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MEMORANDUM

TO: The Commission

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SUBJECT: 1996 Committee on Arrangements for the Republican National
Convention – Statement of Reasons (LRA 472)

AGENDA ITEM
For Meeting of: 1-27-00

I. INTRODUCTION

The Office of General Counsel has prepared the attached draft Statement of Reasons concluding that the 1996 Committee on Arrangements for the Republican National Convention (the "Convention Committee") and the Republican National Committee (the "RNC") must repay \$774,858 to the United States Treasury pursuant to 26 U.S.C. §§ 9007(b)(3) and 9008(h).

On June 25, 1998, the Commission approved the Report of the Audit Division on the Convention Committee (the "Audit Report") and determined that the Convention Committee and the RNC must repay \$1,772,643 to the United States Treasury. Audit Report, Attachment 1 to the draft Statement of Reasons. See 11 C.F.R. § 9008.3(a)(4) and (a)(4)(vi). The Commission's repayment determination was based in part on its

finding that the Committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds its expenditure limitation. See 26 U.S.C. §§ 9007(b)(3); 9008(h) and 11 C.F.R. § 9008.12(b)(3). Specifically, the Commission determined that the Convention Committee: accepted in-kind contributions from the San Diego Host Committee ("Host Committee") in the form of its expenditures that were impermissible host committee expenditures of \$892,489, accepted in-kind contributions from the RNC of \$729,994, and incurred expenditures of \$150,160 in excess of the expenditure limitation.¹ On September 24, 1998, the Committee submitted legal and factual materials² pursuant to 11 C.F.R. § 9007.2(c)(2)(i)³ in an effort to demonstrate that no repayment or a lesser repayment is required to be paid to the United States Treasury. On February 24, 1999, the Committee addressed the Commission in an oral hearing. See Transcript, Attachment 4 to the draft Statement of Reasons.

II. IN-KIND CONTRIBUTION FROM THE SAN DIEGO HOST COMMITTEE (\$482,111)

The in-kind contribution from the Host Committee arises from the Host Committee's payments to David J. Nash and Associates, Inc. ("Nash") for television production services. The Convention Committee maintains that all of the Host Committee's payments were permissible host committee expenditures or were indistinguishable from other expenditures that the Commission has previously permitted host committees to make. Alternatively, the Convention Committee argues that it should be permitted to exercise the common law right of recoupment or offset to reduce the amount of any impermissible in-kind contributions received from the Host Committee by the amount of expenditures that the Convention Committee made, but that were permissible host committee expenditures.

This Office recommends that the Commission reduce the Nash expenditures that are determined to be impermissible host committee expenditures from \$892,489, as the Commission determined in the Audit Report, to \$482,111, a reduction of \$410,378. In the draft Statements of Reasons, this Office recommends that the Commission determine that the Nash expenditures related to video graphics known as Main and End Titles (\$26,684), a Moving Light Operator (\$11,735) and Video Crew Labor (\$46,773) were

¹ This calculation reflected estimated winding down costs of \$512,829. The Audit Division has updated and recalculated the Convention Committee's Statement of Net Outstanding Convention Expenses and \$150,160 in excessive expenditures have been eliminated. See Attachment 2 to the draft Statement of Reasons. The revised Statement of Net Outstanding Convention Expenses reflects revised estimates of winding down expenses.

² The Convention Committee submitted six volumes of exhibits attached to its Administrative Review Request. These documents are available for review in the Commission Secretary's Office.

³ Pursuant to 11 C.F.R. § 9008.12(c), the repayment determination procedures provided for publicly funded general election candidates under 11 C.F.R. § 9007.2(c) through (h) are applicable to national and convention committee repayment determinations. See also 26 U.S.C. § 9008(h).

permissible host committee expenditures and therefore not subject to repayment. Additionally, this Office recommends that the Commission determine that the portion of Nash's \$73,748 expenditures for satellite costs that were the functional equivalent of a cable to the press facilities were permissible host committee expenditures. This Office also concurs with the Audit Division that the Nash expenditures related to a Production Accountant (\$15,000) should be attributed to those Nash expenditures that were permissible host committee expenditures and those that were not. Once so attributed, the portion related to the permissible expenditures (\$11,629) is removed from the repayment determination. The Audit Division agrees with these changes, except those related to permitting a portion of the satellite expenses.

Furthermore, this Office recommends that the Commission reduce the Nash expenditures that are determined to be impermissible host committee expenditures by the amounts related to the live remote video productions (\$138,442),⁴ the related satellite costs,⁵ the related Television Producer fees (\$6,250) and the taped remote video production of a tour of Russell, Kansas (\$70,000).⁶ The Commission did not include expenditures related to other taped remote video productions (\$180,414) in the Audit Report Repayment Determination.⁷ Based on available information, it appears that all the videos were used in the same way during the convention proceedings.

The proposed Audit Report submitted to the Commission on November 26, 1997 recommended that the Commission determine that all of the Nash expenses were impermissible host committee expenditures subject to repayment. However, this

⁴ The live remote video productions that were broadcast were from Russell, Kansas (Fireworks/seconding Sen. Dole's nomination); Sacramento, California (Steve Young with students); San Diego, California (Sen. Dole watching Mrs. Dole's speech); and Miami, Florida (Interview regarding Medicare). See Greener affidavit, Attachment 3 to the draft Statement of Reasons, at A107 and A109-12, ¶¶ 15 and 19-27; Nash affidavit, Attachment 3 to the draft Statement of Reasons, at A584 and A588-89, ¶¶ 12 and 25. Other documentation shows that a portion of the expenses related to live video remote productions from Fon du Lac, Wisconsin and another from San Diego, California that were not shown. See Attachment 7 to the draft Statement of Reasons, at 4.

⁵ The Convention Committee explains that the \$73,748 spent for satellite costs served two purposes: providing a television signal to broadcasters not present in San Diego in a manner that is functionally similar to providing that signal via a cable to the press facilities at the convention center and providing the television signals related to the live remote video productions. Because the draft Statement of Reasons determines that both purposes served by the satellite costs were permissible host committee activity, the draft Statement of Reasons removes the entire \$73,748 from the Repayment Determination upon Administrative Review. Nonetheless, documentation available in the Office of General Counsel establishes that approximately \$58,968 of the \$73,748 were related to the live videos.

⁶ This video tour of Russell, Kansas was hosted by former Senator Nancy Kassebaum and was not shown at the Convention. It was not related to the live remote video production from Russell, Kansas listed *supra* in footnote 3. See Greener affidavit, Attachment 3 to draft Statement of Reasons, at A109, ¶ 20.

⁷ The taped videos consisted of "video clips highlighting profiles of delegates . . . [and] Maury Taylor, Joe Paterno, Mrs. Laura Bush (never used), Connie Mack, and Steve McDonald." See Attachment 7 to the draft Statement of Reasons, at 5.

recommendation failed by a vote of 3 to 2. *See* Audit Report, Attachment 1 to the draft Statement of Reasons, at 56. The Commission voted 5 to 0 to approve a motion making the \$70,000 for the Russell shoot repayable. The Commission again voted 5 to 0 to approve a motion making the \$138,442 for the live videos repayable. The Commission excluded the \$180,414 for taped videos from the subsequent repayment motion. For the Commission's discussion of the videos, see Open Session Transcripts, Attachment 3 to the draft Statement of Reasons, at A976-80 (Russell tour); A978 and A980-83 (live videos) and A1071-77 (taped videos).

The Convention Committee points to the disparate treatment and argues that the Commission should treat the video expenditures consistently as permitted host committee expenditures. Upon careful consideration, we do not believe there is a basis for a legally significant distinction between the videos that were included in the repayment determination and those that were not included in the repayment determination. Therefore, this Office recommends that the Commission treat the taped and live videos at issue consistently. Although this Office originally recommended that all of these videos be subject to repayment, in order to achieve a consistent treatment, we believe that the expenditures related to the live videos, the related satellite costs, the related Producer fees and the Russell tour video should be excluded from the Repayment Determination upon Administrative Review in the draft Statement of Reasons.

Finally, Nash's overhead expenses were reallocated to reflect the changes in the proportion of Nash's expenditures that were permissible and impermissible host committee expenditures. This reallocation reduced the repayment amount by \$20,879.

This Office recommends that the Commission deny the Convention Committee's requested recoupment or offset to reduce the amount of its repayment by the amount of expenditures that the Convention Committee made, but that were permissible host committee expenditures. When a convention committee has accepted private contributions in addition to a full public grant, the Presidential Election Campaign Fund Act provides that the remedy is to seek a repayment. 26 U.S.C. §§ 9007(b)(3) and 9008(h). Furthermore, there is no regulatory provision that permits the Convention Committee and the Host Committee to reallocate past expenditures in an effort to eliminate the Convention Committee's repayment obligation to the United States Treasury. Therefore, as a matter of convention financing law, this Office recommends that the Commission deny the requested recoupment.

III. IN-KIND CONTRIBUTION FROM THE REPUBLICAN NATIONAL COMMITTEE (\$292,747)

The in-kind contribution from the RNC arises from the RNC's payments to Creative Broadcast Techniques, Inc. ("CBT") for television production services related to television programs broadcast by the RNC and the Convention Committee, as well as creation of the "basic feed," the television coverage of the convention provided by the Convention Committee. This Office recommends that the Commission conclude that the RNC made an in-kind contribution to the Convention Committee totaling \$292,747 arising from its payments to CBT, which is \$437,247 less than the Audit Report Repayment Determination of \$729,994. In the Audit Report, the Commission determined that the Convention Committee and the RNC properly allocated the cost of the 14 basic feed cameras, by dividing the cost evenly. We recommend the conclusion that the cost associated with the 14 basic feed cameras is \$833,345 based on information submitted by the RNC. The Convention Committee asserts that \$833,345 is not a final figure for the cost of the basic feed and therefore estimates those costs as 14/25 of the total cost of the CBT contract, or \$984,646, which is based on the proportion of CBT cameras used for the basic feed.

The remainder of the CBT services related to the television programs' production expenses. In the Audit Report, the Commission determined that the division of airtime expenses for these programs did not result in a contribution to the Convention Committee. See Audit Report, Attachment 1 to the draft Statement of Reasons, at 55, item 5 (stating 5-0 vote). In order for the RNC's payment of airtime expenses not to be a contribution to the Convention Committee, the programs broadcast must have been "clearly separate" from the Convention. We recommend that the CBT production expenses be attributed between the RNC and the Convention Committee to reflect the Commission's determination that the broadcast of the GOP-TV programs was clearly separate from the Convention, and therefore, not a contribution to the Convention Committee.

This Office also recommends that the Commission conclude that three of the remaining 11 CBT cameras were used exclusively for GOP-TV broadcasts and that the other eight CBT cameras were used for both COA-TV and GOP-TV broadcasts. This Office further concludes that the costs associated with those eight shared cameras should be split between the Convention Committee and the RNC. The Audit Report attributed the costs related to all 11 cameras based on broadcast hours, which resulted in an in-kind contribution of \$729,994. The difference between the Repayment Determination upon Administrative Review and the Audit Report Repayment Determination is accounted for by the attribution of three cameras to the RNC exclusively, the different attribution method of the costs associated with the other eight cameras and the additional payments made by the Convention Committee that were not reflected in the Audit Report. The Audit Division has no opinion regarding the attribution of these expenses.

IV. CONCLUSION

In sum, the Audit Report Repayment Determination of \$1,772,643 is reduced in the draft Statement of Reasons by \$150,160 for Estimated Winding Down Costs, \$410,378 related to Nash expenditures that are determined to be permissible host committee expenditures, and \$437,247 related to CBT, for a total reduction of \$997,785, to a Repayment Determination upon Administrative Review of \$774,858.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Determine that the 1996 Committee on Arrangements for the Republican National Convention and the Republican National Committee must repay \$774,858 to the United States Treasury pursuant to 26 U.S.C. §§ 9007(b)(3) and 9008(h);
2. Approve the attached Statement of Reasons; and
3. Approve the appropriate letters.

Attachment

Draft Statement of Reasons (with attachments 1-13)

1 The Convention Committee and the RNC received \$12,364,000 in public funds
2 for the purpose of conducting the national nominating convention. *See* Report of the
3 Audit Division on the 1996 Committee on Arrangements for the Republican National
4 Convention, Attachment 1, at 6. This amount represented the Convention Committee's
5 full entitlement to public funds and its expenditure limitation for the convention. The
6 Convention Committee expended its full public grant plus the contributions it received in
7 conducting the national nominating convention, according to a revised Statement of Net
8 Outstanding Committee Expenses. Attachment 2.

9 The Convention Committee was audited pursuant to 11 C.F.R. § 9008.11. On
10 June 23, 1997, the Commission's Audit staff held an exit conference with the Convention
11 Committee to discuss preliminary findings and recommendations that the Audit staff
12 anticipated presenting to the Commission for its approval. 11 C.F.R. §§ 9008.11,
13 9007.1(b)(2)(iii), and 9038.1(b)(2)(iii). The Audit Division's preliminary findings and
14 recommendations were contained in an Exit Conference Memorandum ("ECM"). *Id.* On
15 September 9, 1997, the Convention Committee filed its written response to the ECM,
16 which is included in its exhibits to its Administrative Review Request. *See* Attachment 3,
17 at A1 through A644.

18 On June 25, 1998, the Commission approved the Audit Report and determined
19 that the RNC and the Convention Committee exceeded the expenditure limitation by
20 \$1,772,643 and therefore must repay that amount to the United States Treasury. The
21 repayment amount included in-kind contributions from the San Diego Host Committee
22 ("Host Committee") in the amount of \$892,489 and from the RNC in the amount of
23 \$729,994.

1 The Host Committee was established to serve as a host committee for the
2 Republican National Convention pursuant to 11 C.F.R. §§ 9008.50 to 9008.54. The Host
3 Committee did not receive any public funds pursuant to Title 26 of the United States
4 Code. The Host Committee received \$23,080,276 from other sources, and it spent
5 \$22,923,061 in connection with the 1996 Republican National Convention.¹

6 On September 24, 1998, the Convention Committee submitted legal and factual
7 materials disputing the repayment determination.² Attachment 3. On February 24, 1999,
8 the Convention Committee and the RNC appeared before the Commission at an oral
9 hearing on the repayment determination. Transcript, Attachment 4. As a part of their
10 opening statement at the oral hearing, the Convention Committee and the RNC presented
11 the Commission with additional documents in support of their arguments.³ Attachment 5.

12 **II. LAW**

13 In order to be eligible to receive public funds to finance the presidential
14 nominating convention, a national party committee must establish a convention
15 committee, which is responsible for conducting the day-to-day arrangements and
16 operations of that party's presidential nominating convention and must register with and
17 report to the Commission as a political committee. 11 C.F.R. § 9008.3(a)(1), (a)(2)
18 and (b). A national party committee and its convention committee must also file a written

¹ Pursuant to 11 C.F.R. § 9008.54, the Commission audited the Host Committee, and the receipts and expenditures stated above are as of October 10, 1996, the effective date of the Host Committee's Audit Report. The Commission approved that Audit Report on April 23, 1998.

² The Convention Committee's legal and factual materials were due on August 25, 1998. However, the Commission granted the Committee an extension until September 24, 1998 to submit the materials.

³ Thus, the documents were submitted within the five day period customarily allowed by the Commission for the submission of additional documentation following an oral hearing. *See generally* 11 C.F.R. § 9007.2(c)(3). An additional copy of these documents was also submitted after the oral hearing.

1 agreement with the Commission agreeing to conditions set forth in 11 C.F.R.
2 § 9008.3(a)(4)(i) through (viii) to be eligible for public funding. 11 C.F.R.
3 § 9008.3(a)(4). As part of this agreement, the national party committee and its
4 convention committee must agree to comply with 2 U.S.C. §§ 431 through 451,
5 26 U.S.C. § 9008, and applicable Commission regulations. 11 C.F.R. § 9008.3(a)(4)(vii).
6 Thus, the committees must agree to abide by 2 U.S.C. §§ 441a and 441b, which prohibit,
7 *inter alia*, corporate and labor organization contributions or expenditures in connection
8 with conventions, and they must agree to comply with the applicable expenditure
9 limitation set forth at 26 U.S.C. § 9008(d) and 11 C.F.R. § 9008.8. 11 C.F.R.
10 § 9008.3(a)(4)(vii) and (i), respectively. The national committee of a major party may not
11 make expenditures with respect to a publicly-financed presidential nominating convention
12 which, in the aggregate, exceed the amount of payments to which such committee is
13 entitled under 26 U.S.C. § 9008(b)(1). 26 U.S.C. § 9008(d)(1). Thus, the expenditure
14 limitation is equal to the convention committee's entitlement to public funds. 26 U.S.C.
15 § 9008(d).

16 A host committee may be created to represent a city hosting a nominating
17 convention in matters involving a presidential nominating convention. 11 C.F.R.
18 § 9008.51. Any local organization that is not organized for profit, whose net earnings do
19 not inure to the benefit of any private shareholder or individual and whose principal
20 objective is the encouragement of commerce in the convention city, as well as the

1 projection of a favorable image of the city to convention attendees, may serve as a host
2 committee. 11 C.F.R. § 9008.52(a).⁴

3 Host committees may receive funds or in-kind donations from local businesses
4 (excluding banks), local labor organizations, and other local organizations and
5 individuals.⁵ 11 C.F.R. § 9008.52(c)(1). The purposes for which a host committee may
6 uses funds in connection with a nominating convention are specified in 11 C.F.R.
7 § 9008.52(c)(1)(i) through (xi) and include: (i) "promoting the suitability of the city as a
8 convention site;" (ii) "welcoming the convention attendees to the city;" (iii) "facilitating
9 commerce;" (vi) "local transportation services;" (vii) "law enforcement;" (viii)
10 "convention bureau personnel to provide central housing and reservation services;" (ix)
11 "hotel rooms at no charge or at a reduced rate;" and (x) "accommodations and hospitality
12 for committees of the parties responsible for choosing the site of the conventions."
13 See 11 C.F.R. § 9008.52(c)(1)(i)-(iii) and (vi)-(x). Host committees may also provide
14 "use of an auditorium or convention center" and "construction and convention related
15 services," such as "construction of podiums, press tables, false floors, camera platforms,
16 additional seating, lighting, electrical, air conditioning and loud speaker systems, offices,
17 office equipment, and decorations." 11 C.F.R. § 9008.52(c)(1)(v). Finally, in addition to
18 those facilities and services specifically enumerated in 11 C.F.R. § 9008.52(c)(1)(i)

⁴ Section 9008.52(a) gives the following examples of local organizations that may serve as host committees: a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau.

⁵ Host committees may also accept goods or services from commercial vendors under the terms and conditions set forth at 11 C.F.R. § 9008.9, which also apply to convention committees. 11 C.F.R. § 9008.52(b).

1 through (x), a host committee or a municipal fund is permitted to provide "other similar
2 convention-related facilities services" under 11 C.F.R. § 9008.52(c)(1)(xi).

3 A convention committee may use its public funds only for the purposes set forth
4 at 11 C.F.R. § 9008.7. See 26 U.S.C. § 9008(c). Convention expenses include all
5 expenses incurred by or on behalf of a political party's national committee or convention
6 committee with respect to and for the purpose of conducting a presidential nominating
7 convention or convention-related activities. 11 C.F.R. § 9008.7(a)(4). Some examples of
8 convention expenses include administrative and office expenses for conducting the
9 convention including stationery, office supplies, office machines, and telephone charges,
10 but exclude the cost of any services supplied by the national committee at its headquarters
11 or principal office if such services are incidental to the convention and not utilized
12 primarily for the convention. 11 C.F.R. § 9008.7(a)(4)(x). Generally, convention
13 expenses incurred with respect to a presidential nominating convention are subject to the
14 expenditure limitation. See 11 C.F.R. § 9008.8(a). Nevertheless, certain expenditures
15 related to a convention are not subject to the expenditure limitation. For example,
16 permissible host committee expenditures like those examples listed in 11 C.F.R.
17 § 9008.52 shall not be considered convention committee expenditures and shall not count
18 against the convention committee's expenditure limit. 11 C.F.R. § 9008.8(b)(1).⁶ Host
19 committee expenditures that are not in accordance with section 9008.52 are in-kind
20 contributions to the convention committee that may be considered convention committee
21 expenditures and count against its expenditure limit. See *id.*

⁶ Additionally, host committee expenditures that are permitted under section 9008.52 are exempt from the prohibition of corporate and labor organization contributions or expenditures. 11 C.F.R. § 114.1(a)(2)(viii).

1 If the Commission determines that a national party committee accepted
2 contributions to defray convention expenses which, when added to the amount of
3 payments received, exceeds the expenditure limitation, it shall notify the national
4 committee of the amount of contributions so accepted, and the national committee shall
5 pay the amount specified to the United States Treasury. 11 C.F.R. § 9008.12(b)(3); *see*
6 *also* 26 U.S.C. §§ 9007(b)(3), 9008(h); and 11 C.F.R. § 9008.12(a).⁷ A convention
7 committee's entitlement to public funds shall be adjusted so as not to exceed the
8 difference between the expenditure limitation and the amount of private contributions
9 received to defray convention expenses. 11 C.F.R. § 9008.5(b). If the Commission
10 determines that any portion of the payments to the national committee or convention
11 committee was in excess of the aggregate payments to which the national committee was
12 entitled under 11 C.F.R. §§ 9008.4 and 9008.5, it shall so notify the national committee
13 and the national committee shall pay an amount equal to such portion to the United States
14 Treasury. 11 C.F.R. § 9008.12(b)(1); *see also* 26 U.S.C. § 9007(b)(1). If the
15 Commission determines that the national committee or convention committee incurred
16 convention expenses in excess of the limitation, it shall so notify the national committee
17 and the national committee shall pay an amount equal to such excessive expenditures to
18 the United States Treasury. 11 C.F.R. § 9008.12(b)(2); *see also* 26 U.S.C. § 9007(b)(2).
19 In the case of in-kind contributions from a host committee that cause the convention

⁷ The statute authorizes the Commission to require repayment of public funds equal to any contributions, 26 U.S.C. § 9007(b)(3), while the regulation requires a repayment equal to those contributions that, when added to the amount of public funds received, exceed the expenditure limit, 11 C.F.R. § 9008.12(b)(3). In these circumstances, the full amount of any contributions is subject to repayment under either the statute or the regulation because the Convention Committee received public funds equal to its expenditure limit.

1 committee to exceed the expenditure limitation, the Commission may seek repayment if a
2 convention committee knowingly helps, assists or participates in the making of a
3 convention expenditure by a host committee that is not in accordance with 11 C.F.R.
4 § 9008.52. 11 C.F.R. § 9008.12(b)(7).

5 **III. IN-KIND CONTRIBUTION FROM SAN DIEGO HOST COMMITTEE**

6 **A. AUDIT REPORT REPAYMENT DETERMINATION**

7 The Convention Committee contracted with David J. Nash and Associates, Inc.
8 (“Nash”) for Nash’s services. According to its contract with the Convention Committee,
9 Nash’s duties included producing the television broadcast and the “theatrical production”
10 of the convention and supervising production consultants and vendors. Nash Contracts
11 with Convention and Host Committees, Attachment 6, at 1 and 11. Subsequently, Nash
12 also agreed to a separate contract with the Host Committee, which required Nash to
13 “render such television production and related services consistent with the specifications
14 and requirements for the Convention established by the [Convention Committee.]” *Id.*,
15 at 11. Mr. Nash states that “the design, installation, operation and maintenance of the
16 Convention’s closed circuit television system” were among Nash’s responsibilities under
17 these contracts.⁸ Nash affidavit, Attachment 3, at A583, ¶ 10. The closed circuit
18 television system broadcast the Convention proceedings within the Convention Center to
19 the following areas: (1) the Sail Area, which was an overflow seating area on the

⁸ Although Mr. Nash states that these responsibilities were “[f]oremost” among Nash’s responsibilities under the contracts, neither contract mentions closed circuit television system *per se*. See Attachment 6.

1 Convention Center's roof;⁹ (2) the media areas; (3) areas within the Convention Center
2 that had obstructed or limited views of the podium; and (4) the large television screens
3 located behind the podium. *Id.* Pursuant to these two contracts, Nash was paid net
4 amounts of \$117,500 from the Convention Committee and \$2,245,520 from the Host
5 Committee. Attachment 1, at 15-16.

6 In its Audit Report Repayment Determination, the Commission determined that
7 \$892,489 of the Host Committee's \$2,245,520 payments to Nash were not expended for
8 purposes in accordance with 11 C.F.R. § 9008.52. Pursuant to 11 C.F.R. § 9008.12(b)(7),
9 the Commission also determined that the Convention Committee knowingly helped,
10 assisted or participated in these Host Committee's expenditures based on the Convention
11 Committee's control over Nash's performance. As a result, \$892,489 of the Nash
12 expenditures were not subject to the exemption in 11 C.F.R. § 9008.8(b)(1) and were
13 therefore expenditures that must count toward the Convention Committee's expenditure
14 limitation. As provided in 11 C.F.R. § 9008.12(b)(3), the Commission determined that
15 the Convention Committee accepted contributions of \$892,489 that, when added to the
16 amount of public funds the Convention Committee received, results in the Convention
17 Committee's exceeding its expenditure limitation; the Commission therefore determined
18 that the amount in excess of the expenditure limitation is repayable to the United States
19 Treasury. *See* Attachment 1, at 37-38.

⁹ Expenditures of \$165,299 related to the construction of the Sail Area were not included in the Audit Report Repayment Determination. *See* Attachment 1, at 64. Host committees may provide use of a convention center and construction and convention related services for that location. 11 C.F.R. § 9008.52(c)(1)(v).

1 **B. REQUEST FOR ADMINISTRATIVE REVIEW**

2 The Convention Committee maintains that all of the funds provided to Nash by
3 the Host Committee were expended for purposes permitted by 11 C.F.R. § 9008.52(c)
4 and therefore the \$892,489 at issue should not be subject to a repayment determination.
5 The Convention Committee disputes the repayment determination with two primary
6 arguments: (1) some of the expenditures were for purposes that are expressly listed in
7 section 9008.52(c); and (2) some of the expenditures are indistinguishable from other
8 host committee expenditures previously permitted by the Commission, either in its
9 consideration of the Convention Committee's Audit Report, in its issuance of Advisory
10 Opinion 1980-21, or in its consideration of the Audit Report related to the 1996
11 Democratic National Convention Committee ("DNCC").¹⁰ Finally, the Convention
12 Committee argues in the alternative that it should be permitted to offset any Host
13 Committee expenditures that were not in accordance with section 9008.52(c) by
14 expenditures the Convention Committee made that the Host Committee could have made
15 in accordance with section 9008.52(c).

16 The Convention Committee argues that many of the Nash expenditures were for
17 purposes expressly listed in 11 C.F.R. § 9008.52(c). For example,
18 section 9008.52(c)(1)(ii) permits expenses incurred welcoming the convention attendees
19 to the city, and the Convention Committee claims that expenditures of \$49,032 for an
20 orchestra, \$22,416 for Sail Area entertainment and \$1,199 for an announcer should be

¹⁰ The Audit Reports for the DNCC and the related Chicago Host Committee were approved on June 25, 1998 and are included in the Convention Committee's Exhibits at Attachment 3, at A1136 and A1117, respectively. In the DNCC Audit Report, the Commission determined that the DNCC must repay \$695,270 to the United States Treasury. The DNCC sought an administrative review of its repayment determination, and that review is pending before the Commission.

1 permitted as welcoming expenses. Attachment 3, at 38-40. Section 9008.52(c)(1)(v) lists
2 decorations as a permitted expenditure purpose, and the Convention Committee maintains
3 that the live video remote productions constitute decorations so that the \$138,442 related
4 expenditures should be permitted. *Id.*, at 34-35. The Convention Committee also argues
5 that the \$104,279 spent for a balloon drop, a confetti cannon, fireworks and video
6 graphics should also be permitted as decorations. *Id.*, at 36-38. With respect to
7 approximately one-half of the \$73,748 satellite time expenditures, the Convention
8 Committee argues that because the satellite time was used to deliver the television signal
9 known as the "basic feed" to various broadcasters, it was the functional equivalent of a
10 cable delivering the same signal to the broadcasters at the convention site. *See id.*, at 36,
11 and Nash affidavit, Attachment 3, at A586, ¶ 18c. The Convention Committee apparently
12 maintains that such a cable would be in accordance with section 9008.52(c)(1)(v) as
13 construction services. Finally, the Convention Committee argues that the reference to
14 offices in section 9008.52(c)(1)(v) provides authority for the Host Committee to provide
15 the Convention Committee with overhead expenses of \$210,851. Attachment 3, at 40-42.

16 The Convention Committee argues that some of the expenditures at issue are
17 indistinguishable from other Host Committee expenditures that the Commission did not
18 include in the repayment determination. With respect to the \$222,522 spent for closed
19 circuit television services, the Convention Committee maintains that the Commission has
20 not stated a sufficient reason to distinguish the expenditures included in the repayment
21 determination from those that were not. *Id.*, at 26-33. The Convention Committee also
22 states that the live remote video productions are indistinguishable from the taped remote
23 video productions that the Commission did not include in its repayment determination.

1 Thus, the Convention Committee argues that the \$138,442 related to live remote video
2 productions should not be included in any repayment determination. *Id.*, at 34-35.¹¹ The
3 Convention Committee again cites the expenditures for taped remote video productions
4 and claims those expenditures are indistinguishable from the \$70,000 expended to
5 produce a documentary about Russell, Kansas. *Id.*, at 40. Finally on this point, Nash
6 incurred \$210,851 of overhead and indirect costs, and the Convention Committee argues
7 that because the Commission determined that over \$1.2 million in Nash expenditures
8 were consistent with section 9008.52, some associated overhead expenditures must also
9 be permitted. *Id.*, at 40-42.

10 In Advisory Opinion ("AO") 1980-21, the Commission permitted a host
11 committee to expend funds to provide convention attendees with tickets to a professional
12 baseball game. The Convention Committee contends that the Host Committee's
13 expenditures of \$49,032 for an orchestra and \$22,416 for entertainment in the Sail Area
14 are indistinguishable from the expenditures permitted in AO 1980-21. Attachment 3,
15 at 39-40.

16 Finally, with respect to some expenditures, the Convention Committee argues that
17 the Chicago Host Committee made similar expenditures in connection with the DNCC
18 that were not included in the DNCC's repayment determination. The Convention
19 Committee maintains that the DNCC was permitted to receive services provided by the
20 Chicago Host Committee that were similar to the \$222,522 spent by Nash for television
21 production services. Attachment 3, at 26-33. Additionally, the Convention Committee

¹¹ The Convention Committee also maintains that approximately one-half of the \$73,748 spent for satellite time was related to the live remote video productions and should be permitted in connection with the remote video productions. Attachment 3, at 36.

1 argues that the Commission determined that the Chicago Host Committee's expenditures
2 for fireworks, entertainment and stage hands and technicians were in accordance with
3 11 C.F.R. § 9008.52(c) in the DNCC's Audit Report. *Id.*, at 27 n.5 and 37-38.

4 The Convention Committee also argues in the alternative, that if a repayment is
5 due to the United States Treasury, the Commission should take into consideration
6 approximately \$1.3 million of expenses paid by the Convention Committee that it
7 maintains could have been paid by the Host Committee in accordance with 11 C.F.R.
8 § 9008.52. *Id.*, at 47-54. The Convention Committee uses the common law equitable
9 theory of recoupment to support its argument that the Commission should permit the
10 Convention Committee to offset expenditures that it paid, but that could have been paid
11 by the Host Committee.¹² *Id.*, at 42

12 The Convention Committee presents three primary arguments in support of
13 allowing a recoupment. First, the Convention Committee asserts that recoupment claims
14 have been allowed in a broad range of legal and administrative contexts and the
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¹² Recoupment is a common law, equitable doctrine that permits a defendant to have a plaintiff's monetary claim reduced by reason of some claim that the defendant has against the plaintiff arising out of the same transaction or occurrence giving rise to the plaintiff's claim. 6 *Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, Civil* § 1401 (2d ed. 1990). A recoupment against the government must meet three criteria: (1) it must arise from the same transaction or occurrence that is the subject of the government's suit; (2) it must seek relief of the same kind or nature as that sought by the government; and (3) it must be purely a defensive setoff, and not seek affirmative recovery from the government. *United States v. M/V Santa Clara I*, 819 F. Supp. 507, 513 (D.S.C. 1993); see also *Reiter v. Cooper*, 507 U.S. 258, 264 (1993); *United States v. Dalm*, 494 U.S. 596, 611 (1990).

1 Commission has allowed similar post hoc reallocations in other contexts.¹³ Attachment
2 3, at 44. Second, the Convention Committee argues that permitting a recoupment is
3 appropriate because there is a substantial overlap between expenses that a convention
4 committee may pay and those that may be paid by a host committee without counting
5 toward the convention committee's expenditure limitation. Attachment 4, at 38. Finally,
6 the Convention Committee states that the Commission allowed the Democratic National
7 Convention Committee ("DNCC") to exercise the right of recoupment. Attachment 3,
8 at 45.

9 According to the Convention Committee, it has documented numerous expenses
10 totaling \$1,355,071 that were paid by the Convention Committee but that could have
11 been paid by the Host Committee in accordance with section 9008.52(c). Attachment 3,
12 at 46-49. The Convention Committee divides these expenses into three major categories:
13 (1) \$441,185 of office equipment and other convention infrastructure-related expenses;

¹³ At the Oral Hearing, the Convention Committee utilized a section of the Office of General Counsel's Briefing Memorandum arguing that Commission's Counsel agreed that offset should be permitted. However, the Briefing Memorandum did not take a definitive position on the issue, stating instead, "[i]t is unclear whether the Convention Committee should be allowed to offset a portion of its expenditures by an amount that represents expenditures the Convention Committee paid but that the Host Committee could have paid in accordance with 11 C.F.R. § 9008.52." Office of General Counsel Briefing Memorandum, at 10. The Memorandum also stated: "[i]f the Commission allows the offset, the Convention Committee must be able to demonstrate that the expenditures offered in the offset are host committee expenditures in accordance with 11 C.F.R. § 9008.52 in fact and law." *Id.* Furthermore, staff memoranda do not set forth the Commission's position. See *Fulant v. Federal Election Commission*, 147 F.3d 924, 928 (D.C. Cir. 1998).

1 (2) \$110,387 of local transportation and security expenses; and (3) \$803,499 of hotel
2 rooms for volunteers, speakers and convention staff. *Id.*¹⁴

3 **C. REPAYMENT DETERMINATION UPON ADMINISTRATIVE**
4 **REVIEW**

5 The Convention Committee's administrative review request presents the
6 Commission with several issues related to whether certain Nash expenses were
7 permissible host committee expenditures. Because permissible host committee
8 expenditures that are made in accordance with 11 C.F.R. § 9008.52 are not subject to the
9 convention committee's expenditure limitation, these issues require an interpretation of
10 the breadth of host committee activity permitted under section 9008.52(c). The
11 Commission's recognition of an exception to the convention committee expenditure
12 limitation for host committee activity is in the context of public funds that are provided to
13 convention committees only upon the recipients' agreement to an expenditure limitation.
14 As the Commission previously noted, "the national committee of a political party is
15 entitled to receive public money to pay for its convention and is in turn limited in the
16 amount which it may spend on that convention." 44 Fed. Reg. 63,038 (1979).

17 Section 9008.52(c) is based on previous 11 C.F.R. § 9008.7(b) and (d), which
18 permitted government agencies to make certain expenditures for facilities and services
19 with respect to a convention without the value of the facilities and services counting

¹⁴ The Convention Committee asserts that its first category of expenses are in accordance with section 9008.52 because the regulations expressly state that host committees may pay for office expenses, office equipment, and local transportation services. Attachment 3, at 47. With respect to the second category of expenses, the Convention Committee contends that uniforms worn by security volunteers and local transportation staff were not only decorative tee-shirts, but also uniforms that were a necessary component of the Convention Committee's security system, and therefore, a permissible host committee expense in accordance with section 9008.52(c)(1)(vii). *Id.*, at 48. Finally, the Convention Committee cites section 9008.52(c)(1)(ix) of the Commission's regulations as a basis for permitting \$803,499 in hotel costs for volunteers, speakers, and convention staff. *Id.*, at 48-49.

1 toward the party's expenditure limitation, 11 C.F.R. § 9008.7(b) (1994), permitted host
2 committees to promote the convention city and its commerce, 11 C.F.R. § 9008.7(d)(2)
3 (1994), and permitted host committees to make expenditures similar to government
4 agencies, 11 C.F.R. § 9008.7(d)(3) (1994). See 11 C.F.R. § 9008.7(b), (d) (1994);
5 *Explanation and Justification for 11 C.F.R. § 9008.52*, 59 Fed. Reg. 33614 (1994) and
6 *Explanation and Justification for 11 C.F.R. § 9008.7*, 44 Fed. Reg. 63037 (1979). While
7 the provisions related to host committees permitted unlimited donations from individuals,
8 local businesses, local government agencies, and union locals to the host committee for
9 use in promoting the city and its commerce, "far greater restrictions [were] placed on
10 funds received and expended to defray convention expenses." 44 Fed. Reg. 63037
11 (1979). Specifically, only local retail businesses were permitted to donate funds to defray
12 convention expenses and such donations were "limited to an amount proportionate to the
13 commercial return reasonably expected during the life of the convention by the particular
14 business." 44 Fed. Reg. 63037 (1979). This provision for the host committee to defray
15 convention expenses under these limited circumstances, i.e., 11 C.F.R. § 9008.7(d)(3)
16 (1994), was "intended to be a narrow exception to the statutory limitation on convention
17 expenses." 44 Fed. Reg. 63038 (1979).

18 In 1994, the Commission revised its regulation to the current structure, but the
19 regulation permitting host committees to make expenditures in connection with
20 conventions continues to be an exception to convention committees' expenditure limits.
21 11 C.F.R. § 9008.8(b)(1). Therefore, it still must be narrowly construed in order to
22 preserve the statutory expenditure limit. Similarly, because host committees may accept
23 funds from local corporations and local labor organizations that would otherwise be

1 prohibited from use in connection with conventions, the regulatory exception must be
2 construed narrowly. 2 U.S.C. § 441b. Host committee expenditures are not, however,
3 limited in amount.¹⁵ Instead, host committee expenditures are limited in purpose, which
4 reflects the Commission's determination that expenditures for purposes such as those
5 listed in 11 C.F.R. § 9008.52(c)(1)(i) through (xi) are consistent with the host
6 committees' principal objectives: the encouragement of commerce in the convention city
7 and the projection of a favorable image of the city to convention attendees, 11 C.F.R.
8 § 9008.52(a), rather than election-influencing purposes.

9 As a threshold matter, the Commission determines that the Convention
10 Committee knowingly helped, assisted, and participated in Nash's activities. As required
11 under Nash's contracts with the Convention Committee and the Host Committee, Nash
12 performed his services to the Convention Committee's specifications and under the
13 direction of the Convention Manager, a Convention Committee employee. Attachment 6,
14 at 1 and 11. Consequently, to the extent that any of Nash's expenses were not
15 permissible host committee expenditures, the Commission may seek a repayment for such
16 disbursements from the Convention Committee pursuant to 11 C.F.R. § 9008.12(b)(7).

17 1. Permissible Host Committee Expenditures

18 The Commission concludes that the Convention Committee has demonstrated that
19 a number of the Nash expenses that compose the \$892,489 Audit Report Repayment

¹⁵ The focus on permissible purposes, instead of amounts, permits a wider variety of cities to compete to host conventions as host committees are permitted to provide construction services in order to provide a suitable convention center or auditorium. 11 C.F.R. § 9008.52(c)(1)(v). The Convention Committee points to the amounts of expenditures in connection with previous conventions, arguing they indicate the Commission has interpreted section 9008.52(c) as "a very broad exception." Attachment 3, at 21; see Attachment 5, at 4. However, the breadth of permitted host committee purposes can not be evaluated by an examination of expenditure amounts.

1 Determination were, in fact, permissible host committee expenditures. The Host
2 Committee may expend funds for decorations, which are listed as an example of
3 permissible host committee expenditures in 11 C.F.R. § 9008.52(c)(1)(v). Nash spent
4 \$26,684 on "main and end titles" that were computer-generated graphics projected onto
5 the television screens that were part of the podium; as such, the graphics were
6 decorations. See Attachment 1, at 63, and Attachment 3, at 36-37. Still photographs
7 displayed in the same locations would certainly be within decorations as listed in
8 section 9008.52(c)(1)(v). The additional technology in the computer-generated graphics
9 does not deprive those graphics of their decorative character. Therefore, the Commission
10 determines that the main and end titles were decorations of the Convention Center and as
11 such were permissible host committee expenditures.

12 Section 9008.52(c)(1)(v) specifically lists lighting among the examples of
13 infrastructure-related permissible host committees expenditures. Nash paid \$11,735 for a
14 Moving Light Operator, as part of \$540,345 spent on lighting Rigging and Staging
15 Labor.¹⁶ Because lighting is listed as an example of permissible host committee
16 expenditures in section 9008.52(c)(1)(v), the \$11,735 expenditures for a Moving Light
17 Operator are permissible host committee expenditures.¹⁷ Similarly, Nash spent \$56,781

¹⁶ The Convention Committee allocated most of this amount, \$526,610, to lighting and rigging expenses necessary to prepare the Convention Center to host the convention, and the Commission did not include any of that category in its Audit Report Repayment Determination. Attachment 1, at 63. However, in its response to its Exit Conference Memorandum, the Convention Committee separated the expenses for the Moving Light Operator and categorized those expenses as related entirely to the closed circuit television production. See Bing affidavit, Attachment 3, at A74.

¹⁷ This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, "lighting instruments, . . . follow spotlights, floodlights, special effects lighting, spotlights, etc." and related operator staff were permissible host committee expenditures. See Attachment 3, at A1144 and A1147.

1 designated as video crew labor.¹⁸ Of this amount, \$10,008 was paid to the technical
2 director and is discussed below. According to Nash, the remaining \$46,773 (\$56,781 -
3 \$10,008) was for "a cadre of engineers and video utility persons" who operated several of
4 the technical systems that were part of the Convention Center's infrastructure.
5 Attachment 5, at 8. As such, the Commission determines that payments for their services
6 are permissible host committee expenditures.¹⁹

7 Nash also spent \$73,748 for satellite expenses, which served two purposes, one of
8 which was to provide the basic feed to news organizations that did not have facilities at
9 the San Diego Convention Center. See Nash affidavit, Attachment 3, at A591, ¶ 32b.
10 This purpose served by the satellite expenses was the functional equivalent of laying a
11 cable to the press room at the Convention Center to provide the same material to the news
12 organizations that did have facilities at the San Diego Convention Center. Such a
13 function is consistent with the examples of permissible host committee expenditures
14 related to construction for the convention center that are listed in 11 C.F.R.
15 § 9008.52(c)(1)(v). On this basis, the Commission determines that the expenditures for
16 satellite expenses that were the functional equivalent of a cable at the Convention Center
17

¹⁸ Also included in Video Crew Labor was an additional \$5,321 which was not included in the Audit Report Repayment Determination. It was not allocated to the closed circuit television category, but was assigned to the miscellaneous category by the Convention Committee. See Attachment 1, at 63; Bing affidavit, Attachment 3, at A70, 74 and 76. These expenditures were related to the satellite links for the live video remote productions. See Nash affidavit, Attachment 3, at A591.

¹⁹ This determination is consistent with the Commission's evaluation of apparently similar expenditures in the DNCC Audit Report, in which the Commission determined that host committee expenditures for, *inter alia*, broadcast engineers, cameramen, and projectionists were permissible host committee expenditures. See Attachment 6, at 3.

1 were permissible host committee expenditures.²⁰

2 Nash spent \$138,442 on live video productions at six sites away from the
3 Convention Center: two in San Diego, California; and one each in Sacramento,
4 California; Miami, Florida; Fond du Lac, Wisconsin; and Russell, Kansas. *See Greener*
5 *affidavit*, Attachment 3, at A107 and A109-12, ¶¶ 15 and 19-27; *Nash affidavit*,
6 Attachment 3, at A584 and A588-89, ¶¶ 12 and 25; *see also* Attachment 7, at 4. One of
7 the functions served by the \$73,748 satellite costs that are also discussed above was
8 related to transmitting the signal from the site of the live videos back to the Convention
9 Center. Nash also spent \$70,000 on another taped video of a tour of Russell, Kansas.
10 Attachment 3, at 40. Additionally, \$6,250 of the Television Producer's fee was related to
11 the remote videos. *See Bing affidavit*, Attachment 3, at A79. The Convention
12 Committee argues that the determination that these amounts are repayable is inconsistent
13 with the Commission's treatment of certain taped remote video productions.²¹ The
14 Commission has concluded that the taped and live videos at issue should be treated
15 consistently; consequently, the Nash expenditures for the live videos, related satellite
16 costs and the Russell tour have been excluded from the Repayment Determination upon
17 Administrative Review.

²⁰ Although the Convention Committee argued that one-half of the satellite costs should be allocated to each function, Attachment 3, at 36, documentation available to the Commission supports a more refined allocation. However, such an allocation is unnecessary because the Commission determines the other purpose served by the satellite costs is also permissible host committee activity so the entire \$73,748 has been excluded from the Repayment Determination upon Administrative Review. The satellite time's other purpose was to send the signal from the sites of the live remote video productions to the convention center. The remaining one-half of the expenditures for satellite time is discussed in this section in connection with the live remote video productions.

²¹ The taped videos consisted of "video clips highlighting profiles of delegates . . . [and] Maury Taylor, Joe Paterno, Mrs. Laura Bush (never used), Connie Mack, and Steve McDonald." *See* Attachment 7, at 5.