



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 4, 2011

MEMORANDUM

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Chief Compliance Officer

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SUBJECT: Interim Audit Report on The Legacy Political Action Committee (LRA # 815)

I. INTRODUCTION

The Office of General Counsel ("OGC") has reviewed the Interim Audit Report ("Proposed Report") on The Legacy Political Action Committee ("LCP" or "Committee"). We

concur with Finding I in the Proposed Report (Misstatement of Financial Activity). In its cover memorandum, the Audit Division requested a legal analysis of Finding 2 (Failure to File Notices and Properly Disclose Independent Expenditures). We analyze this issue below.¹ If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

II. BACKGROUND

LCP made expenditures for fundraising letters, many of which also included express advocacy. LCP originally categorized these expenditures as operating expenditures. After receiving notices from the Reports Analysis Division ("RAD"), LCP agreed that a number of its fundraising letters also included express advocacy. RAD advised LCP it should amend its reports to disclose communications containing express advocacy as independent expenditures. LCP admitted, after discussions with RAD, that the fundraising letters "included content which contained some words of express advocacy." ETEXT ATTACHMENT, Dec. 18, 2008 (FEC Image #28935204773). LCP then disclosed over \$1 million in independent expenditures on Schedule E of its amended reports, and filed some, but not all, of the 24/48-hour notices. Audit's review determined that some of the letters disclosed as independent expenditures in the amended reports contained express advocacy and should also have been timely disclosed through 24/48-hour notices. Audit determined, however, that many of the letters disclosed as independent expenditures in the amended reports did not, in fact, contain express advocacy.² Audit's review also revealed that LCP reported the independent expenditures when the invoices were paid, rather than when the materials were disseminated. The draft interim audit report recommends that LCP provide evidence demonstrating that the disbursements were not independent expenditures and therefore did not require 24/48-hour notices, and submit and implement revised procedures for reporting independent expenditures and tracking dissemination dates for independent expenditures to ensure timely filing of 24/48-hour notices.

Though LCP ultimately admitted that some of the fundraising letters included express advocacy, LCP advanced two main reasons why it believed these fundraising letters should not be categorized as independent expenditures: 1) Characterizing the mailings as independent expenditures "has the effect of greatly overstating and inflating the actual funds used by the organization to influence the election by express advocacy;" 2) It also has the effect of "misleading the public into thinking that this type of committee is making significant fulfillment expenditures when in fact all of the funds in the mailing program are simply being used for fundraising." *Id.*

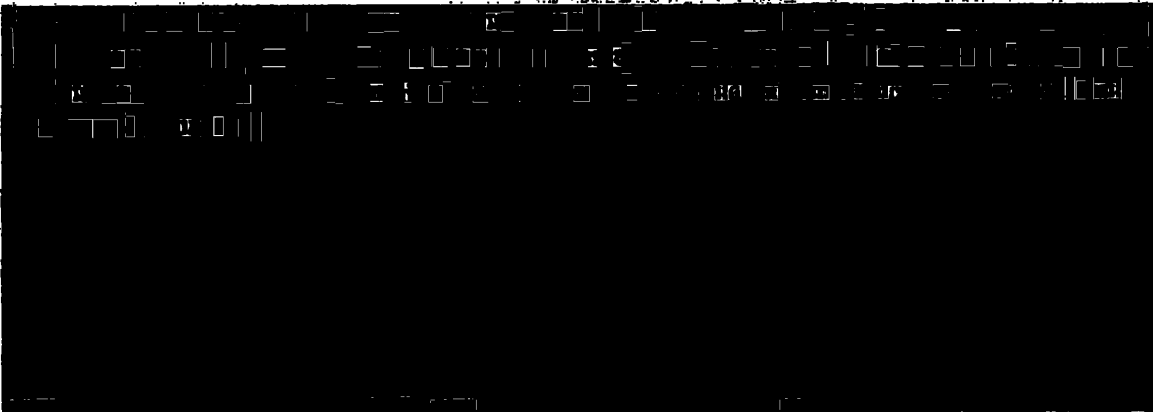
² Audit staff determined that, of the \$1,159,647 LCP disclosed as independent expenditures in its amended reports, only \$390,626 of these expenditures "appeared to meet the definition of independent expenditures and contained language expressly advocating the election or defeat of a clearly identified candidate." Draft Interim Audit Report.

III. ANALYSIS

First, we will examine whether fundraising letters can be independent expenditures as a matter of law. Second, we will examine the letters through a general discussion to determine whether the costs for those letters are independent expenditures. Third, we will advise the auditors as to whether the independent expenditures are correctly reported as being made for the 2008 general election.

A. Fundraising Communications as Independent Expenditures

The Commission has found that fundraising solicitations containing express advocacy should be reported as independent expenditures. In MUR 5809, the Christian Voter Project ("CVP") failed to file independent expenditure notices for the costs of fundraising letters that expressly advocated the election/defeat of candidates. The Commission found reason to believe that CVP's failure to file independent expenditure notices violated the Act, and accepted a conciliation agreement with the committee based on that violation. In MUR 5518 (Hawaii Democratic Party), a party communication contained at least three messages: an invitation to precinct meetings, express advocacy of the defeat of a clearly identified Federal candidate, and a fundraising appeal. The Office of General Counsel concluded the communication should have been reported either as an independent expenditure or as federal election activity, and recommended reason to believe findings. The Commission rejected our recommendation, *not* on grounds that solicitations could not be independent expenditures but on grounds that invitations to precinct meetings permitted treatment as a federal/non-federal allocated administrative expense under the exception to the definition of federal election activity for costs of local political conventions, 2 U.S.C. § 431(20)(B)(iii)). In particular, Commissioners von Spakovsky and Weintraub stated in their Statement of Reasons that "had this invitation been mailed more broadly than it was, and in sufficient numbers to raise questions about whether it was a bona fide invitation, or if it was really just a fundraising or advocacy piece masquerading as an invitation, this would be a different case." MUR 5518 (Hawaii Democratic Party), Statement of Reasons of Commissioners Hans A. von Spakovsky and Elton L. Weintraub, ¶ 3 (Feb. 23, 2007); cf. MURs 5511 and 5525 (Swift Boat Veterans for Truth) (fundraising solicitations containing express advocacy were expenditures that counted towards organization's threshold for political committee status).



B. Detailed Information Regarding Fundraising

This Office has reviewed the 60 types of fundraising letters mailed by LCP, which form the basis for Audit's finding that the Committee failed to file notices and properly disclose independent expenditures.³ We will first discuss the fundraising letters that we conclude contain express advocacy. We then will discuss why we do not conclude that the remaining fundraising letters were express advocacy.⁴ We generally agree with the auditors' finding. In our review of the 60 fundraising letters, however, we have determined that some additional letters also included express advocacy and should therefore have been reported as independent expenditures, as discussed below.

1. Fundraising Letters That Contain Express Advocacy

We conclude that Letters 6, 11, 18-24, 26-41, 43-47, 49-53, 55-60 contain express advocacy pursuant to section 100.22(a). The language from Letters 6, 11, 18-20, 22-23, 26-36, 39-41, 43-47, 49-53, 56-60 included phrases such as "help elect John McCain," "make sure John McCain is elected in November," "Vote John McCain!" "help stop Hillary Clinton," and "John McCain for President!" An independent expenditure is a non-coordinated expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate.⁵ 2 U.S.C. § 431(17); 11 C.F.R. § 100.10(a). A communication that "expressly advocates" includes language such as "vote for the President," "re-elect your Congressman," "defeat," or other words, which in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. 11 C.F.R. § 100.22(a); see *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

Some of these solicitations included phrases that were marginally less direct than "Vote for John McCain" but did not change the "essential nature" of the letters. *FEC v. MCFL*, 479 U.S. 238, 249 (1986); see Letters 21, 24, 37, 38 and 55. For example, some of the letters emphasize the importance of the reader's participation in putting John McCain in the White House. One example is Letter 38, which asks for the recipient's 100% commitment "for John McCain to achieve victory ... and to ensure that he has a Republican Congress to enact his agenda." The letter also asks for "WHATEVER IS YOUR 100% COMMITMENT TO PUTTING JOHN MCCAIN, A TRUE AMERICAN HERO, IN THE WHITE HOUSE." In both of these examples, the words are less marginally direct than "Vote for John McCain," but the essential nature of this letter is the same.

⁴ In addition to the 60 types of fundraising letters, LCP developed a carrier envelope that states "JOHN MCCAIN FOR PRESIDENT," which is express advocacy pursuant to 11 C.F.R. § 100.22(a). We do not know how LCP used this carrier envelope. If this carrier envelope accompanied any of the fundraising letters that we are concluding do not contain express advocacy, our conclusion would change for those fundraising letters.

⁵ We have no information that the communications were coordinated with any candidate.

Letter 21 contains "an official Republican Presidential Elections Committee Petition of Support to Senator John McCain and the Republican Party." The letter states, "so much is at stake . . . the fate of the White House, the fate of Republican ideals and the fate of America . . . And that's why I need you to rush your generous \$150 contribution along with your signed Petition of Support." The Petition of Support states, "I, the undersigned, as a citizen of the United States of America, do hereby petition and notify you that I support you, your strong, principled leadership and candidacy for the White House." The solicitation sends the recipient an American flag, and asks the recipient to "keep the American flag I sent you as a reminder of how critical your support for the Republican Party and Republican Presidential candidate John McCain is to the future of our country." The sentence informs the reader that their "support" for McCain is "critical to the future of our country." A message calling on the reader or listener to "support" a candidate qualifies as express advocacy pursuant to section 100.22(a).

Some letters ask for the reader to cast a ballot or pledge to vote for John McCain. Letter 24 asks, "Do you support John McCain to be the next President of the United States?" The letter goes on to declare, "I certainly hope you said 'YES!'" It also asks, "Will you help me work to elect Senator John McCain and keep the White House in Republican hands?" The letter says, "I am counting on your vote to show our Republican leaders that R.P.E.C. members are standing behind John McCain." The actual "ballot," is the Republican Presidential Elections Committee 2008 Ballot, not the Election Day ballot. The recipient is instructed to indicate their choice by checking "yes" or "no." The recipient is also asked to make a contribution, and "to check all that apply," which includes a space to check that the R.P.E.C. Ballot Completed, and also a separate space to check that a contribution is enclosed. The line "I am counting on your vote" refers to the "ballot" attached to the letter, not the actual presidential election, and therefore does not constitute express advocacy. But Letter 24 also contains the phrase: "Will you help me work to elect Senator John McCain and keep the White House in Republican hands?" followed by the phrase, "or will you allow Barack Obama and Hillary Clinton to impose their radical socialist values on you and your family?" Posed in such a manner, the phrase "will you help me work to elect Senator John McCain" becomes an appeal to "help me to work to elect" McCain in the form of a rhetorical question. An appeal to "help work to elect" a clearly identified candidate is express advocacy pursuant to section 100.22(a).

Letter 37 contains a pledge to vote in the election and an optional question as to whether the recipient will vote for John McCain or Barack Obama. The letter states, "Unless you want Barack Obama to be singing a victory speech on November 4th, our Republican ticket needs your vote." This is essentially the same as saying, "Vote for the Republican nominees." "Vote for" is one of the action phrases in section 100.22(a), and the candidates opposed and supported are clearly identified. Thus, letter 37 contains express advocacy and is an independent expenditure.

Letter 55 also contains express advocacy pursuant to section 100.22(a). Letter 55 includes the following: "You can be that Loyal Friend by sending your generous contribution of \$100 to the Republican Presidential Elections Committee to support in the fight to ensure that John McCain is the next President of the United States of America." By explicitly asking the reader to take action "to ensure that John McCain is the next President of the United States of America," the communication contains express advocacy as defined in 11 C.F.R. § 100.22(a).

We also conclude that Letters 9, 42 and 48 contain express advocacy pursuant to section 100.22(b). An advertisement satisfies the requirements for express advocacy pursuant to the Commission's regulations at 11 C.F.R. § 100.22(b) if, when taken as a whole and with limited reference to external events such as the proximity to the election, it could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because (1) the electoral portion is unmistakable, unambiguous, and suggestive of only one meaning and (2) reasonable minds could not differ as to whether it encourages actions to elect or defeat the clearly identified candidates or encourages some other kind of action. In Letters 9, 14, 42 and 48, there is an electoral portion that makes a specific reference to the 2008 election so the electoral portion is unmistakable, unambiguous, and suggestive of only one meaning. Additionally, each of these letters encourages actions to elect or defeat one or more clearly identified candidates.

Letter 9 references a "2008 Election fight to keep Barack Obama out of the Oval Office" and urges the reader to "[s]tand up for John McCain." The electoral portion is unmistakable and unambiguous; there is a reference to a "2008 Election fight to keep Barack Obama out of the Oval Office." It is suggestive of only one meaning -- an attempt to defeat Barack Obama ("keep Barack Obama out of the Oval Office") and elect John McCain. The action encouraged is for the voter to send money, but the idea is to send money to be used to advocate the election of John McCain and the defeat of Barack Obama. References to money being used generically in House and Senate races would arguably permit allocation of this piece between those parts that are independent expenditures on behalf of McCain and the generic messages pursuant to 11 C.F.R. § 106.1. See AO 2010-10 (National Right to Life PAC).

In Letter 42, the reader is asked to "stand [] with John McCain" and to "help stop Barack Obama." This provides an unambiguous reference to the election. 11 C.F.R. § 100.22(b)(1). The specific way readers are told they can "help stop Barack Obama" is by "rush[ing] your generous contribution today" to Legacy PAC, which the letter says in almost as many words will be used for that purpose ("Please rush your generous contribution today to help stop Barack Obama.") Reasonable minds cannot differ that on its face, the action called for is an action to help defeat Obama by sending money to Legacy PAC. 11 C.F.R. § 100.22(b)(2).

Letter 48 states, "every dollar I raise between now and election day 2008 will go to help expose Hillary Clinton's critical threat to your future and your beliefs." It concludes by stating, "Please don't fail me in this crisis. I am counting on you to help me stop Hillary Clinton!" Prior to the "please don't fail me" appeal, there are a minimum of 12 separate references to the election, including to "the extraordinary danger America faces if Hillary Clinton is elected president," "every dollar I raise between now and election day 2008 will go to help expose Hillary Clinton's critical threat to your future and beliefs," and the need to make sure "during the coming election" that "every American knows what you know -- Hillary Clinton is a dangerous, far-left liberal posing as a moderate just to get elected." Given these unmistakable and unambiguous references to the presidential election and the dangers of electing Hillary Clinton president, reasonable people cannot disagree that an appeal to "help me stop Hillary Clinton" is an appeal to take action to help Michael Reagan stop Hillary Clinton from being elected

President --specifically, by sending money to the Legacy PAC that will be used to oppose her candidacy.

For these reasons, we conclude that the appropriate 24- and 48- hour notices should have been filed for independent expenditures associated with the specific letters referenced. We recommend that the auditors modify their finding in accordance with our conclusion.

2. Fundraising Letters That Do Not Contain Express Advocacy

We conclude that Letters 1-5, 7-8, 10, 12-17, 25 and 54 do not contain express advocacy. Some of the letters simply do not contain elements of express advocacy. Many of the letters contain some elements of express advocacy, but not all that are required under sections 100.22(a) or 100.22(b).

Some letters simply do not contain any elements of express advocacy and therefore do not constitute independent expenditures. One example of such a letter is Letter 14, "Ten-Day Strategy Initiative." In this letter, dated and mailed after the election, the recipient is asked to make a contribution to pay down the debt of the Republican Presidential Elections Committee. Letter 14 does not meet the requirements of an independent expenditures pursuant to 2 U.S.C. § 431(17) because it does not reference a clearly identified candidate.

Another example is Letter 4, which includes a Republican Presidential Elections Committee Pledge of Commitment. In this letter, the recipient is asked to "[p]roudly sign the enclosed Republican Presidential Elections Committee Pledge of Commitment to show the Democrats that loyal, patriotic Republicans will never give up the battle for our values and principles." The communication does not meet the requirements of an independent expenditures pursuant to 2 U.S.C. § 431(17) because it does not reference a clearly identified candidate.

Many of the letters contain some elements of express advocacy, but not all that are required under sections 100.22(a) or 100.22(b). An example of a letter that contains some, but not all of the elements of express advocacy is Letter 25. In Letter 25, the recipient is asked "[i]f Election 2008 were held right now, would you vote for John McCain as your next president?" The letter asks the recipient to return the Registered Sampling Survey and to include a generous contribution. It says, "During this critical time, I need every tool I can possibly get to ensure that we keep the White House under Republican control." Letter 25 does not contain the elements of express advocacy pursuant to section 100.22(a) because it does not use phrases urging the recipient to vote for or against any clearly identified candidate, and, while it identifies John McCain as a candidate for President, it does not urge the recipient to vote for or against him. Rather, it simply has a one-question survey, if the election were held today, would the recipient "yes," vote for John McCain, "no," not vote for John McCain, or is the recipient not sure? Letter 25 does contain a reference to "Election 2008" and therefore contains at least some electoral element, under section 100.22(b). But Letter 25 fails the second prong of section 100.22(b) because it does not encourage actions to elect or defeat any clearly identified candidates. The closest Letter 25 comes to encouraging actions to elect any clearly identified candidates is a phrase that states that "[d]uring this critical time, I need every tool I can possibly get to ensure

that we keep the White House under Republican control." We conclude that Letter 25 fails to meet the requirements for express advocacy in sections 100.22(a) or 100.22(b).

Another example is Letter 12, which says "You must know what is at stake if Barack Obama succeeds in taking the White House on November 4th, 2008." And: "I want you to know what is at stake if you and I do not succeed in putting John McCain in the White House on November 4th, 2008." It also says "Please help me get out the truth. Do not allow Barack Obama to succeed in pulling the wool over the people's eyes and stealing the presidency." The reply form states "I know what is at stake. I will not allow the Democratic National Committee, the Obama campaign and the liberal media to succeed in taking the White House, raising taxes, cutting defense and intelligence, and socializing medicine. In the final push for victory, I am rushing my generous contribution of" Letter 12 contains an electoral petition, in that it references the 2008 general election. The call to "help me get out the truth," and "[d]o not allow Barack Obama to succeed in pulling the wool over the people's eyes..." however, is subject to different interpretations. It could advocate the reader to vote against him. It could, however, encourage the reader to not allow him to succeed with lies and misrepresentations, such that, if he wins, he wins honestly. We conclude that Letter 12 fails to meet the requirements for express advocacy in sections 100.22(a) or 100.22(b).

Similarly, Letter 54 asks "Will you proudly cast your ballot to make John McCain your president?" The actual ballot is the Republican Presidential Elections Committee Republican National Convention Ballot, not an actual ballot for Election Day. And the reply form says: "To help in the fight to make John McCain the next President of the United States, I am casting my vote with him and with the Republican Presidential Elections Committee and sending a contribution of...." Letter 54 also states: "If you, like me, want a man of courage, conviction, integrity and deep faith in the White House, then I am asking you to give everything you can to the fight - just as John McCain always does. Please do everything you can to ensure this battle is won." This language is a very close call, but we would as a matter of discretion recommend that Letter 54 not be subject to reporting as an independent expenditure.

For these reasons, we conclude that 24- and 48- hour notices should have been filed for independent expenditures associated with Fundraising Letters 1-5, 7-8, 10, 12-17, 25 and 54. We recommend that the auditors modify their finding in accordance with our conclusion.

C. Reporting of Independent Expenditures

LCP aggregated and reported all of the independent expenditures as being made for the general election. Additionally, Audit's and RAD's aggregation of the independent expenditures also were based on a general election timeframe. Some of the letters described above, however, occasionally reference the Republican National Convention, as well as Barack Obama and Hillary Clinton, both candidates for the Democratic presidential nomination. Audit has asked for our guidance as to whether LCP's, Audit's and RAD's aggregation and reporting of the independent expenditures based on the general election was correct. Our conclusion is that this approach is correct - each of the letters constituting independent expenditures are primarily focused on voting John McCain into the office of President for the General Election. See 2 U.S.C. § 434(a); 11 C.F.R. § 104.4(b); AO 2003-40 (aggregation of independent expenditures

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The Legacy Political Action Committee LAR
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for 48-hour notices are with respect to a given election). We note that some of these letters specifically advocate the reader to "stop Hillary." Even these letters, in context, appear to be focused on stopping Hillary and other Democrats from winning the presidency in the general election, not their party's nomination.

Direct Mail Letters

Direct Mail Code #	Direct Mail Subcode #	Brief Description	2008 Dissemination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions
1	BPC01	Board of Directors Assembly Line	1/28/2008	Not Express Advocacy	Not Express Advocacy	
2	BPC02	Medicine Speech	3/3/2008	Not Express Advocacy	Not Express Advocacy	
3	BPC04	50 State Strategy Certificate of Commitment	2/19/2008	Not Express Advocacy	Not Express Advocacy	
4	BPC01	Key to Republican Victory	2/26/2008	Not Express Advocacy	Not Express Advocacy	
5	BPC02		2/10/2008	Not Express Advocacy	Not Express Advocacy	
6	BPC03	\$1 B stamp/ "Everything is at Stake"	3/17/2008	Not Express Advocacy	Express Advocacy	"Help stop Clinton" §100.22(a)
7	BPC04	Invitation to American Eagle Alliance	3/24/2008	Not Express Advocacy	Not Express Advocacy	
8	BPC01	"Are You There?"	4/1/2008	Not Express Advocacy	Not Express Advocacy	
9	BPC03	3 - \$1.00 bills Pre-Convention	7/21/2008	Not Express Advocacy	Express Advocacy	Letter 9 references a "2008 Election fight to keep Barack Obama out of the Oval Office" and urges the reader to "stand up for John McCain." The electoral portion is unmistakable and unambiguous; there is a reference to a "2008 Election fight to keep Barack Obama out of the Oval Office." It is suggestive of only one meaning -- an attempt to defeat Barack Obama ("keep Barack Obama out of the Oval Office") and elect John McCain. The action encouraged is for the voter to send money, but the idea is to send money to be used to advocate the election of John McCain and the defeat of Barack Obama. References to money being used generically in House and Senate races could arguably permit allocation of this piece between those parts that are independent expenditures on behalf of McCain and the generic messages pursuant to 11 C.F.R. § 106.1. See AO 2010-10 (National Right to Life PAC).
10	BPC02	Symbolic ballot 2 stamps/"Wipe Out Debt"	8/8/2008	Not Express Advocacy	Not Express Advocacy	
11	BPC05		9/22/2008	Not Express Advocacy	Express Advocacy	Response device says "John McCain for President" §100.22(a)
12	BPC01	"What's at Stake"	10/1/2008	Not Express Advocacy	Not Express Advocacy	
13	BPC01	Pledge to Fight Ten Day Strategy	11/13/2008	Not Express Advocacy	Not Express Advocacy	
14	BPC02	Initiative	11/20/2008	Not Express Advocacy	Not Express Advocacy	
15	EP01-EP032	"Final Notice" Remittance 2008 Election Cycle Membership Confirmation	3/7/08-10/6/08	Not Express Advocacy	Not Express Advocacy	
16	2PC03		1/22/2008	Not Express Advocacy	Not Express Advocacy	

Direct Mail Letters

Direct Mail Code #	Direct Mail Subcode #	Brief Description	2008 Disruption Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions
17	ZPOL4	Private Vote	3/14/2008	Not Express Advocacy	Not Express Advocacy	
18	BNCD1	"Choose John McCain" red zipper pouch	4/7/2008	Express Advocacy	Express Advocacy	"If you choose to fight alongside the Republican Presidential Elections Committee and me to elect John McCain our next President, send me back your reply in the red zipper pouch I've enclosed." "Elect John McCain the next President of the United States." "If you are committed and dedicated to keeping the White House in Republican hands and electing Senator John McCain - a national hero - as president, I need you to do one thing today: TELL ME SO." Reply slip says: "With my signature below, I confirm that I will remain a committed Republican warrior in the battle to elect Senator John McCain to the White House."
19	BNCD2	Silver dollar via Airmail	4/30/2008	Express Advocacy	Express Advocacy	"John McCain needs your vote, and I need your financial support." §100.22(a)
20	BNCD3	Ballot for McCain	4/22/2008	Express Advocacy	Express Advocacy	This letter contains "an official Republican Presidential Elections Committee Petition of Support to Senator John McCain and the Republican Party." The letter states, "as much is at stake . . . the fate of the White House, the fate of Republican ideals and the fate of America . . . And that's why I need you to rush your generous \$150 contribution along with your signed petition of support." The petition of support states, "I, the undersigned, as a citizen of the United States of America, do hereby petition and notify you that I support you, your strong, principled leadership and candidacy for the White House." The solicitation sends the recipient an American flag, and asks the recipient to "keep the American flag I sent you as a reminder of how critical your support for the Republican Party and Republican Presidential candidate John McCain is to the future of our country." The sentence informs the reader that their "support" for McCain is "critical to the future of our country." A message calling on the reader or listener to "support" a candidate qualifies as express advocacy pursuant to section 100.22(a).
21	BNCD4	Flag/Official Petition of Support to Senator John McCain	4/28/2008	Express Advocacy	Express Advocacy	"Support John McCain" "Support his bid for President" §100.22(a)
22	BNCE1	McCain Card of Support	5/6/2008	Express Advocacy	Express Advocacy	This fundraising letter contains a survey and asks policy based questions, but states, "I am making a commitment right now to focus on the issues important to America in my efforts to support John McCain for President." This is express advocacy under § 100.22(a). This is an endorsement; the person to whom is attributed the quoted phrase is Michael Reagan, the signer of the letter. While the phrasing may have been an attempt to remove the communication from § 100.22 - "I am making a commitment right now to focus on the issues important to America in my efforts to support John McCain for President" - the reader is clearly told that Michael Reagan supports John McCain for President. The point of an endorsement is to say to the reader or listener, "I support this candidate and you should too." That this communication also contains other messages - a solicitation of contributions and a request to return a survey - does not diminish the quality of the communication as an endorsement.
23	BNCE2	RPEC Election Survey	5/13/2008	Express Advocacy	Express Advocacy	This fundraising letter and attached ballot ask, "Do you support John McCain to be the next President of the United States?" It goes on to declare, "I certainly hope you said 'YES!' It also asks, "Will you help me work to elect Senator John McCain and keep the White House in Republican hands?" The letter says, "I am counting on your vote to show our Republican leaders that R.P.E.C. members are standing behind John McCain." However, the vote referred to is the ballot attached to the letter, not necessarily the vote on election day. This is express advocacy pursuant to section 100.22(a). The references to the "ballot" asking whether the reader "supports" John McCain, and especially the line "I am counting on your vote to show our Republican leaders" etc., refer to the "ballot" attached to the letter, not to the actual presidential election, and therefore do not constitute express advocacy. But the letter also contains the phrase, "Will you help me work to elect Senator John McCain and keep the White House in Republican hands?" followed by the phrase, "or will you allow Barack Obama and Hillary Clinton to impose their radical socialist values on you and your family?" Posed that way, the phrase "will you help me work to elect Senator John McCain" becomes an appeal to "help me work to elect" McCain in the form of a rhetorical question. An appeal to "help work to elect" a clearly identified candidate is 100.22(a) express advocacy.
24	BNCE3	Republican Ballot "Guaranteed on Time Delivery"	5/22/2008	Express Advocacy	Express Advocacy	

Direct Mail Letters

Direct Mail Code #	Direct Mail Subcode #	Brief Description	2008 Dissemi- nation Date	Audit's Charit- able Status	OGC's Classi- fication	Express Advocacy Letter Descriptions
25	8pce4	Zip code for McCain	5/29/2008	Express Advocacy	Not Express	Carrier envelope says "Fight for John McCain" (tagan under § 100.22(a) - McCain's convention speech "fight with me" "fight for..." "I'm going to fight for...")
26	8pcf1	Rush - Official 2008 Election Poll	6/4/2008	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President" § 100.22(a)
27	8pcf2	3 Promissory Notes to Senator John McCain	7/7/2008	Express Advocacy	Express Advocacy	Sign enclosed pledge of support for John McCain, asserting your full [support?] in the future President John McCain "John McCain has my vote on November 4, 2008."
28	8pcf3	American Flag	7/14/2008	Express Advocacy	Express Advocacy	"I need your help if we are going to make John McCain America's next president."
29	8pcf3	\$1 & Nickel choice	6/24/2008	Express Advocacy	Express Advocacy	"I need your help if we are going to make John McCain America's next president." Response device says "JOHN MCCAIN FOR PRESIDENT." Viewer is asked to sign "PETITION OF SUPPORT FOR REPUBLICAN PRESIDENTIAL NOMINEE JOHN MCCAIN"
30	8pcf2	Petition of Support for John McCain	6/30/2008	Express Advocacy	Express Advocacy	"100 days. Four years. And you." "100 days is all the time you and I have left to fight to keep Barack Obama out of the White House for the next four years." "...you, John McCain and I have only 100 days." "...let me tell you that in a presidential election, the final 100 days goes by like no time at all! Unless you and I take control of this final, all-deciding 100-day fight, all that in which we have ever believed may be destroyed by the Obama liberals." Reply form says "I pledge my commitment to our critical, 100-day battle to help John McCain defeat Barack Obama and the Democratic Campaign of Liberal Special Interests."
31	8pcf4	100 Days Until Election Day	7/28/2008	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President" and text says "I want to convince voters not to vote for Barack Obama." § 100.22(a)
32	8pcf1	\$1.00 Campaign for John McCain	8/4/2008	Express Advocacy	Express Advocacy	Response device says "JOHN MCCAIN FOR PRESIDENT" "BECAUSE THIS LAPEL PIN CLEARLY STATES THE REASON THAT JOHN MCCAIN SHOULD BE THE NEXT PRESIDENT OF THE UNITED STATES: HE HAS SHOWN CONSISTENT BRAVERY IN PROTECTING AND DEFENDING OUR NATION." "BECAUSE THIS IS ONE OF THE MOST IMPORTANT ELECTIONS OF OUR LIFETIME; AND, WHILE THIS LAPEL PIN DOES NOT SAY, "VOTE FOR JOHN MCCAIN" IT MAKES IT PERFECTLY CLEAR WHO IS THE BEST CHOICE."
33	8pcf3	"America's Bravest" US Lapel Pin	9/8/2008	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President"
34	8pcf4	Obama's 3x 3s much money	8/14/2008	Express Advocacy	Express Advocacy	Reply carrier envelope says "John McCain for President"
35	8pcf5	Certified DNC Disaster	8/19/2008	Express Advocacy	Express Advocacy	"I am asking your sacrifice because John McCain cannot possibly be elected President of the United States without your vote, your loyalty and your financial support." Response Device says "JOHN MCCAIN FOR PRESIDENT." From the text: "I do solemnly swear (or affirm) that I will support John McCain in becoming the next President of the United States of America... I will faithfully support John McCain in becoming President of the United States and our Republican leadership."
36	8pcf6	Oath as Republican for Election 2008	8/25/2008	Express Advocacy	Express Advocacy	This fundraising letter contains a pledge to vote in the election and an optional question as to whether the recipient will vote for John McCain or Barack Obama. The letter states, "I'll be blunt-faced with that, our current efforts to help elect John McCain will not be enough. That is why it is absolutely critical that I receive your signed Republican voter pledge within the next four days." This letter constitutes express advocacy pursuant to § 100.22(a), because it says: "Unless you want Barack Obama to be singing a victory speech on November 4th, our Republican ticket needs your vote." This is essentially the same as saying, "Vote for the Republican nominees." "Vote for" is one of the action phrases in 100.22(a), and the candidates opposed and supported are clearly identified. Thus, we have an independent expenditure.
37	8pcf1	Red Warning Sticker & Pledge	8/28/2008	Express Advocacy	Express Advocacy	"Fight for victory on November 4 for John McCain and the GOP"
38	8pcf2	\$1 bill/check for \$198	9/3/2008	Express Advocacy	Express Advocacy	

Direct Mail Letters

Direct Mail #	Direct Mail Subcode	Direct Mail Description	2008 Dissem- nation Date	Audit's Classifi- cation	QGC's Classifi- cation	Express Advocacy Letter Descriptions
39	8pc3	Brief Description 50 Days Left via Certified Mail	9/12/2008	Express Advocacy	Express Advocacy	"stop Obama's political machine ... fight against Barack Obama"
40	8pc4	4 dimes/40 Days	9/17/2008	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President" text says "you must support John McCain for President" and the reply carrier envelope says "John McCain for President!" The letter to Mrs. McCain, to be signed by the recipient and returned to RPEC, says "I fully support John McCain becoming the next President of the United States with you serving as First Lady of the United States of America ... May we prevail on November 4 th ."
41	8pc6	Card to Mrs. McCain	9/26/2008	Express Advocacy	Express Advocacy	This letter states, "Having you standing with John McCain is my number one priority. Nothing is more important." It also says, "I am urging you to step forward now and help John McCain create a new beginning for our nation." However the action called for is a contribution to the Republican Presidential Elections Committee. Nevertheless, it constitutes express advocacy pursuant to § 100.22(b). The reader is asked to "stand [] with John McCain" and to "help stop Barack Obama." This provides an unambiguous reference to the election. 100.22(b)(1). The specific way readers are told they can "help stop Barack Obama" is by "rushing your generous contribution today" to Legacy PAC, which the letter says in almost as many words will be used for that purpose ("Please rush your generous contribution today to Legacy PAC, which the letter says in almost as many words will be used for that purpose.") Reasonable minds cannot differ that on its face, the action called for is an action to help defeat Obama by sending money to Legacy PAC. 100.22(b)(2).
42	8pc2	"Final Warning" via Postal Priority Pak	10/17/2008	Express Advocacy	Express Advocacy	"Barack Obama must not win this election"
43	8pc3	"Obama's Grand Scheme to Destroy Our Nation"	10/10/2008	Express Advocacy	Express Advocacy	"you and I must put John McCain in the White House."
44	8pc4	2 stamps/Incoming Bills	10/14/2008	Express Advocacy	Express Advocacy	
45	8pc5	Certified "Get Out the Vote"	10/24/2008	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President! Get Out the Vote!" § 100.22(a).
46	8pc7	\$2.70 check/Electoral College	10/17/2008	Express Advocacy	Express Advocacy	"elect not only John McCain as President, but also Sarah Palin as Vice President"
47	8pc9	Urgent Election Day Update (in 14 x 4 envelope)	10/21/2008	Express Advocacy	Express Advocacy	"sign the enclosed pledge to wear your special sticker 'I voted McCain-Palin today' sticker on election day"
48	DM6032-DM6036	Hillary Questions	3/3/08-4/11/08	Express Advocacy	Express Advocacy	This letter is anti-Hillary Clinton. It states, "every dollar I raise between now and election day 2008 will go to help expose Hillary Clinton's critical threat to your future and your beliefs." It concludes by stating, "Please don't fail me in this crisis. I am counting on you to help me stop Hillary Clinton!" It contains express advocacy pursuant to § 100.22(b). Prior to the "please don't fail me" appeal, there are a minimum of 12 separate references to the election, including to "the extraordinary danger America faces if Hillary Clinton is elected president," "every dollar I raise between now and election day 2008 will go to help expose Hillary Clinton's critical threat to your future and beliefs," and the need to make sure "during the coming election" that "every American knows what you know: Hillary Clinton is a dangerous, far-left liberal posing as a moderate just to get elected!" Given these unmistakable and unambiguous references to the presidential election and the dangers of electing Hillary Clinton president, reasonable people cannot disagree that an appeal to "help me stop Hillary Clinton" is an appeal to take action to help Michael Reagan stop Hillary Clinton from being elected President - specifically, by sending money to the Legacy PAC that will be used to oppose her candidacy.

Direct Mail Letters

Direct Mail #	Direct Mail Subcode	Brief Description	2008 Dissem. Action Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions
49	JW6001- JW6007	Election 2008 Dues	5/16/08 - 5/30/08	Express Advocacy	Express Advocacy	"As Chairman of the Republican Presidential Elections Committee, it is my duty and honor to ask you to support your Republican Candidate for president, John McCain, as well as the Republican leaders fighting for their seats in the U.S. Senate and the U.S. House of Representatives."
50	JW6001- JW6014	John McCain for President Reagan ask for Support	5/18/08 - 6/13/08	Express Advocacy	Express Advocacy	"John McCain for President" "For the sake of Republican honor, strength, duty and ideals, I urge you to make this commitment with me - to make John McCain President." Pledge of Support, to be signed by the recipient, says, "...I am dedicated to ensuring that the best candidate becomes the next President of the United States. I believe the best candidate is Senator John McCain. I am committed to his leadership. I am dedicated to the Republican ideals of strength, unity and freedom John McCain represents. I will unwaveringly stand by him and the Republican Presidential Elections Committee during the 2008 campaign. And I pledge my firm support for Republican John McCain for President."
51	JZ5 JZ6001- JZ6007	Reagan's Pledge of Support	4/15/08 - 5/15/08	Express Advocacy	Express Advocacy	"For that reason, I am asking you to choose just one way to step forward and assist in the fight to make John McCain the next President of the United States of America." Different levels of support all indicate support to make John McCain the next President...
52	JH6 JH6001- JH6007	Certificates	5/15/08 - 5/30/08	Express Advocacy	Express Advocacy	"IN THE TRADITION OF PRESIDENT RONALD REAGAN, WILL YOU STAND WITH HIS SON MICHAEL REAGAN AND MAKE JOHN MCCAIN THE NEXT PRESIDENT OF THE UNITED STATES?" "Will you step forward and stand with John McCain as President?" "Will you step forward and support the Republican Presidential Elections Committee in electing John McCain as the next President of the United States of America?" Response device says "JOHN MCCAIN FOR PRESIDENT"
53	JH6 JH6001- JH6005	"Will You Step Forward & Stand With John McCain as President?" RPEC Proposed Honorary Delegate	5/15/08 - 5/30/08	Express Advocacy Express Advocacy	Express Advocacy Not Express Advocacy	"You can be that Loyal Friend by sending your generous contribution of \$100 to the Republican Presidential Elections Committee to support in the fight to ensure that John McCain is the next President of the United States of America." "And will you be among one of the first loyal friends to congratulate John McCain for accepting the Republican nomination for President of the United States? I sincerely pray your answer is yes." "...[N]ow, I am putting my trust in you - that you will be one of those loyal and trusted friends to put John McCain in the White House." The reply form says: "I will help you in the fight to put John McCain in the White House. Towards that goal, I am returning my signed Congratulatory Note for John McCain for the Republican Presidential Elections Committee..."
55	JM6 JM6001- JM6005	RPEC Congratulatory Note	None Mailed	Express Advocacy	Express Advocacy	"Your gift enclosed for helping to make John McCain America's next President." "I am sure President Reagan would want you to make John McCain America's next great president." "...and now I call on you to help make sure our nation is led by a man with this great courage and ask you to join with the Republican Presidential Elections Committee in making Senator McCain our next president." "I am passionate about how John McCain must be our next President of the United States of America." Response device says: "I will fight to help make John McCain President!"
56	JSS JSS001- JSS006	Picture of Ronald Reagan and John McCain	5/22/08 - 6/13/08	Express Advocacy	Express Advocacy	"YOUR CHARTER MEMBERSHIP TO HELP JOHN MCCAIN BECOME AMERICA'S NEXT GREAT PRESIDENT ENCLOSED." "Please sign the enclosed John McCain for President Membership Acceptance and return it to me today." "Agree to help us stop Barack Obama and the Democrats by electing John McCain President of the United States." "So now is the time for you and I to make history again: by electing John McCain President." "That's why, I need you to help me elect John McCain President of the United States." The certificate of charter membership says that it is "CHARTER MEMBERSHIP WITH THE REPUBLICAN PRESIDENTIAL ELECTIONS COMMITTEE'S JOHN MCCAIN FOR PRESIDENT"
57	JUB JUB001- JUB008	Charter Membership Certificate & Acceptance	5/30/08 - 6/15/08	Express Advocacy	Express Advocacy	

Direct Mail Letters

Direct Mail #	Direct Mail Subcode #	Brief Description	2008 Dissem-ination Date	Audit's Classification	OGC's Classification	Express Advocacy Letter Descriptions
58	JY6001- JY6005	Lucky Penny	6/30/08 - 7/23/08	Express Advocacy	Express Advocacy	"Please also send your generous contribution to put John McCain in the White House." "Like your father Ronald Reagan and like John McCain, I also know it will take more than luck to put John McCain in the White House."
59	JZ6001- JZ6005	John McCain: A True American Hero	7/2/08 - 7/22/08	Express Advocacy	Express Advocacy	Carrier envelope says "John McCain for President" Text says "I am asking you to make a contribution of \$100, making you a Patriot in the Republican Presidential Elections Committee's fight to make John McCain the next President of the United States." "...know that John McCain will make a courageous, honorable and committed President for our nation, [name of recipient]." In reply form, "To help the Republican Presidential Elections Committee in the fight to make John McCain the next President of the United States, I am rushing my generous contribution of..." "Now can I just briefly tell you why America must elect John McCain President of the United States?" "And I can assure you that John McCain as your President will show the world and the Democrats here at home..." "And now John McCain's dedication to American values and patriotism make him the logical person to be America's next President." "That is why I need your financial support today and why it is so important that you do what you can do to make sure John McCain is elected in November." "...I would ask you to send back your \$50 donation so you will have joined our push to elect John McCain."
60	KK6001- KK6006	Dog tags	7/23/08 - 8/6/08	Express Advocacy	Express Advocacy	