



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 22 2015

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson
Deputy General Counsel - Law *LJS*

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Margaret J. Forman *MD*
Attorney

SUBJECT: Interim Audit Report on the Illinois Republican Party (LRA 1006)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("proposed IAR") on the Illinois Republican Party ("IRP" or "Committee"). The IAR contains five findings: Misstatement of Financial Activity (Finding 1), Failure to File Reports and Properly Disclose Independent Expenditures (Finding 2), Receipt of Apparent Prohibited In-Kind Contributions (Finding 3), Reporting of Debts and Obligations (Finding 4), and Recordkeeping for Employees (Finding 5).¹ We generally concur with the findings, except as addressed below regarding finding 2, Failure to File Reports and Properly Disclose Independent Expenditures. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. §§ 2.4(a) and (b)(6).

II. FAILURE TO FILE REPORTS AND PROPERLY DISCLOSE INDEPENDENT EXPENDITURES²

A. Reporting of Independent Expenditures Section

The Audit staff identified disbursements for printed materials and phone calls totaling \$1,971,040, which the Audit staff determined should have been reported as independent expenditures. The Committee disclosed these expenditures as Federal Election Activity or Disbursements for Allocated Federal/Non-federal activity. The IRP stated that all of the direct mail expenditures were for candidate-specific mass mailings performed by volunteers; however, the Audit staff received documentation showing volunteer activity only for some of the mailings. The Audit staff applied the volunteer materials exemption only to activity which it could directly correlate to specific candidates. We discuss the implications of this in section B, *infra*, and analyze the independent expenditures immediately below.

The audit report places these expenditures into two main categories of independent expenditures: 1) independent expenditures for which there are no underlying communications and 2) independent expenditures supported by the underlying communications.³

I. Independent Expenditures For Which There Are No Underlying Communications

For the independent expenditures for which no underlying communications were provided, the auditors identified 12 invoices for disbursements totaling \$77,336 for two congressional party candidates, 16 disbursements identified on reports as FEA 100% Federal Volunteer Mail and postage for direct mail, for which there were no ads or invoices, and 11 disbursements totaling \$189,662 for the telephone program, but no invoices or scripts.⁴ Since the communications were not available for the auditors to review, the Audit staff reviewed other available documentation such as the Committee's invoices. The auditors conclude that, in the absence of documentation demonstrating that the disbursements did not require reporting as independent expenditures, the Committee should amend its reports to disclose the disbursements

² Before proceeding with our principal comments, we have a brief, ancillary comment relating to the presentation of this finding to the Committee. We recommend that the Audit Division furnish to the Committee, along with the IAR, lists or charts specifically identifying the advertisements the auditors believe may be independent expenditures so that the Committee may provide a fully informed response.

³ The Audit staff included, in the category of independent expenditures with no underlying communications, \$1,323,447 in disbursements for 34 mailers, for which Audit had a copy of the mailers at issue but the expenditures were not supported with invoices. IRP disclosed the \$1,132,447 in disbursements as FEA Volunteer mail. We recommend that the Audit staff either move these mailers to the second category (perhaps as a separate subcategory), which addresses independent expenditures with underlying communications, or otherwise distinguish these mailers separate from this category. In our analysis, we address these 34 mailers as if they are in the second category, since that is where we discuss the substance of the communications.

⁴ The Audit staff identified 9 scripts that could not be connected to any vendor. These 9 scripts will be addressed in the analysis of the second category.

as independent expenditures on Schedule E and submit revised procedures for reporting independent expenditures.

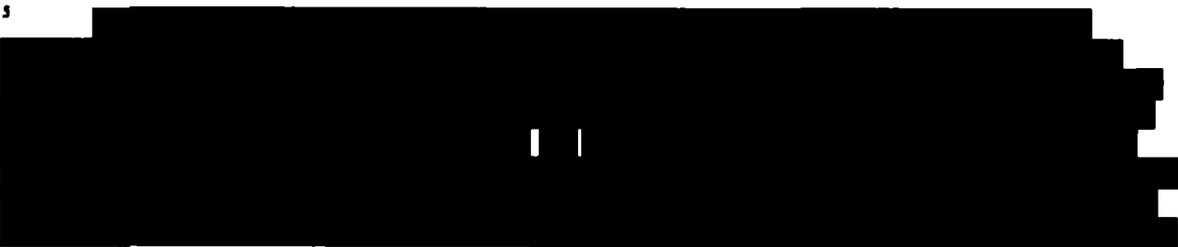
We believe that more information is needed to support a finding that the disbursements meet the requirements to be considered independent expenditures. To be an independent expenditure, the communication must expressly advocate the election or defeat of a clearly identified candidate and must not be made in concert or cooperation with or at the request or suggestion of that candidate, the candidate's authorized political committee, their agents, or a political party committee or its agents. 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16(a). A candidate is clearly identified in a communication when the name of the candidate involved appears; a photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference. 52 U.S.C. § 30101(18); 11 C.F.R. § 100.17.

A communication can expressly advocate the election or defeat of a candidate in two ways. First, a communication expressly advocates the election or defeat of a clearly identified candidate when it uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent" or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One", "Carter '76", "Reagan/Bush" or "Mondale!" 11 C.F.R. § 100.22(a).

Second, a communication may contain express advocacy 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 for the election or defeat of one or more clearly identified candidate(s), because: (1) the electoral portion of the communication 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 one or more clearly identified candidate(s) or encourages some other kind of action. 11 C.F.R. § 100.22(b).

With these standards in mind, we do not believe that Audit staff may infer that disbursements were for independent expenditures solely on the information provided in the invoices.⁵ Since the communications are not available, it is difficult to determine whether they

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2. Independent Expenditures Supported by the Underlying Communications

For the independent expenditures identified by Audit for which the underlying communications were available, the auditors identified 17 disbursements totaling \$278,780. The Audit staff noted that many of the communications included language expressly advocating the election or defeat of a clearly identified candidate along with a photograph of a clearly identified candidate. The Audit staff noted that some of the mailers included the phrases "Vote Robert Dold for Congress," "Vote no on Brad Schneider for Congress," and "Vote Judy Biggert for Congress." The IAR, therefore, concludes that all of the disbursements at issue should have been disclosed as independent expenditures rather than Federal Election Activity or Disbursements for Allocated Federal/Non-federal activity.

We reviewed the communications, and we concur with Audit staff that many of the disbursements should have been reported as independent expenditures because they contain express advocacy.⁶ However, we have identified 14 communications which we do not believe contain express advocacy as analyzed below, and therefore should not be including in Finding 2.

Eight of the communications do not contain express advocacy under 11 C.F.R. § 100.22 because they do not appear to contain any call to vote. Rather, these communications contain biographical information about the candidate and/or the candidate's positions on issues. *See* Randy Hultgren direct mailers ("Working to preserve the American Dream," "Helping Small Business Create Jobs," and "Working for more opportunities & jobs"). Some of these "informational" communications are critical of the identified individual; however, these communications nevertheless do not include any call to vote. *See* Bill Foster direct mailer ("This Grinch's heart was two sizes too small... He's a mean one... Mr. Foster" (detailing "The grinch who fired people" at Christmas)), a Bobby Schilling direct mailer ("Cheri Bustos [love symbol of a heart] taxes"), Jason Plummer direct mailers ("Your Candidates for Congress ... A Fair Comparison of the Candidates", and "Congressional candidate Bill Enyart is on the record supporting cuts of \$719 BILLION from Medicare." One of the communications is positive, and refers to the individual as a candidate, but does not include a call to vote: "Jason Plummer ... The only Real Social Conservative in the race for Congress").

Further, the Audit staff identified six of nine scripts as referencing a Congressional candidate. These scripts are split into two subcategories: (1) where the recipient does not answer and the call forwards to voicemail, and (2) where a recipient answers the phone. We concur with the Audit staff on the subcategory of calls that forward to voicemail.⁷ However, for

⁶ This includes a number of Obamacare communications that are identical to each other except for the name of the candidate. These communications clearly identify a federal candidate (President Obama), contain a call to vote, the communication is suggestive of only one meaning, and reasonable minds could not differ that it encourages actions to defeat that candidate. 11 C.F.R. § 100.22(b). Another pending audit includes similar Obamacare communications, which will be addressed in that audit.

⁷ These voicemail scripts state: "Mitt Romney will rebuild the American economy by reducing taxes, government regulation and dramatically cutting the out of control spending that has happened under President

the subcategory of scripts where the recipient answers the phone, the scripts only use questions pertaining to polling and language to encourage voting generally. We, therefore, conclude that this second subcategory does not include language expressly advocating for or against a candidate. 11 C.F.R. § 100.22.

B. Levels of Volunteer Involvement and Documentation needed to Qualify for the Volunteer Materials Exemption

The IRP stated that all of the direct mail expenditures were for candidate-specific mass mailings performed by volunteers. However, the Audit staff received documentation showing volunteer activity only for some of the mailings. The IRP provided four sign-in sheets, two affidavits and twenty-four photographs for seven mailers to document the use of volunteers. The proposed IAR concludes that, based on the documentation provided, the Audit staff could only match four mailers to photographs for which an invoice was provided, totaling \$33,972. The Audit staff notes the uncertainty regarding the amount of volunteer involvement needed to qualify for the volunteer materials exemption and recommends that IRP provide further documentation to support its use of volunteers under this exemption. Absent such evidence, the Audit staff recommends that the IRP amend its reports to disclose these disbursements as independent expenditures and submit revised procedures for reporting independent expenditures.

Similar to other audits, this audit report notes that there is a lack of clarity with respect to the information required to satisfy the volunteer materials exemption. *See* DFAR on Arizona Republican Party (LRA 889), Final Audit Reports in the Democratic Executive Committee of Florida (DECF), OGC Comments on Final Audit Report on the Tennessee Republican Party Federal Election Account (LRA 745); OGC Comments on Final Audit Report on the Washington State Democratic Central Committee (LRA 737) (discussing Statement of Reasons of Commissioners Petersen, Bauerly, Hunter, and Weintraub in MUR 5598, Utah Republican Party, et al. (April 9, 2009)). The IRP, however, provided documentation supporting its assertions of volunteer exempt activity with respect to mailings on behalf of some, but not all of the candidates. Since the IRP has provided some of the information, we recommend that the Audit Division raise this issue in the cover memorandum to the Commission.

Obama. Please join the Republican ticket to get the country back on track and getting Americans working again. Because you are an important voter and because your opinion matters to Illinois, this call has been paid for by the Illinois Republican Party....” Thus, the scripts identify a clearly identified candidate (Mitt Romney), include a call to action (“Please join the Republican ticket Because you are an important voter....”), and contain specific information about what the candidate will do, once elected, in response to what “has happened under President Obama.” 11 C.F.R. § 100.22(b).