



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 9, 2003

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: JOSEPH F. STOLTZ *RFJ JFS*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
FRIENDS OF WEINER

Attached please find a copy of the final audit report and related documents on the Friends of Weiner that was approved by the Commission on April 22, 2003.

All parties involved have received informational copies of the report and the report may be released to the public on May 9, 2003.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

**REPORT OF THE AUDIT DIVISION
ON THE
FRIENDS OF WEINER**

Approved April 22, 2003



**FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.**

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

FRIENDS OF WEINER
EXECUTIVE SUMMARY

Friends of Weiner (FOW) registered with the Federal Election Commission on May 28, 1997, as the principal campaign committee for Anthony David Weiner (the Candidate), Democratic candidate for the U.S. House of Representatives from the state of New York, 9th Congressional District.

The audit was conducted pursuant to 2 U.S.C. §438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The audit findings summarized below were presented to the FOW at the completion of fieldwork on April 17, 2002, and later in the interim audit report. FOW's response to these findings is contained in the audit report.

The following is an overview of the findings contained in the audit report.

RECEIPT OF CONTRIBUTIONS FROM INDIVIDUALS IN EXCESS OF THE LIMITATIONS — 2 U.S.C. §441a(a)(1)(A). A review of FOW's receipt records identified contributions from 183 individuals that exceeded the contribution limitations by \$207,300. However, as a result of the application of new regulations adopted by the Commission that allow greater latitude to either reattribute or redesignate contributions to other elections, the number of unresolved excessive contributions was reduced to \$33,250. In response to the interim audit report, FOW provided photocopies of contribution refund checks (front only) it had issued for the \$33,250 in excessive contributions.

RECEIPT OF LOAN IN EXCESS OF THE LIMITATIONS — 2 U.S.C. §441a(a)(1)(A); 11 CFR §§ 100.7(a)(1)(i) and 110.10. FOW disclosed the receipt of two loans from the Candidate totaling \$28,000, which appeared to have been funded by the Candidate's parents, resulting in excessive contributions by the parents totaling \$28,000. The response did not include any evidence that the funds provided by the Candidate's parents should not be treated as excessive contributions.

MISSTATEMENT OF FINANCIAL ACTIVITY — 2 U.S.C. §434(b)(1)(2)(4). A reconciliation of FOW's reports to the bank activity revealed misstatements on reports covering calendar years 1999 and 2000. FOW filed amended reports, which significantly corrected the misstatements.

CONTRIBUTIONS SUBJECT TO 48 HOUR NOTIFICATION — 11 CFR §104.5(f). A review of contributions indicated FOW did not file required 48-hour notices for 46 contributions totaling \$66,000. In response to the interim audit report, Counsel for FOW questioned the receipt date used in determining whether contributions were received within the 48-hour reporting period. Based on the response, the amount of contributions that lack a 48-hour notice was reduced to \$50,000.

DISCLOSURE OF RECEIPTS — 2 U.S.C. §§434(b)(3)(A)(B) and 431(13); 11 CFR §104.7(a)(4)(ii). Sample reviews of contributions from individuals and from political committees noted deficiencies in the disclosure of contributor information. In response the interim audit report, FOW filed amended reports, which significantly corrected these deficiencies.

DISCLOSURE OF DISBURSEMENTS — 2 U.S.C. §434(b)(5)(A). A review of all disbursements requiring itemization revealed that FOW failed to properly disclose addresses and/or inadequately disclosed the purpose for approximately 23% of its disbursements, totaling \$121,906. In its response, FOW filed amended reports that significantly corrected the noted disclosure deficiencies.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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REPORT OF THE AUDIT DIVISION

ON

FRIENDS OF WEINER

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Friends of Weiner (FOW), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code that states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. AUDIT COVERAGE

The audit covered the period from January 1, 1999, through December 31, 2000. FOW reported a beginning cash balance of \$27,516; total receipts for the audit period of \$1,147,672; total disbursements for the audit period of \$528,369; and an ending cash balance of \$646,819.

C. CAMPAIGN ORGANIZATION

FOW registered with the Commission on May 28, 1997, as the principal campaign committee for Anthony David Weiner (the Candidate), Democratic candidate for the U.S. House of Representatives from the state of New York, 9th Congressional District.

The Treasurer for FOW during the audit period was Christopher L. Bellitti. Mr. Ira Spodek replaced Mr. Bellitti on January 12, 2001, as the Treasurer, and is currently serving in that capacity. FOW maintains its headquarters in Brooklyn, New York.

To manage its financial activity, FOW maintained three bank accounts, one of which was closed on November 30, 1999. From these accounts, 480 disbursements were made totaling \$557,594.¹ FOW receipts were comprised of approximately 1,400 contributions from individuals totaling \$764,122; 273 contributions from other political committees and organizations totaling \$372,047; offsets to operating expenditures totaling \$5,350; and other receipts (interest) totaling \$10,219. Accounting, record keeping and reporting functions were performed by volunteer campaign staff, utilizing commonly available computer software. Neither the current treasurer, nor the previous treasurer, had any previous campaign finance or accounting experience and have not attended any Commission seminars. FOW did not file its disclosure reports electronically during the period covered by the audit.

D. AUDIT SCOPE AND PROCEDURES

In maintaining its disbursement records, FOW satisfied the minimum record keeping requirements of 11 CFR §102.9; however, the Audit staff's testing of disbursements was limited by the lack of external documentation, such as invoices, for approximately 18% of its disbursements. This lack of third party records limited the testing for record keeping and the proper reporting of debts and obligations; as well as the adequacy of disclosure of information, such as, payee, address and purpose for disbursements. Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, the scope of the audit included the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Findings II. A. & B.);
2. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. Proper disclosure of receipts from individuals, political committees and other entities, to include the itemization of contributions or other receipts when required, as well as, the completeness and accuracy of the information disclosed (see Finding II. E.);
4. Proper disclosure of disbursements, including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II. F.);

¹ This amount does not agree with total reported disbursements due to FOW reporting errors (see Finding II. C.).

5. Proper disclosure of debts and obligations;
6. The accuracy of total reported receipts, disbursements and cash balances as compared to bank records (see Finding II. C.);
7. Adequate record keeping for transactions; and
8. Other audit procedures that were deemed necessary in the situation (see Finding II. D.).

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF CONTRIBUTIONS FROM INDIVIDUALS IN EXCESS OF THE LIMITATIONS

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office, which in the aggregate, exceed \$1,000. Subsection (b) (2) and (6) of 11 CFR §110.1 explains that *with respect to any election* means that if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made. A contribution is considered made when the contributor relinquishes control over the contribution by delivering the contribution to the Candidate, the political committee, or an agent of the committee. A contribution that is mailed is considered to be made on the date of the postmark.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that the treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) or 110.1(k), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states that any contribution which appears to be illegal under 11 CFR §103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the

political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing and if a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR 110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution, and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(b)(5) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if the contribution exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1). A contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(l)(5) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee does not retain the written records concerning redesignation or reattribution, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

FOW's contribution records consisted of a database containing contributor information and bank deposit slips that included copies of contribution checks. A sample review of contributions from individuals disclosed that FOW's had received excessive contributions. The review of all contributions from individuals who made contributions in excess of \$1,000 revealed the following:

1. Primary Election Contributions

FOW received contributions from 175 individuals, totaling \$202,801, in excess of the contribution limitation for the primary election. These contributions were dated prior to the primary election and were either designated to the general election or reattributed to another individual by FOW, without proper written authorization from the contributors. FOW did receive redesignation letters from 19 of these contributors, but none of the redesignations were timely. The Audit staff noted that most of the redesignation letters were signed and dated more than a year after the contributions were made well beyond the period provided in the regulations and therefore the contributions must be refunded. FOW made contribution refunds, totaling \$2,501, to four contributors, but made them untimely. Taking into consideration these untimely refunds, the Audit staff determined that FOW has unresolved excessive contributions totaling \$200,300.

2. General Election Contributions

FOW received contributions from 8 individuals that exceed the contribution limitation for the general election by \$10,000. In some cases FOW attributed portions of these contributions to another individual without written authorization. FOW made contribution refunds, totaling \$3,000, to two individuals; however, these refunds were not timely. Taking into consideration these untimely refunds, FOW has unresolved excessive contributions of \$7,000.

FOW did not maintain a separate account to deposit questionable contributions but did consistently maintain sufficient balances to cover the amounts deposited in excess of the limitations.² The Audit staff also performed an analysis of the contributions and disbursements to determine whether any of the contributions designated for the general election had been spent on primary election expenses. The analysis was performed using election designations for contributions as entered by FOW on its database. The analysis shows that contributions designated by FOW for the general election were not spent on primary related activity.

At the exit conference, FOW officials were provided schedules detailing the Primary and General excessive contributions discussed above. FOW officials stated they would look into this matter.

² On its latest disclosure report covering the period through November 25, 2002, FOW reported ending cash on hand totaling \$1,203,696.

Subsequent to the exit conference, FOW provided copies of refund checks (front only) issued in November 2001 to seven individuals, totaling \$9,250. To date, copies of negotiated refund checks have not been provided. Absent evidence that the refund checks were cashed, the Audit staff determined that \$207,300 (\$200,300 + \$7,000) was the amount of unresolved excessive contributions received for the Primary and General elections.

However, the Commission has recently adopted new regulations that allow committees greater latitude to either reattribute contributions to joint account holders or redesignate contributions to other elections, and the Commission has applied these new provisions to current matters. Accordingly, the Audit staff reevaluated this issue under the revised regulations. The reevaluation resulted in a reduction of the number of unresolved excessive contributions to \$27,250 for the Primary election and \$6,000 for the General election³.

In the interim audit report, it was recommended that FOW provide evidence demonstrating that the contributions in question are not excessive and that the refunds it made were timely. Absent such a demonstration, it was recommended that FOW refund \$33,250⁴ and provide evidence of such refunds (photocopies of the front and back of the negotiated refund checks) for our review.

In response to the interim audit report, FOW provided photocopies of refund checks for the \$33,250 in excessive contribution (front only). The refund checks were issued on February 26, 2003, and March 27, 2003.

B. RECEIPT OF LOAN IN EXCESS OF THE LIMITATIONS

Section 110.10 of Title 11 of the Code of Federal Regulations states, in part, that candidates for Federal office may make unlimited expenditures from personal funds. For the purposes of this section *personal funds* means - any assets which, under applicable state law, at the time he or she becomes a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either legal and rightful title, or an equitable interest. Further personal funds means - salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

³ FOW did not report any Primary debt, therefore no excessive General election contribution could be redesignated for the Primary election.

⁴ This total is net of refunds that cleared FOW bank accounts.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 100.7(a)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that the term *contribution* includes the following payments, services or other things of value: a gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.7(b)(11)), advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution.

In September 1998 the Candidate made two loans to FOW totaling \$28,000. FOW paid \$10,000 on the loans in 1998 and repaid the remainder of the loans in 1999 during the period covered by this audit. The Audit staff requested that FOW produce loan documents, copies of the loan proceed checks, and copies of the Candidate's bank statements for the period August through October 1998 in order to determine whether the loans were made from the personal funds of the Candidate.

Initially, Counsel for FOW responded that no loan documents exist and also refused to produce the bank statements on the grounds that the 1998 loan falls outside of the scope of the 2000 election cycle audit and the request for the documents violates the Candidate's First Amendment rights and privacy interests.

On May 17, 2002, the Commission issued a subpoena to FOW requesting production of the documents and a subpoena and order to the Candidate to produce records and to identify the source of the funds used to make the loan. On May 13, 2002, prior to issuance of the subpoenas, counsel for FOW produced monthly statements for the Candidate's credit union account for September and October 1998 and a tissue copy of one of the loan proceed checks for \$20,000 payable to FOW. In a letter accompanying the production, the counsel for FOW stated that the Candidate has no other bank accounts; does not have a copy of the other loan proceeds check and no other documents. Counsel for FOW explained that the Candidate did not have a copy of the monthly statement for August 1998 and that, due to a computer problem the credit union was unable to retrieve it from its records. A letter from a credit union officer confirming this was included.

A review of the Candidate's credit union statement for September 1998, shows that on September 2, 1998, just prior to making the loans to FOW, the Candidate deposited \$5,000 into the credit union account bringing the balance to \$32,222. By September 10, 1998, the Candidate had transferred \$28,000 of this amount to FOW. For

the months of September and October the only other significant deposits to the Candidate's account appear to be direct deposits of salary. The activity in the Candidate's account raised questions as to the source of the \$28,000 in loans.

On June 25, 2002, Counsel for FOW stated that FOW had produced all documents in its possession responsive to its subpoena. Counsel for FOW further stated that the Candidate had not received his subpoena and that Counsel did not have the authority to receive the subpoena on his behalf. Another copy of the subpoena was sent to the Candidate on July 2, 2002.

On August 5, 2002, in response to the subpoena, the Candidate stated: "The funds I used to make loans to Friends of Weiner, totaling \$28,000, in September 1998 were funds in my personal bank account at the Municipal Credit Union... (the "MCU Account"). Pursuant to the FEC's requests, I previously produced my bank statements for the MCU Account for September and October 1998." The Candidate also stated: "to the best of my current ability to recall, I believe that in August of 1998, I made the following deposits into the MCU Account:

- a. Two deposits of \$1,734.75 from the City of New York;
- b. A deposit of \$10,000.00 from Mort Weiner, my father;
- c. A deposit of \$2,500.00 from Fran Weiner, my mother."

The Candidate further stated that he is unable to locate a statement for the credit union account for August 1998 and the credit union is unable to provide a copy.

On August 6, 2002, the Commission issued an additional subpoena to the Candidate's credit union requesting documents sufficient to identify all items in excess of \$2,000 deposited into the Candidate's account for the period July through August 1998. In addition, the credit union was asked to provide documentation to identify the source of the \$5,000 deposit into the Candidate's account on September 2, 1998.

On September 16, 2002, in response to the subpoena, the credit union provided four check copies (front & back), totaling \$30,000, that were deposited into the Candidate's account.⁵ One check dated August 3, 1998, in the amount of \$15,000 was made payable to the Candidate and was drawn on an account of the Candidate's father. The memo line of the check indicated that the \$15,000 was a loan. Two of the checks made payable to the Candidate (\$5,000 & \$2,862) each dated August 5, 1998, were drawn on accounts of the Candidate's mother. The memo lines on these checks were blank. The last check dated August 3, 1998, in the amount of \$7,138 was drawn on an investment account and was made payable to the Candidate's mother.

Based on the facts presented above, it appears that the Candidate's parents provided the funding for the \$28,000 in loans to FOW. Since both parents previously

⁵ The credit union did not provide documents to identify the source of the \$5,000 deposit on September 2, 1998.

contributed \$1,000 to FOW primary, it appears that the Candidate's parents made excessive contributions in the form of a loan to FOW totaling \$28,000. No information was available about whether the funds were returned to the Candidate's parents.

In the interim audit report, it was recommended that FOW provide documentation to show that the funds provided to the Candidate by his parents should not be considered excessive contributions to FOW. If amounts received from the Candidate's parents are "gifts of a personal nature which had been customarily received prior to candidacy", evidence of previous gifts of a similar nature should be provided. Further the candidate should provide the source of funds for the \$5,000 deposit into his credit union account on September 2, 1998. Finally the Candidate should provide an explanation of and documentation for the final disposition of the \$28,000 repaid to him from FOW. The documentation should include but not be limited to copies of deposit tickets and cancelled checks (front & back) showing the final disposition of the \$28,000.

In response to the interim audit report, counsel for FOW stated that "Based on information received from our client, we understand that the Candidate returned the amount in question to his parents." The response did not include any evidence that the funds provided by the Candidate's parents should not be treated as excessive contributions. In addition, the Candidate did not provide any information regarding the source of funds for the \$5,000 deposit into his credit union account on September 2, 1998, or documentation for the final disposition of the \$28,000 repaid to him from FOW.

C. MISSTATEMENT OF FINANCIAL ACTIVITY

Sections 434(b)(1), (2), and (4) of Title 2 of the United States Code state, in part, that each report shall disclose the amount of cash on hand at the beginning of the reporting period and the total amount of all receipts and disbursements for the reporting period and calendar year.

The reconciliation of FOW's reported financial activity to its bank records revealed that beginning cash on hand, receipts, disbursements and ending cash on hand had been misstated for calendar years 1999 and 2000. FOW did not maintain records to show the derivation of its reported amounts. Absent such records, the Audit staff could not identify all differences between bank activity and the disclosure reports.

1. 1999 Misstatement

FOW reported a beginning cash balance of \$27,516 on January 1, 1999. The correct cash balance was determined to be \$23,743. The reported amount was overstated by \$3,773, a difference that carried over from the year-end 1998 disclosure report and could not be explained absent FOW work papers showing the derivation of the reported amount.

FOW reported total receipts of \$482,951. The correct total was \$469,350, an overstatement of \$13,601. The overstatement resulted primarily from: FOW's failure to report contributions from political committees (\$1,500); reporting contributions from individuals twice (-\$15,250); a math error on the 1999 Year-End report, Schedule A's, (\$200); and, an unexplained difference (-\$51).

Total reported disbursements were \$122,602. FOW should have reported total disbursements of \$126,068, an understatement of \$3,466. The understatement is the net result of: disbursements not reported (\$5,241); math errors on reported disbursements (-\$775); and a disbursement reported with no check or bank debit memo issued (-\$1,000).

Reported ending cash-on-hand was \$387,865. The correct cash balance was determined to be \$367,024. The amount was overstated by \$20,841 as a result of the discrepancies noted above. Beginning cash on hand for 2000 was similarly misstated.

2. 2000 Misstatement

FOW reported total receipts of \$664,721. The correct total was \$682,388, a net understatement of \$17,667. The understatement is the net result of FOW's: failure to report contributions from political committees totaling \$10,000; individual contributions not reported totaling \$5,000; unreported earned interest totaling \$2,574; in-kind contributions not reported in the amount of \$847; and, an unexplained difference of -\$754.

Reported disbursements were \$405,767. FOW should have reported total disbursements of \$431,526, a net understatement of \$25,759. The understatement is the net result of FOW's: disbursements not reported (\$26,392); math errors on reported disbursements (\$2,971); reported disbursements not supported by checks or bank debit memos (-\$6,776); unreported in-kind contributions (\$3,197); and, an unexplained difference (-\$25).

Reported ending cash-on-hand was \$646,819. The correct cash balance was determined to be \$617,886. The reported amount was overstated by \$28,933 as a net result of the discrepancies noted above.

At the exit conference, FOW officials were informed of the misstatements of financial activity and were provided schedules detailing the errors. FOW officials stated they would research the matter.

In the interim audit report, it was recommended that FOW file comprehensive amended reports for calendar years 1999 and 2000, including corrected Summary and Detailed Summary Pages for each year to accurately disclose the FOW financial activity, and amended Schedules A and B, to support the corrected Summary

and Detailed Summary Pages. In response, FOW filed amended reports, which significantly corrected the misstatements.

D. CONTRIBUTIONS SUBJECT TO 48 HOUR NOTIFICATION

Section 104.5(f) of Title 11 of the Code of Federal Regulations states, that if any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions on the post-election report.

FOW was required to report within 48 hours of receipt, any contributions of \$1,000 or more received August 24, 2000, through September 9, 2000, for the primary election and October 19, 2000, through November 4, 2000, for the general election. It was determined that most of the checks dated during these periods were included in deposits made after the periods⁶. FOW used the check date as the reported date on its Schedules A for these contributions. No record was kept of the date the contributions were received. Therefore, three days were allowed for delivery of the contribution after the date of the check when determining the date of receipt. Using this criteria, the review identified 42 contributions totaling \$63,500 that appeared to have been received within two and twenty days of the primary election, held on September 12, 2000, and 6 contributions totaling \$9,500 that appeared to have been received within two and twenty days of the general election, held on November 7, 2000.

Forty-eight hour notices were not filed for 43 of the contributions noted above totaling \$66,000. Forty of the contributions totaling \$61,500 related to the primary election, while three contributions totaling \$4,500 related to the general election.

At the exit conference, FOW officials were informed of these discrepancies and were provided schedules detailing the contributions noted above. FOW officials stated they would look into the matter.

In the interim audit report, it was recommended that FOW submit evidence that all required 48 hour notices were filed as required or submit evidence that the noted contributions were not received within two and twenty days of the primary or general election.

In response to the interim audit report, Counsel for FOW questioned the receipt date the Audit staff used in determining whether contributions were received within the 48-hour reporting period. Counsel for FOW contends that the Audit staff's

⁶ FOW made deposits infrequently making the deposit date an unreliable indication of receipt date.

arbitrary use of the three-day period from the day each contribution was dated ignores the Commission's regulations at 11 CFR §102.8(a) permitting a person who receives a contribution for an authorized committee 10 days to forward the contribution to the Treasurer. Counsel for FOW also stated that on September 11, 2000, FOW held a gala fundraising event, which was after the close of the 48-hour reporting period and that most of the contributors listed on the schedules provided by the Audit staff attended and/or contributed to this event. In addition, counsel for FOW stated the Audit staff had not permitted a reasonable time frame for agents of the campaign who served as hosts for the event, to collect, receive and forward contributions for the event to FOW.

The Audit staff agrees that the regulations provide 10 days for persons who receive a contribution for a committee to forward that contribution to the Treasurer. However, FOW's response provides no evidence that an agent initially received the contributions in question. Eleven of the contributions, totaling \$16,000, are associated with solicitation response devices that reference an unidentified reception and include a Washington, D.C. address. The Audit staff was able to determine that the address is that of a fundraising concern. Therefore, although it is not possible to determine if the event is the September 11, 2000, event referred to by the counsel for FOW, or the precise date of FOW's receipt of the contributions, it is reasonable to assume that the fundraiser initially received these contributions and to allow the additional 10 days for transmittal to FOW. With one exception, documentation for the remaining contributions does not associate them with any event or any person who may have received them on behalf of FOW. The exception is a contribution that was accompanied by a letter that references the September 11, 2000, event, but the letter is addressed to FOW's New York post office box rather than some other person. Therefore, the remaining contributions that lack a 48-hour notice total \$50,000.

E. DISCLOSURE OF RECEIPTS

Section 434(b)(3)(A) of Title 2 of the United States Code requires, in part, a political committee to report the identification of each person (other than a political committee) who makes a contribution to the committee in an aggregate amount or value in excess of \$200 per calendar year together with the date and amount of any such contribution.

Section 434(b)(3)(B) of Title 2 of the United States Code states that each report under this section shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 431(13) of Title 2 of the United States Code defines the term "identification" to be, in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and, in the case of any other person, the full name and address of such person.

Section 104.3(a) (4) (ii) of Title 11 of the Code of Federal Regulations states, in relevant part, that the identification of each contributor and the aggregate year-to-date total for such contributor shall be reported for all political committees which make contributions to the reporting committee during the reporting period, together with the date of receipt and amount of any such contribution.

1. Adequacy of Disclosure of Individual Receipts

The Audit staff's sample review of contributions from individuals itemized on Schedule A identified a deficiency in the disclosure of contributor information. The majority of the errors were the result of FOW reporting two individual's (i.e. husband and wife) names on one line, when in fact the contribution was made by only one of the individuals. The other errors were the result of missing addresses.

2. Adequacy of Disclosure for Political Committees Receipts

The Audit staff's sample review of contributions from political committees itemized on Schedules A revealed a problem with the adequacy of disclosure information. The majority of the errors were incorrect aggregate year-to-date totals. Also, some errors related to incorrect names and addresses of contributors, and contribution dates.

At the exit conference, FOW officials were informed of the disclosure information problem noted above. FOW officials stated they would research the matter.

In the interim audit report, it was recommended that FOW file with its comprehensive amended reports Schedules A (Itemized Receipts), to correctly disclose the contributions noted above. In response FOW filed amended reports, which significantly corrected the noted deficiencies.

F. DISCLOSURE OF DISBURSEMENTS

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

A review of all disbursements requiring itemization on FOW's disclosure reports revealed that FOW failed to disclose addresses and/or disclosed an inadequate purpose for approximately 23% of its disbursements, totaling \$121,906.

At the exit conference, FOW officials were informed of the disclosure information problem and were provided schedules detailing the errors. FOW officials stated they would respond to this issue.

In the interim audit report, it was recommended that FOW file with its comprehensive amended reports Schedules B (Itemized Disbursements), to properly disclose the disbursements noted above. In response, FOW filed amended reports that significantly corrected the noted disclosure deficiencies.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

May 1, 2003

Mr. Ira Spodek, Treasurer
Friends of Weiner
P.O. Box 290-346
Brooklyn, NY 11229

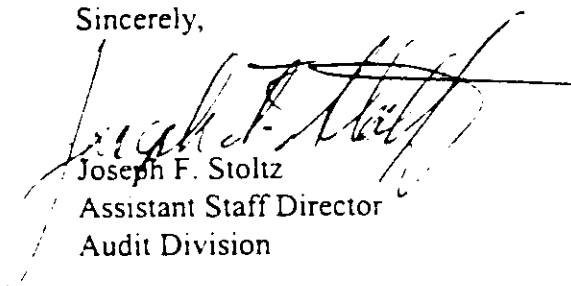
Dear Mr. Spodek:

Attached please find the Report of the Audit Division on Friends of Weiner (Final Audit Report). The Commission approved the report on April 22, 2003.

The Commission approved Final Audit Report will be placed on the public record on May 9, 2003. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220.

Any questions you have related to matters covered during the audit or in the report should be directed to Jim Miller or Ray Lisi of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Joseph F. Stoltz
Assistant Staff Director
Audit Division

cc: Cassandra F. Lentchner, Counsel

Attachment as stated

CHRONOLOGY
FRIENDS OF WEINER

Audit Fieldwork	December 11, 2001 – April 2, 2002
Interim Audit Report to the Committee	January 14, 2003
Response Received to the Interim Audit Report	March 5, 2003
Final Audit Report Approved	April 22, 2003

