



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

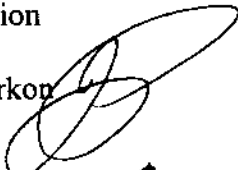
RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT


2002 DEC 10 P 3:48

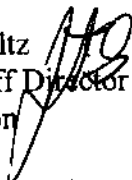
December 10, 2002


**Memorandum**


TO: The Commission

THROUGH: James A. Pehrkon   
Staff Director

Robert J. Costa   
Deputy Staff Director

FROM: Joseph F. Stoltz   
Assistant Staff Director  
Audit Division

Wanda J. Thomas   
Audit Manager

Lead Auditor  
Marty Kuest 

SUBJECT: Audit Report on Keyes 2000, Inc.

**AGENDA ITEM**  
For Meeting of: 12-12-02

**SUBMITTED LATE**

Attached for your approval is the subject audit report. Also attached are the legal analysis provided by the Office of General Counsel and the narrative portion of the Committee's response. Recommendations from the General Counsel have been incorporated in the report.

**Recommendation**

The Audit staff recommends the report be approved.

It is requested that this matter be placed on the Open Session agenda for December 12, 2002. If you have any questions, please contact Marty Kuest or Wanda Thomas at extension 1200.

Attachments:

Audit Report of the Audit Division on Keyes 2000, Inc.  
OGC's Legal Analysis, December 9, 2002  
Committee's response narrative.



***REPORT OF THE AUDIT DIVISION  
ON  
KEYES 2000, Inc.***

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of Keyes 2000, Inc. (Keyes 2000). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (FECA), as amended.

**B. AUDIT COVERAGE**

The audit covered the period from Keyes 2000's first bank transaction on November 13, 1996, through December 31, 2000. Keyes 2000 reported an opening cash balance of \$-0-; total receipts of \$15,063,087; total disbursements of \$14,529,460; and a closing cash balance of \$514,784.<sup>1</sup> In addition, a limited review of Keyes 2000's financial activity and disclosure reports filed through September 30, 2002 was conducted for purposes of determining Keyes 2000's matching fund entitlement based on its financial position.

---

<sup>1</sup> The reported figures do not foot due to various reporting errors.

### C. CAMPAIGN ORGANIZATION

Keyes 2000 maintained its headquarters in Washington, DC. The Treasurer, William Leo Constantine, CPA, was designated on June 17, 1999 and continues to serve in that capacity.<sup>2</sup>

Keyes 2000 registered with the Federal Election Commission (the Commission) on June 17, 1999 as the principal campaign committee for Ambassador Alan L. Keyes, candidate for the Republican Party's nomination for the office of President of the United States.<sup>3</sup> During the audit period, Keyes 2000 maintained depositories in Minneapolis, Minnesota; Phoenix, Arizona; Houston, Texas; Washington, DC; Manchester, New Hampshire; and Roanoke, Virginia. To handle its financial activity Keyes 2000 utilized 11 bank accounts.<sup>4</sup> From these accounts Keyes 2000 made approximately 6,000 disbursements. In addition, Keyes 2000 received approximately 238,500 contributions from 96,800 contributors totaling \$8,357,000. Keyes 2000 also received bank loans of \$1,860,900.

Ambassador Keyes was determined eligible to receive matching funds on September 30, 1999. Keyes 2000 made 20 requests for matching funds totaling \$5,261,907 and received \$5,043,341 from the United States Treasury. This amount represents 29.9% of the \$16,890,000 maximum entitlement that any candidate could receive. For matching fund purposes, the Commission determined that Ambassador Keyes' candidacy ended on April 20, 2000. Ambassador Keyes continued to campaign after the Commission made its determination. On June 7, 2000, Ambassador Keyes publicly announced he was withdrawing from the campaign. On June 1, 2001, Keyes 2000 received its final matching fund payment to defray qualified campaign expenses and to help defray the cost of winding down the campaign.

---

<sup>2</sup> Mary Parker Lewis, Campaign Chief of Staff and Keyes 2000, Inc. corporate president, submitted to the FEC on paper, an amended Statement of Organization designating herself Treasurer and Mr. Constantine Assistant Treasurer. She was advised that in order for the change to be recognized, she would need to submit the Statement of Organization electronically. Although Mrs. Lewis made known her intention to make the proper electronic filing on September 24<sup>th</sup>, as of December 6, 2002 no filing had been received and Mr. Constantine continues as Treasurer.

<sup>3</sup> Shortly after registering, Keyes 2000 filed a Mid-Year report for 1999. In this report, receipts of \$1,914,847 and disbursements of \$1,742,349 were disclosed. All of the reported activity, however, did not occur in 1999. This report included receipts of approximately \$218,000 and \$663,000 and disbursements of approximately \$166,000 and \$642,000 which occurred in 1997 and 1998, respectively.

<sup>4</sup> Keyes 2000 failed to report on its Statement of Organization the existence of a depository at the TCF National Bank in Minnesota (TCF). This TCF account was opened in November, 1996, however, its existence was first made known to the Audit staff in February, 2001 when Keyes 2000's treasurer identified it as the source of the funds deposited to open Keyes 2000's account at Norwest Bank Arizona, N.A. TCF account activity was not included on Keyes 2000 disclosure reports.

**D. AUDIT SCOPE AND PROCEDURES**

In addition to a review of expenditures made by Keyes 2000 to determine if they were qualified or non-qualified campaign expenses, the audit covered the following general categories:

1. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
2. The receipt of contributions or loans in excess of the statutory limitations (see Findings II.B. and II.C.);
3. Proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;
4. Proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. Proper disclosure of campaign debts and obligations;
6. The accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
7. Adequate recordkeeping for campaign transactions (see Finding III.A.);
8. Accuracy of the Statement of Net Outstanding Campaign Obligations filed by Keyes 2000 to disclose its financial condition and to establish continuing matching fund entitlement (see Finding III.C.);
9. Compliance with spending limitations; and
10. Other audit procedures that were deemed necessary in the situation (See Findings II.A., III. B., and III.D. ).

As part of the Commission's standard audit process, an inventory of campaign records was conducted prior to the audit fieldwork. The inventory was conducted to determine if Keyes 2000's records were materially complete and in an auditable state. The records were found to be materially complete and the audit fieldwork commenced immediately.

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

## **II. AUDIT FINDINGS AND RECOMMENDATIONS – NON REPAYMENT MATTERS**

### **A. CASH DISBURSEMENTS**

Section 102.10 of Title 11 of the Code of Federal Regulations states, in part, that all disbursements by a political committee, except for disbursements from the petty cash fund under 11 CFR 102.11, shall be made by check or similar draft drawn on account(s) established at the committee's campaign depositories.

Section 102.11 of Title 11 of the Code of Federal Regulations states in relevant part that no payment from petty cash may be made in excess of \$100.

#### **1. Cash Disbursements made in New Hampshire**

Keyes 2000 opened an account at the Bank of New Hampshire in December 1999 to facilitate campaigning in the state but did not timely transfer sufficient funds to cover every check written. This resulted in 31 checks to vendors totaling more than \$80,000 being returned unpaid. It appeared that as a result, vendors refused to accept checks from Keyes 2000. Subsequently, campaign staff cashed checks and used the proceeds to make campaign expenditures.

A review of the activity in New Hampshire identified 397 receipts for purchases made in cash totaling \$111,104. One hundred twenty-two of these receipts involved purchases greater than \$100. The total value of these expenditures was \$80,498.<sup>5</sup> The receipts could not be associated with any specific check. Among the checks drawn on the New Hampshire account were eight, made payable to "cash." These checks totaled \$48,000 and ranged in amounts from \$3,000 to \$20,000. Each of the eight checks was disclosed; seven were disclosed as operating expenditures paid to individuals and one was reported as a fundraising expense. An analysis of the remaining checks drawn on the account and Keyes 2000 operating account identified 32 checks that apparently funded the remaining cash activity. These checks were payable to and disclosed as payments to campaign staff. It appears that the checks were negotiated and the staff used the cash to fund these expenditures. These checks (including those checks drawn to "cash") totaled \$113,237. Ninety-seven percent of the receipted cash disbursements and all of the checks that funded them occurred between October 1999 and February 2000. Though the total amount of cash disbursements corresponds in time and amount to total funds available; no direct connection could be established between particular disbursements and particular checks.

---

<sup>5</sup> For additional detail concerning the cash disbursements, see Finding III.C.4.

## 2. Cash Disbursements Made From the Travel Account<sup>6</sup>

Beginning in May 1999, Keyes 2000 opened and maintained an account at First Union Bank to facilitate campaign travel. Debit cards were issued to several key campaign personnel who made periodic cash withdrawals.

Keyes 2000 personnel made 129 cash withdrawals, each in excess of \$100, from its travel account. The total for these withdrawals was \$27,365. Keyes 2000 did not maintain any documentation supporting these transactions. Absent documentation showing that no single purchase greater than \$100 was made from these funds, these withdrawals were considered cash disbursements in excess of the limitation for petty cash disbursements.

Thus, it appeared that Keyes 2000 made cash disbursements in excess of the limitation for petty cash disbursements, which, in the aggregate, totaled \$107,863 (\$80,498 + \$27,365). At the exit conference a Keyes 2000 representative stated that the cash payments had been made in violation of committee policy.

In the preliminary audit report, the Audit staff recommended that Keyes 2000:

- Make any comment it deemed relevant or offer an explanation regarding the cash disbursements made in New Hampshire; and
- Provide documentation that demonstrated that it did not exceed the \$100 limitation for petty cash disbursements.

In its response to the preliminary audit report, Keyes 2000 agreed that the cash disbursements occurred and made two general arguments as to why these disbursements should not be considered violations of the prohibition on cash disbursements. First, it is suggested that the prohibition on cash disbursements should apply only to funds that were not deposited into the Keyes 2000's account and then withdrawn by check or other debit to the account. Second, it argued that the cash prohibition should not apply if the expenditures are adequately documented. Neither is the case.

With respect to the cash disbursements made in New Hampshire, Keyes 2000 stated that vendors refused to accept their checks. Therefore, the staff was compelled by the circumstances to make lump sum cash withdrawals in order to pay for goods and services. Further, the response stated that the use of lump-sum cash disbursements violated Keyes 2000's accounting standards and practices.

Regarding cash disbursements from the travel account, Keyes 2000 stated that, "the Committee policy for using the [debit] cards was soon revised for authorized staffers to make periodic cash withdrawals as petty cash, per diem, and travel

<sup>6</sup> For additional detail concerning the Travel Account, see Finding III.C.3.b.

advances," when it became apparent that it would be burdensome to report each small purchase made with the card. Keyes 2000 wrote that "with the notable exception of a few airfare purchases at airports that were so last-minute only cash could transact quickly enough to get tickets issued, virtually no cash purchase greater than \$100 per person was ever authorized or made from these funds, as the cards operated as debit and credit cards and there was no need for large cash transactions."

Keyes 2000's response to the preliminary audit report stated that supplemental documentation demonstrating that they did not exceed the \$100 limitation for petty cash was submitted under separate cover. However, the materials submitted by Keyes 2000 made no such demonstration. Based on the Committee's response, the Audit staff concludes that Keyes 2000 made cash disbursements in excess of the limitation for petty cash disbursements, which, in the aggregate, totaled \$107,863 (\$80,498 + \$27,365).

#### **B. APPARENT EXCESSIVE CONTRIBUTIONS FROM INDIVIDUALS**

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 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer shall be responsible for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitation set forth at 11 CFR 110.1. Contributions which on their face exceed the contribution limitations set forth at 11 CFR 110.1 and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set for in 11 CFR 110.1 when aggregated, may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. 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). 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, in part, that a contribution, which appears to be illegal under 11 CFR 103.3(b)(3) and 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 or maintain sufficient funds to make all such refunds.

Section 110.1(k)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, that if a contribution to a candidate, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions, the treasurer of the recipient committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person.

Sections 110.1(k)(3)(ii)(A) and (B) of Title 11 of the Code of Federal Regulations state, in part, that a contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient 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 if 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 attributed to each contributor if the equal attribution is not intended.

Section 110.1(l)(3) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor.

Sections 9038.1(f)(1), (2) and (3) of Title 11 of the Code of Federal Regulations, state, that in conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violation identified in such a sample may become the basis, in whole or in part, of any audit finding. A committee in responding to a sample-based finding concerning excessive or prohibited contributions shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample. Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b)(1), (2) or (3).

A review of disclosure reports revealed that Keyes 2000 disclosed the receipt of 78 excessive contributions dating back to 1997. Indeed, 69 excessive contributions disclosed on Keyes 2000's first report (Mid Year 1999) were, at the time they were disclosed, outside the time that they might have been resolved timely. Keyes 2000 only began to address excessive contributions in April 2000. In response to questions raised about this issue by the Reports Analysis Division, the Treasurer, on September 29, 2000, wrote "...in April 2000 we refunded \$27,101.55 of the donations over \$1,000.00."

Although these refunds were disclosed as having been made in April 2000, the checks were not mailed until December 2000. Beginning in January of 2001, the checks began to clear the account. By the first week of February, 43 checks, totaling \$19,140, (of 69 written) had been cashed. Even if the checks had been mailed when prepared, none of the refunds would have timely resolved an excessive contribution.



Based on these facts, it appears that Keyes 2000 had no policy to address the timely resolution of excessive contributions.

The sample review of contributions from individuals indicated that Keyes 2000 failed to resolve a substantial number of excessive contributions. The sample projected that the total dollar value of the unresolved excessive contributions in the population was \$163,200. In addition to this, \$5,000 was identified in a 100% review of selected contributions. Thus, the Audit staff concluded that Keyes 2000 failed to resolve excessive contributions totaling \$168,200 and must pay this amount to the United States Treasury.

At the exit conference, Keyes 2000 was provided with a spreadsheet of the sample errors for unresolved excessive contributions as well as documentation to support that the sample contributions were excessive. The Treasurer expressed his concern that because of the magnitude of the projection for unresolved excessive contributions, untimely resolved contributions<sup>7</sup> were included. He stated that he could not understand how the sample error projection was calculated. Despite the Audit staff's explanation that only exceptions involving unresolved contributions were used to make the projection, he stated he was unconvinced.<sup>8</sup>

In a statement provided subsequent to the exit conference the Treasurer stated the following:

"I am attaching a spreadsheet that shows exactly and completely which excessive contributions have not yet been refunded. This spreadsheet was available to the auditors in March of 2001. Because the method of using sampling to determine the excessive contributions amount is both unintelligible and far in excess of the actual amount, I contend that the auditors need to confirm the data in this spreadsheet and adjust this amount down to accord with the facts. Moreover, I have the e-mail that the lead auditor wrote to me advising me to suspend our ongoing refund efforts, and stating that if Keyes 2000 continued to refund excessive contributions after sixty days, those same amounts would also have to be repaid to the US Treasury anyway – doubling the Committee's financial liability. As we learned in the February 15<sup>th</sup> meeting, this is not necessarily the case, yet we suspended our refund efforts on this FEC advice. Moreover, an imputation was made during the February 15<sup>th</sup> meeting that the Committee might face increased legal liability because of the remaining unrefunded excess contributions. This feels like a bait and switch."

---

<sup>7</sup> *Untimely resolved contributions* means excessive contributions that were either refunded or reattributed to another contributor outside the 60-day time period provided for by 11CFR §103.3(b)(3).

<sup>8</sup> Subsequent to the exit conference, the Treasurer was provided with a detailed explanation of the "Dollar Unit Sampling" program used by the Audit staff, including the background, statistical theory and the computer code for the sampling program.

The Audit staff advised the Treasurer on April 9, 2001 that should the audit result in an excessive contribution finding, Keyes 2000 would be required to pay to the United States Treasury a projected amount of unresolved excessive contributions. This projection would not consider as resolved any excessive contribution that was untimely refunded after the commencement date for the audit, January 16, 2001. Any such contributions would be considered unresolved. It was recommended that Keyes 2000 not issue any more untimely refunds of excessive contributions.

The spreadsheet provided with Keyes 2000's statement did not provide documentation to show that the excessive contributions identified as sample errors were not excessive or that a corrective action had been taken. As such, the Audit staff projection of \$168,200 for unresolved excessive contributions remained unchanged.

In the preliminary audit report the Audit staff recommended that Keyes 2000 provide documentation to demonstrate that the contributions identified as sample errors were not excessive. Such documentation should include copies of timely negotiated refund checks or timely signed and dated reattribution letters. Absent such documentation, the Audit staff recommended that Keyes 2000 make a payment of \$168,200 to the United States Treasury.

Keyes 2000 did not comply with the Audit staff's recommendations. Instead, they provided a schedule of contributors who made excessive contributions and copies of letters from contributors for reattributing their contributions. The schedule indicated what action, if any, was taken to address the excessive contributions.

Keyes 2000 also provided a written response that acknowledged a "failure to successfully adhere to the sixty-day deadline for refunds" of contributions due to a breakdown in procedures and problems with the campaign data management software. The response acknowledges that that nearly \$90,000 in unresolved excessive contributions remains.

None of the materials provided by Keyes 2000 demonstrated that the contributions identified as sample errors or those identified in the 100% review were not excessive. Rather, the schedule confirmed the contributions as either unresolved or untimely refunded after the start of audit fieldwork.

The Audit staff's projection of \$168,200 for unresolved excessive contributions was not changed as a result materials provided in Keyes 2000 response. However, the Commission has recently adopted new regulations which allow committees greater latitude to reattribute contributions to joint account holders and the Commission has applied these new provisions to current matters. Accordingly, the Audit staff reevaluated the sample results under the revised regulations. This reevaluation resulted in a reduction to the number of excessive contribution sample errors and a corresponding reduction of the projection for excessive contributions. The new excessive contribution projection is \$95,286.

### **Recommendation #1**

The Audit staff recommends that Keyes 2000 make a payment to the United States Treasury in the amount of \$95,286.

#### **C. RECEIPT OF CURRENCY IN EXCESS OF LIMITATION**

Section 110.4(c)(3) of Title 11 of the Code of Federal Regulations states that a candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

Section 441g of Title 2 of the United States Code states that no person may make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

Section 9038.1(f)(3) of Title 11 of the Code of Federal Regulations states, in part, that within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contribution not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR §103.3(b)(1), (2) or (3).

The Audit staff identified 89 deposits, each containing currency greater than \$50. The total for these currency deposits was \$39,243. Keyes 2000 provided documentation for 45 deposits that were associated with events. The remaining 44 currency deposits were not satisfactorily explained. These deposits totaled \$19,039. After allowing for one permissible \$50 anonymous currency contribution from each deposit, Keyes 2000 received excessive anonymous currency contributions in the amount of \$16,839.

At the exit conference, the Treasurer and Chief-of-Staff wanted to know why the candidate's itineraries<sup>9</sup> were not used to answer any questions concerning the large currency deposits. The Treasurer also stated that the cash contributions were deposited within 24 hours of the date of the event where they were received.

In a statement provided subsequent to the exit conference Keyes 2000 stated:

“Each cash contribution in question has been matched to the candidate's daily schedules, staff travel itineraries, and campaign events

<sup>9</sup> Though requested during audit fieldwork, the Candidate's itineraries were not made available for Audit staff review until the Exit Conference.

where small donor fundraising solicitation was made. The documents which specified these travel and event fundraising efforts, correlated to the Committee's bank records of receipts deposits, were ignored by the audit team. A spreadsheet was provided to the auditors, which shows this information explicitly. At the Exit Conference we first learned that this spreadsheet had not been accepted, and some cash receipts were still deemed excessive. All of these cash receipts do qualify under the regulations and should be accepted."

Keyes 2000 was formally advised of the remaining excessive anonymous currency contributions on November 5, 2001, approximately 2½ months prior to the exit conference when the Audit staff sent, via electronic mail, a summary of the audit findings and nine supporting schedules.

Despite the Treasurer's claim of prompt deposit, according to his spreadsheet, 30 of the 44 inadequately documented deposits were not made within ten days of the associated event. In addition, the Treasurer associated several large currency deposits with events that occurred up to 66 days *after* the deposits were made. Explanations for other currency deposits referred to unverifiable events. Finally, the remaining currency deposits were attributed to "white mail" where no attempt was made to identify how many contributions each currency deposit represented.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide documentation for fundraising events associated with the 44 currency deposits noted above that shows that no single anonymous cash contribution in excess of \$50 was received. Absent such a showing, the Audit staff recommended that Keyes 2000 pay \$16,839 to the United States Treasury.

In response to the preliminary audit report Keyes 2000 supplied a revised schedule of cash deposits and stated that it matched each contribution deposit in question to the:

- Candidate's daily schedule;
- Candidate and staff travel itineraries; and
- Campaign events where small donor fundraising solicitations were made.

The schedule, like its predecessor, indicated that 30 deposits were not made within ten days of the associated event. Therefore, for those deposits no adjustments were warranted. However, there were changes related to nine events that corrected earlier assertions that cash deposits were made prior to the dates of the events with which they had been associated. This resulted in a reduction of \$1,826 to the excessive anonymous cash total.

Keyes 2000 also stated that attached contemporaneous documentation supported their position that all of the cash receipts meet compliance under the regulations, and should be accepted as qualified campaign contributions. However, the

referenced contemporaneous documentation was not attached to the response to the preliminary audit report.

### **Recommendation #2**

The Audit staff recommends that Keyes 2000 make a payment to the United States Treasury in the amount of \$15,013 (\$16,839 less \$1,826).

## **III. AUDIT FINDINGS AND RECOMMENDATIONS – REPAYMENT MATTERS**

### **A. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES**

Section 432(h)(2) of Title 2 of the United States Code states, in part, that a political committee may maintain a petty cash fund for disbursements not in excess of \$100 to any person in connection with a single purchase or transaction.

Section 9032(9) of Title 26 of the United States Code defines, in part, the term “qualified campaign expense” as a purchase or payment incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination, and neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

Section 9033.11(a) of Title 11 of the Code of Federal Regulations states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses.

Section 9033.11(b) of Title 11 of the Code of Federal Regulations states, in part, that for disbursements in excess of \$200 to a payee, the candidate shall present a canceled check negotiated by the payee and either a receipted bill from the payee that states the purpose of the disbursement or a bill, invoice or voucher from the payee that states the purpose of the disbursement. Where the documents specified above are not available, the candidate or committee may provide a voucher or contemporaneous memorandum that states the purpose of the disbursement. Where the supporting documentation required above is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to, evidence demonstrating that expenditure is part of an identifiable program or project which is otherwise sufficiently documented or evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy. If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee. Purpose means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods and services purchased.

Section 9034.4(a)(3)(i) of Title 11 of the Code of Federal Regulations states, in part, that costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes after he has notified the Commission in writing of his withdrawal from the campaign for nomination.

Section 9038.2(b)(2)(i) and (iii) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. The amount of any repayment under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to total deposits, as of 90 days after the candidate's date of ineligibility.

The audit discovered that Keyes 2000 made non-qualified disbursements totaling \$407,378. This amount included a duplicate payment of \$12,000, undocumented disbursements of \$314,880 (\$127,433 from the operating account and \$187,447 from the travel account) and \$80,498 in cash disbursements in excess of the \$100 limit.

At the exit conference the Treasurer, citing regulations at 11 CFR 102.9(b), could not understand why the bank statements from the travel account, by themselves, did not constitute adequate documentation. The Audit staff explained that pursuant to 11 CFR §9033.11, the committee must show that expenses were qualified and made in connection with Ambassador Keyes' campaign for nomination. The documentation standards for publicly funded campaigns are more stringent than those applicable to non-publicly funded campaigns.

In statements provided subsequent to the exit conference, the Treasurer wrote:

“During the course of the audit I asked repeatedly for a list of expenditure qualification problems, yet I received minimal specifics. Documented responses to specified requests by the auditors were submitted to the FEC as quickly as possible. We are asking that the Audit Division of the Federal Election Commission finish reviewing the documentation provided them, and only then give us an “Exit Memo” specifying missing documentation. We need one list, with all of the pertinent insufficiencies, including the reason for non-qualification, of all non-qualified expenses.”

Beginning on February 1, 2001, the Audit staff made numerous requests to the Treasurer for documentation and for campaign itineraries. Requests for additional disbursement documentation were made on April 10<sup>th</sup>, July 17<sup>th</sup>, and August 15<sup>th</sup>. On

November 5, 2001, a detailed summary of prospective audit findings along with detailed schedules supporting each area of concern was provided. Finally, on February 15, 2002, at the exit conference, a detailed schedule of disbursements considered to be non-qualified for lack of documentation was provided to Keyes 2000.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide evidence documenting that the disbursements described below were qualified campaign expenses.

1. Duplicate Payment to Vendor

Keyes 2000 made a duplicate payment to MDS Communications. Two invoices from this vendor totaling \$12,000 were paid on February 22, 1999. These two invoices were mistakenly batched with three additional invoices and paid a second time on April 2, 1999.

In the response to the preliminary audit report, Keyes 2000 concurred with the Audit staff that the duplicate payment was made.

2. Undocumented Disbursements

A review of operating disbursements indicated that Keyes 2000 failed to adequately document 61 disbursements totaling \$127,433. For these disbursements, neither documentation such as receipted bills, invoices, vouchers or contemporaneous memoranda was available for review, nor could these disbursements be associated with an identified program, policy, reoccurring expense or other collateral evidence to document them as qualified campaign expenses.

Canceled checks were not available for four of these disbursements totaling \$1,238. For the remaining disbursements, canceled checks were the only documentation maintained. The canceled checks alone, lacking a purpose on the memo line, failed to document the disbursements as qualified campaign expenses.

Nine checks, totaling \$69,746, were identified, by the purpose on their memo line, as travel-related disbursements. Listed purposes included "reimbursement," "expenses," "travel expenses," and "travel reimbursement" which, without further information, are not sufficient to establish that the expenses were incurred in connection with Ambassador Keyes' campaign for nomination.

Individuals received sixteen checks, totaling \$19,962, identified as "reimbursements" by their memo entries. Four checks totaling \$1,539 had memo entries that were too vague to identify their purpose. Without additional documentation such as receipts or invoices, it is not possible to establish the campaign purpose of these disbursements. Three checks totaling \$5,385 were payable to two individuals for consulting. Consulting contracts were not provided and the payees did not endorse two of the three checks. Finally, twenty-five checks totaling \$29,563 lacked any memo entry.

In response to the preliminary audit report, Keyes 2000 provided documentation that demonstrated that \$117,626 of the \$127,433 in disbursements described above were qualified campaign expenses, leaving \$9,807 in disbursements undocumented.

### 3. Undocumented Expenses from the Travel Account

In June of 1999, Keyes 2000 opened an account at First Union Bank and issued debit cards to several key campaign personnel to be used for campaign travel expenses. All disbursements from this account were made by debit card. Campaign personnel did not retain documentation from vendors for disbursements from this account. The only documentation retained and provided were account statements that itemized each disbursement in chronological order. The information provided was limited to a transaction date, an eighteen-character field to identify the name of the vendor, and the City and State where the transaction occurred. Without some collateral evidence showing the connection between the expenses and the campaign efforts, these expenses were insufficiently documented. Originally, expenses totaling \$594,385 were insufficiently documented. However, the candidate itineraries supplied at the exit conference provided collateral evidence to document \$406,938 in expenses as campaign related, reducing the amount not documented to \$187,447.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide documentation such as receipted bills, invoices, or vouchers, from the payees, that stated the purpose for the disbursements; contemporaneous memoranda; or other collateral evidence<sup>10</sup> to support the remaining \$183,986<sup>11</sup> undocumented disbursements as qualified campaign expenses. Except for providing two canceled check copies,<sup>11</sup> Keyes 2000 did not comply with the recommendation. Instead, Keyes 2000 generated and provided schedules to describe how the disbursements from the travel account were documented.

The undocumented expenses presented in the preliminary audit report consisted of:

#### a. Expenses incurred from 1/3/00 through 2/3/00

Candidate itineraries for the period 01/03/00 through 02/03/00 were not provided. The preliminary audit report contended that travel account expenses totaling \$83,593 paid during this period were undocumented.

<sup>10</sup> Collateral evidence may include but is not limited to: evidence demonstrating that the expenditure is part of an identifiable program or project that is sufficiently documented; or evidence that the disbursement is covered by a pre-established written committee policy.

<sup>11</sup> These checks document expenses of \$3,461 and this reduces the undocumented travel account disbursements from \$187,447 to \$183,986.



In response to the preliminary audit report, Keyes 2000 submitted a *Schedule of Travel Disbursements 1/01/00 thru 02/02/00*. This listing of disbursements from the travel account included a vendor name, date, amount, purpose and Keyes 2000's "reason for compliance" for each transaction. For each entry, the reason for compliance was stated as "Travel and Related Expenses Other" followed by a brief description of the purpose for the disbursement.

The schedule was generated in response to the preliminary audit report and therefore, is not a contemporaneous memorandum. Further, the schedule does not demonstrate that the disbursements were made as part of an identifiable program or covered by a pre-established written policy. Therefore travel account expenses totaling \$80,132 (\$83,593 less the two checks totaling \$3,461) paid during this period remain undocumented.

b. Travel Expenses as Winding Down Costs

From June 7 through December 8, 2000, Keyes 2000 spent \$76,489 on travel. The regulations at (11 CFR §9034.4(a)(3)(i)) allow necessary administrative costs associated with winding down the campaign. Expenses included in administrative costs are office space rental, staff salaries and office supplies. Keyes 2000 had not established the connection between this travel and administrative expenses allowed during winding down. Therefore, the Audit staff considered these expenses to be non-qualified campaign expenses.

In response to the preliminary audit report, Keyes 2000 submitted three schedules:

1. *Wind Down Travel Table – First Union Account* - This is a schedule of disbursements, paid from the travel account during the period, which lists the disbursements by category (airfare, lodging, and transportation).
2. *Wind Down Administrative Table – First Union Account* - This is a schedule of disbursements, paid from the travel account during the period, that are administrative in nature (expenses for telephone, general office expense, and office supplies.)
3. *Schedule of Wind Down Travel – Itinerary Documentation for Non-Qualified Campaign Expenditures* – This is a schedule that lists the candidate's travel during the period June 8, 2000 through December 6, 2000. For each date, the schedule lists personnel, location, airline city of departure and arrival, type of event, hotel, car service and a "reason for expenditure qualification." For each date, the stated reason is: "Costs associated with terminating political activity and debt retirement; Trip is allocable to Committee sustaining positive public relations and donor support necessary for wind down funding."

Keyes 2000 stated in its written response that "All travel and associated costs funded by the Committee in this period represent either compliance,

or legitimate and essential fundraising and contributor solicitation expenditures.” However, in the opinion of the Audit staff, the documents provided do not support Keyes 2000’s contention that the travel and activity that occurred after June 6, 2000, was related to winding down the campaign. In fact, they suggest that Ambassador Keyes was engaged in activity not connected with winding down his campaign.

Ambassador Keyes engaged in fundraising for the benefit of entities other than Keyes 2000. He raised money on behalf of two individuals, two right-to-life committees, a county republican committee, and a church mission. He also attended an event described as a fundraising reception at which he met with “\$10,000 donors.” Nothing on the itineraries suggests that he was engaged in raising money for Keyes 2000. There is an indication that he received two honoraria: \$5,000 from a church and an indeterminate amount, a “love offering” in the form of a check to be made payable to AKE<sup>12</sup>. Between July 31, 2000, and August 3, 2000, during the Republican National Convention, Ambassador Keyes made three trips to Philadelphia and attended several events. On August 2, 2000, he held a “Keyes 2000 Hospitality Suite – Birthday Party” for himself. In late September, he participated in a debate whose topic was “Does Organized Religion Have The Answers To The Problems Of The 21<sup>st</sup> Century?” He made speeches on behalf of the Christian Coalition, the Tennessee Right to Life committee, Michigan Catholic Radio Anniversary Celebration, the Calvary Chappel Church and the New City Jewish Center. His topics ranged from “The Moral Disintegration In America” to “The Future Of The Conservative Movement In This Country” to “Israel And Zionism In The 21<sup>st</sup> Century.” The itinerary for November 12, 2000, showed that he appeared in a two-hour election special; this was not included on the “*Schedule of Wind Down Travel*.”

The lack of documentation such as receipted bills, invoices, or vouchers, from the payees; contemporaneous memoranda; or other collateral evidence; prevents the Audit staff from concluding that the disbursements represent legitimate winding down costs. Further, available documentation suggests that Ambassador Keyes was engaged in activity unrelated to the wind down effort of his campaign. The schedules provided by Keyes 2000 were generated in response to the preliminary audit report and are not contemporaneous memoranda. Therefore, the Audit staff considers these expenses totaling \$76,489 to be non-qualified campaign expenses.

#### c. Cash Withdrawals

Cash withdrawals totaling \$27,365<sup>13</sup> were made from the travel account. No documentation of the amounts spent from these cash advances was provided. The Candidate’s itineraries supplied at the exit conference did not offer any information as to how the cash was spent.

In response to the preliminary audit report, Keyes 2000 asserted that the cash disbursements were documented. The response stated that “under

<sup>12</sup> AKE is an acronym for Alan Keyes Enterprises, Inc.

<sup>13</sup> Also See Finding II.A., Cash Disbursements.

11 CFR 9033.11 (b)(iv)(A) [sic.], the itemized bank statements, collated with the Candidate's itineraries offer information as to how the cash was spent among campaign staff and functionaries for meals, incidentals, and local travel." To support this, Keyes 2000 cited the following:

- The cash disbursements were part of an identifiable personnel policy to provide travel advances for the staff;
- The First Union bank statements served to "voucherize" each advance by designating by debit card number the staff member making the withdrawal; and
- The policy for facilitating travel advances is substantiated by lining up daily data on the itineraries with withdrawals on the bank records.

The response also stated that supplemental documentation that demonstrated pre-established written campaign policies, was previously submitted to the Audit staff in the form of memoranda and captured email communications.

In the Audit staff's opinion, Keyes 2000 has not provided adequate documentation for the cash disbursements. Documentation of pre-established written campaign policies was not previously submitted as stated. Copies of the referenced memoranda and captured email communications were not included in the preliminary audit report response and none of the materials submitted in the response provides evidence that such policies existed. Furthermore, the response did not identify the staff members to whom the debit cards were assigned or the corresponding debit card numbers. Finally, the response provided nothing to demonstrate how the itineraries, when "lined up" with the bank records, provide adequate documentation for the cash withdrawals. The materials provided in the response to the preliminary audit report do not comply with the documentation requirements of 11 CFR §9033.11 or demonstrate that the disbursements do not violate the prohibition on cash disbursements. Therefore, Keyes 2000 has not shown that cash disbursements, totaling \$27,365, were qualified campaign expenses.

#### 4. New Hampshire Cash Disbursements

As previously noted, Keyes 2000, in the course of conducting campaign activity in New Hampshire, made 122 cash disbursements, each in excess \$100.<sup>14</sup> The disbursements total \$80,498.

Although a number of checks were identified which, when cashed, may have provided the funds to make the cash disbursements in New Hampshire, no specific or direct connection between the disbursements and funds available can be made.

---

<sup>14</sup> Also See Finding II.A., Cash Disbursements.

As stated above in *Finding II.A., Cash Disbursements*, Keyes 2000's acknowledged that cash disbursements were made from the New Hampshire account. The preliminary audit report response stated "...the cash money represents disbursements transactions by checks from a Committee depository for legitimate and authorized expenditures, they are documented and those transactions in justice should be deemed qualified campaign expenses."

The Audit staff concludes that cash disbursements from the New Hampshire account totaling \$80,498 are non-qualified campaign expenses because they violate the prohibition on cash disbursements set forth at 2 USC §432(h).

In summary, Keyes 2000 made non-qualified disbursements totaling \$288,876. This amount includes the duplicate payment of \$12,000, non-qualified campaign expenses of \$2,585<sup>15</sup> for convention activity, undocumented disbursements of \$274,291 (\$9,807 from the operating account and \$183,986 from the Travel Account and \$80,498 in cash disbursements in excess of the \$100 limitation).

### **Recommendation #3**

The Audit staff recommends that the Commission determine that a pro rata repayment of \$74,439 (\$288,876 multiplied by the repayment ratio of .257686<sup>16</sup>) is payable to the United States Treasury.

#### **B. COSTS ASSOCIATED WITH CONTINUING TO CAMPAIGN**

Section 9034.4(a)(3)(ii) of Title 11 of the Code of Federal Regulations states if the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under paragraph (a)(3)(i) of this section. Contributions received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any

<sup>15</sup> See Finding III.B. Costs Associated with Continuing to Campaign; explanation at footnote #19.

<sup>16</sup> This figure (.257686) represents Keyes 2000's repayment ratio as calculated pursuant to 11 CFR §9038.2(b)(2)(iii).

costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR §9038.8.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that any expenses incurred after a candidate's date of ineligibility under 11 CFR §9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR §9034.4(a)(3).

Section 9038.2(b)(2)(i) of Title 11 of the Code of Federal Regulations states, that the Commission may determine that amount(s) of any payment made to a candidate from the matching payment account were used for purposes other than defrayal of qualified campaign expenses, repayment of loans which were used to defray qualified campaign expenses and restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

Section 9038.2(b)(2)(ii)(D) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may make a repayment determination under 11 CFR 9038.2(b)(2) for funds, described in 11 CFR 9038.2(b)(2)(i), which were expended for costs associated with continuing to campaign after the candidate's date of ineligibility

The Commission determined that Ambassador Keyes' date of ineligibility (DOI) was April 20, 2000. Ambassador Keyes chose to continue to campaign until June 7, 2000, when he formally withdrew from active campaigning. At the time of the PAR it appeared that during the period that Ambassador Keyes continued to campaign, Keyes 2000 incurred expenses of \$782,711. To partially offset these expenses, Keyes 2000 received contributions totaling \$450,440. The balance, \$332,271 appeared to have been paid with funds containing matching funds; and as such, subject to a pro rata repayment to the United States Treasury.

At the exit conference the Treasurer acknowledged that Ambassador Keyes had, indeed, continued to campaign but pointed out that as soon as there was a decision concerning the Arkansas primary results, this issue would be resolved.<sup>17</sup> Further, the Treasurer contended that there were serious errors in how the Audit staff presented this issue.

In a statement provided subsequent to the exit conference the Treasurer stated:

“Repayment Due to Continuing to Campaign: This number will diminish considerably when the auditors look at the actual bills for goods and

---

<sup>17</sup> Ambassador Keyes received 19.8% of the vote in the Arkansas primary. He needed to receive 20% of the vote to reestablish his eligibility to receive matching funds. Keyes 2000 is currently attempting through legal action, to persuade the Arkansas authorities to round up his election results to 20%.

services in the accounts payable, which were paid during the period of ineligibility, but which were incurred previous to DOI. Rectifying these errors will significantly lower the repayment amount due to Continuing to Campaign.”

The \$782,711 in expenses identified, as having been incurred during the period did not include expenses incurred prior to DOI as determined by the Audit staff using the records available during audit fieldwork. The Treasurer was provided detailed spreadsheets supporting the amounts presented in this finding. Documentation was not provided to address specific items about which the Treasurer believed mistakes were made.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide documentation to demonstrate that matching funds were not used to fund the continuing to campaign effort between April 20, and June 7, 2000. Absent such documentation, the preliminary audit report stated that the Audit staff would recommend that the Commission determine that \$85,622 (\$332,271 multiplied by the repayment ratio, .257686) was repayable to the U.S. Treasury.

In response to the preliminary audit report, Keyes 2000 stated, “ the Committee is pursuing a reconsideration of the DOI based on a favorable determination concerning the Arkansas primary results. Such a determination would of course render moot the CTC [Continuing to Campaign] issue of non-qualified campaign expenses.”

Regardless, Keyes 2000 “...asserts that it incurred expenses during the CTC period commensurate but not in excess of the contributions noted.”<sup>18</sup> However, a schedule provided in the response to the preliminary audit report suggests that Keyes 2000 has acknowledged spending \$35,720 in excess of the amount of funds available to campaign.

In response to the preliminary audit report, Keyes 2000 presented documentation that showed that disbursements totaling \$215,817<sup>19</sup> paid during the period were for goods and services provided prior to DOI or following the CTC period. This reduced the amount spent during the period from \$782,711 to \$566,894, or \$116,454 in excess of the amount available for use during the period.

---

<sup>18</sup> “Contributions noted” refers to the \$450,440 in contributions that were available to Keyes 2000 to spend during the period April 21, 2000, through June 7, 2000, for continuing to campaign activity.

<sup>19</sup> Included in this amount were two reimbursements for expenses incurred for attending the Republican National Convention. Since the convention occurred in the winding down period, these reimbursements were non-qualified expenses to Keyes 2000. These non-qualified expenses were added to non-qualified expenses in Finding III.A. (See footnote #15.)

**Recommendation #4**

The Audit staff recommends that the Commission determine that \$30,009 (\$116,454 multiplied by the repayment ratio of .257686) is repayable to the United States Treasury.

**C. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS**

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which reflects the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Section 9034.4(a)(3)(ii) of Title 11 of the Code of Federal Regulations states, in part, that if the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR §9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs.

Under 11 CFR §9033.5(b), the Candidate's date of ineligibility shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10% of the number of popular votes cast for all candidate's of the same party for the same office in that primary election.

The Commission determined that Ambassador Keyes' date of ineligibility was April 20, 2000. However, he continued to campaign until June 7, 2000, the date he notified the Commission of his official withdrawal from active campaigning. As a result, Ambassador Keyes may not claim any winding down costs until June 8, 2000. The Audit staff reviewed Keyes 2000's financial activity through December 31, 2000, reviewed Keyes 2000's reported activity through September 30, 2002, analyzed allowable winding down costs, and prepared the following Statement of Net Outstanding Campaign Obligations (NOCO).

**Keyes 2000, Inc.**  
**Statement of Net Outstanding Campaign Obligations**  
**As of April 20, 2000**  
**As Determined at September 30, 2002**

**ASSETS**

Cash in Bank	\$739,163	
Accounts Receivable	3,692	
Capital Assets	<u>3,808</u>	
Total Assets		\$746,663

**LIABILITIES**

Accounts Payable for Qualified Campaign Expenses at 4/20/00	\$1,318,400	
Disbursements for Winding Down (06/08/00 - 09/30/02)	3,716,162	(a)
Loan Payable	181,006	
Estimated Winding Down Costs (10/01/02 - 12/31/03)	332,188	(b)
Amount Due United States Treasury		
Excessive Currency Contributions	15,013	
Unresolved Excessive Contributions	168,200	
Stale Dated Checks	<u>8,003</u>	
Total Liabilities		<u>\$5,738,972</u>
<b>Net Outstanding Campaign Obligations (Deficit)</b>		<b>(\$4,992,309)</b>

**Footnotes:**

- (a) This amount does not include \$566,494 in expenses incurred between April 21 and June 7, 2000, the period after DOI during which Ambassador Keyes continued to campaign. (See Finding III.B.) Post DOI non-qualified campaign expenses such as travel and convention and undocumented cash disbursements have been excluded from winding down expenses.
- (b) The estimated winding down costs will be monitored throughout calendar year 2002. Should actual costs be substantially less than projected costs, a repayment pursuant to 26 USC §9038.2(b)(1) would result.

The Treasurer expressed concern at the exit conference and in the statement submitted subsequent to the exit conference, that cash-on-hand as calculated by the Audit staff was overstated by more than \$100,000. Although he was provided with a printout detailing the Audit staff's calculation of cash-on-hand, his statement did not address how the Audit staff's calculation was in error.



The Statement of Net Outstanding Campaign Obligations as of April 20, 2000 as presented above shows Keyes 2000 to be in a deficit position in the amount of \$4,992,309. Shown below are adjustments for funds received after April 20, 2000, based on the most current financial information available:

Net Outstanding Campaign Obligations (Deficit) as of 4/20/00	(\$4,992,309)
Net Private Contributions Received 6/7/00 to 12/31/00	882,934
Matching Funds Received 04/20/00 to 12/31/00	<u>3,183,371</u>
SUBTOTAL: Remaining Net Outstanding Campaign Obligations (Deficit) @ 12/31/00	(\$926,004)
Net Private Contributions Received 1/1/01 to 6/01/01	302,621
Matching Funds Received 1/2/01 through 06/01/01	<u>171,567</u>
Remaining Net Outstanding Campaign Obligations (Deficit)	<u><u>(\$451,816)</u></u>

As presented above, the Keyes 2000 has not received matching fund payments in excess of its entitlement.

#### D. STALE-DATED CHECKS

Section 9038.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributions that have not been cashed, the committee shall notify the Commission. The Committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff identified 27 stale-dated checks totaling \$8,003. Twenty-four of the stale-dated checks represented refunds to individuals of excessive contributions.

At the exit conference the Treasurer noted that the listed checks had been voided. He also expressed concern that the payment for outstanding refund checks constituted double counting.<sup>20</sup>

In a statement provided subsequent to the exit conference the Treasurer stated:

“Stale Dated Checks: Although we have been assured that these checks were not included in the Unresolved Excessive Contributions, we can not confirm this assertion, because we can not determine how the FEC number was generated. The Stale Dated Checks in question have been voided.”

The stale-dated refund checks represent untimely resolved excessive contributions, a category separate from unresolved excessive contributions. These refunds were not a factor in calculating the projected payment due the United States Treasury for the unresolved excessive contributions presented at Finding II.B.

It should be noted that the mere voiding of a stale-dated check does not obviate the requirement to pay the amount of the check to the United States Treasury. Keyes 2000 must demonstrate that the obligation for which the check was written has been satisfied or that the obligation never existed.

In the preliminary audit report, the Audit staff recommended that Keyes 2000 provide evidence that the checks were not outstanding (i.e., copies of the front and back of the negotiated checks), or that the outstanding checks were voided and that no obligation exists. Absent such evidence, the Audit staff recommended that \$8,003 was payable to the United States Treasury.

Keyes 2000's response to the preliminary audit report "...asserts that the stale-dated checks for over-donors are included in the unresolved excessive calculation of \$89,861.82 at Finding II.B." This is a restatement of the argument presented after the exit conference and addressed above.

#### **Recommendation #5**

The Audit staff recommends that Keyes 2000 make a payment to the United States Treasury in the amount of \$8,003.

---

<sup>20</sup> By double counting, it is the Treasurer's belief that Keyes 2000 is being forced to refund some excessive contributions twice.

**IV. SUMMARY OF AMOUNTS DUE TO THE UNITED STATES TREASURY**

Finding II.B.	Unresolved Excessive Contributions	\$ 95,286
Finding II.C.	Excessive Cash Contributions	15,013
Finding III.A.	Non-Qualified Expenses	74,439
Finding III.B.	Costs Associated with Continuing to Campaign	30,009
Finding III.D.	Stale-Dated Checks	<u>8,003</u>
		<u>\$ 222,750</u>



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

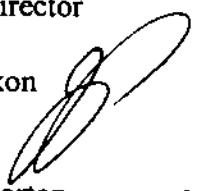
RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION


2002 DEC 10 A 11:06

December 9, 2002

**MEMORANDUM**

TO: Robert J. Costa  
Deputy Staff Director

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence H. Norton   
General Counsel

Gregory R. Baker   
Acting Associate General Counsel

Lorenzo Holloway   
Assistant General Counsel

Dawn R. Jackson *mem to DRS*  
Attorney

Michelle E. Abellera *mem*  
Attorney

Susan Kay *mem to SF*  
Attorney

SUBJECT: Report of the Audit Division on Keyes 2000, Inc. (LRA #570)

**I. INTRODUCTION**

The Office of General Counsel reviewed the proposed Report of the Audit Division ("Proposed Report") on Keyes 2000, Inc. ("the Committee") submitted to this Office on November 5, 2002. This memorandum summarizes our comments on the Proposed Report.<sup>1</sup> Our comments address a procedural issue and two related repayment findings: 1) undocumented travel expenses incurred during the candidate's eligibility

<sup>1</sup> The Office of General Counsel recommends that the Commission consider this document in open session. See 11 C.F.R. § 9038.1(e)(1).

period, and 2) undocumented travel expenses during the winding down period. We concur with any findings not specifically discussed in this memorandum. If you have any questions, please contact Dawn R. Jackson, Michelle Abellera, or Susan Kay, the attorneys assigned to this audit.

## II. TREASURER PROCEDURAL ISSUE

The Proposed Report states that Mary Lewis Parker succeeded William Leo Constantine as the Committee's Treasurer. On September 23, 2002, the Committee submitted an amended Statement of Organization indicating that Mary Lewis Parker was the new Treasurer. However, the amended Statement of Organization was submitted in paper format.

The Commission's regulations require the Committee to file all of its reports electronically. 11 C.F.R. §§ 104.18(a)(1), 105.3. In addition, "if a committee is required to file electronically, it must file amendments to its Statement of Organization (FEC form 1) electronically." Explanation and Justification for 11 C.F.R. § 102.2, 65 Fed. Reg. 38416 (June 21, 2000). Therefore, the Committee's amended Statement of Organization must be filed electronically.<sup>2</sup> Thus, we recommend that the Audit Division revise the Proposed Report to indicate that a procedural requirement for designating a new treasurer - filing electronically - has not been met; therefore, Mr. Constantine remains the Committee's Treasurer.<sup>3</sup>

## III. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES

The Proposed Report recommends that the Committee repay \$88,496 to the United States Treasury. The repayment represents the pro-rata portion of \$343,482 in nonqualified campaign expenses. The nonqualified campaign expenses include \$64,354 in undocumented travel expenses incurred during the candidate's eligibility period and \$76,489 in travel expenses incurred during the winding down period.

The Committee has offered some documentation to support these expenses. Therefore, we believe there is a question as to whether these two expense categories should be considered nonqualified campaign expenses. The key factor in this determination is whether the Committee's documentation is sufficient to establish that the

---

<sup>2</sup> The electronic filing requirement is not merely a question of form over substance. The Commission noted that, in addition to reducing paper filing and manual processing of reports, the electronic filing system was intended to "provide the public with more complete on-line access to reports... thereby furthering the disclosure purposes of the Act." Explanation and Justification for Regulations on Electronic Filing of Reports by Political Committees, 61 Fed. Reg. 42371, 42372 (August 15, 1996).

<sup>3</sup> This Office notes that the Audit staff advised Ms. Parker of the electronic filing requirement on September 23, 2002. The Reports Analysis Division will also notify the Committee of the electronic filing requirement. If an electronic amendment is filed, the new treasurer will be properly designated at that time.

travel expenses were incurred in connection with seeking the nomination or if the expenses were a part of the Committee's effort to terminate its 2000 presidential campaign. 11 C.F.R. §§ 9032.9(a), 9034.4(a)(3)(i).

Candidates have the burden of demonstrating that disbursements are qualified campaign expenses, by submitting the required documentation.<sup>4</sup> 11 C.F.R. §§ 9033.11(b), 9033.11(a)-(b). Disbursements over \$200 must be documented with a receipted bill from the payee that states the purpose of the disbursement; if a receipted bill is not available, the disbursement must be documented with: (1) a canceled check negotiated by the payee supported by an invoice, bill, voucher or contemporaneous memorandum; (2) a canceled check stating the purpose of the disbursement; or (3) a canceled check and collateral evidence to document the qualified campaign expense. 11 C.F.R. § 9033.11(b)(1)(i)-(iv).

**A. Undocumented Travel Expenses During the Period of Eligibility**  
**(Section III.A.2)**

The Proposed Report notes that the Committee has \$64,355 in nonqualified campaign expenses for undocumented travel expenses due to the fact that the listed purposes on the canceled checks "are not sufficient to establish that the expenses were incurred in connection with [the Committee's] campaign." In particular, there are two canceled checks, totaling \$54,547.55, made payable to Malvey Travel.<sup>5</sup> The checks state on the memo lines "outside services-air travel" and "air charter-Iowa flying services."

There is a letter from Peter Malvey to the Committee dated December 31, 1999 that stated "Iowa City Flying will rent the aircraft to Malvey Travel, not the campaign." In response to the Preliminary Audit Report ("PAR"), the Committee submitted a \$67,691.07 invoice from Iowa City Flying Service. The invoice lists the date of each transaction, the referencing invoice number, a brief description of each transaction, the amount of the transaction, and the payment received from the Committee. In addition, the auditors were able to obtain a receipt dated February 29, 2000 from PS Air<sup>6</sup> to the Committee that listed the Committee's activity and balance for the Iowa City Flying Service Account.

---

<sup>4</sup> As a condition precedent to receiving public funds, candidates "agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses." 26 U.S.C. § 9033(a)(1); see also 11 C.F.R. § 9033.1(b)(3). Also, candidates are required to keep and furnish all documentation relating to disbursements and receipts and any other information that the Commission requests. 11 C.F.R. § 9033.1(b)(5).

<sup>5</sup> According to the auditors, there are eleven checks that total \$64,354.83 in nonqualified campaign expenses. However, this Office has only identified two checks that require comment.

<sup>6</sup> PS Air is a service provider for the Iowa Airport that offers services such as fuel, aircraft rental, aircraft maintenance, oxygen, and hangars.

The Audit Division reviewed the PS Air receipt<sup>7</sup> and noted a few inconsistencies with the amount the Committee paid. This Office reviewed the PS Air receipt, and we found that the receipt shows the purpose of the disbursement and the amount that the Committee paid. Therefore, this documentation satisfies the minimum required for documenting disbursements. 11 C.F.R. § 9033.11(b). To address the inconsistencies, this Office asked the Audit Division to separate the disbursements that were supported by the receipt from the inconsistent disbursements. However, the auditors stated that the disbursements in question could not be separated in such a manner. Given the limited options at this point and the fact that the Committee satisfied the minimum documentation requirements, the Office of General Counsel recommends that the Audit Division revise the Proposed Report to conclude that the travel expenses are qualified campaign expenses.<sup>8</sup>

**B. Travel Expenses During Winding Down Period (Section III.A.3.b.)**

Generally, committees will incur winding down expenses as a part of their effort to terminate the campaign. Winding down costs are "costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies." 11 C.F.R. § 9034.4(a)(3)(i). These expenditures are recognized as qualified campaign expenses. *Id.* Since winding down expenses are qualified campaign expenses, committees must document their winding down expenses. 11 C.F.R. § 9033.11(a)-(b).

According to the Audit Division, the Committee made \$76,489 in travel-related disbursements during the period June 7, 2000 through December 8, 2000.<sup>9</sup> The Audit Division concluded that the Committee's travel disbursements were nonqualified campaign expenses because the Committee did not submit documentation establishing the connection between the travel and the administrative expenses allowed for winding down. *See* 11 C.F.R. § 9034.4(a)(3)(i).

In response to the PAR, the Committee submitted three schedules that provided information about disbursement dates, amounts and vendors. According to the Committee, the travel disbursements are documented by the submitted schedules.

---

<sup>7</sup> Unlike the PS Air Receipt, the Malvey invoice was dated March 7, 2002 and is not contemporaneous documentation. The auditors believe the Malvey invoice was prepared in response to the PAR. 11 C.F.R. § 9033.11(b).

<sup>8</sup> This Office recommends that the Audit Division review the other "undocumented disbursements" in the Proposed Report in connection with any supporting documentation submitted by the Committee that may satisfy the minimum required for documenting disbursements. 11 C.F.R. § 9033.11(b).

<sup>9</sup> The Commission determined that the Candidate was ineligible for public funds on April 20, 2000. On June 7, 2000, Ambassador Keyes publicly announced he was withdrawing from the campaign.

Furthermore, the Committee argues that all travel expenses incurred during the winding down period were “qualified costs associated with the termination of political activity of a nationwide campaign, including the fundraising imperative of facilitating personal candidate contact with contributors and supporters” and that all the disbursements “represent[ed] either compliance, administrative, or legitimate and essential fundraising and contributor solicitation expenditures.”<sup>10</sup> Keyes 2000 Response Narrative addenda – Re: Repayment Matters (“Addenda”), at 2. Furthermore, the Committee contends that “it is the Committee’s prerogative how best to execute its own termination, and how most appropriately to handle its donor relations in preparing the ground for its debt retirement activity.” Addenda at 3.

This Office concurs with the Audit Division’s finding that these travel expenses are nonqualified campaign expenses. Although the Committee provided schedules in response to the PAR, the Committee did not provide cancelled checks, receipted bills, invoices, vouchers, contemporaneous memoranda or other collateral evidence to support the schedules or otherwise demonstrate that the travel disbursements were related to the termination of the campaign.<sup>11</sup> 11 C.F.R. § 9033.11(b)(1)(i)-(iv). According to the Audit staff, the schedules do not provide any additional information beyond what was made available during fieldwork and at the Exit Conference. The schedules merely provide general, uncorroborated descriptions relating to the purpose of the disbursements.<sup>12</sup>

It is our understanding that the auditors are concerned that the travel was for the purpose of soliciting contributions on behalf of other organizations.<sup>13</sup> A review of the Committee’s itineraries for this period suggests that portions of the travel were related to

---

<sup>10</sup> The Committee stated that it had significant debt to retire and, therefore, fundraising was a necessary expense. Keyes 2000 Response Narrative, at 13.

<sup>11</sup> Winding down costs may include disbursements for fundraising and supporter solicitation. The regulations at section 9034.4(a)(3)(i) provide only a partial list of permissible winding down expenses, and the absence of language relating to fundraising should not be interpreted as being prohibitive of such purposes. 11 C.F.R. § 9034.4(a)(3)(i). Furthermore, this Office agrees “it is the Committee’s prerogative how best to execute its own termination.” Addenda at 3. However, this is a case about documenting the expenses. A committee’s autonomy and freedom of choice concerning the manner in which it shuts down the campaign does not relieve the committee of the obligation to document expenditures. 11 C.F.R. §§ 9033.1(b), 9033.11(a)-(b). Although the Committee provided itineraries for the winding down period, the Committee did not submit any documentation linking the purported travel expenses to specific dates and events. *Id.*

<sup>12</sup> Two of the schedules describe the disbursements as “travel.” The third schedule, *Schedule of Wind Down Travel- Itinerary Documentation for Non-Qualified Campaign Expenses*, notes that the “costs [are] associated with terminating political activity and debt retirement” and the “trip[s] [are] allocable to [the] Committee sustaining positive public relations and donor support necessary for wind down funding.” The Proposed Report notes that schedules were produced in response to the PAR and are, therefore, not contemporaneous memoranda. 11 C.F.R. § 9033.11(b)(1)(ii).

<sup>13</sup> The Candidate is involved in numerous grassroots political organizations, including the Declaration Foundation, Declaration Alliance, RenewAmerica and AKE (Alan Keyes Enterprises).



the Candidate's personal activities, including fundraising for other organizations, and not solely to maintain contact with campaign contributors and supporters. Since the Candidate was traveling for other activities at the same time that he was terminating his political campaign for the 2000 presidential election, the Committee should have been more vigilant in documenting the costs related to closing the presidential campaign. The fact that the candidate was engaged in other activities does not relieve the Committee of documenting its winding down expenses. 11 C.F.R. §§ 9033.1(b), 9033.11(a)-(b). However, the Proposed Report does not address these facts. We recommend that the Audit Division revise the Proposed Report to specifically address the Audit staff's concerns that the Candidate was traveling for other purposes not related to the termination of the campaign.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

2002 OCT -4 P 6:00

FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

2002 OCT 31 10:52

FD 16  
5

*Peggy Smith*

**COMMITTEE RESPONSE TO FEDERAL ELECTION COMMISSION  
PRELIMINARY REPORT  
OF THE AUDIT DIVISION ON  
Keyes 2000, Inc.**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

Pursuant to federal election law herein specified, Keyes 2000, Inc. (Keyes 2000) has since December 19, 2000 worked diligently to facilitate the Federal Election Commission (FEC) audit of this Committee's fiduciary performance and regulatory compliance during the year 2000 Republican presidential primary election cycle. Such an audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that, "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037."

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (FECA), as amended.

This Committee's conscientious efforts at compliance throughout the election cycle and within this audit process notwithstanding, the Preliminary Audit Report to which Keyes 2000 will respond herein is based on an FEC audit that in its earlier Exit Conference Memorandum, and now in its Preliminary Audit Report (PAR), presents a false and misleading assessment of this Committee's due diligence regarding the FECA.

The audit has been conducted in an arbitrary, protracted, procedurally flawed, unduly and illogically burdensome, and fiscally punitive manner. This PAR itself is error-ridden, and rife with omissions of data, distorted contentions and mistaken analysis. Correcting the false assertions contained in this report is necessary in order to provide an accurate public account of the Committee's law-abidingness, and of our stewardship of our donors' generous support. But with the effort of this PAR response, Keyes 2000 must yet again provide for FEC review resubmission of hundreds of substantiating documents already presented in other formats to the auditors for consideration. This needless duplication of effort and materials has required the Committee to expend absurd levels of staff effort and expense. The Committee's financial resources have been exhausted by the onerous and excessive standard of

financial resources have been exhausted by the onerous and excessive standard of detailed and duplicative documentation unnecessarily demanded by the FEC auditors. Keyes 2000 has sought, and continues to seek to comply with all record-keeping and reporting requirements, including all contribution and expenditure limitations, matching fund restrictions, qualified campaign expenses, and Net Outstanding Campaign Obligations (NOCO) as mandated by federal law. We hope that our efforts will finally bring this audit process to an honest, expeditious and just conclusion.

## **B. AUDIT COVERAGE**

The Preliminary Audit Report indicates that the committee generated cash receipts of \$15,063,087.00 and cash disbursements of \$14,529,460.00 from November 13, 1996 through December 31, 2000, leaving a cash balance of \$514,784.00. These numbers are in error.<sup>1</sup> The total cash receipts and cash disbursements numbers generated by "Campaign Manager 4" software by Aristotle Publishing, Inc. were erroneous due to a programming problem contained in the software. This was repeatedly disclosed and confirmed by the Committee to the Audit Division and the Reports Division of the Federal Elections Commission. Consensus was reached among these groups and the Committee that Keyes 2000 should amend each of its Monthly and Quarterly Disclosure Reports only after the FEC audit had been completed.

The actual cash receipts from November 13, 1996 to December 31, 2000 were \$13,148,489.12. The actual cash disbursements in the same period were \$12,623,293.74. This left a cash balance of \$525,195.38 at December 31, 2000. This revised total also creates a discrepancy with the auditors' balance at the Date of Ineligibility (DOI), April 20, 2000, with a cash balance of \$127,423.43. The Committee can substantiate these amounts with the hand written, hard copies of the Committee's Federal Election Commission Disclosure Reports, the Committee's general ledger software and reports and the bank statements for each of the Committee's bank accounts. All of this documentation was provided to the auditors and was readily available at the Committee's office at all times throughout the audit. It was demonstrated that there were calculation errors built into the "Campaign Manager 4" software which produced inaccurate totals on the summary page of the Monthly and Quarterly Disclosure Reports. The Committee tried to remedy this problem by submitting a hard copy of each report along with the electronic report, but we were told by the Reports Division that sending a hard copy was confusing and not acceptable.

## **C. CAMPAIGN ORGANIZATION**

Keyes 2000 maintains its headquarters in Washington, DC. The Treasurer, William Leo Constantine, CPA, was designated on June 17, 1999 and

<sup>1</sup> The reported figures do not foot due to various reporting errors.

continued to serve in that capacity until September 19, 2002. As of that date, Mr. Constantine now serves as Assistant Treasurer, and Mary Parker Lewis, the Committee Chief of Staff, has assumed the responsibilities of Treasurer.

Keyes 2000 registered with the Federal Election Commission (the Commission) on June 17, 1999 as the principal campaign committee for Ambassador Alan L. Keyes, candidate for the Republican Party's nomination for the office of President of the United States.<sup>2</sup> During the audit period, Keyes 2000 maintained depositories in Minneapolis, Minnesota; Phoenix, Arizona; Houston, Texas; Washington, DC; Manchester, New Hampshire; and Roanoke, Virginia. To handle its financial activity Keyes 2000 utilized 11 bank accounts.<sup>3</sup> From these accounts Keyes 2000 made approximately 6,000 disbursements. In addition, Keyes 2000 received approximately 238,500 contributions from approximately 96,800 contributors. These contributions totaled approximately \$8,357,000. Keyes 2000 also received loans of \$1,860,900.

Ambassador Keyes was determined eligible by the FEC to receive matching funds on September 30, 1999. Keyes 2000 made 20 requests for matching funds totaling \$5,261,907 and received \$5,043,341<sup>4</sup> from the United States Treasury. This amount represents 29.9% of the \$16,890,000 maximum entitlement that any candidate could receive. For matching fund purposes, the Commission determined that Ambassador Keyes' candidacy ended on April 20, 2000. This date of ineligibility (DOI) is disputed by the Committee because of the electoral returns of the State of Arkansas, which were reported by the Arkansas Secretary of State as 19.87%, with two counties failing – in violation of Arkansas law – to hold Republican primaries. This outcome under Arkansas Republican Party rules rounded up to the 20% necessary to send three pledged Keyes delegates to the Republican National Convention, and provides ground for a determination by the Commission to honor the intentions of 20% of the Arkansas GOP voters who supported Ambassador Keyes and sought to keep him in the race beyond the early primaries of the heavily front-loaded campaign cycle.

Ambassador Keyes continued to campaign after the Commission made its determination without regard to the Arkansas GOP's own regulations and standards for

---

<sup>2</sup> This footnote is correct. Shortly after registering, Keyes 2000 filed a Mid-Year report for 1999. In this report, receipts of \$1,914,847 and disbursements of \$1,742,349 were disclosed. All of the reported activity, however, did not occur in 1999. This report included receipts of approximately \$218,000 and \$663,000 and disbursements of approximately \$166,000 and \$642,000 which occurred in 1997 and 1998, respectively.

<sup>3</sup> Keyes 2000 did not report on its initial Statement of Organization with the FEC the prior existence of a then-closed depository at the TCF National Bank in Minnesota (TCF). This TCF account was briefly opened in November of 1996 by volunteer Keyes supporters seeking to encourage a Keyes candidacy after the 1996 campaign. The account was closed and the Committee brought under political and financial direction in Washington, D.C. The balance from the TCF account was the source of the initial funds deposited to open Keyes 2000's registered account at Norwest Bank Arizona, N.A. Specific TCF account activity was not available even with bank research sought by the Committee, and so was incompletely reported.

<sup>4</sup> Keyes 2000 received four matching fund payments totaling \$171,000 in 2001.

candidate selection. On June 7, 2000, Ambassador Keyes publicly announced he was withdrawing from the campaign. On June 1, 2001, Keyes 2000 received its final matching fund payment to defray qualified campaign expenses and to help defray the cost of winding down the campaign.

#### **D. AUDIT SCOPE AND PROCEDURES**

In addition to a review of expenditures made by Keyes 2000 to determine if they were qualified or non-qualified campaign expenses, the audit covered the following general categories:

1. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
2. the receipt of contributions or loans in excess of the statutory limitations (see Findings II.B. and II.C.);
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of campaign debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
7. adequate recordkeeping for campaign transactions (see Finding III.A.);
8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by Keyes 2000 to disclose its financial condition and to establish continuing matching fund entitlement (see Finding III.C.);
9. compliance with spending limitations; and,
10. other audit procedures that were deemed necessary in the situation (See Findings II.A., III. B. and III.D. ).

The Committee concurs that prior to commencing the audit fieldwork, an inventory of the Committee's campaign records was conducted. The inventory was conducted to determine if Keyes 2000's records were materially complete and in an

auditable state. The records were found to be materially complete and the audit fieldwork commenced immediately.

No material non-compliance was detected. While the Commission statutorily may pursue further in an enforcement action any of the five principal matters discussed in this report, the Committee categorically asserts that there are no grounds whatever for the FEC to take any enforcement or legal action against it.

## **II. AUDIT FINDINGS AND RECOMMENDATIONS – NON REPAYMENT MATTERS**

### **A. CASH DISBURSEMENTS**

The PAR asserts two categories of apparent violation by Committee functionaries of the following two sections governing cash expenditures, 11 CFR 102.10 and 102.11. The Committee rejects the auditors' assertion that in the circumstances cited, these are the most relevant sections for determining record-keeping compliance. Both assertions of regulatory violations in the Committee's New Hampshire campaigning and with the staff debit cards rest upon (1) applying a narrow and, in campaign field operations, unrealistic interpretation of the term "disbursement" to apply to every specific and discrete transaction exceeding \$200.00, and (2) categorizing all the expenditures in question to fall under the rubric of excessive petty cash fund transactions – which are limited to the even lower threshold of \$100.00 per purchase or expenditure.

The Committee contends that it is appropriate to understand the disbursements discussed in the PAR as follows:

The cash expenditures in both categories were paid out by funds drawn directly from an authorized Committee depository, not from any cash which lacked a documented and reported Committee source. Indeed, both these depositories were operational accounts, funded via Committee transfers, not donor contributions. The purpose of 102.10 should be understood as protection against expenses and field operations paid by unattributed and undocumented, i.e., unbanked, cash. It is neither reasonable nor realistic in the exigencies of national campaigning in the ever more highly compressed election cycle to interpret this section as a prohibition of substantive cash transactions simply.

Under application of 11 CFR 102.9 the Committee is obligated to keep an account of all disbursements, consisting of "a record of name, address, date, amount and purpose of the disbursement." In addition, "a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of \$200.00." Hence, all staff remuneration, expense reimbursements, travel advances, operations, goods and services paid in cash that were rendered from lump-sum withdrawals made by check drawn on the Committee's New Hampshire bank account, or withdrawn via Committee debit cards, should be interpreted as technically in compliance with this section even in excess of \$200.00, as long as substantiating ledger, memoranda,

vouchers or receipts are produced that correspond with the aggregated amounts of cash withdrawals from an authorized account.

1. Cash Disbursements Made in New Hampshire

Keyes 2000 opened an account at the Bank of New Hampshire in December 1999 to facilitate campaigning in the state. Delays in the funds transfer process created confusion regarding available balances, and resulted in a brief series of shortfalls in the initial funding of the New Hampshire account. Because Committee depository transfers left an insufficient balance to cover every check written during an aggressive campaigning period that involved advertising buys and other major transactions, thirty-one checks to vendors totaling more than eighty thousand dollars were returned unpaid. The Committee was financially embarrassed, and our checks would not be accepted by essential vendors and functionaries until our creditworthiness could be reestablished. Subsequently, campaign staff was compelled to make lump-sum withdrawals, paying for documented goods and services using cash drawn from the New Hampshire account.

The audit review of the activity in New Hampshire identified 397 receipts for purchases made in cash totaling \$111,104. One hundred twenty-two of these receipts involved purchases greater than \$100. The total value of these expenditures was \$80,498.<sup>5</sup> The Committee asserts that ledger entries, receipts, vouchers and other contemporaneous memoranda need not be associated with any specific check. According to the auditors, ninety-seven percent of the receipted cash disbursements and all of the checks which funded them, occurred between October 1999 and February 2000. The total amount of cash disbursements correspond in time and amount to total funds available, there is substantive documentation of transactions in accordance with 11 CFR 102.9, and the New Hampshire campaign expenses should not be deemed non-qualified.

2. Cash Disbursements Made From the Travel Account<sup>6</sup>

Beginning in May 1999, Keyes 2000 opened and maintained an account at First Union Bank to increase field operations accountability and facilitate campaign travel. Three debit cards were issued to key campaign personnel. Because of the highly staff-intensive and time-sensitive burden of monthly reporting for every small purchase made with the cards in the field, the Committee policy for using the cards was soon revised for authorized staffers to make periodic cash withdrawals as petty cash, per diem, and travel advances.

The auditors note that, "over the course of the campaign cycle, Keyes 2000 personnel made 129 cash withdrawals, each in excess of \$100.00, from its travel account. The total for these withdrawals was \$27,365." That averages approximately \$200.00 per withdrawal, and there were only three such cards issued to

<sup>5</sup> For additional detail concerning the cash disbursements, see Finding III.C.4.

<sup>6</sup> For additional detail concerning the Travel Account, see Finding III.C.3.b.

facilitate the entire campaign staff. Keyes 2000 functionaries at the outset of the campaign had been directed in writing by the Treasurer to maintain receipts or other documentation supporting all field expenditures, no matter how minor. But with the issuance of the debit charge cards, there was apparently a misunderstanding that the bank statements reflecting withdrawal amounts and itemized transaction records would in themselves constitute sufficient documentation, and not all field receipts from the candidate's top staffers were retained and submitted.

The Committee asserts categorically that, with the notable exception of a few airfare purchases at airports that were so last-minute only cash could transact quickly enough to get tickets issued, virtually no cash purchase greater than \$100 per person was ever authorized or made from these funds, as the cards operated as debit and credit cards and there was no need for large cash transactions. Moreover, there were functionaries deployed around the country to facilitate operations and transact substantive expenditures with Committee checks. All our FEC monthly reporting supports and substantiates this. Many of these cash withdrawals are "in excess of \$100.00" only because of the \$1.00 or \$1.50 ATM transaction fee charged in addition to the \$100.00 per person standard withdrawal. If a senior staffer had two junior staffers traveling with him, the withdrawal would typically be for \$300.00 plus the ATM transaction fee. These cash withdrawals fed, transported locally, and provided incidentals for the candidate, numerous staff and Committee functionaries, as is meticulously detailed in the Committee itineraries we have generated for the audit team. The Committee respectfully requests that common sense be applied in this matter. Under 11 CFR 102.10 and 9033.11(b)(iv)(A & B), these ATM cash withdrawals on the merits should not be considered cash disbursements in excess of the limitation for petty cash disbursements, and should not be non-qualified.

The auditors assert that Keyes 2000 made cash disbursements in excess of the limitation for petty cash disbursements, which, in the aggregate, totaled \$107,863 (\$80,498.00 + \$27,365.00). The PAR states that, "at the exit conference a Keyes 2000 representative stated that the cash payments had been made in violation of committee policy." Of course, the use of lump-sum cash disbursements violated the Committee's accounting standards and practices, and utterly defeated the entire purpose of our opening an operations account in New Hampshire. It was deeply regrettable that the funds transfer system initially failed to perform on deadline, and local faith in our creditworthiness was undermined. Although we believe we can justify our assertion of compliance with the FECA, the Committee Treasurer shut down activity on the account immediately upon receiving accounting that reflected the large cash withdrawals. But the cash money represents disbursement transactions by checks from a Committee depository for legitimate and authorized expenditures, they are documented, and those transactions in justice should be deemed qualified campaign expenses.



## **Recommendation #1**

- The Committee's commentary regarding the cash disbursements issues are above.
- Supplemental documentation demonstrating relevant pre-established written campaign policies, evidence demonstrating these expenditures are part of an identifiable and authorized personnel policy, and itineraries that support our contention that for these expenses Keyes 2000 facilitated numerous personnel, and did not exceed the \$100 limitation for petty cash purchase or transaction per person is submitted under separate cover.

### **B. APPARENT EXCESSIVE CONTRIBUTIONS FROM INDIVIDUALS**

Under separate cover, the Commission is receiving from the Committee a comprehensive Schedule of Excessive Contributions derived from our entire donor database. This Schedule specifies every "over-donor" by name and address whose aggregated contribution amount to the Committee exceeded the statutory limit. The date and amount of every refund check issued by the Committee to each over-donor is included.

The PAR cites Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations to state in relevant part, "that the Treasurer shall be responsible for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitation 11 CFR 110.1. Contributions which on their face exceed the contribution limitations set forth at 11 CFR 110.1 and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set for in 11 CFR 110.1 when aggregated, may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. 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). 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 110.1(k)(3)(i) of Title 11 of the Code of Federal Regulations states in part, "that if a contribution to a candidate, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions, the treasurer of the recipient committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person.

The Committee did experience a breakdown of procedures in timely refund, redesignation, or reattribution of excessive aggregated contributions. The reasons for this procedural failure were complicated, but rest essentially on the profound performance failures and reliability defects we experienced with our campaign data

management software. Our system to track aggregations of donor contributions and address this obligation did not operate properly.

Having acknowledged our failure to successfully adhere to the sixty-day deadline for refunds, the Committee nevertheless asserts the following relevant points regarding our compliance in this area. At no time did the Committee accept and bank any contribution that we knew to be non-compliant "on its face" or that we recognized as coming from donors over their statutory limit. Many, many checks from small business accounts, incorporated entities, trustee accounts, etc. were screened out and rejected from deposit during our caging operations, as well as donors we believed to be non-compliant in aggregation or other regards. It was primarily due to intractable problems with our campaign management software, and the non-responsiveness of our contracted vendor in handling these defects, that we failed to successfully identify in aggregation our multiple contribution over-donors, and comply with the sixty-day refund response period.

The Committee did eventually reliably confirm a total of \$204,626.91 of excessive aggregated contributions, contact most of their donors, and execute refunds of \$114,765.09. The Committee was in the process of refunding the balance of these excessive contributions, when the FEC auditor advised that we suspend our refund efforts.

The PAR states, "Sections 9038.1(f)(1), (2) and (3) of Title 11 of the Code of Federal Regulations, state, that in conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted statistical sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violation identified in such a sample may become the basis, in whole or in part, of any audit finding. A committee in responding to a sample-based finding concerning excessive or prohibited contributions shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any apparent errors found among the sample items were not errors, the Commission shall make a new projection based on the reduced number of errors in the sample. Within 30 days of service of the Final Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b)(1), (2) or (3)."

The statistical formula and process used by the FEC to extrapolate the Committee's liability for untimely refunded and unresolved excessive contributions may be statutorily authorized, but it is inflated by more than 53% of the actual total of excessive contributions. The auditors interpret the regulations to hold Keyes 2000 obligated to make a payment of \$168,200 to the United States Treasury.

This Committee reported on more than 96,800 contributors, with only exactly 437 over-donors – or .45% of our donor base. Given the precise accuracy that the Committee strove mightily to achieve with our contributions data for meeting our donor disclosure obligations, and to achieve and maintain our matching funds qualification, and

given the ongoing calculations and aggregation function failures we suffered with our software throughout the entire election cycle, it is the position of the Committee that our liability should be our remaining \$89,861.82 of unresolved excessive contributions.

### **Recommendation #2**

The 11 CFR 9038 sections cited above say the Commission "may" use sampling to determine a Committee's liability, not that it must. The PAR states that the audit projection does not consider as resolved any excessive contribution that was untimely refunded after the commencement date for the audit, January 16, 2001 – an evidently arbitrary cut-off date for any such contributions to be considered resolved. As a Committee that has exhausted its financial resources trying diligently to satisfy the regulatory burden before us, this recommendation by the auditors seems gratuitously injurious.

### **C. RECEIPT OF CURRENCY IN EXCESS OF LIMITATION**

The PAR here cites Section 110.4(c)(3) of Title 11 of the Code of Federal Regulations stating that, "a candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate."

The auditor identified eighty-nine deposits, each containing currency greater than \$50. The total for these currency deposits was \$39,243. Keyes 2000 provided only preliminary documentation upon demand for deposits that were associated with events. The remaining currency deposits totaling \$19,039 are asserted in the PAR to be not "satisfactorily explained." These, after allowing for one permissible \$50 anonymous currency contribution from each deposit, are said to have resulted in Keyes 2000 receiving excessive anonymous currency contributions in the amount of \$16,839.

At the exit conference, the Treasurer and Chief of Staff asserted, and continue to maintain, that the candidate's schedules have been available for months to the audit team, but were not reviewed for this category of compliance. These schedules, and the itineraries<sup>7</sup> we later prepared to accommodate the rigidities of the auditor's data demands, demonstrate the correlation between numerous candidate appearances and "pass the hat" event fundraising that drew many event attendees, and produced many small cash donations. Contrary to the assertion in the PAR, the Treasurer stated that the

---

<sup>7</sup> The assertion in this footnote of the PAR is in error; schedules and the Candidate's itineraries were made available to the auditor, and a still more substantive version was offered to try to meet all data demands just prior to the Exit Conference.

events cash contributions were deposited within twenty-four to forty-eight hours of the date of receipt by the Treasurer and/or the Committee's in-house caging operation, and the commercial cagers deposited virtually daily. Their caging reports breakout cash contributions.

In a statement provided subsequent to the exit conference, the Keyes 2000 Treasurer stated:

"Each cash contribution in question has been matched to the candidate's daily schedules, staff travel itineraries, and campaign events where small donor fundraising solicitation was made. The documents which specified these travel and event fundraising efforts, correlated to the Committee's bank records of receipts deposits, were ignored by the audit team. A spreadsheet was provided to the auditors, which shows this information explicitly. At the Exit Conference we first learned that this spreadsheet had not been accepted, and some cash receipts were still deemed excessive. All of these cash receipts do qualify under the regulations and should be accepted."

### **Recommendation #3**

Keyes 2000 will again provide documentation for fundraising events associated with the all the currency deposits noted above, and produce yet again the hard copy caging reports that show the non-aggregated cash contributions received. Very considerable staff time and Committee expense has been expended to correlate data for the auditors that includes travel expenditures for the candidate, staff and volunteers to hold well-attended rallies and other campaign events – virtually all of which included an ancillary, low-dollar fundraising appeal. The Committee asserts that none of the \$16,839.00 of cash contributions in this category is excessive, and none should be payable to the United States Treasury.

## **III. AUDIT FINDINGS AND RECOMMENDATIONS – REPAYMENT MATTERS**

### **A. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES**

The Committee asserts it is in material compliance with the PAR's various relevant and cited sections of the FECA. Substantiating documentation is being submitted under separate cover to address, and we trust finally satisfy, the auditors' demands for yet further documentation on these various matters. The Committee will note that since the Exit Conference, a substantial quantity of original, collated documentation has been available to the auditors to resolve numerous issues raised at that time. No review of that documentation has yet been made by the audit team; the Committee has undertaken to duplicate it in its entirety and is submitting it to the FEC under separate cover.

### 1. Duplicate Payment to Vendor

The Committee has requested research from the fundraising vendor for any clarification they may have on this item. We concur with the auditors that this is an erroneous duplicate payment, and are seeking reimbursement to Keyes 2000 from MDS Communications. Two invoices from this vendor totaling \$12,000 do appear to have been paid on February 22, 1999. Apparently, these two invoices were mistakenly batched with three additional invoices and paid a second time on April 2, 1999.

### 2. Undocumented Disbursements

The Committee is further documenting sixty-one disbursements totaling \$127,433. For these disbursements, either receipted bills, invoices, vouchers or contemporaneous memoranda are available for review, or these disbursements have been associated with an identified program, policy, reoccurring expense or other collateral evidence to document them as qualified campaign expenses.

Canceled checks were not available for four of these disbursements totaling \$1,238. Other supporting documentation has been located.

Nine checks, totaling \$69,746, were identified, by the purpose on their memo line, as travel related disbursements. Listed purposes included "reimbursement," "expenses," "travel expenses," and "travel reimbursement" which, without further information, are not sufficient to establish that the expenses were incurred in connection with Ambassador Keyes' campaign for nomination.

Individuals received sixteen checks, totaling \$19,962, identified as reimbursements by their memo entries. Four checks totaling \$1,539 had memo entries that were too vague to identify their purpose. Additional documentation such as receipts or invoices, will establish the campaign purpose of these disbursements. Three checks totaling \$5,385 were payable to two individuals for consulting. Certain misfiled consulting contracts are now able to be provided, and the payees have substantiated their receipt of payment. Finally, twenty-five checks totaling \$29,563 lacking any memo entry have supporting documentation that will bring them into compliance as qualified campaign expenses.

### 3. Undocumented Expenses from the Travel Account

In June of 1999, Keyes 2000 opened an account at First Union Bank and issued debit cards to several key campaign personnel to be used for campaign travel expenses. All disbursements from this account were made by debit card. Account statements that itemize each disbursement in chronological order, plus collateral evidence showing the connection between the expenses and the campaign efforts will render these expenses sufficiently documented. The candidate itineraries supplied prior to the Exit Conference provided collateral evidence which reduced the amount not documented to \$187,447. These remaining undocumented expenses consist of:

a. Expenses incurred from 1/3/00 through 2/3/00

Candidate itineraries for the period 01/03/00 through 02/03/00 were provided to the auditors and deemed incomplete. Travel account expenses totaling \$83,593 paid during this period are being documented under separate cover.

b. Travel Expenses as Winding Down Costs

This category has arisen without warning or prior objection whatever by the auditor, and is utterly without merit. All travel in the wind down period is legitimate fundraising and contributor solicitation travel. From June 7 through December 8, 2000, Keyes 2000 spent \$76,489 on travel, as a national campaign with significant debt to retire. Ambassador Keyes and senior staff have met with supporters all over the country whose generous contributions had our campaign possible, and who will assist us in retiring our debt – once its magnitude is finally determined. The regulations at (11 CFR §9034.4(a)(3)(i)) allow necessary administrative costs associated with winding down the campaign. Expenses included in administrative costs are office space rental, staff salaries and office supplies. Keyes 2000 has established the connection between this travel and administrative expenses allowed during winding down, and will present data under separate cover. It is the contention of the Committee that these expenses in their entirety are qualified campaign expenses under the FECA.

c. Cash Withdrawals

Cash withdrawals totaling \$27,365<sup>8</sup> were made from the travel account. The auditors alternately refer to these as “excessive petty cash” and “cash advances.” The Candidate’s itineraries offer adequate information as to how the cash was spent among campaign staff and functionaries for meals, incidentals, local travel.

4. New Hampshire Cash Disbursements

Please refer to the Committee’s commentary on this matter under Finding II.A., Cash Disbursements.

In summary, the Keyes 2000 Committee is submitting for FEC audit review substantiating materials under separate cover that will demonstrate that virtually all of the “non-qualified disbursements” referenced herein, and asserted by the auditors to total \$407,378 are in fact qualified campaign expenses which were authorized by the Committee Treasurer and the Chief of Staff, used for their appropriate purposes, and are in material compliance with both the spirit and the letter of the Federal Election Campaign Act. The amount the Committee does not dispute is the apparent duplicate payment of \$12,000.00 erroneously paid to a fundraising vendor. The “undocumented

<sup>8</sup> Also See Committee comments under Finding II.A., Cash Disbursements.

disbursements of \$314,880 (\$127,433 from the operating account and \$187,447 from the travel account) and \$80,498 in cash disbursements in excess of the \$100 limit" we vigorously dispute, and for those items we are submitting substantiating documentation under separate cover.

At the exit conference the Treasurer, citing regulations at 11 CFR 102.9(b), asserted that the bank statements from the travel account, by themselves, should constitute adequate documentation in serving to itemize the transaction with payee, amount and location, and in representing the instrument of payment. The Audit staff asserted that pursuant to 11CFR §9033.11, the committee must show that expenses are qualified and made in connection with Ambassador Keyes' campaign for nomination. The documentation standards for publicly funded campaigns are more stringent than those applicable to non-publicly funded campaigns, but they need not be illogical. To satisfy the special demands of the auditor in these matters, the Committee has generated itineraries for all our travel and campaigning activities, and dug deep around the country among our grassroots volunteers and supporters to locate the data requested.

#### **Recommendation #4**

The Committee is providing under separate cover for the alleged undocumented disbursements, documentation such as but not limited to receipted bills, invoices or vouchers from the payee that state the purpose of the disbursement or other collateral evidence to support these disbursements as qualified campaign expenses.

#### **B. COSTS ASSOCIATED WITH CONTINUING TO CAMPAIGN**

Section 9034.4(a)(3)(ii) of Title 11 of the Code of Federal Regulations states if the candidate continues to campaign (the "CTC" period) after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under paragraph (a)(3)(i) of this section. Contributions received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR §9038.8.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that any expenses incurred after a candidate's date of ineligibility under 11 CFR §9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR §9034.4(a)(3).

Section 9038.2(b)(2)(i) of Title 11 of the Code of Federal Regulations states, that the Commission may determine that amount(s) of any payment made to a candidate from the matching payment account were used for purposes other than defrayal of qualified campaign expenses, repayment of loans which were used to defray qualified campaign expenses and restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

Section 9038.2(b)(2)(ii)(D) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may make a repayment determination under 11 CFR 9038.2(b)(2) for funds, described in 11 CFR 9038.2(b)(2)(i), which were expended for costs associated with continuing to campaign after the candidate's date of ineligibility

The Commission determined that Ambassador Keyes' date of ineligibility (DOI) was April 20, 2000. Ambassador Keyes chose to continue to campaign until June 7, 2000, when he formally withdrew from active campaigning. During the period that Ambassador Keyes continued to campaign, the auditors assert that Keyes 2000 incurred expenses of \$782,711. The Committee asserts that this number is erroneously inflated by approximately one third, primarily due to inclusion of fundraising, advertising services and other substantive payables that were incurred prior to DOI, but billed and paid during the CTC period. According to the auditors, to partially offset the CTC period expenses, Keyes 2000 received contributions totaling \$450,440. The balance according to the PAR, \$332,271 was paid with funds containing matching funds; and as such, are subject to a pro rata repayment to the United States Treasury. The Committee asserts that it incurred expenses during the CTC period commensurate but not in excess of the contributions noted.

As previously noted, the Committee is pursuing a reconsideration of the DOI based on a favorable determination concerning the Arkansas primary results. Such a determination would of course render moot the CTC issue of non-qualified campaign expenses.<sup>9</sup> Further, the Committee continues to contend that there are serious errors in the auditors' calculations.

In a statement provided to the FEC subsequent to the exit conference, the Treasurer stated:

---

<sup>9</sup> Ambassador Keyes received 19.8% of the vote in the Arkansas primary. He needed to receive 20% of the vote to reestablish his eligibility to receive matching funds. Keyes 2000 is currently attempting through legal action, to persuade the Arkansas authorities to round up his election results to 20%.



ineligibility, but which were incurred previous to DOI. Rectifying these errors will significantly lower the repayment amount due to Continuing to Campaign.”

### **Recommendation #5**

Documentation is being provided under separate cover to address specific errors in the audit totals. Keyes 2000 will demonstrate that matching funds were not used to fund the continuing to campaign effort between April 20, and June 7, 2000.

#### **C. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS**

The auditor cites Section 9034.5(a) of Title 11 of the Code of Federal Regulations, which requires that within 15 calendar days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which reflects the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Section 9034.4(a)(3)(ii) of Title 11 of the Code of Federal Regulations states, in part, that if the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR §9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs.

Under 11 CFR §9033.5(b), the Candidate's date of ineligibility shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10% of the number of popular votes cast for all candidate's of the same party for the same office in that primary election.

The Commission determined that Ambassador Keyes' date of ineligibility was April 20, 2000. However, he continued to campaign until June 7, 2000, the date he notified the Commission of his official withdrawal from active campaigning. As a result, Ambassador Keyes may not claim any winding down costs until June 8, 2000. The Audit staff reviewed Keyes 2000's financial activity through December 31, 2000, analyzed

allowable winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations (NOCO).

The Committee disputes the Cash in Bank figure of \$739,163.00, because the numbers used to determine this figure are based upon the disclosure reports generated via Aristotle's CM4 software, and as previously discussed, are error-ridden. The corrected Cash in Bank figure is 577,863.43.

The Committee had no other corrections or objections to the Statement of Net Outstanding Campaign Obligations as of April 20, 2000 as presented in the PAR by the auditors.

#### **D. STALE-DATED CHECKS**

The PAR cites Section 9038.6 of Title 11 of the Code of Federal Regulations, stating that if the committee has checks outstanding to creditors or contributions that have not been cashed, the Committee shall notify the Commission. The Committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The Committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff identified 27 stale-dated checks totaling \$8,003. Twenty-four of the stale-dated checks represented refunds to individuals of excessive contributions.

At the exit conference the Treasurer noted that the listed checks had been voided. He also expressed concern that the payment for outstanding refund checks constituted "double counting."<sup>10</sup>

In a statement provided subsequent to the exit conference the Treasurer stated:

"Stale Dated Checks: Although we have been assured that these checks were not included in the Unresolved Excessive Contributions, we can not confirm this assertion, because we can not determine how the FEC number was generated. The Stale Dated Checks in question have been voided."

---

<sup>10</sup> By double counting, the Treasurer asserts that Keyes 2000 should not be forced to refund some excessive contributions twice.

**Recommendation #6**

According to the PAR, the stale-dated refund checks represent untimely resolved excessive contributions, a category separate from unresolved excessive contributions. The Committee asserts that the stale-dated checks for over-donors are included in the unresolved excessive contributions calculation of \$89,861.82 at Finding II.B.

**IV. SUMMARY OF AMOUNTS DUE TO THE U.S. TREASURY**

The Committee will submit with substantiating documentation a revised summary of amounts due to the U. S. Treasury. The Committee asserts that with proper audit review, Findings II.C, III.A and III.B will require significant revision.

Finding II.B.	Unresolved Excessive Contributions
Finding II.C.	Excessive Cash Contributions
Finding III.A.	Non-Qualified Expenses
Finding III.B.	Costs Associated with Continuing to Campaign
Finding III.D.	Stale-Dated Checks

AD-16 (6)

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

**COMMITTEE RESPONSE TO FEDERAL ELECTION COMMISSION  
PRELIMINARY REPORT  
OF THE AUDIT DIVISION ON KEYES 2000, INC.  
ADDENDA**

2002 OCT -9 P 4: 56

*Explanation of Substantiating Documentation and Attached Schedule*

**RE: II. AUDIT FINDINGS AND RECOMMENDATIONS – NON-REPAYMENT MATTERS**

**A. Cash Disbursements and, C. Receipt of Currency in Excess of Limitation**

**A. CASH DISBURSEMENTS**

The Committee attaches supplemental documentation re: the First Union "travel" account, but no further documentation relevant to the PAR Recommendation #1 referencing New Hampshire that is supplemental to materials previously received by the auditor. If indeed the apparent technical violations asserted in the PAR have occurred in the campaign field under the category of Committee cash disbursements, such violations are interpretive and inadvertent, they are unintended deviations from the Committee's best efforts in recordkeeping and reporting, and should be considered in light of the Committee's overall efforts towards compliance with the Federal Election Campaign Act (FECA). If deemed substantive, such apparent violations should be susceptible to a discretionary sanction less injurious to the Committee than those recommended by the auditor in the PAR.

As noted in the Committee's Response Letter, the PAR asserts two categories of apparent violation by Committee functionaries of the following two sections governing cash expenditures, 11 CFR 102.10 and 102.11. The Committee rejects the auditors' assertion that in the circumstances cited, these are the most relevant sections for determining record-keeping compliance. Both interpretations of regulatory violations in the Committee's New Hampshire campaigning and with the First Union Bank staff debit cards rest upon (1) applying a narrow and, in real-world campaign field operations, untenable application of the term "disbursement" to apply to every specific and discrete transaction exceeding \$200.00, and (2) categorizing all the "travel account" expenditures in question to fall under the rubric not of travel advances, but of excessive petty cash fund transactions – which are limited to the even lower threshold of \$100.00 per purchase or expenditure.

The Committee argues in our Letter of Response that it is appropriate to understand the disbursements discussed in the PAR as follows:

The cash expenditures in both categories were paid out by funds drawn directly from an authorized Committee depository, not from any cash contributions which lacked a documented and reported Committee source. Indeed, both these depositories were exclusively operational accounts, funded via Committee transfers of previously documented receipts from accounts segregated for contributions only. The intent of 11 CFR 102.10 is most reasonably interpreted as protection against expenses and field operations paid by unattributed and undocumented, i.e., unbanked or "walking around" cash. It is neither reasonable nor realistic in the exigencies of national campaigning in the ever more highly compressed election cycle to interpret this section as a blanket prohibition of substantive cash transactions simply.

Under application of 11 CFR 102.9 the Committee is obligated to keep an account of all disbursements, consisting of "a record of name, address, date, amount and purpose of the disbursement." In addition, "a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of \$200.00." Hence, all staff remuneration, expense reimbursements, travel advances, operations, goods and services paid in cash that were rendered from lump-sum withdrawals made by check drawn on the Committee's New Hampshire bank account, electronically transferred, or withdrawn via Committee debit cards, should be interpreted as technically in compliance with this section even in amounts exceeding \$200.00, where there are substantiating bank records, ledgers, memoranda, vouchers, invoices or receipts the Committee has produced that correspond with the aggregated amounts of cash withdrawals from an authorized Committee depository.

### **Recommendation #1**

- The Committee's commentary regarding the cash disbursements issues is stated in our Letter of Response and summarized above.
- Substantiating documentation demonstrating relevant, pre-established written campaign policies regarding Committee travel has been previously made available to the auditor. It does not seem to have been considered in the PAR, and can be re-supplied upon request. Supplemental materials have been submitted under response to the PAR categories "Non-Qualified Campaign Expenses" and "Continuing to Campaign," which demonstrate that the debit card withdrawals are part of an identifiable and authorized personnel policy, which even without individual field receipts should provide acceptable, "best effort" accountability for numerous, small *per diem* expenditures by Keyes 2000 functionaries. Committee itineraries supplied to the auditors support our contention that for the travel expenses in question Keyes 2000 responsibly facilitated the travel activities of numerous personnel in the field, and did not effectually exceed either the \$500 travel advance limit, or the \$100 limitation for petty cash purchase or transaction per person.

### C. RECEIPT OF CURRENCY IN EXCESS OF LIMITATION

The Committee attaches supplemental documentation that, when correlated to the previously submitted schedule of "Committee Corrections Provided to PAR for Unidentified Cash Donations," further supports the Committee's contention that Keyes 2000 is in substantive compliance with the FECA regarding unidentified or anonymous cash donations.

As noted in our Letter of Response, the PAR cites Section 110.4(c)(3) of Title 11 of the Code of Federal Regulations stating that, "a candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate."

At the Committee's recent request, samples of contemporaneous documentation from our former state operatives in Iowa are attached relative to this matter. In the interest of cost/benefit analysis for our local and regional media buys, the Iowa state operatives maintained records of attendance and cash donations received at many Keyes 2000 rallies and events. These memoranda support the numbers of attendees and average contribution amounts the Committee presented in our schedule referenced above.

Further, the expanded itineraries provided with the Committee's response to the PAR support our assertion that cash contributions from field events **were banked timely by the Treasurer upon receipt by him or his authorized in-house caging agent, TGS.** These operations were located in Phoenix, AZ, and received regular, but not daily, delivery of small currency contributions from the rural venues of our grassroots campaign. In respect of locally accepted practices, all cash was openly solicited and donated during the campaign rallies, and then counted by a responsible volunteer or campaign functionary in front of at least two witnesses. This system was put in place to ensure fiduciary control of cash in the field, with solid accountability enforced by our state directors for funds solicitation at campaign events. Our operatives were well aware of the \$50.00 cash limit, and contributors were solicited to make donations by check if they wished to exceed that amount. Our donor base is small-dollar, and we have no reason to doubt the law-abidingness of our supporters.

The auditor identified eighty-nine deposits, each containing currency greater than \$50.00. The total for these currency deposits was \$39,243.00. Upon request, the Treasurer provided initial documentation for deposits that were acceptably associated with events. The remaining currency deposits totaling \$19,039.00 are asserted in the PAR to be not "satisfactorily explained." These, after allowing for one permissible \$50.00 anonymous currency contribution from each deposit, are said to have resulted in Keyes 2000 receiving excessive anonymous currency contributions in the amount of \$16,839.00.

The Treasurer and Chief of Staff have asserted, and continue to maintain, that the Candidate's schedules have been available for months to the audit team, but were not reviewed or considered regarding this category of compliance. These schedules, and the itineraries the Committee subsequently compiled for the auditor, demonstrate the correlation between numerous Candidate appearances and the small town practice of "pass the hat" event fundraising that drew many event attendees, and produced many small cash donations. At the Exit Conference, Keyes 2000 accurately represented that Committee deposits from field events were possible and achieved within twenty-four to forty-eight hours *of the date of receipt by the Treasurer and/or the Committee's in-house caging operation.*

All caging vendors were well aware of their obligation to reject any single un-attributed cash donation exceeding \$50.00. The cash deposits made by our commercial caging vendors and our in-house vendor, TGS, which are cited in the PAR as non-compliant, in fact break out on each deposit ticket the dollar amount of any cash contributions, and the number of cash contributors, even if received anonymously. These deposit tickets apparently were not reviewed or considered by the auditor.

Each cash contribution deposit in question has been matched to the Candidate's daily schedules, Candidate and staff travel itineraries, and campaign events where small donor fundraising solicitation was made. The documents which specified these travel and event fundraising efforts, correlated to the Committee's bank records of contribution deposits, were ignored in the PAR. A revised and expanded spreadsheet is attached, which shows this information explicitly. The contemporaneous documentation also attached supports the Committee's position that all of these cash receipts do meet compliance under the regulations, and should be accepted as qualified campaign contributions.

### **Recommendation #3**

Very considerable staff time and Committee expense has been expended to competently correlate events, attendance and contribution data for the auditors. This data includes travel and venue detail that substantiates that the Candidate, staff and volunteers held well-attended rallies and other campaign events throughout rural areas of the country – virtually all of which included an ancillary, low-dollar fundraising appeal. The Committee asserts that none of the \$16,839.00 of cash contributions cited in this category is excessive or non-qualified, and none should be payable to the United States Treasury.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

2002 OCT -9 P 4: 5b

AD16 (7)

**COMMITTEE RESPONSE TO FEDERAL ELECTION COMMISSION  
PRELIMINARY REPORT  
OF THE AUDIT DIVISION ON KEYES 2000, INC.  
ADDENDA**

***Explanation of Substantiating Documentation and Attached Schedules***

**Committee Submission to Address PAR, re:**

**III. AUDIT FINDINGS AND RECOMMENDATIONS – REPAYMENT MATTERS**

**A. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES**

**3. Undocumented Expenses from the Travel Account**

In June of 1999, Keyes 2000 opened an account at First Union Bank and issued debit cards to three key campaign personnel to be used for campaign travel expenses, and other authorized campaign expenses. All but approximately a dozen disbursements from this account were made by debit card; these other disbursements were by counter check, money order or wire transfer, were personally executed by the Chief of Staff, and are fully documented. Account statements that itemize each disbursement in chronological order, plus collateral evidence showing the connection between the expenses and the Committee's campaign efforts will render these transactions sufficiently documented for qualified campaign expenses. This collateral documentation includes revised versions of candidate itineraries supplied prior to the Exit Conference that provide substantiating evidence for the "Undocumented Travel Account Total," expenses which consist of:

**a. Expenses incurred from 1/3/00 through 2/2/00**

All expenses itemized on the PAR schedule of "Undocumented Travel Account Total" are in fact qualified and documented campaign expenses. Candidate itineraries for the period 01/03/00 through 02/02/00 were provided to the auditors and deemed incomplete. Travel account expenses totaling \$83,593 paid during this period from the "travel" account with First Union Bank are re-documented in greater detail and attached as "Schedule of Travel Disbursements," 1/3/00 through 2/2/00. The Committee notes there are a small number of qualified administrative (non-travel) disbursements executed on this account during this period, which have been previously documented in vendor histories, e.g., PR Newswire.



b. Travel Expenses as Winding Down Costs

All expenses itemized on the PAR schedule of "Wind Down Travel Total" are in fact qualified and documented campaign expenses. This category has arisen in the PAR without warning or prior objection whatsoever by the auditor, and is utterly without merit. All travel expenses incurred by the Committee in the wind down period are qualified costs associated with the termination of political activity of a nationwide campaign, including the fundraising imperative of facilitating personal candidate contact with contributors and supporters. All travel and associated costs funded by the Committee in this period represent either compliance, administrative, or legitimate and essential fundraising and contributor solicitation expenditures.

For the record, from June 7 through December 8, 2000, Keyes 2000 directly spent on travel not the \$76,489.43 the PAR carelessly asserts, but rather a total of \$53,766.75. This actual travel amount includes expenditures of \$1,421.53 from our operational account and \$52,345.22 from our First Union "travel" account. These amounts are documented and clarified in both the Committee's "Wind Down Travel Table - First Union Account" (correlated to the PAR Non-Qualified Campaign Expense, Wind Down Travel Total), and the Committee's "Schedule of Wind Down Travel" providing detailed itinerary documentation relevant not only to the non-qualified travel expenses, but also the continuing to campaign category of the PAR. The qualified expenses balance of the First Union transaction activity, \$21,575.03, is properly allocated in the "Wind Down Administrative Table - First Union Account," with all tables and schedules attached.

As a national grassroots campaign with an organizational presence in all fifty states, the District of Columbia, and Puerto Rico and Guam, this Committee coordinated thousands of regional and state volunteer activists, supporters and donors. In the highly front-loaded "whirlwind" primary election cycle that now confronts with greatest disadvantage challenger candidates, there is little opportunity for the candidate to cultivate and consolidate contributor relationships prior to withdrawal and wind down. Keyes 2000 is a Committee with significant debt to retire, sustained almost entirely by small-donor supporters. In closing down our state and regional volunteer groups and state-based offices, and consolidating our national staff and accountability operations, Ambassador Keyes and a few senior staff have met with donors all over the country to thank them for their efforts and solicit their ongoing financial support. The generous contributions of our donors made our campaign possible, and it is they who will assist us in retiring our debt - once its magnitude is finally determined in this audit process.

The regulations at 11 CFR §9034.4(a)(3)(i) authorize "costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act..." which costs reasonably include fundraising and supporter solicitation, whether via direct mail, telemarketing or traveling the former candidate for appearances and personal meetings. It is the Committee's prerogative how

best to execute its own termination, and how most appropriately to handle its donor relations in preparing the ground for its debt retirement activity. The Committee deems our average cost of less than \$1,015 per state for termination travel to be a modest and necessary administrative cost associated with successfully winding down our campaign.

Expenses included in administrative costs such as "office space rental, staff salaries and office supplies" are mentioned in the section cited, but are obviously not exhaustive. Keyes 2000 has established the connection between this travel and termination expenses allowable during winding down. It is the unequivocal contention of the Committee that these expenses in their entirety are qualified campaign expenses under the FECA.

c. Cash Withdrawals

According to the PAR, the Committee's campaign manager and the director of the candidate's security detail made cash withdrawals in the field totaling \$27,365 from the travel account. The auditors alternately refer to these withdrawals as "excessive petty cash" and "cash advances." The PAR refers to them under both Finding III.A.3c, and Finding II.A, Cash Disbursements. Under 11 CFR 9033.11(b)(iv)(A), the itemized bank statements, collated with the Candidate's itineraries offer adequate information as to how the cash was spent among campaign staff and functionaries for meals, incidentals, and local travel.

Supplemental documentation from the Treasurer and the Chief of Staff demonstrating relevant pre-established written campaign policies in the form of memoranda and captured email communications were previously submitted to the auditors, detailing the Committee's understanding that the debit card cash withdrawals were to be utilized as travel advances distributed by senior staff to all authorized functionaries in the field for *per diem* authorized meals, local transportation and incidentals. Evidence demonstrating that these expenditures are part of an identifiable and authorized personnel policy providing travel advance well under the allowable \$500 limit for staff accompanying or advancing the candidate is substantiated by the First Union detailed statements, which "voucherize" each advance by designating by debit card number the senior staff member making the withdrawal and consequently responsible for the advance. The only exception was a last-minute airline ticket purchase on February 22, 2000 which had only enough time to be transacted in cash (credit or debit electronic ticketing requires a minimum one hour transaction processing time).

The Committee itineraries provided further support our contention that with these periodic withdrawals, modest travel advances were efficiently distributed among junior field staffers as well as the senior staff responsible for their allocation. With this arrangement, Keyes 2000 facilitated with documented travel advances drawn from a Committee depository, numerous personnel in the field working with or around candidate appearances. These functionaries consequently did not have to bear "fronting" expenses and the subsequent seeking of reimbursement from the Committee. Indeed,

these travel advances – while not structured as a “petty cash” system and hence not properly susceptible to the PAR recommendation #1 regarding documentation for petty cash standards – generally are shown by the data in the itineraries to have in no significant measure exceeded even the \$100 limitation for petty cash purchase or transaction per person, as is substantiated by simply distributing equitably the amounts withdrawn among the staff detailed for each trip in question.

By lining up the daily data of the itineraries with the withdrawal bank records, the Committee policy for facilitating very minimal travel advances in the campaign field is evident and reasonably substantiated.