from the misstatements described above, as well as from a \$58,112 mathematical discrepancy in calculating the ending cash balance.

Subsequent to audit notification, TPE filed amended 2012 reports in April 2014. The Audit staff analyzed the amended information and determined that the amendments corrected some but not all of the identified misstatements.

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

The Audit staff discussed the misstatements for 2011 and 2012 with TPE's representative during the exit conference and provided copies of relevant work papers detailing the remaining misstatements. TPE provided no comments related to this matter in its response to the exit conference.

The Interim Audit Report recommended that TPE file an amended 2011 Mid-Year Report to disclose the additional Unitemized Contributions from Individuals totaling \$103,315 on Line 11(a)(ii). The Interim Audit Report further recommended that the most recent disclosure report be amended to show the adjusted cash-on-hand balance with an explanation that it resulted from audit adjustment from a prior period.

**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. The Audit staff considered this matter unresolved.

**D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that TPE amended its 2012 reports subsequent to audit notification and corrected some of the identified misstatements. However, TPE did not file amended reports to correct the misstatement of financial activity for the calendar year 2011, nor did it correct the most recent disclosure report to show the adjusted cash-on-hand balance with a corresponding explanation.

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

In response to the Draft Final Audit Report, TPE explained that during the time of activity it experienced challenges with the data. TPE stated it was willing to amend reports as needed, however, has not done so as of yet. As such, TPE has not complied with the recommendation.

**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 misstated its financial activity for calendar years 2011 and 2012.

The Commission approved the Audit staff's recommendation.

14-00000-001

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

### **Summary**

A review of all contributions from individuals requiring itemization indicated that 2,896 contributions totaling \$549,694 lacked disclosure of occupation/name of employer. During the audit, TPE demonstrated "best efforts" to obtain, maintain and submit the missing occupation/name of employer information to materially correct the disclosure errors. Since TPE's corrective action occurred after audit notification, the matter was included in the Interim Audit Report.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated it has significantly improved its process for collecting and reporting occupation/name of employer from individuals and that it has always practiced "best efforts." TPE stated it created a system internally which obtains the information faster and in time for the new report filings.

The Commission approved a finding that TPE failed to disclose occupation/name of employer information from individuals totaling \$549,694.

### **Legal Standard**

- A. 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).
- B. 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) and 11 CFR §104.7(a).
- C. 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 itemized contributions from individuals indicated that 2,896 contributions totaling \$549,694, or 25 percent of the dollar value of individual contributions required to be itemized by TPE, lacked disclosure of occupation/name of employer. The contributor entries with missing information were either disclosed with the notation "n/a"; "Best Efforts Made"; or were left blank on the Schedules A (Itemized Receipts).

During audit fieldwork, the Audit staff reviewed the receipt documents provided by TPE to determine if TPE had utilized "best efforts" to obtain, maintain and submit the missing information. TPE presented 391 follow-up letters sent to contributors requesting the occupation/name of employer. In response to these letters, TPE provided the necessary occupation/name of employer information obtained from 137 individuals. For the remaining 254 individuals, no further occupation/name of employer information was provided. The Audit staff reviewed TPE's disclosure reports filed after the audit notification and determined that TPE amended its reports to materially disclose the missing occupation/name of employer information.

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

The Audit staff presented this matter to the TPE representative at the exit conference and noted that TPE has materially resolved this matter and no further action was required. However, because TPE's corrective action was taken after the audit notification, the matter was presented in the Interim Audit Report.

The Interim Audit Report recommended that TPE provide any comments it deemed necessary with respect to this matter.

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

TPE did not submit a response the Interim Audit Report, however, the Audit staff considered this matter resolved.

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

The Draft Final Audit Report acknowledged that TPE has materially resolved this matter and recommended that TPE provide any comments it deemed necessary.

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

In its response to the Draft Final Audit Report, TPE stated it has significantly improved its process for collecting and reporting occupation/name of employer information from individuals.

### **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 disclose occupation/name of employer information from individuals totaling \$549,694.

The Commission approved the Audit staff's recommendation.

### **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 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 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 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.

- i) 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.<sup>4</sup> 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

<sup>4</sup> 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.<sup>5</sup> 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 \$84, 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.

<sup>5</sup> 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 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. TPE reported 340 (237+103) expenditures totaling \$3,792,648 (2,302,864 + 1,489,784), on Schedule B, Line 21b (Operating Expenditures) or Line 29 (Other Disbursements) with purposes such as "Postage & Delivery", "Printing & Mailshop" or "PAC Fundraising Postage & Delivery..". Documentation provided by TPE was insufficient to make a determination pertaining to the purpose for these disbursements and verification as an operating or other expense.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated that it has provided copies of invoices and payments made but experienced challenges collecting further information from its consultants and email vendor. TPE added that it has changed its collection process pertaining to the details of the communications.

The Commission approved a finding that TPE did not provide the necessary records pertaining to disbursements totaling \$3,792,648.

### **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 checked 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. TPE made 340 expenditures totaling \$3,792,648 for which documentation was insufficient to make a determination pertaining to whether these disbursements were correctly reported on Schedule B, Line 21b (Operating Expenditures) or Line 29 (Other Disbursements).

The Audit staff's analysis of the documentation that was provided, including the reconciled committee's database, invoices, and bank statements, determined the following:

- **Disbursements – No Invoices or Copies of Communications Provided (\$2,302,864)**  
 Disbursements totaling \$2,302,864 were paid to direct mail vendors and reflected on the committee's database and/or disclosed on Schedule B with purposes such as "Postage & Delivery", "Printing & Mailshop" or "PAC Fundraising Postage & Delivery." The Audit staff requested copies of the invoices and the associated direct mail piece for each of the disbursements. To date, these invoices or other information to associate the payments to these communications have not been provided.
- **Disbursements – Invoices Provided - Not Able to Associate with Copies of Communications (\$1,489,784)**  
 Disbursements totaling \$1,489,784 were paid to direct mail vendors and were reflected on the TPE's database and/or disclosed on Schedule B with purposes such as "email newsletter", "PAC online advertising" or "PAC fundraising emails." For these disbursements, TPE provided copies of invoices as well as cancelled checks but did not provide information about the related mail communications. Without sufficient details, the Audit staff is unable to verify TPE's reporting itemization of these amounts as operating expenditures or other disbursements. The Audit staff requested information that would allow an association between these invoices and the communications, however, TPE has not responded to that request.

### **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 TPE's reporting. TPE representatives provided additional e-mail communications, invoices, and two ads which the Audit staff reviewed and incorporated into this finding. The Audit staff provided an updated schedule of disbursements for which further records were necessary to verify the accuracy of TPE's reporting and requested that TPE provide additional invoices and information that would associate each invoice to the corresponding communication. TPE representatives responded via e-mail and stated that TPE would provide additional documents, however, TPE has not done so to date.

The Interim Audit Report recommended that TPE provide, in sufficient detail, the necessary information from which the reported operating expenditures and other disbursements totaling \$3,792,648 might have been verified or explained. Such records

were to include copies of invoices and identification of the associated communications, and, where applicable, pertinent information associating each communication with an invoice(s).

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

TPE did not submit a response to the Interim Audit Report. Absent the further documentation as recommended, the Audit staff considered the documentation provided to be insufficient.

**D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that TPE did not provide the necessary information from which the reported operating and other disbursements totaling \$3,792,648 may be verified or explained.

**E. Committee's Response to Draft Final Audit Report**

In response to the Draft Final Audit Report, TPE stated that it has provided copies of invoices and payments made but experienced challenges collecting further information from its consultants and email vendor. TPE further stated it has changed its collection process for obtaining the details of the communications.

**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 provide the necessary records pertaining to disbursements totaling \$3,792,648.

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.



1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 RESPONDENTS: TeaPartyExpress.org and Kelly Lawler AR 17-02  
5 in her official capacity as treasurer  
6

7 **I. INTRODUCTION**

8  
9 This matter arises from the Commission's audit of the 2012 election cycle activity of  
10 TeaPartyExpress.org and Kelly Lawler in her official capacity as treasurer ("the Committee").<sup>1</sup>  
11 On January 6, 2017, the Commission approved the Final Audit Report and the Audit Division  
12 referred two findings to the Office of General Counsel ("OGC") for possible enforcement action:  
13 1) failure to file 24-Hour and 48-Hour Reports of independent expenditures ("IEs") totaling  
14 \$876,525, and 2) failure to itemize \$310,561 in debts and obligations.

15 For the reasons that follow, and based on the facts, analysis, and findings set forth in the  
16 Final Audit Report, which is herein incorporated by reference, the Commission finds reason to  
17 believe that the Committee violated 52 U.S.C. § 30104(b)(4)(H)(iii) and (g) by failing to file 24-  
18 Hour and 48-Hour Reports of independent expenditures, and violated 52 U.S.C. § 30104(b)(8)  
19 by failing to itemize debts and obligations.

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. Reporting of Independent Expenditures**

22 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
23 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.  
24 § 30104(b).<sup>2</sup> This requirement includes reporting independent expenditures ("IEs") made by  
25 political committees other than authorized committees.<sup>3</sup> Every political committee that makes

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<sup>1</sup> See Attach. 1, Final Audit Report.

<sup>2</sup> 52 U.S.C. § 30104(a)(1).

1 IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.  
2 § 104.3(b)(3)(vii).<sup>4</sup> In addition, political committees that make IEs aggregating \$1,000 or more  
3 with respect to a given election after the 20th day, but more than 24 hours before the date of that  
4 election, must disclose them within 24 hours following the date of dissemination.<sup>5</sup> These  
5 reports, known as 24-Hour Reports, must be filed within 24 hours after each time it makes or  
6 contracts to make IEs aggregating an additional \$1,000.<sup>6</sup>

7 A political committee that makes or contracts to make IEs aggregating \$10,000 or more  
8 for an election in any calendar year, up to and including the 20th day before an election, must  
9 report these expenditures within 48 hours.<sup>7</sup> These reports, known as 48-Hour Reports, must be  
10 filed by the end of the second day “following the date on which a communication that constitutes  
11 an independent expenditure is publicly distributed or otherwise publicly disseminated.”<sup>8</sup>

12 During the 2012 election cycle, the Committee disclosed \$680,735 as IEs on its quarterly  
13 reports, but failed to file 24-Hour or 48-Hour Reports for \$28,003 of those IEs.<sup>9</sup> The Committee

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<sup>3</sup> 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

<sup>4</sup> 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an IE by the reporting committee. The report also must disclose the date, amount, and purpose of any such IE and include a statement that indicates whether such IE is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*, *see also* 11 C.F.R. § 104.3(b)(3)(vii).

<sup>5</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

<sup>6</sup> 11 C.F.R. § 104.4(c).

<sup>7</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

<sup>8</sup> 11 C.F.R. § 104.4(b)(2).

<sup>9</sup> Attach. 1, Final Audit Report at 10-12.

1 also reported \$848,522 of apparent IEs as operating expenditures or other disbursements on its  
2 quarterly reports, but failed to file 24-Hour or 48-Hour Reports for any of them.<sup>10</sup>

3 The Interim Audit Report recommended that the Committee provide documentation to  
4 show that the 24-Hour or 48-Hour Reports for the \$848,522 in apparent IEs were timely filed or  
5 not required.<sup>11</sup> The Committee, however, did not submit a response to the Interim Audit Report.  
6 In response to the Draft Final Audit Report, the Committee stated that many of the  
7 communications identified as IEs were actually fundraising communications that were not  
8 reportable as IEs, but no documentation was provided to support this assertion.<sup>12</sup>

9 The Commission approved a finding that the Committee did not file 24-Hour or 48-Hour  
10 Reports for IEs totaling \$848,522 that were reported as operating expenditures or other  
11 disbursements, and failed to file 24-Hour or 48-Hour Reports for an additional \$28,003 in IEs  
12 reported on Schedule E.<sup>13</sup> The Audit Division referred these findings to OGC for possible  
13 enforcement action.

14 In its Response to the Notice of Referral,<sup>14</sup> the Committee asserted that the total IEs the  
15 Committee failed to disclose in 24-Hour or 48-Hour Reports is actually \$337,561.68.<sup>15</sup> The  
16 Committee also reiterated its argument that the communications were not “public  
17 communications” but were instead fundraising solicitations sent to its prior donors.<sup>16</sup> However,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Notice of Referral, AR 17-02 (Feb. 2, 2017).

<sup>15</sup> See TeaPartyExpress.org Resp. (Apr. 17, 2017).

<sup>16</sup> *Id.* at 1-2.



1 the Committee, despite repeated opportunities, has not provided documentation, including the  
2 actual communications in question, or other information to support its assertion that the IEs  
3 identified by the Audit Division were not required to be reported on 24-Hour or 48-Hour  
4 Reports. Accordingly, the Commission finds reason to believe that the Committee violated 52  
5 U.S.C. § 30104(b)(4)(H)(iii) and (g) by failing to file 24-Hour and 48-Hour Reports for \$876,525  
6 in IEs.

7 **B. Failure to Itemize Debts and Obligations**

8 The Act and Commission regulations require political committees to disclose the amount  
9 and nature of its outstanding debts and obligations until those obligations are extinguished.<sup>17</sup> A  
10 political committee must file separate schedules for debts owed by and to the committee with a  
11 statement explaining the circumstances and conditions under which each debt and obligation was  
12 incurred and extinguished.<sup>18</sup> A debt of \$500 or less must be reported at the time that payment  
13 was made or within 60 days of the date the political committee incurs the debts, whichever  
14 comes first, and a debt exceeding \$500 must be disclosed in the report that covers the date on  
15 which the debt was incurred.<sup>19</sup>

16 The Audit Division identified \$310,561 in debts and obligations pertaining to IEs that the  
17 Committee did not disclose in its disclosure reports.<sup>20</sup> The amounts were owed to 19 vendors,  
18 ranged from 34 to 207 days outstanding, and included both unreported and understated debts.<sup>21</sup>  
19 The Committee did not respond to the Interim Audit Report, which recommended that the

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<sup>17</sup> 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

<sup>18</sup> See 11 C.F.R. § 104.11(a).

<sup>19</sup> 11 C.F.R. § 104.11(b).

<sup>20</sup> Attach. 1, Final Audit Report at 18.

<sup>21</sup> *Id.*

1 Committee provide documentation to demonstrate that the debts did not require reporting, were  
2 properly reported, or amend its filings to properly disclose its debts.<sup>22</sup> The Commission  
3 approved the Audit Divisions findings, and they were referred to OGC for possible enforcement  
4 action.

5 In its Response to the Notice of Referral, the Committee does not dispute the Audit  
6 Division's findings, but states that the reporting error arose out of an issue between it and its  
7 direct mail vendors which has since been corrected.<sup>23</sup> Throughout the audit process the  
8 Committee has been repeatedly instructed to amend its filings, and it indicated its willingness to  
9 do so, but has not made the necessary amendments.<sup>24</sup> Accordingly, the Commission finds that  
10 there is reason to believe the Committee failed to properly disclose its debts and obligations in  
11 violation of 52 U.S.C. § 30104(b)(8).

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<sup>22</sup> *Id.* at 19.

<sup>23</sup> *Resp.* at 2-3.

<sup>24</sup> *See id.* at 2.