FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

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SUBJECT: Interim Audit Report on the Colorado Republican Committee (LRA 961)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Interim Audit Report ("IAR") on the Colorado Republican Committee ("the Committee"). The IAR contains three findings: Misstatement of Financial Activity (Finding 1); Failure to File Notices and Properly Disclose Independent Expenditures (Finding 2); and Failure to Itemize Debts and Obligations (Finding 3). Our comments address each of these findings. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

II. MISSTATEMENT OF FINANCIAL ACTIVITY (Finding 1)

The proposed IAR addresses an apparent unreported bank account: Colorado State Republican Central Committee Republican National Convention Expense Account ("Convention Account"). The Committee possessed statements associated with this account and provided them to audit staff. These statements showed that the Convention Account was active for a period of time in 2012 and had receipts of approximately $87,000 and disbursements of approximately $86,000. The Audit Division believes that the vast majority of disbursements from the account were for the payment of travel and other expenses of delegates from Colorado to the 2012 Republican National Convention in Tampa, Florida.[1]

The Committee argues that it was not required to report the financial activity from this account because the account did not belong to the Committee. The Committee claims that a separate entity established as a non-profit corporation pursuant to 26 U.S.C. § 501(c)(4), and called the "Colorado Chairman's Host Committee for the Republican National Convention" ("Chairman's Committee"),[2] owned and controlled the account.[3] The Committee stated that neither the Committee, nor any of its officers or agents, controlled the Chairman's Committee's activities. The Committee provided a copy of a June 2012 letter from the Internal Revenue Service addressed to the Chairman's Committee assigning it an Employee Identification Number ("EIN") for tax purposes, as well as a copy of the entity's Articles of Incorporation, reflecting the entity's incorporation in June 2012.

The Audit Division asks whether it: (1) has the authority to review the Convention Account as part of the audit; and (2) should address the Convention Account in the IAR. We conclude that there is insufficient information at this time to determine whether the audit staff has the authority to review the Convention Account as part of the audit because it is unclear whether the Committee owned or controlled this account, but the IAR should address this account to the extent that the

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1 We recommend that the audit staff clarify the proposed IAR to show that the tables and charts presented in Finding 1, Facts and Analysis, Part A (Most Recent Reports Filed Prior to the Audit) do not include an analysis of the Convention Account.

2 Although this organization referred to itself as the "Host Committee," it is not clear that the organization qualifies as a "host committee" under Commission regulations. *See* 11 C.F.R. § 9008.50(b)(3).

3 While we currently have no reason to question the Committee's statement that it and the Convention Committee are separate entities, we note for your information that the Commission has in the past considered the question of whether a party committee's control of an ostensibly separate legal entity is so pervasive as to warrant considering the party committee and the ostensibly separate entity to be in fact a single entity. *See* Matter Under Review ("MUR") 1503, General Counsel's Brief In the Matter of Jefferson Marketing, Inc. and the National Congressional Club, at 5-6 (Aug. 17, 1984); MUR 1503, Consent Order, at 3, par. V (May 15, 1986); MUR 4250, First General Counsel's Report, at 6-8 (May 8, 1997). However, the Commission did not approve this Office's recommendation by the required four votes in MUR 4250. *See* Statement of Reasons of Commissioner Scott E. Thomas and Commissioner Danny Lee McDonald in MUR 4250 (Jan. 28, 2000); Statement of Reasons of Commissioner Lee Ann Elliott in MUR 4250 (Mar. 10, 2000). We will fully analyze this issue if information comes to light suggesting that the Committee exercised such control over the Chairman's Committee that they should be considered a single entity.

IAR seeks additional information from the Committee that may resolve the question of ownership and control of the account.[4]

Without this additional information, the answer to the question of ownership and control is limited to circumstantial evidence. The Committee's possession of the Convention Account bank statements and the inclusion of the Committee's name in the bank statement is circumstantial evidence suggesting that the Committee created and claimed the Convention Account as its own, and that it possibly managed and controlled it as well. We cannot conclude, however, that this was the case. In light of the Committee's assertion that the Convention Account was owned and controlled by a separate entity, Audit staff would require information that might contradict that assertion in order to conclude that the account was controlled by the Committee and should be considered part of the audit. Additionally, evidence that the account became active in January 2012 and that the Chairman's Committee was incorporated in June 2012, while raising questions, would not, itself, nor in combination with these other facts, necessarily warrant the conclusion that the Committee owned and controlled the Convention Account.

In contrast, the EIN associated with the Convention Account may provide more direct evidence of ownership and control of this account. The proposed IAR explains that a prerequisite for an entity to open a bank account is possession of an EIN. It follows that determining whether the Committee's EIN has been associated with the Convention Account would be relevant to determining the ownership of that account. This point, however, is not clear in the IAR. We, therefore, recommend that the Audit Division revise the IAR to make this clearer.

The IAR recommends that the Committee provide documentation from the Bank that confirms the EIN associated with the Convention Account. The Committee may not be able to obtain this information from the Bank if it does not own or control the Convention Account. As an alternative, the Audit Division should consider a subpoena and order for written answers to the bank or a voluntary release from the Committee for the audit staff to ask the bank whether the Committee's EIN was associated with the Convention Account.

[4] During fieldwork, Audit staff sought informal legal guidance from this Office regarding the Convention Account. The auditors asked: (1) whether the Committee was responsible for reporting the transactions relating to the Convention Account; (2) whether, in the event that the Convention Committee, rather than the Committee, was responsible for reporting the activity of the Convention Account, the Convention Committee and the Committee were affiliated, and (3) whether the Convention Account was a Federal or a non-federal account. We concluded that we did not have sufficient information to determine whether the Committee was responsible for reporting the activity of the Convention Account, or that the Committee and the Convention Committee were affiliated, but that even if they were affiliated, their reporting responsibilities would remain separate. Regarding whether the Convention Account was a Federal or non-federal account, we declined to address the question because the answer to the question could only be ascertained by an examination of the Convention Account and how it was designed to be used by the Convention Committee – an examination beyond the permissible scope of the audit given the state of the information then available. *See* Informal Advice to Audit Division on the Colorado Republican Committee – Responsibility for Convention Account Reporting, LRA 961.

III. FAILURE TO FILE NOTICES AND PROPERLY DISCLOSE INDEPENDENT EXPENDITURES (Finding 2)

Finding 2 identifies a total of approximately $6.2 million in Committee spending on direct mail advertisements and radio advertisements that may contain express advocacy, and may therefore have been reportable as independent expenditures. Of this $6.2 million total, approximately $5.8 million relates to "undocumented" independent expenditures, whereas the approximate balance of $358,000 relates to "documented" independent expenditures. The Audit Division has explained to us that the distinction between documented and undocumented independent expenditures is generally based upon whether the advertisement allegedly containing express advocacy can be associated with an invoice or other statement reciting the cost of creating and disseminating the advertisement. The audit staff identified these advertisements out of a larger universe of Committee communications. Since these advertisements are from a larger universe, the advertisements at issue in the Audit should be identified for the Committee. We recommend that the audit staff either revise the IAR, or attach a supplemental document to the IAR that identifies the advertisements at issue.

We have three additional recommendations related to the substance of this finding. First, we recommend that the Audit Division alter its treatment of advertisements currently classified as undocumented independent expenditures, when the classification is not based on possession of the underlying communications. Second, we recommend that the Audit Division change the justification for one advertisement and include additional advertisements in the IAR that expressly advocate the defeat of a clearly identified candidate. Finally, we suggest that the Audit Division remove certain advertisements from the IAR that do not expressly advocate the defeat of the candidate. We concur with the Audit Division's classification of the remainder of the advertisements that are not addressed by these three recommendations.

A. Independent Expenditures Not Supported By Underlying Communications

The IAR identifies approximately $5.8 million in apparent independent expenditures that the Audit staff could not completely verify with documentation. The IAR further subdivides these apparent independent expenditures into three subcategories. In the first two of these subcategories, the relevant communications were not available for review. Subcategory (i) includes disbursements totaling approximately $2.2 million that were paid to a direct mail vendor that were not supported with a copy of an associated direct mail piece.[5] Subcategory (ii) includes invoices totaling approximately $761,000 that also were not supported with a copy of an underlying communication. The auditors apparently inferred from details on the invoices, however, such as inclusion of the word "persuasion" or of a candidate's name that these invoices covered the dissemination of independent expenditures. The third subcategory, subcategory (iii), apparently includes copies of 72 communications that were classified as undocumented because

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[5] This subcategory also mentions approximately $2.9 million in invoices from direct mail vendors that could not be associated with direct mail advertising examples.

they lacked associated invoice numbers.[6] Our comments on the independent expenditures focus on subcategories (i) and (ii).

To constitute an independent expenditure, a 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 the Audit staff may infer that disbursements were for independent expenditures solely on the basis of invoice descriptions or the use of common vendors. Since the communications are not available, it is difficult to determine whether they contain express advocacy. The information in invoices, generally, may not be adequate because invoices are not typically created for the purpose of conveying the content of communications. Rather, invoices usually contain brief descriptions that are sufficient for both a vendor to identify the service provided and a committee to confirm that it is receiving the service for which it contracted prior to making payment. Similarly, although subcategory (i) suggests that

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[6] We believe there is some ambiguity in the wording of subcategory (iii). Subcategory (iii) states: "With respect to the apparent independent expenditures for which a copy of the direct mailer is missing, the Audit staff notes that [the Committee] has provided 72 direct mail advertisements that contained [express advocacy], however the identification of the associated invoice numbers for each advertisement was not provided." While the balance of the quoted statement suggests the interpretation we have offered above, the initial dependent clause may create confusion as to whether the discussed direct mailers are available or unavailable. We, therefore, recommend that the Audit Division revise this statement to eliminate any ambiguity.

the auditors may have inferred that disbursements were made to some of the same vendors who had previously been paid by the Committee for communications containing express advocacy, its conclusion that these additional communications from the same vendor therefore contain express advocacy cannot be supported since it is possible that the same vendor provided services for communications that did not, in fact, contain express advocacy and thus were not independent expenditures. Given the difficulty of analyzing whether a communication contains express advocacy when the communication is available, we conclude that descriptive information contained in an invoice or the use of a common vendor is too tangential to support a finding that express advocacy exists absent a copy of the underlying communication or other more descriptive documentation than that relied upon by Audit staff here.[7]

We acknowledge, however, that there are instances where drawing inferences is appropriate. For example, in the allocation context, we believe that Audit staff may infer that certain types of ordinary overhead expenses such as postage, consulting, travel reimbursements, printing, and accounting fees are allocable absent information demonstrating that the expenses are solely non-federal. *See* Legal Analysis Memorandum to the Audit Division, "Interim Audit Report on the Maine Republican Party" (LRA 817) (Dec. 17, 2010). This type of adverse inference can be supported because the Commission, through the regulatory process, has already determined that administrative expenses of this type are, in fact, allocable absent a demonstration otherwise. There has been no such regulatory guidance by the Commission here. Audit staff also may use adverse inferences where a committee's internal records specifically identify the type of expenditure though its reports disclose the expenditure differently. *See id.* (Audit staff may conclude that printed materials costs that the committee coded in its internal records as federal election activity ("FEA") but reported as operating expenses represents potential FEA while giving the committee an opportunity to clarify the discrepancy). Such discrepancies, however, do not exist here.

To address the lack of information at this stage of the audit, we recommend that the media-related disbursements in subcategories (i) and (ii) should not be categorized as independent expenditures at this stage in the audit process. Instead, the disbursements should be treated as a separate category of expenditures for which the Committee has not provided sufficient documentation to verify its disclosure reports. When a committee reports financial activity, the Commission requires the committee to maintain records with respect to that financial activity. 11 C.F.R. § 104.14(b)(1). These records must 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. *Id.* In the absence of this information, the auditors are unable to

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verify whether the Committee correctly reported its disbursements as operating expenditures or whether they should have been disclosed as independent expenditures. Thus, the Committee should be given the opportunity to provide copies of the communications, additional documentation, or other information and/or to explain any discrepancies in its reporting. In the alternative, the Audit staff may request the Commission to issue a subpoena for copies of the communications at issue or other documents the auditors believe may enable it to verify the Committee's reporting of these disbursements as operating expenditures.

B. Communications that Should Be Included in the Audit Report Because They Expressly Advocate the Defeat of a Clearly Identified Candidate

Turning to the advertisement expenses for which Audit does have the underlying communications, we make the following recommendations.

1. Radio Advertisements

In the larger universe of Committee communications, there are four radio advertisements and written scripts. The IAR concludes that only one of the four radio advertisements, the advertisement designated as "CRC-GOTVrev.mp3" ("Radio Ad 1"), contains express advocacy because of the presence of the opposition candidate's voice. We agree with this conclusion, however, it is not the presence of the opposition candidate's voice that is solely determinative, but rather the content of the advertisement as analyzed under section 100.22(b).

Specifically, in Radio Ad 1, the narrator states that "America can't afford four more years of Barack Obama." The narrator also states that "[t]his election is about the course of our nation" and "[i]t is time to change course. Make your voice heard by voting." Finally, toward the end of the advertisement, the narrator states, "Election day is Tuesday, November 6th. The future of our country is in your hands. Take it back." While there is no specific call to vote against President Obama, the references to the election, the need to change course, and the exhortation to "take it back" suggest that the only reasonable interpretation of these remarks is to urge the listener to vote in the upcoming election and defeat the president's electoral bid by "taking back" the country or the future of the country. 11 C.F.R. § 100.22(b). For these reasons, we believe that Radio Ad 1 contains express advocacy.

We believe that two other radio advertisements out of the larger universe of advertisements, while presenting closer questions, also contain express advocacy under section 100.22(b) and should be included on the list of independent expenditures. These are "CRC LastDaytoReg – 60.mp3" ("Radio Ad 2") and "CO-TTMO-101812.mp3" ("Radio Ad 3"). The content of these advertisements is similar to each other, though not identical. Each of these advertisements opens with a statement about how President Obama made promises that were not fulfilled and describes how the country has declined economically since that time. After noting that "That's not the change we were promised", Radio Ad 2 states "Our country needs new leadership. You can make a difference, but you have to vote to make a difference. Don't just sit on the sidelines. Make your voice heard. Vote." Radio Ad 2 concludes by stating that a person must be registered in order to be able to vote, invites the reader to visit the website "Go Vote

Colorado.com," and exhorts the reader to "[g]et registered today". Radio Ad 3 concludes with the statement "We know that the path we are taking isn't working. It's time for a new path. It's time for new leadership."

While Radio Ad 2's concluding phrases contain an exhortation to the reader to register to vote, this appears at the conclusion of a criticism of a clearly identified candidate's record, a statement that "[o]ur country needs new leadership" and an exhortation to vote. Taken as a whole, which includes the juxtaposition of all of these elements in the order in which they are presented, this advertisement contains a clear electoral portion (the exhortation to vote) that, in context, a reasonable person could only interpret as an exhortation not simply to vote, but to vote to defeat President Obama and to install new leadership. Thus, Radio Ad 2 expressly advocates the defeat of President Obama under section 100.22(b).

While Radio Ad 3 presents a closer call than Radio Ad 2, we conclude that it too expressly advocates the defeat of President Obama. The advertisement notes that four years previously, President Obama made promises that were not fulfilled by subsequent events. The advertisement then concludes by stating "[w]e know that the path we are taking isn't working. It's time for a new path. It's time for new leadership." When taken as a whole, the statements that it is time for a new path and for new leadership, following a critique of a clearly identified candidate's performance, suggest only one meaning: to embark on a new path and to obtain new leadership by replacing the current leadership, *i.e.*, President Obama. A reasonable mind could not but construe the statements as a call to replace President Obama with new leadership. Therefore, we believe that this advertisement contains express advocacy under section 100.22(b).

2. Door Hangers

We conclude that the door hangers designated as J.24.9 through J.24.15 and J.24.19 include express advocacy and the Committee should report the related expenses as independent expenditures. Exhibits J.24.9 through J.24.15 are all alternate versions of the reverse side of a two-sided door hanger. All of these door hangers bear the heading "America's Comeback Team" and contain photographs of Federal and State candidates, or blank spaces where such photographs would otherwise be located.[8] All of the door hangers contain a photograph of presidential candidate Mitt Romney, and beneath the photograph the phrase "Mitt Romney for President". Appearing at the bottom is the phrase "Vote 2012". Thus, these door hangers expressly advocate the election of presidential candidate Mitt Romney under section 100.22(a) because they contain the same kinds of words or phrases as those identified in that regulation and they have no reasonable meaning other than to urge the election of Mr. Romney.

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[8] We understand from discussions with the audit staff that one or more of these door hangers may only have been models for proposed door hangers that were never ultimately distributed. Thus, it is not clear whether they were paid for and used, and, therefore, whether they ultimately were independent expenditures in this sense. Our comments here are restricted to the question of whether they contain express advocacy in the form in which the Committee submitted them to the audit staff.

This is also the case for J.24.19. Here, the door hanger contains the statement "A Clear Choice" followed by the names of Mitt Romney and Paul Ryan, the presidential and vice-presidential candidates of the Republican Party in 2012. This is followed by statements of policy positions that the candidates support, and concludes with the statement "Vote Tuesday November 6th", the campaign logo of "Romney/Ryan," and photographs of the two candidates. This door hanger also expressly advocates the election of Mr. Romney and Mr. Ryan under section 100.22(a) because the phrases in the door hanger, which, again, are similar to the exemplary phrases listed in section 100.22(a), have no reasonable meaning other than to urge the election of Mr. Romney and Mr. Ryan.[9]

3. Absentee Ballot and Voter Registration Form Mail Pieces

Similarly, we conclude that certain mail pieces apparently designed to urge potential voters to register to vote and to vote early by absentee ballot through the mail contain express advocacy. These advertisements generally advocate that the reader vote for the Republican Party, but they also contain individualized references to President Obama. The Commission concluded in a recent enforcement matter that pages of a voter guide generally exhorting readers to vote for the Democratic Party contained express advocacy under 11 C.F.R. § 100.22(a) when they were accompanied by the campaign logos of President Obama and the Obama-Biden 2012 ticket. *See* MUR 6683 (Fort Bend County Democratic Party), Factual and Legal Analysis, at 7 (July 29, 2014). It follows from this MUR, therefore, that advertisements exhorting the reader to vote for the Republican Party, when accompanied by references to President Obama in the form of a campaign logo, a photograph, or his name, constitute express advocacy under section 100.22(a). Such advertisements are designated J.24.20, J.24.21, J.24.25, J.24.26, J.24.36, J.24.42, J.24.59, J.24.66, J.24.70, J.24.76, and J.24.78.

4. Communications That Reference Obamacare

The audit staff concluded that a number of advertisements exhorting the reader to vote for the Republican Party by absentee ballot or to register to vote for the Republican Party, and which further call upon the reader either to "repeal Obamacare" or to help the Republican Party to repeal Obamacare,[10] do not contain express advocacy under 11 C.F.R. § 100.22. We conclude that these

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[9] Door hangers may qualify as exempt from the definition of "expenditure" by reason either of their potential qualification as slate cards or sample ballots under 11 C.F.R. § 100.140, as materials distributed by volunteers and therefore exempt under the volunteer materials exemption found at 11 C.F.R. § 100.147, or both. The Committee should be given an opportunity to state whether it claims that these exemptions apply, and, if so, to provide evidence to substantiate that claim.

[10] In this portion of our comments, we intend to refer only to those advertisements that refer to "Obamacare" and do not otherwise refer to President Obama, whether by proper name, campaign logo, or photograph. Some advertisements both refer to "Obamacare" and refer to President Obama in this way, and these are included in our discussion of communications in section B.3 of these comments.

communications constitute express advocacy and the Committee should report the expenses associated with these advertisements as independent expenditures.[11]

The communications first raise the issue of whether "Obamacare" clearly identifies a federal candidate under 11 C.F.R. § 100.17. In Advisory Opinion 2012-19, the Commission previously considered whether "Obamacare" clearly identified a federal candidate under the identical definition in the context of electioneering communications under 11 C.F.R. § 100.29(b)(2).[12] In that opinion, the Commission concluded that advertisements using the terms "Obamacare" and "Romneycare" clearly identified federal candidates President Obama and Mitt Romney, respectively. *See* Advisory Op. 2012-19 (American Future Fund) (discussion of Advertisements 7 and 8).

As to whether these communications expressly advocate the election or defeat of a clearly identified federal candidate, OGC concludes that the communications at a minimum satisfy the definition of express advocacy under 100.22(b). The communications expressly urge the reader, in a presidential election cycle, to "Vote Republican" coupled with the exhortation to "repeal Obamacare," an explicit reference to President Obama, a specifically identified federal candidate. Thus, these communications contain an unambiguous electoral portion and, taken as a whole, could only be interpreted by a reasonable person as advocating that the recipient vote for the Republican presidential nominee and against President Obama. We therefore recommend that the Audit Division include the specified "Obamacare" communications in the findings of the Audit report as independent expenditures.[13]

C. Communications That Should Be Removed From The Audit Report Because They Do Not Expressly Advocate The Defeat of Clearly Identified Candidate

The advertisements designated J.24.86 and J.24.118 do not contain express advocacy under 11 C.F.R. § 100.22. The expenditures for these advertisements, therefore, should be removed from the list of independent expenditures. The front of each of these two-sided mail pieces identifies Barack Obama by name and photograph, and state, alternately, "Barack Obama Doesn't Defend Life or Liberty" and "Barack Obama Supports Partial-Birth Abortion . . . Leaving Innocent Children Without a Voice." The reverse sides of these advertisements, while containing different language, contain such statements as "Barack Obama Doesn't Speak For Our Families",

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[11] The communications at issue are J.24.27, J.24.50, J.24.55, J.24.62, and J.24.139. The communication designated J.24.46, although containing a reference to repealing "Obamacare," does not contain any exhortation to "vote Republican" or otherwise to support the Republican party, but simply instructs the reader to "vote early." Therefore, OGC concurs with the Audit Staff's conclusion to exclude this communication in its findings.

[12] The Commission regulation governing electioneering communications, 11 C.F.R. § 100.29, defines referencing "a clearly identified candidate," *id.* § 100.29(b)(2), in identical terms to the generally applicable definition of "clearly identified" found at section 100.17. Both of those definitions, in turn, mirror the statutory definition of "clearly identified" provided in the Federal Election Campaign Act of 1971, as amended. 52 U.S.C. § 30101(18).

[13] Although these particular communications arguably may further satisfy the definition of express advocacy under section 100.22(a), it is unnecessary to reach that question to recommend that the audit staff treat the relevant advertisements as independent expenditures in the interim audit context.

"Barack Obama Doesn't Defend Life or Liberty", "Barack Obama Is Silencing Our Pro-Life Values" and "Barack Obama Will Not Defend Life." Both advertisements contain, in smaller print, specific criticisms of President Obama's record or actions relevant to the pro-life values mentioned in the advertisements. While both advertisements are critical of President Obama's character, qualifications or accomplishments, these criticisms do not appear in the context of a reference to an impending election or to President Obama's status as a candidate, nor do they contain an exhortation to vote, or words that, in context, have no other reasonable meaning than a call to vote against him. Thus, they do not qualify as express advocacy under section 100.22(a). Further, there is no "electoral portion" in these advertisements that unmistakably and unambiguously carries one meaning. A reasonable person could construe these advertisements as containing only criticism of the President's record on an issue rather than an exhortation to vote. Thus, the advertisements do not qualify as express advocacy under section 100.22(b).

IV. FAILURE TO ITEMIZE DEBTS AND OBLIGATIONS (Finding 3)

The proposed IAR concludes that the Committee did not properly report certain items of debt in Schedule D of its disclosure reports. Among the debts discussed in the report is a total debt of $133,487 owed to one vendor, representing the unpaid balance of a contract for get-out-the-vote services. Commission regulations provide for the continuous reporting of outstanding debt from the date on which the debt is incurred until the debt is extinguished.[14] 11 C.F.R. § 104.11(b) (debt or obligation, including written contract, to make expenditure over $500 to be reported as of date of incurrence of obligation in most circumstances). The Committee states that it terminated the contract with this vendor before the vendor provided all of the contracted services and therefore did not have any reportable debt. In support of its contention, the Committee provided the auditors with a copy of an unsigned letter that the Committee sent to the vendor; the letter advised the vendor that the Committee was terminating the contract.

The proposed IAR indicates that the Committee did not provide evidence that the vendor had agreed to the termination of the contract. Based upon a review of the contract, we do not believe that this contract requires the vendor to agree to the termination. The contract provides that either party may terminate the contract on 15 days' written notice to the other party. *See* Get Out The Vote Program Agreement, Par. 6 (Sept. 17, 2012). Paragraph 6 further provides that termination does not release the client from the obligation to make pro rata payments of fees for the services the vendor actually provided under the contract. *Id.*

However, there is an issue as to whether the Committee paid the vendor for services that the vendor provided to the Committee prior to the termination.[15] We recommend that the Audit Division revise the IAR to request information about debt remaining for any services provided

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[14] The Committee would have been required to report the debt up to the time when the contract was terminated. 11 C.F.R. § 104.11.

[15] The Committee's statement that it terminated the contract before the vendor provided *all* of the contracted services suggests that the vendor did provide at least *some* of the contracted services to the Committee before the termination occurred.

before the termination of the contract. Since the termination letter was not signed, the Audit Division should request documentation such as a signed letter to the vendor or e-mails or telephone logs regarding the termination.