



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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For the meeting of March 25, 2021

March 4, 2021

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

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

Dayna C. Brown *DCB*
Acting Assistant Staff Director
Audit Division

Zuzana O. Pacious *ZOP*
Audit Manager

By: Robert Morcomb *RM*
Lead Auditor

Subject: Proposed Final Audit Report on the Mississippi Republican Party
(A17-15)

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

This report is being circulated on a 72-hour no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session.

If you have any questions, please contact Zuzana Pacious (x 1347) or Robert Morcomb at (x 1183).

Attachment:
Proposed Final Audit Report on the Mississippi Republican Party



Proposed Final Audit Report on the Mississippi Republican Party

(January 1, 2015 - December 31, 2016)

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)

The Mississippi Republican Party is a state party committee headquartered in Jackson, Mississippi. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 3)

• Receipts

○ Contributions from Individuals	\$ 740,807
○ Contributions from Political Party Committees and Other Political Committees	55,950
○ Transfers from Affiliated/Other Party Committees	1,647,080
○ Offsets to Operating Expenditures	2,686
○ Other Federal Receipts	98,202
○ Transfers from Non-Federal Account	172,635

Total Receipts **\$ 2,717,360**

• Disbursements

○ Operating Expenditures	\$ 328,494
○ Allocated Federal/Non-Federal Expenditures	492,538
○ Transfers to Affiliated Committees	1,587,842
○ Federal Election Activity	296,857

Total Disbursements **\$ 2,705,731**

Commission Findings (p. 4)

- Misstatement of Financial Activity (Finding 1)
- Reporting of Debts and Obligations (Finding 2)

Additional Issue (p. 4)

- Reporting of Apparent Independent Expenditures

¹ 52 U.S.C. §30111(b).



Proposed Final Audit Report on the Mississippi Republican Party

(January 1, 2015 - December 31, 2016)

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Part I

Background

Authority for Audit

This report is based on an audit of the Mississippi Republican Party (MRP), 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 receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the disclosure of disbursements, debts and obligations;
6. the disclosure of expenses allocated between federal and non-federal accounts;
7. the consistency between reported figures and bank records;
8. the completeness of records;
9. the disclosure of independent expenditures; and
10. other committee operations necessary to the review.

Audit Hearing

MRP requested an audit hearing before the Commission. At that time, the Commission lacked a quorum and two Commissioners did not agree to grant the request for an oral hearing. MRP was advised that it may submit a new hearing request once the Commission regained a quorum. MRP was also advised the submission of a new hearing request did not guarantee the newly established Commission would grant the hearing request. On January 8, 2021, MRP declined to submit a second request for an audit hearing.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	January 9, 1978
• Audit Coverage	January 1, 2015 - December 31, 2016
Headquarters	Jackson, Mississippi
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Three Federal; Three Non-Federal
Treasurer	
• Treasurer When Audit Was Conducted	Paul V. Breazeale (1/31/2018 - present) Lucien Smith (1/26/2018 - 1/30/2018)
• Treasurer During Period Covered by Audit	Lucien Smith (7/20/2016 - 12/31/2016) Paul V. Breazeale (8/21/2012 - 7/19/16)
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, 2015	\$ 42,307
Receipts	
○ Contributions from Individuals	740,807
○ Contributions from Political Party and Other Committees	55,950
○ Transfers from Affiliated and Other Political Committees	1,647,080
○ Offsets to Operating Expenditures	2,686
○ Other Federal Receipts	98,202
○ Transfers from Non-Federal Account	172,635
Total Receipts	\$ 2,717,360
Disbursements	
○ Operating Expenditures	328,494
○ Allocated Federal/Non-Federal Expenditures	492,538
○ Transfers to Affiliated Committees	1,587,842
○ Federal Election Activity	296,857
Total Disbursements	\$ 2,705,731
Cash on hand @ December 31, 2016	\$ 53,936

Part III

Summaries

Commission Findings

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of MRP's reported financial activity with its bank records revealed a misstatement of receipts and disbursements in calendar year 2015. Specifically, MRP understated its receipts and disbursements by \$10,606 and \$14,808, respectively. In response to the Interim Audit Report recommendation, MRP filed a Form 99 (Miscellaneous Electronic Submission) on June 21, 2019, which corrected the misstatements for the 2015 calendar year. MRP also stated that the cash balance was correct as of its 2019 May Monthly disclosure report. In response to the Draft Final Audit Report, MRP reiterated that any incorrect reporting of receipts and disbursements was an "inadvertent administrative oversight, and without any intention to circumvent reporting requirements."

The Commission approved a finding that MRP misstated its receipts and disbursements by \$10,606 and \$14,808, respectively, for calendar year 2015. (For more detail, see p. 7.)

Finding 2. Reporting of Debts and Obligations

During audit fieldwork, the Audit staff noted that MRP failed to disclose debts and obligations owed to 10 vendors totaling \$152,931. In response to the Interim Audit Report recommendation, MRP filed a Form 99 on both June 21, 2019 and June 22, 2019, properly disclosing the debts and obligations and correcting the public record. In response to the Draft Final Audit Report, MRP reiterated that it hired a compliance professional who worked with Commission staff to properly disclose the debts and obligations to correct the public record.

The Commission approved a finding that MRP failed to disclose debts and obligations to vendors totaling \$152,931. (For more detail, see p. 9.)

Additional Issue

Reporting of Apparent Independent Expenditures

During audit fieldwork, the Audit staff reviewed expenditures totaling \$43,967², that MRP disclosed on Schedule B, Line 21(b) (Other Federal Operating Expenditures) and Schedule H4 (Disbursements for Allocated Federal /Non-Federal Activity). These expenditures appeared to be independent expenditures that contained express advocacy

² The amount cited in the Interim Audit Report was \$38,940. An additional \$5,027 was added following the submission of an invoice and an estimated shipping cost in response to the Interim Audit Report.

which should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures).

Additionally, of the \$43,967, MRP did not provide sufficient documentation, pertaining to dissemination dates, to allow the Audit staff to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$36,969.

In response to the Interim Audit Report recommendation, MRP stated that the expenditures were reported correctly as operating expenses or fundraising expenses. MRP also stated the primary purpose of these mailings was to solicit donors for contributions and to explain the potential uses of the donated funds, and that any mention of federal candidates was “incidental” to the purpose of the mailings. However, MRP stated it would file amendments, based on the Commission vote, with respect to the Audit staff’s recommendation on this finding.

Additionally, based on clarification MRP provided in response to the Interim Audit Report which explained the “ship date” noted on some invoices, expenditures totaling \$3,926 required a 24-hour report and expenditures totaling \$12,382 required a 48-hour report. For the remaining expenditures, totaling \$20,661, without associated dissemination dates, 24/48-hour reports could still have been required. MRP did not comply with the recommendation to correct the disclosure for these nine independent expenditures.

In response to the Draft Final Audit Report, MRP reiterated its position that the payments represented “routine political party solicitation expenses.” MRP also presented a new legal argument involving the allocation of costs pertaining to express advocacy. MRP stated that it should have been permitted to allocate the total cost of each mailer between the express advocacy content and other content that did not contain express advocacy. MRP agreed, however, to amend its reports and properly disclose these expenditures should the Commission reject or modify this finding. Finally, MRP requested an audit hearing before the Commission.³ The Draft Final Audit Report maintained that MRP did not comply with the recommendation to correct the disclosure for the remaining nine independent expenditures.

The Office of General Counsel considered MRP’s response to the Draft Final Audit Report and subsequently provided an additional legal analysis. According to the analysis, one mailer, totaling \$6,518, was no longer considered an independent expenditure as it did not contain express advocacy. As a result, in the Audit Division Recommendation Memorandum, the Audit staff removed this mailer from the finding and recalculated the total amount of improperly disclosed independent expenditures to equal \$37,449.⁴

The Commission did not approve, by the required four votes, the Audit staff’s recommendation that MRP failed to properly disclose apparent independent expenditures totaling \$37,449. In addition, the Commission did not approve, by the required four

³ See Part I, Audit Hearing, p. 1.

⁴ \$43,967 (nine mailers) - \$6,518 (one removed mailer) = \$37,449 (eight mailers).

votes, the Audit staff's recommendation that MRP did not file 24/48-hour reports for apparent independent expenditures totaling \$36,969. Pursuant to Commission Directive 70,⁵ this matter is discussed in the "Additional Issue" section of this report. (For more detail, see p. 11.)

⁵ Available at https://www.fec.gov/resources/cms-content/documents/directive_70.pdf

Part IV

Commission Findings

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of MRP's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for calendar year 2015. Specifically, MRP understated its receipts and disbursements by \$10,606 and \$14,808, respectively. In response to the Interim Audit Report recommendation, MRP filed a Form 99 (Miscellaneous Electronic Submission) on June 21, 2019, which corrected the misstatements for the 2015 calendar year. MRP also stated that the cash balance was correct as of its 2019 May Monthly disclosure report. In response to the Draft Final Audit Report, MRP reiterated that any incorrect reporting of receipts and disbursements was an "inadvertent administrative oversight, and without any intention to circumvent reporting requirements."

The Commission approved a finding that MRP misstated its receipts and disbursements by \$10,606 and \$14,808, respectively, for calendar year 2015.

Legal Standard

Contents of Federal 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 MRP's reported financial activity with its bank records for calendar years 2015 and 2016. The reconciliation identified that MRP misstated receipts and disbursements for 2015. The following chart details the discrepancies between MRP's disclosure reports and bank activity. The succeeding paragraphs explain why the discrepancies occurred.

2015 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2015	\$50,087	\$42,307	\$7,780 Overstated
Receipts	\$394,175	\$404,781	\$10,606 Understated
Disbursements	\$403,626	\$418,434	\$14,808 Understated
Ending Cash on hand @ December 31, 2015	\$28,624 ⁶	\$28,654	\$30 Understated

The reported 2015 beginning cash on hand was over reported by \$7,780 likely resulting from prior period discrepancies.

The understatement of receipts resulted from the following:

• Transfer from a Non-federal account not reported	\$7,830
• In-kind contribution not reported as a receipt	2,868
• Unexplained differences	<u>(92)</u>
Net Understatement of Receipts	<u>\$10,606</u>

The understatement of disbursements resulted from the following:

• Disbursements not reported	\$11,932
• In-kind contribution not reported as a disbursement	2,868
• Unexplained differences	<u>8</u>
Understatement of Disbursements	<u>\$14,808</u>

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with MRP representatives during the exit conference and provided schedules detailing the misstatements. MRP representatives did not provide any comments.

The Interim Audit Report recommended that MRP amend its disclosure reports or file a Form 99⁷ to correct the misstatements noted above. It was further recommended that MRP reconcile the cash on hand in its most recently filed report to include these adjustments and correct any subsequent discrepancies.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MRP explained that it believed that the “minor apparent misstatements” were “inadvertent administrative oversights.” MRP filed a Form 99, on June 21, 2019, which corrected the misstatements for the 2015 calendar year. MRP also stated that the cash balance reflected on its 2019 May Monthly disclosure report was correct.

⁶ The reported ending cash on hand did not equal reported beginning cash on hand plus reported receipts minus reported disbursements likely due to the mathematical discrepancy.

⁷ MRP was advised by the Audit staff that if it chose to file a Form 99, instead of amending its disclosure reports, the form must contain all pertinent information that is required on each schedule.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that MRP filed a Form 99 on June 21, 2019, which corrected the misstatements for the 2015 calendar year and also stated that the cash balance reflected on MRP's 2019 May Monthly disclosure report, was correct.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP reiterated that any incorrect reporting of receipts and disbursements was an "inadvertent administrative oversight, and without any intention to circumvent reporting requirements."

Commission Conclusion

On January 28, 2021, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that, in calendar year 2015, MRP understated its receipts and disbursements by \$10,606 and \$14,808, respectively.

The Commission approved the Audit staff's recommendation.

Finding 2. Reporting of Debts and Obligations

Summary

During audit fieldwork, the Audit staff noted that MRP failed to disclose debts and obligations owed to 10 vendors totaling \$152,931. In response to the Interim Audit Report recommendation, MRP filed a Form 99 on both June 21, 2019 and June 22, 2019, properly disclosing the debts and obligations and correcting the public record. In response to the Draft Final Audit Report, MRP reiterated that it hired a compliance professional who worked with Commission staff to properly disclose the debts and obligations to correct the public record.

The Commission approved a finding that MRP failed to disclose debts and obligations to vendors totaling \$152,931.

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. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed MRP's disbursements records and disclosure reports for proper reporting of debts and obligations. This review identified debts owed to 10 vendors totaling \$152,931⁸ that MRP failed to report on Schedule D (Debts and Obligations) during the audit period. Based on a review of the records, these vendors provided MRP with signs, stickers, printed membership/fundraising letters and cards, audio and video equipment, food and venue for events, financial services, national convention materials, transportation, compliance services, postage, and flower arrangements. MRP reported debt totaling \$134,142 on Schedule D during the audit cycle. 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 13 to 1,047 days.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter at the exit conference and provided MRP representatives schedules detailing the transactions requiring disclosure on Schedule D. MRP representatives inquired about the definition of debts and whether monthly recurring expenses would be considered debt if not paid within a specific timeframe or crossing reporting periods. The Audit staff noted that none of the errors were recurring expenses. In response to the exit conference, MRP provided no further comments.

The Interim Audit Report recommended that MRP provide additional documents such as, invoices, billings statements, cancelled checks, etc., demonstrating that these transactions were not obligations which required reporting on Schedule D. Absent such documentation, the Interim Audit Report further recommended that MRP amend its reports or file a Form 99 to disclose these debts and obligations on Schedule D.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MRP filed a Form 99 on both June 21, 2019 and June 22, 2019, properly disclosing the debts and obligations and correcting the public record.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged MRP filed a Form 99 on June 21 and 22, 2019, properly disclosing the debts and obligations and correcting the public record.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP reiterated that it hired a compliance professional who worked with Commission staff to properly disclose the debts and obligations to correct the public record.

⁸ Each debt in this amount was counted once, even if it required disclosure over multiple periods.

Commission Conclusion

On January 28, 2021, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MRP failed to disclose debts and obligations to vendors totaling \$152,931.

The Commission approved the Audit's staff's recommendation.

Part V Additional Issue

Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed expenditures totaling \$43,967⁹, that MRP disclosed on Schedule B, Line 21(b) (Other Federal Operating Expenditures) and Schedule H4 (Disbursements for Allocated Federal /Non-Federal Activity). These expenditures appeared to be independent expenditures that contained express advocacy which should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures).

Additionally, of the \$43,967, MRP did not provide sufficient documentation, pertaining to dissemination dates, to allow the Audit staff to verify whether 24/48-hour reports were required to be filed for the apparent independent expenditures totaling \$36,969.

In response to the Interim Audit Report recommendation, MRP stated that the expenditures were reported correctly as operating expenses or fundraising expenses. MRP also stated the primary purpose of these mailings was to solicit donors for contributions and to explain the potential uses of the donated funds, and that any mention of federal candidates was "incidental" to the purpose of the mailings. However, MRP stated it would file amendments, based on the Commission vote, with respect to the Audit staff's recommendation on this finding.

Additionally, based on clarification MRP provided in response to the Interim Audit Report which explained the "ship date" noted on some invoices, expenditures totaling \$3,926 required a 24-hour report and expenditures totaling \$12,382 required a 48-hour report. For the remaining expenditures totaling \$20,661, without associated dissemination dates, 24/48-hour reports could still have been required. MRP did not comply with the recommendation to correct the disclosure for these nine independent expenditures.

In response to the Draft Final Audit Report, MRP reiterated its position that the payments represented "routine political party solicitation expenses." MRP also presented a new

⁹ See footnote 2.

legal argument involving the allocation of costs pertaining to express advocacy. MRP stated that it should have been permitted to allocate the total cost of each mailer between the express advocacy content and other content that did not contain express advocacy. MRP agreed, however, to amend its reports and properly disclose these expenditures should the Commission reject or modify this finding. Finally, MRP requested an audit hearing before the Commission.¹⁰ The Draft Final Audit Report maintained that MRP did not comply with the recommendation to correct the disclosure for the remaining nine independent expenditures.

The Office of General Counsel considered MRP's response to the Draft Final Audit Report and subsequently provided an additional legal analysis. According to the analysis, one mailer, totaling \$6,518, was no longer considered an independent expenditure as it did not contain express advocacy. As a result, in the Audit Division Recommendation Memorandum, the Audit staff removed this mailer from the finding and recalculated the total amount of improperly disclosed independent expenditures to equal \$37,449.¹¹

The Commission did not approve, by the required four votes, the Audit staff's recommendation that MRP failed to properly disclose apparent independent expenditures totaling \$37,449. In addition, the Commission did not approve, by the required four votes, the Audit staff's recommendation that MRP failed to file 24/48-hour reports for apparent independent expenditures totaling \$36,969. Pursuant to Commission Directive 70,¹² this matter is discussed in the "Additional Issue" section of this report.

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

¹⁰ See footnote 3.

¹¹ See footnote 4.

¹² See footnote 5.

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 MRP did not disclose any independent

expenditures on Schedule E, however, it made expenditures totaling \$43,967¹³ disclosed on Schedule B, Line 21(b), and Schedule H4. These expenditures were for nine fundraising mailers, which contained express advocacy. A breakdown analysis for these expenditures is as follows:

a. Apparent Independent Expenditures Reported as Disbursements for Allocated Federal /Non-federal Activity (Associated Mailer and Invoice Provided under 11 CFR §100.22(a))

MRP made 12 disbursements for five¹⁴ apparent independent expenditures totaling \$26,638 for which it provided copies of the mailers with associated invoices and cancelled checks. These communications contained language expressly advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a):

LRA 1077, p. 4, Mailer #1

“We must elect a Republican as the 45th President of the United States”

LRA 1077, p. 4, Mailer #2

“If we unite to support Donald Trump, we still have a chance to save our country for the future”

LRA 1077, p. 4, Mailer #3

“Stop Hillary!”; “STOP HILLARY from becoming President of the United States” and “support Donald Trump”

LRA 1077, p. 4, Mailer #4

“... you can make a difference to support Donald Trump and stop Hillary Clinton from moving back into the White House”

LRA 1077, p. 6, Mailer #8¹⁵

“We must elect a Republican President in 2016”

b. Apparent Independent Expenditures Reported as Operating Expenditures and Disbursements for Allocated Federal /Non-federal Activity (Associated Mailer and Invoice Provided under 11 CFR §100.22(b))

MRP made 9 disbursements for four apparent independent expenditures totaling \$17,329, for which it provided copies of the mailers with associated invoices and cancelled checks.

Based on the definition of express advocacy under 11 CFR §100.22(b), the Audit staff believes the following mailers could only be interpreted by a

¹³ See footnote 2.

¹⁴ Mailer #1, previously considered under §100.22(a), has been reclassified under §100.22(b), per the Office of General Counsel’s legal analysis, LRA 1077 Audit Division Recommendation Memorandum page #2.

¹⁵ The Office of General Counsel would recommend in LRA 1077 Audit Division Recommendation Memorandum, that Mailer #8 be removed from Finding 3.

reasonable person as advocating the election or defeat of a clearly identified candidate:

LRA 1077, p. 5, Mailer #5

“Donald Trump ...will nominate Supreme Court Justices who will protect the Constitution.... I’m asking you to please stand up in defense of our Constitution by making a contribution today...”; “The Mississippi Republican Party has been hard at work not only to ensure that Donald Trump wins Mississippi by a wide margin, but also that he wins swing states such as Florida and Ohio”; and “Your generous contribution today will help keep Trump from losing the presidency...”

LRA 1077, p. 5, Mailer #6

“I am asking you to please contribute \$100 to make sure that Donald Trump’s message of Making America Great Again can be delivered untainted by the media to undecided voters here in Mississippi and in key battleground states”

LRA 1077, p. 5, Mailer #7

“The Mississippi Republican Party is working hard to make sure Republicans in Mississippi turn out to vote and send Donald Trump to a landslide victory here. And the Party is doing the same thing in the critical battleground state of Florida... Will you please contribute \$50, \$75, \$100 or more to enable our Party to do everything it can in these last days to turn out Republican voters in Mississippi and Florida?”

LRA 1077, p. 6, Mailer #9

“Recent polls suggest the presidential election is dead even and that’s good news for Donald Trump and Mike Pence as they build momentum to win the White House... NOW is the time for a final surge in the momentum. Will you help make sure that happens?”

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented MRP with a schedule detailing these expenditures. MRP representatives did not have any comments.

The Interim Audit Report recommended that MRP provide documentation showing that the apparent independent expenditures, totaling \$38,940¹⁶, did not require reporting as independent expenditures. Absent such documentation, the Interim Audit Report recommended that MRP amend its reports to disclose these disbursements as independent expenditures on Schedule E and submit procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MRP disagreed that any of its mailers constituted independent expenditures. MRP stated that expenditures

¹⁶ See footnote 2.

totaling \$38,940¹⁷ were reported on the appropriate schedule as “operating expenses or fundraising expenses”¹⁸ and that these mailings “constitute solicitations for MRP.” MRP further stated that the Commission should reject the assertion that these mailings contain express advocacy because the “call to action” was not “electoral” or an “explicit directive to vote for or against any clearly identified Federal candidate,” but rather, “a solicitation of a contribution.” Lastly, MRP stated that it and other “similarly situated parties lack notice that the Commission has taken the view that incidental issue or political advocacy language can transform typical party expenses such as these into independent expenditures.”

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged MRP’s assertion that the expenditures in question were reported as operating or fundraising expenses and that mailers were used to solicit contributions. However, the Draft Final Audit Report pointed out that the Commission has concluded that if mailers contained express advocacy as defined in 11 CFR §100.22, they were considered independent expenditures, irrespective of the solicitations’ intended purpose to raise funds.¹⁹

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP reiterated that the primary purpose of the mailers was to solicit donors for contributions and any mention of federal candidates was “incidental” to the purpose of the mailings. MRP disagreed with the cited regulations and stated that “political parties are distinguishable from the non-connected political committees.” MRP further stated that only a “very small portion of the amount the Audit Division found at issue would fall into [the independent expenditures] category due to allocation principles when communications include independent advocacy and party advocacy.” MRP agreed, however, to amend its reports and properly disclose these expenditures should the Commission reject or modify this finding. Finally, MRP requested an audit hearing before the Commission.²⁰ The Draft Final Audit Report maintained that MRP did not comply with the recommendation to correct the disclosure for the remaining nine independent expenditures totaling \$43,967.

The Office of General Counsel considered MRP’s response to the Draft Final Audit Report and subsequently provided an additional legal analysis. According to the analysis, one mailer, totaling \$6,518, was no longer considered an independent expenditure as it did not contain express advocacy. As a result, in the Audit Division Recommendation Memorandum, the Audit staff removed this

¹⁷ See footnote 2.

¹⁸ Expenditures totaling \$36,969 referenced a Federal candidate and were therefore incorrectly reported on Schedule H4. 11 CFR §300.32(a).

¹⁹ Final Audit Report on National Campaign Fund; Final Audit Report on Legacy Committee Political Action Committee; Final Audit Report on Freedom’s Defense Fund; and Final Audit Report on Conservative Majority Fund.

²⁰ See footnote 3.

mailer from the finding and recalculated the total amount of improperly disclosed independent expenditures to equal \$37,449.²¹

Commission Conclusion

On January 28, 2021, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MRP failed to properly disclose apparent independent expenditures totaling \$37,449.

The Commission did not approve, by the required four votes, the Audit staff's recommendation. Some Commissioners voted to approve the Audit staff's recommendation. Other Commissioners did not approve the Audit staff's recommendation, stating that they did not consider a solicitation to be an independent expenditure, given the nature of how state parties fundraise and solicit funds.

Pursuant to Commission Directive 70, this matter is presented as an "Additional Issue."

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

1. Facts

In addition to not reporting any independent expenditures during the audit period, MRP did not file any 24 or 48-hour reports. Therefore, the apparent independent expenditures identified above, may also have required such filings.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed with the MRP representatives the requirements for filing 24/48-hour reports. MRP representatives did not provide any comments.

The Interim Audit Report recommended that, absent documentation that the apparent independent expenditures, totaling \$38,940, did not require reporting as independent expenditures, MRP provide documentation to support the date of public dissemination for each mailer to determine whether a 24/48-hour report was required.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, MRP provided documentation and stated that the term "ship date," as detailed on four of the nine invoices, reflected "the day that they took the mailers to the post office."

Accordingly, the Audit staff used the ship date as the date of dissemination for these invoices and determined that MRP failed to file one 48-hour report for expenditures totaling \$12,382 and one 24-hour report for expenditures totaling \$3,926.

²¹ See footnote 4.

Thus, four of the remaining five mailers²² with no dissemination date might have still required the filing of 24/48-hour reports. Absent evidence that the expenditures totaling \$36,969 did not require reporting as independent expenditures, the Audit staff considered these independent expenditures which might have required filing of 24/48-hour reports. The Interim Audit Report further recommended that MRP provide the dates of dissemination for the mailers discussed above.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged MRP provided clarification of the “ship date” noted on some invoices. Based on that clarification, expenditures totaling \$3,926 required a 24-hour report and expenditures totaling \$12,382 required a 48-hour report. For the remaining expenditures totaling \$20,661 without associated dissemination dates, 24/48-hour reports might still be required. As such, the Draft Final Audit Report concluded that MRP did not comply with the recommendation to correct the disclosure of these apparent independent expenditures.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP did not address the 24/48-hour reports.

Commission Conclusion

On January 28, 2021, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that MRP did not file 24/48-hour reports for apparent independent expenditures totaling \$36,969.

The Commission did not approve, by the required four votes, the Audit staff’s recommendation.

Pursuant to Commission Directive 70, this matter is presented as an “Additional Issue.”

²² The cost for the 2015 activity totaling \$6,998, did not require any 24/48-hour reports.