



Interim Audit Report of the Audit Division on The Legacy Committee Political Action Committee

January 1, 2007 – December 31, 2008

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 Legacy Committee Political Action Committee is a nonconnected, multi-candidate committee headquartered in Laguna Niguel, California. For more information, see the chart on Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 1,544,747
○ Loans Received	5,000
Total Receipts	\$ 1,549,747
• Disbursements	
○ Independent Expenditures	\$ 1,162,464
○ Operating Expenditures	217,889
○ Contributions to Federal Candidate Committees and Other Political Committees	47,250
○ Refunds of Contributions	19,139
○ Other Disbursements	12,853
○ Loan Repayments	5,000
Total Disbursements	\$ 1,464,595

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Failure to File Notices and Properly Disclose Independent Expenditures (Finding 2)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of The Legacy Committee Political Action Committee (LCP) 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 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. 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. 2 U.S.C. §438(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/name of employer;
3. the disclosure of independent expenditures; and
4. other committee operations necessary to the review.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	September 19, 2006
• Audit Coverage	January 1, 2007 – December 31, 2008
Headquarters	
	Laguna Niguel, California
Bank Information	
• Bank Depositories	One
• Bank Accounts	Two Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	James V. Lacy
• Treasurer During Period Covered by Audit	James V. Lacy
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2007	\$ 0
Receipts	
○ Contributions from Individuals	1,544,747
○ Loans Received	5,000
Total Receipts	\$ 1,549,747
Disbursements	
○ Independent Expenditures	1,162,464 ²
○ Operating Expenditures	217,889
○ Contributions to Federal Candidate Committees and Other Political Committees	47,250
○ All Other Disbursements	36,992
Total Disbursements	\$ 1,464,595
Cash-on-hand @ December 31, 2008	\$ 85,152

² This amount, as well as the amount for operating expenditures, may change as a result of the finding on page 5.

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of LCP's reported financial activity with its bank records revealed that, for 2008, LCP understated its reported receipts and disbursements by \$32,411 and \$25,529, respectively. The Audit staff recommends that LCP amend its reports to correct the misstatements. (For more detail, see p. 4)

Finding 2. Failure to File Notices and Properly Disclose Independent Expenditures

LCP disclosed independent expenditures totaling \$1,159,647 on Schedule E (Itemized Independent Expenditures). During audit fieldwork, the Audit staff noted that only \$412,891 of these expenditures appeared to meet the definition of independent expenditure and contained language expressly advocating the election or defeat of a clearly identified candidate. Of these independent expenditures (\$412,891):

- LCP did not timely file 24/48-hour notices for \$374,327 and did not file any 24-hour notices for \$17,491; and
- LCP did not properly disclose independent expenditures totaling \$294,570 made (i.e., publicly disseminated) prior to payment as "memo" entries on Schedule E and as a reportable debt on Schedule D (Debts and Obligations).

If LCP believes that these expenditures did not require reporting as independent expenditures, the Audit staff recommends that it provide evidence to support that conclusion. Absent that, it is recommended that LCP submit and implement revised procedures for reporting independent expenditures. (For more detail, see p. 5)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of LCP's reported financial activity with its bank records revealed that, for 2008, LCP understated its reported receipts and disbursements by \$32,411 and \$25,529, respectively. The Audit staff recommends that LCP amend its reports to correct the misstatements.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash-on-hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled reported financial activity with bank records for calendar years 2007 and 2008. A misstatement of receipts and disbursements was identified for 2008. The following chart outlines the discrepancies.

2008 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2008	\$19,508	\$19,365	\$143 Overstated
Receipts	\$1,066,076	\$1,098,487	\$32,411 Understated
Disbursements	\$1,007,171	\$1,032,700	\$25,529 Understated
Ending Cash Balance @ December 31, 2008	\$78,413	\$85,152	\$6,739 Understated

The understatement of receipts resulted from unidentified differences that occurred primarily in the second half of the year. Based on a limited review of available records, it appeared that all contributor information received by the vendor that processed deposits

of contributions may not have been forwarded to the vendor responsible for the data entry.

The understatement of disbursements resulted from the following:

• Refunds of contributions not reported	\$ 18,152
• Bank and credit card fees not reported	4,560
• Independent expenditures not reported	<u>2,817</u>
Understatement of disbursements	<u>\$ 25,529</u>

B. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff explained the misstatements and provided schedules to LCP's Treasurer and Assistant Treasurer. They agreed to amend their reports as necessary.

The Audit staff recommends that, within 30 calendar days of service of this report, LCP:

- Amend its reports to correct the misstatements noted above; and
- Amend its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment. Further, LCP should reconcile the cash balance of its most recent report to identify any subsequent discrepancies that may affect the adjustment recommended by the Audit staff.

Finding 2. Failure to File Notices and Properly Disclose Independent Expenditures

Summary

LCP disclosed independent expenditures totaling \$1,159,647 on Schedule E (Itemized Independent Expenditures). During audit fieldwork, the Audit staff noted that only \$412,891 of these expenditures appeared to meet the definition of independent expenditures and contained language expressly advocating the election or defeat of a clearly identified candidate. Of these independent expenditures (\$412,891):

- LCP did not timely file 24/48-hour notices for \$374,327 and did not file any 24-hour notices for \$17,491; and
- LCP did not properly disclose independent expenditures totaling \$294,570 in more (i.e., publicly disseminated) prior to payment as "memo" entries on Schedule E and as a reportable debt on Schedule D (Debts and Obligations).

If LCP believes that these expenditures did not require reporting as independent expenditures, the Audit staff recommends that it provide evidence to support that conclusion. Absent that, it is recommended that LCP submit and implement revised procedures for reporting independent expenditures.

Legal Standard

A. Definition of Independent Expenditures. The term “independent expenditure” means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. 11CFR §100.16.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as “memo” entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to 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 Notices). 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 notice is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Independent Expenditure Reports (48-Hour Notices). Any independent expenditure 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 notices must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

Facts and Analysis

A. Facts

Initially, LCP disclosed all expenditures as operating expenditures (Schedule B, Line 21(b)). During 2008, LCP received notices from the Commission’s Reports Analysis Division (RAD) questioning whether any of the expenditures, e.g., “Printing,” were for public communications containing express advocacy. LCP’s Treasurer acknowledged that some of the communications contained express advocacy but contended that the purpose of the communication was fundraising. RAD advised LCP that if the communication contained express advocacy, LCP should amend its reports to disclose the expenditures as independent expenditures. Subsequently, LCP filed the requested amended reports.

LCP disclosed independent expenditures totaling \$1,159,647 on Schedule E. During audit fieldwork, it was noted that most of these disbursements were for the printing and

postage of direct mail solicitation letters and were disclosed as either in support of John McCain for President or in opposition to Hillary Clinton or Barack Obama for President. The Audit staff reviewed these expenditures to determine if they were properly reported on Schedule E and to determine if LCP filed the required 24/48-hour notices. The review noted that only \$412,891 of these expenditures appeared to meet the definition of an independent expenditure and contained language expressly advocating the election or defeat of a clearly identified candidate. A review of the direct mail pieces and invoices for those expenditures (\$412,891) revealed the following:

- LCP did not timely file 24/48-hour notices of its independent expenditures for \$374,327. In addition, LCP did not file any 24-hour notices for \$17,491 of these expenditures.
- LCP reported the independent expenditures when the invoices were paid. However, most of these payments were weeks or months after the dissemination date of the printed material. For expenditures totaling \$294,570, LCP should have disclosed independent expenditures as memo entries on Schedule E, filed with reports covering the dates when the materials were disseminated, and included a corresponding debt on Schedule D.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff addressed these matters at the exit conference and provided appropriate schedules to LCP representatives. The Audit staff indicated that, at this time, no amended reports were necessary to correct the reporting of the independent expenditures or to address the 24/48-hour notices that were not filed or not filed timely. LCP representatives stated that they will review these schedules.

The Audit staff recommends that, within 30 calendar days of service of this report, LCP take the following action:

- Provide any documentary evidence that would demonstrate that these disbursements were not independent expenditures and therefore did not require 24/48-hour notices; and
- Submit and implement revised procedures for reporting independent expenditures, as well as for tracking dissemination dates for such expenditures, in order to allow for timely filing of 24/48-hour reporting notices.