



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

April 13, 1981

MEMORANDUM

TO: FRED EILAND
PRESS OFFICE

FROM: BOB COSTA *RC*

SUBJECT: PUBLIC ISSUANCE OF FINAL POST-PRIMARY
AUDIT REPORT - CITIZENS FOR LAROUCHE

Attached please find a copy of the final post-primary audit report of Citizens for LaRouche which was approved by the Commission on March 17, 1981.

Informational copies of this report have been received by all parties involved and this report may be released to the public.

Attachment as stated

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON THE CITIZENS FOR LAROUCHE

I. Background

A. Overview

This report is based on an audit of the Citizens For LaRouche ("the Committee"), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 9038(a) of Title 26 of the United States Code which 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, Section 9039(b) of Title 26 of the United States Code and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on January 29, 1979, as the principal campaign committee for Lyndon H. LaRouche, Jr., the U.S. Labor Party's candidate for the Office of President of the United States. On November 9, 1979, the Committee amended its Statement of Organization to disclose that the candidate was seeking the Democratic Party's nomination for President of the United States. The Committee maintains its headquarters in New York City.

The audit covered the period from January 29, 1979, the inception date of the Committee, through April 17, 1980, the date determined by the Commission to be the candidate's date of ineligibility for purposes of incurring qualified campaign expenses. During this period, the Committee reported an opening cash balance of \$-0-, total receipts of \$1,376,290.95, total expenditures of \$1,372,129.80, and a closing cash balance of \$4,026.15. 1/

1/ There is an apparent understatement of \$135.00 in ending cash. This is due to arithmetical errors in receipts and expenditures.

At the time of the completion of the audit fieldwork, the Committee had reported financial activity through June 30, 1980. Furthermore, the Audit staff performed a review of the Committee's financial activity from April 18, 1980, through June 30, 1980.

This report is based upon documents and working papers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The principal officers of the Committee during the period audited were: Ms. Carol White, Chairman and Ms. Felice M. Gelman, Treasurer.

C. Scope

The audit included such tests as verification of total reported receipts, expenditures and individual transactions; review of required supporting documentation; analysis of debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations

A. Findings Relating to Title 2 of the United States Code

1. Disclosure of Contributor Information

Section 434(b)(3)(A) of Title 2 of the United States Code states that each report shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of each contribution.

During the review of the Committee's contribution records and reports, a sample of contributions was randomly selected and tested for proper disclosure of contributor information (occupation/name of employer). The sample indicated that at a 90% confidence level between 21% and 61% of the contributions that aggregated in excess of \$200 were disclosed without the contributor's occupation and/or name of employer. However, for the most part, this information was contained within the Committee's contributor files. *

* It should be noted that the interim report cited an error rate based on an itemization threshold of \$100 which was applicable before the enactment of the '79 Amendments of the Act.

Committee officials stated that this information was not disclosed on its reports due to programming oversights.

On November 13, 1980, the Commission approved an Audit staff recommendation that the Committee file amended reports disclosing the required contributor information within 30 days of receipt of the interim report.

The Committee's response to the interim report, received on December 29, 1980, discusses its basis for the itemization of individual contributions and disclosure of contributor information, however, amended disclosure reports were not submitted. The response also questions the Audit staff's testing of contributions greater than \$100 for disclosure of contributor information when, "As the statutes now stand, all that is required of the committee is disclosure of the information specified for contributors of \$200.00 or over..."

Finally, the Committee indicated that computer hardware problems have prevented the filing of amendments (for contributors of \$200.00 or more) until sometime after filing the year-end report.

Recommendation

In view of the Committee's computer hardware problems, as indicated in its response, the Audit staff recommends that the Committee be afforded an opportunity to file the amendments within 30 days of receipt of this report.

2. Allocation of Expenditures to States

Section 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code state, in part, that no candidate for the Office of President of the United States who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in excess of \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the State, or \$200,000 adjusted by the change in the Consumer Price Index from the base period (1974).

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a Presidential candidate's authorized committee(s) which seek to influence the nomination of the candidate in a particular state shall be attributed to that state. This allocation of expenditures shall be reported on FEC form 3Pc.

Section 106.2(b) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing, and other goods and services used in a campaign in a specific state shall be attributed to that state.

Section 106.2(c) of Title 11 of the Code of Federal Regulations states that an expenditure by a Presidential candidate for use in two or more states, which cannot be attributed in specific amounts to each state, shall be attributed to each state based on the voting age population in each state which can reasonably be expected to be influenced by such expenditure.

Our review of Committee expenditures for the audit period included testing to determine the Committee's compliance with the allocation of expenditures among states as required by the Act. It should be noted that the Committee filed an amendment to its state allocation schedules, FEC form 3Pc, in June 1980, which substantially corrected the allocation discrepancies noted through calendar year 1979.

The state allocation findings which follow make reference to expenditures that have not been allocated, expenditures that have been improperly allocated and certain expenditures that require additional documentation in order to determine proper allocation. In addition, specific reference is also made to the allocation discrepancies that affect the New Hampshire state spending limitation, the only state spending limitation which appears to have been exceeded by the Committee.

a. Unallocated/Improperly Allocated Media Expenditures

i) Our review of Committee expenditures to a vendor supplying advertising services indicated that \$35,359.85 of the \$196,738.44 billed to the Committee during January and February 1980 was not allocated to states. Since the Committee was unable to provide adequate records regarding a detailed composition of each bill (bills were structured by category, i.e. total television and radio costs, etc.) we could not identify specific states where voters might be reasonably influenced by the advertisements. However, a majority of these expenditures that were allocated during January and February involved a media campaign directed to New Hampshire, Massachusetts, Connecticut, Maine and Vermont. It would appear that some portion of the \$35,359.85 in unallocated expenditures may require allocation to states.

On November 13, 1980, the Commission approved an Audit staff recommendation that within 30 days of receipt of the interim report, the Committee obtain and submit the documentation to determine proper allocation for the \$35,359.85 in expenditures. Further, the Committee should review this documentation and amend its state allocation schedules (FEC form 3Pc) where necessary. Committee worksheets detailing any amendments should also be submitted to the Audit staff for review.

The Committee's response was received on December 29, 1980. The Committee states that,

"The report alleges that CFL failed to allocate to state or national expenditures \$35,359.85 out of a total of \$196,738.44 billed from a media advertising agency. The report suggests that some portion of this may require allocation to New Hampshire, Massachusetts, Connecticut, Maine, and Vermont, states in which the candidate was active in the January-February period covered by those bills.

The Report then notes three pages later (after discussion of several other items), 'that the Committee has subsequently amended its allocation schedule (FEC form 3Pc) and submitted computational schedules which support the \$35,359.85 in media costs not previously allocated' (page 8) thereby rendering moot the earlier allegation that the expenditure was not fully allocated, and leaving only the recommendation that CFL provide the vendor documents upon which the allocation was based. This was omitted in the course of the audit through an oversight and is included here as Exhibit C."

The vendor documentation submitted by the Committee as Exhibit C was, in fact, examined during the fieldwork and considered to be inadequate for the purpose of determining proper allocation. This documentation appears to be limited to production costs which do not require allocation to states. Further the vendor documentation provides only broad categories of charges for editing, rentals, and broadcasts. However, our examination of the amended allocation schedule and related computational schedules shows that various non-production related charges were allocated to several states. A portion of the non-production related charges covered television and radio placement costs, totaling \$8,098.42, were allocated to four (4) states (Wisconsin, Michigan, Illinois, Iowa) and national overhead. The vendor documentation makes no such reference to these states. Further, the computational schedules show other charges for bumper stickers, billboards, postage and airline tickets allocated to exempt fundraising, national overhead or a state (Massachusetts). It is the Audit staff's opinion that the vendor documentation submitted does not provide sufficient detail and scope to determine proper state(s) allocation of the Committee expenditures to this vendor.

With respect to the amended allocation schedule (FEC form 3Pc) and computational schedules which detail the \$35,359.85 in media costs not previously allocated, the Committee has adjusted the amount of unallocated media costs from \$35,359.85 to \$33,382.11. The Committee indicated that billing errors were the reasons for this adjustment. In addition, in its amended state allocation schedule (FEC form 3Pc) an additional \$796.63 (includes production costs) of the media costs were allocated to New Hampshire.

Our review has indicated that \$1,941.11 should be allocated to New Hampshire. This amount represents an allocation of \$55.32 based on the voting age population of New Hampshire in addition to a proportional share of February's direct television charges totaling \$1,885.79. The above amounts were calculated as follows:

a. Total amount of media costs	\$33,382.11
Less: January's production costs	1,780.89
February's production costs	15,640.68
February's television charges (WBZ-Boston market)	<u>2,200.20</u>
 Amount to be allocated based on the VAP	 \$13,760.34
 New Hampshire's percentage of VAP (see VAP formula on following page)	 <u>x .00402</u>
Amount allocable to New Hampshire	<u>\$ 55.32</u>
 b. February's television charges (WBZ-Boston Market)	 \$ 2,200.20 *
 Percentage allocable to New Hampshire	 <u>x .8571 *</u>
Amount allocable to New Hampshire	<u>\$ 1,885.79</u>
 Total amount allocable to New Hampshire (a and b)	 <u>\$ 1,941.11</u>

Recommendation

Based on the above, the Audit staff recommends that within 30 days of receipt of this report the Committee amend its state allocation schedule to allocate an additional \$1,144.48 (\$1,941.11 less \$796.63 previously allocated).

It should be noted that the amount identified above as allocable to New Hampshire (\$1,144.48) has been included in the amount in excess of the New Hampshire state limit and recommended as repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(2) (see overall repayment section).

* The same application noted in Finding 3a(iii) has been applied to these charges.

ii) Committee expenditures for political broadcasts on two (2) national network television stations in January 1980 were reviewed for proper allocation. It was determined that the Committee paid \$163,231.02 in vendor placement costs (the charge for airing the broadcast with local stations) which was not allocated to any state(s). Further, production costs for these two (2) broadcasts could not be specifically identified to determine proper allocation. Committee officials acknowledged that the \$163,231.02 in placement costs and an unknown dollar amount of production costs were not allocated to states.

The staff advised the Committee that one (1) method of allocating these expenditures would be based on the voting age population (VAP) of each state plus the District of Columbia. Based on this method, the Audit staff has determined that \$492.71 should be allocated to New Hampshire.

VAP FORMULA

$$\frac{\text{VAP (New Hampshire)}}{\text{VAP (50 States + District of Columbia)}} \times (\$163,231.02 \times .75 \text{ operating portion})$$

$$\frac{634 \text{ (in thousands)}}{157528 \text{ (in thousands)}} \times \$122,423.27 =$$

\$492.71 Allocable to New Hampshire

On November 13, 1980, the Commission approved the Audit staff recommendation that within 30 days of receipt of the interim report, the Committee amend its state allocation schedules to properly allocate expenditures made in conjunction with the political broadcasts (New Hampshire) \$492.71 plus a representative portion of production costs).* Committee work-sheets relating to any amendments should also be submitted to the Audit staff for review.

The Committee's response was received on December 29, 1980. It states that,

"The Interim Report claims that costs associated with two nationally televised television broadcasts require allocation across the states involved. These costs include both broadcast charges and costs incurred in the production of the tapes so broadcast. The Commission has already determined, for other political committees, that such production costs are not required to be allocated to states. *

* At the time the interim audit report was approved by the Commission (November 13, 1980) the production cost element of media broadcasts required state allocation. Upon further consideration, however, the Commission determined that such costs do not require allocation to states. The Committee was notified of this determination.

CFL's position remains that none of these costs are properly allocable to state expenditure limitations because the intent of the broadcasts was not to influence any particular state(s), but national climate of opinion as a whole. In support of this intent, CFL points out that it would have been far cheaper to air broadcasts in several targeted regional locations--such as New England from Boston, the Greater New York and Chicago areas, etc.--rather than network-wide broadcasts which by their nature and intent reach many states in which the candidate has not declared active candidacy, but whose primary elections or other delegate selection procedures could be shaped in such a way as to favor the candidate's success elsewhere or in the National Convention as such. Not only would a targetting strategy have been cheaper, but it would have required far less exertion of effort and manpower to achieve access to the media.

However, in the event that the Commission ultimately rules in favor of the state-by-state allocation, CFL requests documentation (sources, worksheets, etc.) by which the Audit staff computes the report figure of \$492.71 allocable to New Hampshire. These are not provided in the attachments to the Interim Report. We would appreciate being informed as to whether the sample allocation methods are being applied to the Kennedy and Carter campaigns and on what basis those campaigns allocated media costs.

CFL thus cannot comply with Recommendation #1 (Interim Report page 8) until (1) a Commission decision is provided concerning the allocability of the expenditure in question, and pending that

outcome, (2) the Commission provides the approved method of allocation."

It is our opinion that the application of 11 C.F.R. 106.2(b) and (c) necessitates allocation of these expenditures to New Hampshire since expenditures for radio and television advertisements that are broadcast in more than one state must be attributed to each state on a formula basis in proportion to the estimated voting age-viewing population of the state. The two advertisements in question were broadcast in more than one state, therefore, the express language of 11 C.F.R. 106.2(c)(1) requires the allocation to the states. It also has been the Commission's practice to apply this application to all presidential committees.

Recommendation

The Audit staff recommends that the Commission reaffirm its preliminary determination that the Committee amend its state allocation schedules to properly allocate expenditures (exclusive of production costs) made in conjunction with the political broadcasts (New Hampshire 492.71). This amendment is to be filed within 30 days of receipt of this report.

It should be noted that the amount identified above as allocable to New Hampshire (\$492.71) has been included in the amount in excess of the New Hampshire state limit and recommended as repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(2) (see overall repayment section).

iii) The Candidate was not on the Massachusetts primary ballot. The final ballot access date for the Massachusetts primary was January 4, 1980. However, the Committee placed television and radio spots as well as newspaper ads between January 9, 1980, and February 8, 1980, totaling \$57,393.62, and allocated 86% of the cost or \$49,358.53 to Massachusetts, 12% or \$6,887.21 to New Hampshire and 1% or \$573.94 to both Vermont and Connecticut. The Committee utilized industry publications which provided the percentage of the population which may have viewed the advertisements, as its source for determining the above allocation.

The Committee was informed that the portion of the expenditures that was allocated to Massachusetts (\$49,358.53) should have been allocated to New Hampshire, Vermont, or Connecticut, as applicable. Committee officials stated that, even though the candidate was not on the Massachusetts ballot, he was, in fact, campaigning for the uncommitted delegates from that state.

It is the Audit staff's opinion that \$42,305.20 of the \$49,358.53 allocated to Massachusetts should be allocated to New Hampshire and the remaining \$7,053.33 should be allocated equally between Connecticut and Vermont. This allocation was determined by applying the 86% (previously allocated to Massachusetts) to each of the three (3) states based on the Committee's proportional distribution of costs noted above (New Hampshire 12%, Connecticut 1%, and Vermont 1%). Accordingly, 85.71% (12/14) of the \$49,358.53 should be allocated to New Hampshire and 14.29% (2/14) should be allocated equally between Connecticut and Vermont. The Audit staff used the same industry publications in determining the required allocation for New Hampshire, Connecticut and Vermont.

On November 13, 1980, the Commission approved an Audit staff recommendation that within 30 days of receipt of the interim report, the Committee amend its state allocation schedules to properly allocate that portion of the media expenditures (\$49,358.53) improperly allocated to Massachusetts after the ballot access date - (New Hampshire \$42,305.20, Connecticut and Vermont \$3,526.66 each). Committee worksheets relating to these amendments should also be submitted to the Audit staff for review.

The Committee's response to the interim report, received on December 29, 1980, asserts that the recommendation to re-allocate the \$49,358.53 in media expenditures to states other than Massachusetts (primarily New Hampshire) is based on an "...arbitrary and idiosyncratic... interpretation of the phrase 'influence voters'" and the Committee "finds no basis in the Statute or Regulations, or reasonable interpretation thereof, in justification of the recommendation." It is the Committee's opinion that neither the Statute nor Regulations restrict the meaning of influencing votes to the narrow goal of getting them to vote for one (1) particular candidate by name on the ballot. The basis for this conclusion appears to rest with the Committee's campaign strategy which was not to influence Massachusetts' citizens to cast votes for LaRouche but to "influence" them to make an "uncommitted" vote for some unknown, future candidate in lieu of the current two (2) major Democratic candidates (Kennedy and Carter). If the strategy was successful, the Committee felt the election could result in a large number of votes for the "None of the Above" option resulting in the selection of "uncommitted" delegates. The Committee further stated that these delegates may, in fact, have a preference for particular candidates, or could, perhaps, be influenced to support LaRouche and important convention issues (such as the so called "Open Convention" Rule 11H). The Committee's response notes that the Committee was not seeking "write-in votes" but uncommitted delegates through the no preference slot on the Massachusetts ballot. The Committee also states that the National Democratic policy, which is binding on all state parties, requires that delegate selection procedures provide an "uncommitted" slate of delegates. Further, they note that Massachusetts state law mandates this option.

It should be noted that the Massachusetts primary ballot provided a space in which voters could insert "No Preference." If the number of no preference votes reached the applicable percentage threshold (applied to candidates appearing on the ballot), Congressional District caucuses would have been held for the selection of uncommitted delegates. As with committed delegates, all candidates for any uncommitted delegate spots were required to be identified as to their uncommitted status, at all levels of the process, and were required to file a statement, by February 4, 1980, declaring their uncommitted/non-preference status.* Therefore, CFL could not influence the election of delegates committed to, or with preference for, the candidate through the uncommitted delegate process, since by definition and Party rule, such elected delegates could not have had such a preference or been so committed. Finally, the Massachusetts primary ballot also provided a blank line for write-in votes. This procedure for delegate selection based on write-ins followed the same procedure explained above, that is, if write-in votes for a Candidate reached the designated threshold percentage, Congressional District caucuses for that candidate would be held. However, as noted above, CFL acknowledges that it did not stage a write-in campaign in Massachusetts nor seek to influence the write-in vote in that state.

Recommendation

The Audit staff recommends that the Commission reaffirm its preliminary determination that the Committee amend its state allocation schedules to properly allocate that portion of the media expenditures (\$49,358.53) improperly allocated to Massachusetts after the ballot access date (New Hampshire \$42,305.20, Connecticut and Vermont \$3,526.66 each) within 30 days of receipt of this report.

It should be noted that the amount identified above as allocable to New Hampshire (\$42,305.20) has been included in the amount in excess of the New Hampshire state limit and recommended as repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(2) (see overall repayment section).

b. Literature

During the review of expenditure records it was noted that literature (leaflets, fliers, stickers, etc.) costs appeared to be improperly allocated. The Committee generally allocated a percentage of the total invoiced amount to each state that apparently received literature. Typically, literature costs were spread on a 5% basis for 14 key states in which the Committee actively campaigned (70% of the total cost), 10% in a state which

* Delegates are bound to vote on the first ballot for the candidate they are committed to by rule of the Massachusetts Democratic Party.

the Committee extensively campaigned and 20% to the National headquarters overhead.

A review of literature purchases from four (4) Committee vendors (248 invoices totaling \$287,724.13) indicated that in 45 instances (PMR) literature (costing \$44,167) clearly targeted at New Hampshire was being allocated on a 5% basis to New Hampshire. Subsequent amendments filed by the Committee increased the allocation basis for New Hampshire up to 75% in some instances. A portion (\$24,764.77) of the aforementioned 45 PMR literature invoices was not allocated to New Hampshire even though the literature was clearly targeted toward New Hampshire. However, sample copies of literature were not available for 160 invoices 2/ totaling \$193,199.13, and therefore could not be examined for proper allocation.

On September 9, 1980, the Committee submitted copies (some only in part) of literature for 50 of the 160 invoices. The photocopies of literature associated with invoices, totaling \$20,159.14, were reviewed for proper allocation in conjunction with the Committee's response on December 29, 1980. It was determined that a portion of the invoices, totaling \$2,620.40 should be allocated to New Hampshire since the literature was clearly targeted to that state. It should be noted that the Committee has not provided sample copies of literature for more than 104 invoices* totaling \$170,344.99.

On November 13, 1980, the Commission approved the Audit staff recommendation that the Committee obtain and submit the documentation necessary to determine proper allocation for the 160 vendor invoices (totaling \$193,199.13). In addition, the Audit staff recommended that the Committee amend its state allocation schedule to properly allocate that portion of the literature costs associated with the 45 invoices that were clearly targeted at New Hampshire but not entirely allocated to New Hampshire (\$24,764.77). Committee worksheets relating to these amendments should also be submitted to the Audit staff for review.

The Committee's response to the interim audit report, received on December 29, 1980, states, in part, that until several points of law are resolved, the Committee cannot begin to consider the audit recommendations. The Committee raises these "points of law" as questions regarding the establishment of certain criteria for compliance, the application of the criteria to existing law and other candidates, the reasonableness of the criteria used by the Committee and finally, the need for compliance after the fact

2/ 14 of the 160 invoices, totaling \$40,852, have not been allocated to states.

* This amount has been decreased for the 6 invoices previously allocated (100%) to New Hampshire.

with great expense when adequate guidelines were not provided by the Commission. The Committee then proceeds to discuss these questions at some length. After listing the sections of the Code of Federal Regulations relevant to allocation, the response comments on the limited scope of the regulations and asserts that under law the Committee has no obligation to maintain files of literature used in the campaign.

The response accurately notes that the Audit report did not provide the specific criteria used to determine that the allocation of certain literature expenditures appeared unreasonable. It also lists several but not all of the criteria used to determine the need for a re-allocation of these expenditures (the criteria was discussed with Committee officials during the fieldwork). The criteria essentially consisted of language appearing on the literature suggesting targeting to New Hampshire. In its response, the Committee presented its position with respect to the criteria and concluded that a 100% allocation is not justified.

During a discussion of various figures presented in the report, the Committee alleges that of the missing literature samples requested, 16 entirely and 22 in part were, in fact, provided to the auditors and were apparently ignored. Audit workpapers developed during the fieldwork indicate that the literature in question was not provided, and the Committee has not included any copies of this literature with its response. The response also states that four (4) other invoices for literature were allocated 100% and thus, copies of the literature are not necessary. The response goes on to state that of the missing literature requested, an additional 32 invoices for literature are so clearcut by the title or connection to similar literature for which samples were provided that copies are unnecessary. Finally, the Committee concludes that as a result of the above the actual number of invoices with missing literature samples is less than 40, with many of them so clearcut, such as fundraising items, that copies are also unnecessary.

Implicit in the Committee's discussion is the assumption that there is no requirement to maintain copies of literature, and if there is, they are not required to maintain copies for items that were allocated to fundraising, national overhead or which have been already allocated 100% to a state.

The Committee also points out that some of the "unavailable" literature requested by the Commission was beyond the scope of the audit which was to have covered the period through April 17, 1980. The failure to properly allocate a significant amount of literature which was reviewed and other criteria of audit procedures led the Audit staff to request all missing literature, even if it was invoiced subsequent to April 17, 1980.

It is the view of the Audit staff that the Committee does have an obligation to furnish the Commission any evidence regarding qualified campaign expenses made by the principal campaign committee, as required under Section 9033.1(a)(1) of the Matching Fund Regulations. Indeed, the candidate agreed to this requirement in his Candidate agreement dated December 19, 1979. Further, Section 9033.1(a)(3) requires the candidate to furnish the Commission with any books, and records, for all accounts and other information that the Commission may request. Finally, Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations requires a political committee to maintain records with respect to matters required to be reported from which filed reports and statements may be verified, explained, clarified and checked for accuracy and completeness. It is the Audit staff's opinion that copies of literature must be provided regardless of literature title or actual allocation to enable a determination to be made regarding the reasonableness of allocation, particularly in view of the state allocation problems noted during the review of literature samples maintained by the Committee.

With respect to the Committee's comment concerning the scope of the audit, it should be noted that the Committee was notified by letter on July 23, 1980, that the audit would cover the period beyond the date of ineligibility (4-17-80), as is the case with all audits of 1980 publicly funded presidential candidates.

The Audit staff disagrees with the Committee's statement that the titles on many of the invoices are clearcut that sample copies of literature are not necessary to determine allocation. It is our opinion that even though a majority of the invoiced amounts were allocated, it is impossible to determine proper allocation without sample copies of the literature produced.

Recommendation

It is the recommendation of the Audit staff that within 30 days of receipt of this report the Committee amend its state allocation schedules to allocate the amount identified above (\$27,385.17 (\$24,764.77 + \$2,620.40) to New Hampshire. With respect to the literature samples for the remaining 104 invoices, totaling \$170,344.99, the Audit staff recommends that within 30 days of receipt of this report the Committee obtain and submit the documentation necessary to determine proper allocation.

It should be noted that the amount identified above as allocable to New Hampshire (\$27,385.17) has been included in the amount in excess of the New Hampshire state limit and recommended as repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(2) (see overall repayment section).

c. Candidate Residence and Telephone

Also noted during our review of expenditure records were disbursements for a rented house in New Hampshire used by the candidate during the campaign. For the period October 1979 through March 1980 the Committee paid \$10,094 in rent (\$800 of which represents a rental deposit). 3/ The Committee has allocated 52% of the rental payments (\$5,205.40) to New Hampshire and 48% to fundraising and national campaign headquarter's overhead. In support of the method used to allocate the rent expenses, Committee official stated that when the candidate was not campaigning, he was "resting" which was considered headquarter's overhead and therefore not allocable. However, 11 C.F.R. 106.2(b) states, in part, that expenditures for administrative, staff, and overhead costs directly related to the National Campaign Headquarters shall be reported but need not be attributed to individual states. Expenditures for staff and other goods and services used in a campaign in a specific state shall be attributed to that state.

In addition, telephone expenses incurred through December, 1979, totaled \$1,425.49. 4/ The telephone expenses were allocated 50% (\$712.74) to New Hampshire and 50% to headquarter's overhead. The Committee was also assessed an amount for damages to the house, which it has failed to allocate to New Hampshire.

On November 13, 1980, the Commission approved the Audit staff recommendation that the Committee amend its state allocation schedules to properly allocate that portion of the housing costs that was not allocated to New Hampshire - rent \$4,888.60, telephone \$712.75, and damages \$2,481.00. Information to include a description of the damages and the circumstances under which these damages occurred were to be provided to the Audit staff within 30 days of receipt of the report. With respect to the telephone expenses for 1980 associated with the rental property, it was recommended that the Committee obtain and submit the documentation necessary to determine the proper allocation for these expenses and amend its state allocation schedules accordingly. Further, Committee worksheets supporting these amendments should also be submitted to the Audit staff for review.

3/ Allocation Amendment #III filed by the Committee on September 24, 1980, reflected a portion of the rental payments as a deposit. Although there is disagreement on the actual amount of the deposit (the Committee appears to claim \$3,000 although the lease provides for a deposit of \$800), it is our opinion that both the rental and deposit payments require allocation since the deposit was applied to the damages.

4/ The Audit staff could not determine Committee telephone expenses associated with the candidate's residence for the year 1980.

The Committee's response to the interim report, received on December 29, 1980, states that the house was rented for the purpose of lodging the candidate between campaign appearances in New Hampshire to avoid the expense of flying back to his residence in Michigan. The Committee also notes that they allocated the rental cost of the house based on the time the candidate was in New Hampshire and campaigning and, that the location of a vendor, service, or origin of goods is not the basis for determining how those goods or services should be allocated. To support their position, the Committee cites Advisory Opinion 1979-73 concerning the allocation by state of the salaries and per diem expense of advance staff. In a summary of the opinion, the response states, "...the Advisory Opinion makes it absolutely clear that it is the activity being organized that determines the allocation ... not the location of the person(s) doing the organizing."

The Committee has also questioned figures contained in the audit report by stating that the \$10,094 in rental payments included a \$3,000 deposit which was subsequently applied to the rent. Since the figures contained in the report were developed from the Committee records examined during the fieldwork, the interim report did not distinguish between rental payments and deposits. 5/

After reviewing Allocation Amendment III and the Committee's response to the interim audit report, the Audit staff has determined that, absent a showing to the contrary, rental payments (including the \$800 deposit) totaling \$10,094, damages to the property totaling \$4,181, and telephone expenses (through December, 1979) totaling \$1,425.49 should have been allocated to New Hampshire. As previously stated the Committee has allocated \$5,205.40 in rental payments and \$712.74 in telephone expenses to New Hampshire.

It is the opinion of the Audit staff that 11 C.F.R. 106.2(b) clearly states that expenditures for goods and services used in a campaign in a particular state shall be attributed to that state. Furthermore, just as the entire amount of staff per diem or hotel accommodations used in a state is allocable to that state (see AO 1979-73), so too is the entire amount of candidate lodging in a state attributable to that state.

Recommendation

It is the recommendation of the Audit staff that within 30 days of receipt of this report the Committee amend its state allocation schedules to properly allocate that portion of the housing costs that was not allocated to New Hampshire - rent

5/ It should be noted that the lease agreement required a deposit of \$800 and rent at \$1,500 per month (subject to increase with additional space being made available).

\$4,888.60, telephone \$712.75, and damages \$4,181.00, or provide documentation (i.e., cancelled deposit/rental checks) that demonstrate the amount of rental payments (\$10,094) noted in this report is incorrect.

With respect to the telephone expenses for 1980 associated with the rental property, the Audit staff recommends that within 30 days of receipt of this report the Committee obtain and submit the documentation necessary to determine the proper allocation for these expenses (copies of phone bills associated with the rental payments for 1980, etc.) and amend its state allocation schedules accordingly. Further, Committee worksheets supporting these amendments should also be submitted to the Audit staff for review.

It should be noted that the amount identified as allocable to New Hampshire (\$9,782.35) has been included in the amount in excess of the New Hampshire state limit and recommended as repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(2) (see overall repayment section).

Recap of Expenditures Affecting the New Hampshire State Spending Limitation

New Hampshire state spending limit		\$294,400.00
Amount allocated to New Hampshire	288,791.05	<u>6/</u>
Media (TV & Radio) production costs included above not requiring state allocation	(1,840.62)	
Allocation required from Finding 3a(i)	1,144.48	
Allocation required from Finding 3a(ii)	492.71	
Allocation required from Finding 3a(iii)	42,305.20	
Allocation required from Finding 3b	27,385.17	
Allocation required from Finding 3c	9,782.35	
Total recommended allocations to New Hampshire		<u>368,060.34</u> <u>7/</u>
Total expenditures in excess of limitations resulting from recommended New Hampshire allocations		<u>\$ 73,660.34</u>

6/ This amount was reflected on the Committee's amended state allocation schedule filed on September 24, 1980. It does not include the amendment filed for the January, 1981, monthly report. This amendment decreases the total amount allocated to New Hampshire by \$14,539.13 (candidate security \$10,485.15 and media production \$4,053.98). The Committee has not provided worksheets detailing these adjustments. However, the Audit staff will consider a reduction for these expenses upon receipt of Committee documentation supporting same.

7/ This amount does not include the expenditures noted in 3b (\$170,344.99), and 3c (an undetermined amount of telephone expenses for 1980) that may require allocation to New Hampshire based upon the documentation not yet presented by the Committee.

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B. Findings Relating to Title 26 of the United States Code

1. Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

Section 9034.5(b) of Title 11, Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code states that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

Further, Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payments was made, it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

The Committee filed a Statement of Net Outstanding Campaign Obligations (NOCO) on April 22, 1980. ^{8/} This statement, as amended, and the results of our verification of the items contained thereon, appear below.

^{8/} The Committee amended its original NOCO on May 19, 1980, June 16, 1980, July 7, 1980, and July 28, 1980. In addition, on August 4, 1980, the Committee filed an "alternative" NOCO to the amended July 28, 1980 NOCO. Since the August 4 NOCO was submitted after the completion of the New York fieldwork, it was not incorporated into the interim report. Our analysis of the "alternative" NOCO filed on August 4, 1980, is located at page 23 of this report.

Audit Analysis of Committee NOCO Statements As Amended Through July 28, 1980

	7-28-80 NOCO AS AMENDED	AUDIT	7-28-80 NOCO AS AMENDED	AUDIT
<u>ASSETS</u>				
Cash on Hand as of 4/17/80 ^{9/}			(4,399.65)	(1,440.73)
Prepayments and Security Deposits			<u>39,541.05</u>	<u>36,466.74</u>
TOTAL ASSETS			<u>35,141.40</u>	<u>35,026.01</u>
<u>OBLIGATIONS</u>				
Accounts and Loans Payable			406,466.72	378,869.51 ^{10/}
<u>ESTIMATED WINDING DOWN COSTS</u>				
Office Expenses	4,500.00	4,500.00		
Legal Expenses (General)	35,000.00	-0-	<u>11/</u>	
Miscellaneous Staff Expenses	2,500.00	2,500.00		
Field Offices - Transportation				
Hotels, Freight & Per Diem	6,250.00	6,250.00		
Candidate Travel & Lodging	100,000.00	-0-	<u>11/</u>	
Audit 1 7½ weeks - Room				
Personnel, Accountant & Attorney Fees	15,000.00	15,000.00		
Audit 2 6 weeks				
FEC Room	1,500.00	-0-	<u>11/</u>	
Personnel	1,200.00	-0-	<u>11/</u>	
Attorney Fees and Expenses	5,000.00	-0-	<u>11/</u>	
Travel For FEC Related Business	5,000.00	5,000.00		
Other Compliance/Computer Cost	9,250.00	9,250.00		
Fundraising Costs	66,500.00	-0-	<u>12/</u>	
Candidate Security	27,000.00	-0-	<u>11/</u>	
Storage	<u>2,250.00</u>	<u>2,250.00</u>		
TOTAL ESTIMATED WINDING DOWN COSTS			<u>\$280,950.00</u>	<u>\$ 44,750.00</u> ^{13/}
TOTAL OBLIGATIONS			<u>687,416.72</u>	<u>423,619.51</u>
NET OUTSTANDING CAMPAIGN OBLIGATIONS				
DEFICIT			<u>(652,275.32)</u>	<u>(388,593.50)</u>
CONTRIBUTIONS/MATCHING FUNDS				
APPLIED TOWARD DEFICIT			<u>568,685.78</u>	<u>579,764.82</u> ^{14/}
REMAINING ENTITLEMENT			<u>(\$ 83,589.54)</u>	<u>\$ -0-</u>

^{9/} April 17, 1980, is the date determined by the Commission to be the Candidate's date of ineligibility for purposes of incurring qualified campaign expenses.

^{10/} This figure does not include Committee debts of \$27,597.21, due to CFL's failure to provide the supporting documentation required by 11 C.F.R. 9033.1(a) (1).

^{11/} The Commission preliminarily determined on August 7, 1980 that the items listed are not legitimate winding down costs. The Committee was afforded 30 days in which to respond to the Commission's preliminary determination (Committee's response was due 10/5/80). No response was received from the Committee. Furthermore, the Committee did not pursue its statutory right to contest the Commission's determination in the Court of Appeals for the District of Columbia (see 26 U.S.C. 9041(a)).

^{12/} By excluding the items in footnote 11 from estimated winding down costs, the Committee is no longer in a deficit position, therefore, the projected fundraising costs from 8/18 (Date of Nomination of Democratic Candidate) to 12/31/80 are not applicable.

^{13/} The remaining items appear reasonable but are subject to revision based upon actual cost incurred.

^{14/} The Committee only included \$330.00 of the \$11,409.04 in matching funds received on April 24, 1980.

As noted above, the Audit staff's verification of the items on the Committee's NOCO statement (amended through 7-28-80) revealed various differences which resulted in a net difference (overstatement) in net outstanding campaign obligations of \$263,681.82. Therefore, the Committee's NOCO as of the date of ineligibility (April 17, 1980) should have disclosed a deficit of \$388,593.50 and not \$652,275.32 as stated by the Committee in its amended NOCO statement filed on July 28, 1980.

In addition, our review of the Committee's deposits indicated that for the period April 18, 1980, through June 16, 1980, the Committee received \$374,332.73 ^{15/} in individual contributions and matching funds. Based on the above, the Committee's remaining entitlement was \$14,260.77 (\$388,593.50 - \$374,332.73) as of June 16, 1980 (see 11 C.F.R. 9034.5(a)). However, the Committee received three (3) subsequent matching fund payments totaling \$36,958.19 resulting in an overpayment of \$22,697.42 (\$36,958.19 - \$14,260.77).

On November 13, 1980, the Commission approved the recommendation of the Audit staff contained in the interim audit report and preliminarily determined that \$22,697.42 was payable to the U. S. Treasury pursuant to 26 U.S.C. 9038(b)(1). In addition, the recommendation stated that the Committee obtain and submit documentation for the unverified items noted, and within 30 days of notification, the Committee obtain and submit the June bank records for its Ohio account as well as financial records for the Teamsters Committee to Elect LaRouche, an authorized committee.

On December 29, 1980, the Committee responded, in part, that "in addition to the errors, detailed below, the Audit document fails outright to consider the Committee's relevant submission of record, its Statement of Net Outstanding Campaign Obligations of August 4, 1980. Despite the Report's disclaimer that this material "will be included in the final audit report" (Interim Report page 10, footnote 5), the Committee wonders what sort of "inclusion" could be intended when no provision is made for the Committee to respond given the present omission of the material from Audit Division consideration.

^{15/} The Committee actually received \$375,412.34, however, the NSF checks that were matched (\$589.07) and the loans/refund that were matched (\$490.54) have been deducted from this amount (see Finding 32 and 3). In addition, the Audit staff was not provided with the June bank records of the Ohio depository or the bank records of the Teamsters Committee to Elect LaRouche. Therefore, a reconciliation of Committee receipts through June 16, 1980 could not be completed.

The points to be discussed here fall under four headings:

1. Determination of cash on hand as of April 17, 1980 (The Interim Report is in error).
2. Determination of Committee debts as of April 17, 1980 (The Report is again in error).
3. Determination of what constitutes legitimate "Winding Down Expenses."
4. Determination of what time period constitutes the winding down period.

In brief the Audit Division claims that the Committee must repay the Treasury \$22,697.42 as a result of the above; the Committee claims that it has remaining entitlement to matching funds of over \$200,000.00."

As noted in footnote 8 (page 19 of this report) the Committee filed an alternative NOCO to its amended July 28, 1980, NOCO. The NOCO statements, as amended, through August 4, 1980, and the results of our verification of the items contained thereon, appear below.

Audit Analysis of Committee NOCO Statement As Amended Through August 4, 1980

	8-4-80 NOCO AS AMENDED	AUDIT	8-4-80 NOCO AS AMENDED	AUDIT
<u>ASSETS</u>				
Cash on Hand as of 4/17/80 <u>a/</u>			(4,399.65)	(1,440.73)
Prepayments and Security Deposits			<u>39,541.05</u>	<u>36,466.74</u>
TOTAL ASSETS			<u>35,141.40</u>	<u>35,026.01</u>
<u>OBLIGATIONS</u>				
Accounts and Loan Payable			406,466.72	379,019.51
<u>ESTIMATED WINDING DOWN COSTS</u>				
Office Expenses	4,500.00	4,500.00		
Legal Expenses (General)	47,500.00	-0-	b/	
Miscellaneous Staff Expenses	2,500.00	2,500.00		
Field Offices - Transportation				
Hotels, Freight & Per Diem	6,250.00	6,250.00		
Candidate Travel & Lodging	37,400.00	-0-	b/	
Audit 2 @ 1 week	450.00	-0-	c/	
Audit 1 @ 8 weeks FEC room; personnel	2,500.00	2,500.00		
Audit & other FECA related legal expenses	12,500.00	12,500.00		
Audit & other FECA, non-FECA Related Accountant Fees & expenses	4,125.00	-0-	d/	
Travel For FEC Related Business	5,000.00	5,000.00		
Other Compliance/Computer Cost	9,250.00	9,250.00		
Compliance (to 11/30)	21,926.25	-0-	d/	
Fundraising (to 7/28/80)	128,339.44	-0-	e/	
Fundraising (7/29-8/15/80)	14,701.70	-0-	e/	
Storage	<u>2,250.00</u>	<u>2,250.00</u>		
TOTAL ESTIMATED WINDING DOWN COSTS			<u>\$299,192.39</u>	<u>\$ 44,750.00 f/</u>
TOTAL OBLIGATIONS			<u>705,659.11</u>	<u>423,769.51</u>
NET OUTSTANDING CAMPAIGN OBLIGATIONS DEFICIT			<u>(670,517.71)</u>	<u>(388,743.50)</u>
CONTRIBUTIONS/MATCHING FUNDS APPLIED TOWARD DEFICIT			<u>568,685.78</u>	<u>579,765.89 g/</u>
REMAINING ENTITLEMENT			<u>(\$101,831.93)</u>	<u>\$ -0-</u>

a/ April 17, 1980, is the date determined by the Commission to be the Candidate's date of ineligibility for purposes of incurring qualified campaign expenses.

b/ The Commission preliminarily determined on August 7, 1980 that the items listed were not legitimate winding down costs. The Committee was afforded 30 days in which to respond to the Commission's preliminary determination (Committee's response was due 10/5/80). No response was received from the Committee. Furthermore, the Committee did not pursue its statutory right to contest the Commission's determination in the Court of Appeals for the District of Columbia (see 26 U.S.C. 9041(a)).

c/ The Audit staff determined that a follow-up review was not required.

d/ During the fieldwork phase of the audit, the Committee had been informed that any additions/adjustments to its NOCO statement would require supporting documentation. The August 4, 1980, NOCO was presented after the completion of the fieldwork. The Committee did not provide computational schedules or any other documentation detailing the estimates/costs, therefore, they are not considered valid windown expenses. However, inclusion of these

in the NOCO statement does not result in any additional entitlement due the Committee, but would negate the recommendation for a repayment (\$36,958.19) noted in this finding.

- e/ By excluding the items in footnote d/ from estimated winding down costs, the Committee is no longer in a deficit position, therefore, the projected fund-raising costs from 7/29/80 to 8/15/80 are not applicable.
- f/ The remaining items appear reasonable but are subject to revision based upon actual cost incurred.
- g/ The Committee only included \$330.00 of the \$11,409.04 in matching funds received on April 24, 1980 and omitted \$1.07 of matching funds received on July 31, 1980.

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The Audit staff has determined that consideration of the August 4, 1980 NOCO does not affect the staff's previous determination that the Committee is not entitled to additional matching fund payments.

As previously stated, the Committee's remaining entitlement was \$14,260.77 as of June 16, 1980 and that subsequent matching fund payments resulted in an overpayment of \$22,697.42. However, the Audit staff has subsequently determined that the Committee received sufficient individual contributions during the period June 16, 1980 through June 18, 1980, to satisfy its net outstanding campaign obligations (\$14,260.77). On June 19, 1980, the Committee received the first of three (3) matching fund payments, totaling \$36,958.19. Since the Committee was not entitled to any matching fund payments as of June 19, 1980, the three (3) payments (6/19/80 \$18,872.77, 7/2/80 \$17,996.35, 7/31/80 \$89.07) resulted in an overpayment to the Committee totaling \$36,958.19.

Recommendation

The Committee has not submitted documentation for the unverified items as noted in footnote 10 on page 20 of this report. Therefore, the Audit staff recommends that \$36,958.19 is repayable to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(1). Such repayment is to be made within 90 days of receipt of this report. Further, the Committee is afforded 30 days from receipt of this report to present legal or factual materials to show that a payment is not required (See 11 C.F.R. 9038.2(b)).

Finally, since the Committee has not submitted the June bank records for its Ohio account as well as the financial records for the Teamsters Committee to Elect LaRouche, an authorized Committee, the Audit staff recommends that the Committee obtain these records and submit them to the Audit staff within 30 days of receipt of this report.

2. Insufficient Funds Checks Matched

Section 9034.2(a)(3) of Title 11, Code of Federal Regulations states that a matchable campaign contribution is one in which the amount of the contribution which is submitted for matching shall be actually received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the principal campaign committee.

In accordance with the Guideline for Presentation in Good Order approved by the Commission on May 17, 1979, committees are required to present a list of all instruments returned by the bank because of insufficient funds. This list forms the basis for adjustments to matching fund payments for contributions, which may have been submitted for matching and subsequently returned by the bank as non-negotiable.

The review of Committee records indicated that 14 contributions were returned by the campaign depository due to insufficient funds in the contributor account. Six (6) of these contributions totaling \$145.00 were from identifiable contributors which were not included on the non-negotiable instrument list submitted by the Committee with its matching fund submissions. Matching funds actually disbursed for these contributions after the application of the appropriate submission error rates totaled \$139.07. The remaining eight (8) contributions totaling \$450.00 were from contributors whose identification could not be ascertained from available records. Therefore, the Audit staff was not able to determine whether these contributions were in fact, matched.

The Commission approved the interim report recommendation on November 13, 1980 which stated that absent a showing to the contrary within 30 days of receipt of the report, the Commission preliminarily determined that a repayment of \$589.07 be made to the U.S. Treasury pursuant to 26 U.S.C. 9038 (b) (1) and 11 C.F.R. 9038.2(a) (1).

It should be noted that the Committee acknowledged the above interim report recommendation and on December 29, 1980 a repayment of \$589.07 was received and forwarded to the U.S. Treasury for deposit.

Recommendation

The Audit staff recommends no further action.

3. Loans/Refunded Contributions Matched

Section 9034.3(b) of Title 11 of the Code of Federal Regulations defines non-matchable contributions to include a subscription, loan, advance, or deposit of money or anything of value.

As part of our testing, we reviewed the Committee's loan records (including repayments) and records relating to contribution refunds. Three (3) instances were noted which require recovery of \$490.54 in matching funds certified for payment to the U.S. Treasury.

a. the Committee submitted for matching two (2) \$1,000 loans from two (2) individuals. Both loans were received in September of 1979. One (1) loan was repaid in full by the Committee in November, 1979 and the other loan was repaid to the extent of \$995 in January, 1980. The loan repayments were verified by a review of the cancelled checks negotiated by the individuals. However, on January 14, 1980, the Committee submitted a matching fund submission to the Commission which included signed statements dated December 10, 1979 from the individuals who made the loans, which indicated that \$250 of the \$1,000 loans were, in fact, not a loan but rather a donation/contribution.

b. the Committee submitted for matching on December 31, 1979, a contribution of \$20 which was refunded on October 6, 1979 at the request of the contributor. The refund transaction was not recorded in the Committee's data base and as a result, the \$20 contribution was improperly included in a matching fund submission. Matching funds actually paid out for the refunded contribution and the two (2) loans after the application of the appropriate submission error rates totaled \$490.54.

On November 13, 1980, the Commission approved the interim report recommendation that absent a showing to the contrary within 30 days of receipt of the report, the Commission preliminarily determined that, a repayment of \$490.54 be made to the U.S. Treasury pursuant to 26 U.S.C. 9038(b)(1) and 11 C.F.R. 9038.2(a)(1).

On December 29, 1980, the Audit staff received a repayment of \$490.54 and forwarded the repayment to the U.S. Treasury.

Recommendation

The Audit staff recommends that no further action be taken with respect to the repayment of this amount (\$490.54) pursuant to 26 U.S.C. 9038(b)(1).

Repayment Summary

Repayment required from Finding A3	\$ 73,660.34
Repayment required from Finding B1	36,958.19
Repayment required from Finding B2	589.07
Repayment required from Finding B3	<u>490.54</u>
Subtotal	\$111,698.14
Amount Repaid (Re: Finding B2 & B3)	(<u>1,079.61</u>)
Repayment Amount	\$110,618.53*

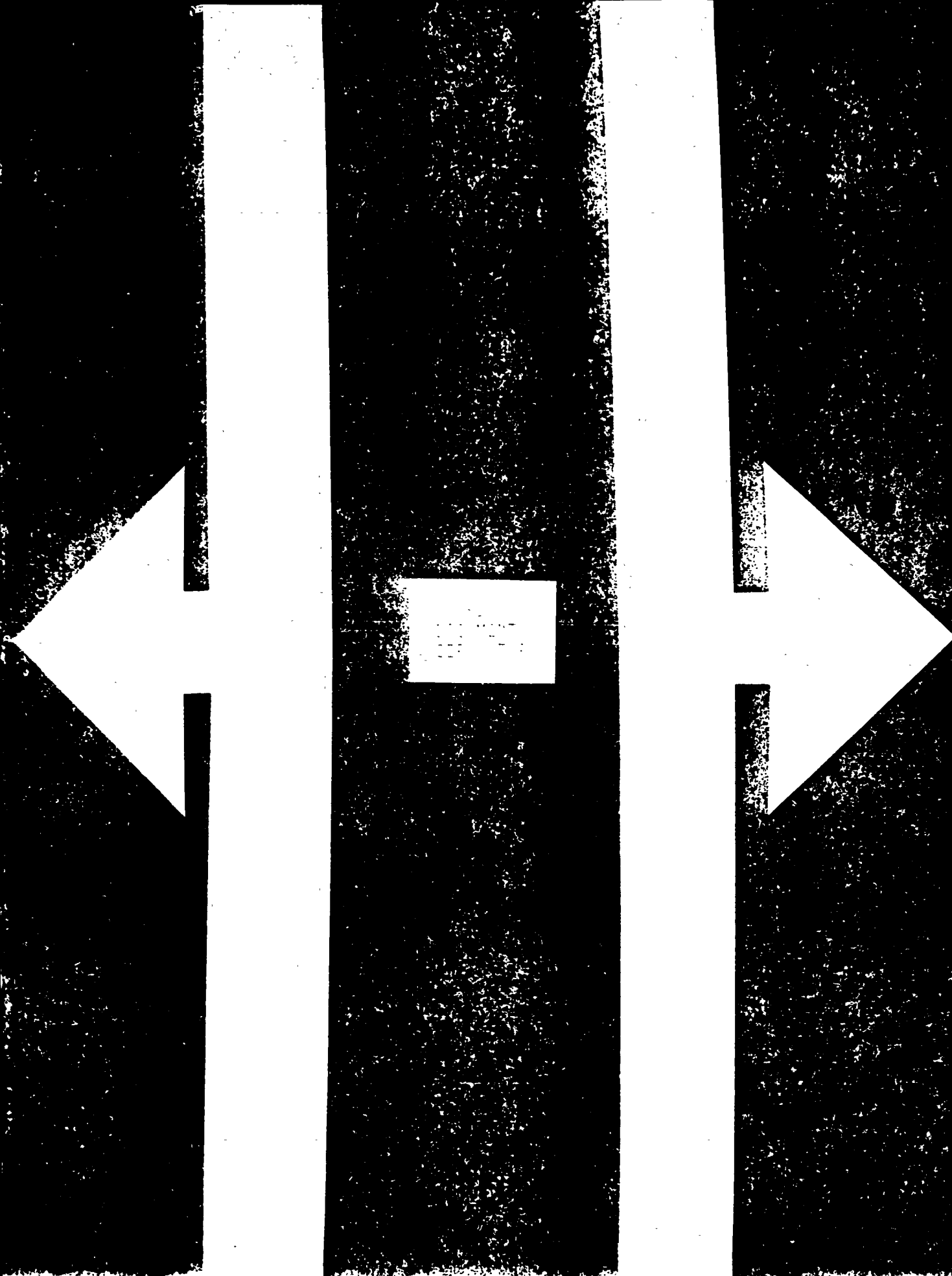
Recommendation

The Audit staff recommends that the Committee repay to the U.S. Treasury \$110,618.53 within 90 days of receipt of this report pursuant to 26 U.S.C. 9038(b)(1) and (2). Further, the Committee is afforded 30 days from receipt of this report to present legal or factual materials to show that a repayment is not required (see 11 C.F.R. 9038.2(b)).

4. Matters Referred to the Office of General Counsel

Certain other matters noted during the audit were referred to the Commission's Office of General Counsel for consideration on June 13, 1980, September 5, 1980, and January 14, 1981.

* See footnote 7/ on page 18 for discussion of possible adjustment to the repayment figure shown.



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 1, 1982

MEMORANDUM

TO: FRED S. EILAND
PRESS OFFICE

FROM: BOB COSTA *RJC*

SUBJECT: PUBLIC ISSUANCE OF ADDENDUM TO THE
FINAL AUDIT REPORT - CITIZENS FOR LAROUCHE

Attached please find a copy of the Addendum to the Final Audit Report of Citizens For LaRouche which was approved by the Commission on September 24, 1982.

A copy of the Addendum to the Final Audit Report has been received by the Committee's Counsel, therefore, the Addendum may be released to the public.

Attachment as stated

cc: FEC Library
RAD
Public Record



FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20463

September 21, 1982

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: B. ALLEN CLUTTER
STAFF DIRECTOR

FROM: BOB COSTA *ph FOR RJC
9-21-82*

SUBJECT: ADDENDUM TO THE FINAL AUDIT REPORT -
CITIZENS FOR LAROUCHE

I. Summary of Issues and Recommendations

On May 6, 1981, the Audit staff received from Citizens For LaRouche ("the Committee"), its response to the final audit report. Also, on June 7, 1982, the Committee provided certain records to the Audit Division in response to our April 19, 1982 letter. Based on our review of the materials presented, the amount calculated as repayable to the U.S. Treasury has been revised from \$110,618.53 to \$54,671.84 (see summary at page 9).

Further, it is recommended that this document be placed on the public record as an addendum to the publicly released final audit report.

II. Background

On April 8, 1981, the Committee received a copy of the final audit report. The report afforded the Committee 30 days to respond to certain findings and conclusions contained therein.

In addition, the Committee was notified by letter on July 13, 1981 that the Commission determined that expenditures for salaries paid to certain national campaign staff while temporarily working in states and certain long distance telephone charges did not require allocation to states. The Audit Division also hand-delivered a copy of the letter to the Committee's attorney on July 20, 1981. The Committee was requested to

determine if its state allocations were affected by the Commission's determination and was afforded 30 days from receipt of the letter to submit an amended state allocation schedule (FEC Form 3Pc) to the Audit Division. In addition, all computational schedules including copies of bills, expense vouchers, or any other documentation detailing such amendment was to be submitted.

The Committee's response was due on August 19, 1981. The Committee's attorney stated that the Committee currently has a lawsuit against the Commission and is "on hold" pending the outcome of the lawsuit.

In early November 1981, the Audit staff notified the Committee that if they planned to submit an amended state allocation schedule with supporting documentation such action should occur within 15 days, otherwise the Audit staff's repayment calculation would be based on information available to date.

On November 20, 1981 the Audit staff received a telegram from the Committee which stated that their attorney was presently engaged in litigation in New Jersey and unable to assist in their response. The Committee requested additional time to December 15, 1981 in order to file any amendments.

The Audit staff notified the Committee by letter (dated December 4, 1981) that the December 15, 1981 time frame would be acceptable. To date, no amendments have been received from the Committee in response to the July 13, 1981 letter.

A. Disclosure of Contributor Information

Section 434(b)(3)(A) of Title 2 of the United States Code states that each report shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of each contribution.

During the review of the Committee's contribution records and reports, a sample of contributions was randomly selected and tested for proper disclosure of contributor information (occupation/name of employer). The sample indicated that at a 90% confidence level between 21% and 61% of the contributions that aggregated in excess of \$200 were disclosed without the contributor's occupation and/or name of employer.

However, for the most part, this information was contained within the Committee's contributor files.

In its response to the final audit report, the Committee stated that they are hindered from filing the amendments because their computer vendor is involved in bankruptcy proceedings, and to retain another vendor or process the information by hand would be impossible at this time. A review of Committee reports filed through March 31, 1982 ^{1/} indicated that the necessary amendments for proper disclosure of contributor information have not been filed.

The Commission has determined that the bankruptcy proceedings involving CFL's computer vendor does not absolve CFL from filing amended reports.

Recommendation

Since the necessary contributor information (occupation/name of employer) is contained in the Committee's contributor files, the Commission recommends that the Committee file amended reports within 30 days of receipt of this letter.

B. Allocation of Expenditures to States

1. Finding II.A.2.b. on pages 12 through 15 of the final audit report contained a recommendation that the Committee amend its state allocation schedule within 30 days of receipt of the report to allocate \$27,385.17 to New Hampshire for the purchase of literature targeted to that state. The report also included a recommendation that the Committee obtain and submit documentation (literature samples) necessary to determine proper allocation for 104 invoices totaling \$170,344.99 within 30 days of receipt of the final audit report.

^{1/} This is the latest report filed to date.

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The Committee responded to the Audit staff's recommendation on May 6, 1981, by providing worksheets and schedules increasing the Committee's allocation to New Hampshire by \$6,067.24. On June 1, 1981, the Committee filed an amended state allocation schedule (Form 3Pc) providing for public disclosure of the increase in New Hampshire's state allocation total. The Committee's increased allocation to New Hampshire resulted from their review of the \$27,385.17 in literature costs noted in the final audit report as requiring allocation to New Hampshire and literature costs not supported by documentation necessary to determine proper allocation.

The Committee's response offers, for the first time, detailed explanations of distribution, usage and content in support of their allocation of literature costs incurred throughout the campaign. These explanations enabled the Audit staff to re-examine literature previously considered to require 100% allocation to the state of New Hampshire. In addition, the explanations aided in evaluating the allocation of literature costs for additional sample literature included with the Committee's response. The Committee also provided a cross-referencing system to identify previously examined literature samples for proper allocation. The additional literature samples and cross-referencing system, once adjusted for errors and literature submitted as allocation amendment III on May 6, 1981, provided the Audit staff with the opportunity to review \$87,955.05 in literature costs. It should be noted, however, at that time the Committee did not provide documentation necessary to determine proper allocation for the remaining \$82,389.94 of literature costs. Prior to requesting Committee records in April 1982, the Audit staff again reviewed invoice descriptions of the remaining \$82,389.94 in literature costs. Based on that review, it was determined that invoices totaling \$6,165.00 did not contain any direct or indirect reference to New Hampshire. Therefore, the cost of the remaining literature samples not provided was reduced to \$76,224.94 (\$82,389.94 - \$6,165.00).

On June 7, 1982, in response to our request, the Committee provided the Audit staff with the opportunity to review an additional \$35,672.00 in literature costs. However, the Committee did not provide documentation necessary to determine proper allocation for the remaining \$40,552.94 of literature costs.

Based on a review of the Committee's literature costs and respective New Hampshire allocation worksheets, the Audit staff has determined that for the literature samples provided thus far, the Committee's method of allocation appears reasonable. With respect to literature samples not yet provided, the Audit staff noted from a review of the Committee's worksheets

that the Committee allocated these costs (\$40,552.94) using the same percentages applied to the literature costs for which documentation was submitted, therefore, the Audit staff recommends no further action on this matter.

2. Finding II.A.2.c. on pages 16 through 18 of the final audit report contained a recommendation that the Committee amend its state allocation schedule to properly allocate that portion of housing costs not allocated to New Hampshire (rent \$4,888.60, telephone \$712.75, and damages \$4,181.00) and provide documentation that demonstrates the amount of rental payments (\$10,094) noted in the final report was incorrect. Further, it was recommended that, within 30 days of receipt of the final audit report, the Committee obtain and submit the documentation necessary to determine the proper allocation of telephone expenses incurred in 1980 and amend their state allocation schedule accordingly.

The Committee's response indicated that the rental portion of the housing costs for the candidate, from October 1979, through termination of the lease on March 31, 1980, totaled \$8,594 (more precisely at \$6,930.14 through the New Hampshire Primary Election on February 26, 1980). The Committee's response also noted that a \$3,000 deposit, required for securing the lease, was applied to the rental charge for March and the remaining portion was used to reduce a \$4,181 charge for damages to the residence.

In summarizing the basis used for the allocation of rental payments, the Committee indicated that only a portion of each month's rent was allocated to New Hampshire which represented the number of days the candidate actually campaigned in the state, ending with the primary election on February 26, 1980. As of May 1981 the Committee had allocated \$3,834.92 of the \$8,594 in rental payments to New Hampshire but none of the damage charge.

With respect to the allocation of telephone expenses, the Committee responded that the audit report figure of \$1,425.49 actually represented costs incurred through February, 1980, rather than through December, 1979. As noted on page 16 of the final audit report, Committee telephone expenses were allocated 50% (\$712.74) to New Hampshire and 50% (\$712.75) to national overhead.

After making a series of adjustments to the portion of telephone costs allocated to national overhead, the Committee indicated that an additional \$302.53 has been allocated to New Hampshire (\$1,015.27 total) and \$410.22 remains allocated to national overhead for long distance charges.

Based on the documentation submitted, the Audit staff agrees with the Committee's calculation of \$12,775 for rent (\$8,594) and damages (\$4,181), and that telephone expenses for the period of the lease totaled \$1,425.49. However, the Audit staff disagrees with the Committee's basis for allocating such expenses (see Final Audit Report, page 17). Furthermore, this matter will be addressed in the Commission's statement of reasons in accordance with 11 C.F.R. 9038.2(d).

Summary - B.1 through B.5

The downward adjustments noted in sections B.1 and B.2 will be reflected in the Commission's final repayment determination.

New Hampshire Recap-Expenditures Affecting State Spending Limitation

Amount Allocated Per Committee Reports, as amended		\$277,693.73
	1979	\$ 91,220.03
	1980	<u>186,473.70</u>
Additional Allocations to New Hampshire:		
Media expenses		1,144.48 <u>2/</u>
Media expenses		492.71 <u>2/</u>
Media expenses		42,305.20 <u>2/</u>
Housing expenses		<u>9,350.30</u>
Total Amount Allocable to New Hampshire		\$330,986.42
Less: New Hampshire Limit		(<u>294,400.00</u>)
Amount in excess to be repaid to U.S. Treasury		<u>\$ 36,586.42</u>

2/ CFL's response and the Commission's final determination with respect to these matters will be addressed in the Commission's statement of reasons.

C. Determination of Net Outstanding Campaign Obligations

Finding II.B.1 on pages 19 through 25 of the final audit report contained a recommendation that the Committee be required to repay \$36,958.19 to the U.S. Treasury within 90 days of receipt of the report. Further, the Committee was afforded 30 days from receipt of the report to present legal or factual materials to show that a repayment was not required. The audit report also recommended that the Committee supply the Audit staff with certain bank records for its Ohio account along with financial records of the Teamsters Committee to Elect LaRouche (an authorized committee) within 30 days of receipt.

The Committee responded to the Audit staff's recommendation by submitting a revised NOCO statement along with documentation detailing a portion of the listed winding down costs. The Committee's financial position as presented on its NOCO statement indicates that as of April 17, 1980, the Candidate's date of ineligibility, the Committee had a deficit of \$471,983.59. Furthermore, according to the Committee's NOCO statement, as of June 30, 1980, the Committee was entitled to an additional \$6,146.65 in matching funds.

On April 19, 1982, the Audit staff requested that the Committee provide supporting documentation for \$9,658.00 in undocumented winddown expenses. In addition, it was requested that the Committee provide certain bank records for all of its accounts.

The Committee responded to the Audit staff's request on June 7, 1982 by submitting documentation to support \$3,000.00 of the undocumented winddown expenses. In addition, the Committee submitted sufficient bank records for the Audit staff to calculate the amount of matching payments received in excess of entitlement.

The Audit staff reviewed the documentation submitted and determined that as of April 17, 1980, the Committee's deficit was \$450,540.55. Further, during the period 4/18/80 through 7/2/80, the Committee received sufficient private contributions and matching fund payments to eliminate this deficit.

The Committee's NOCO statement and the results of our verification of items contained thereon appear below.

Analysis of Net Outstanding Campaign Obligations

	Committee	Audit	Committee	Audit
<u>Assets</u>				
Money on Hand as of 4-17-80			(2,265.73)	(2,265.73) ^{a/}
Repayments and Security Deposits			<u>31,698.74</u>	<u>31,698.74</u> ^{a/}
Total Assets			<u>29,433.01</u>	<u>29,433.01</u>
<u>Obligations</u>				
Accounts and Loans Payable			385,847.90	384,462.86 ^{a/}
<u>Estimated or Actual Winding Down Costs</u>				
Office Expenses	3,266.50	3,266.50		
Legal Expenses (General)	13,400.00	-0- ^{e/}		
Miscellaneous Staff Expenses	-0-	-0-		
Field Offices - Transportation, Hotels, Freight and Per Diem	-0-	-0-		
Audit 1 & 8 weeks FDC Form; personnel	2,245.93	2,245.93		
Audit and other FDC related legal expenses	25,434.36	25,434.36		
Travel for FDC related business	5,000.00	2,342.00 ^{e/}		
Other Compliance/Computer Cost	13,750.90	9,750.90 ^{e/}		
Storage	2,250.00	2,250.00		
Fundraising Costs to 6-16-80	46,374.00	46,374.00		
Additional Fundraising Costs (6-17 to 6-30-80)	<u>3,847.01</u>	<u>3,847.01</u> ^{e/}		
Total Estimated or Actual Winding Down Costs			<u>115,568.70</u>	<u>95,510.70</u>
Total Obligations			<u>501,416.60</u>	<u>479,973.56</u>
Net Outstanding Campaign Obligations Deficit			(471,983.59)	(450,540.55)
Contributions, Matching Funds Applied Toward Deficit			<u>488,836.94</u>	<u>489,016.69</u> ^{e/}
Remaining Encumbrance			<u>(6,146.65)</u>	<u>-0-</u>

-
- a/ As a result of the CFL response to the final audit report, the discrepancies which existed in the categories between CFL and the Audit staff have been entirely and/or substantially eliminated.
- b/ The Commission preliminarily determined on August 7, 1980 that this item is not a legitimate winding down cost. The Committee was afforded 30 days in which to respond to the Commission's preliminary determination (Committee's response was due 10/5/80). No response was received from the Committee. Furthermore, the Committee did not pursue its statutory right to contest the Commission's determination in the Court of Appeals for the District of Columbia (see 26 U.S.C. 9041(a)).
- c/ These figures represent documented winding down costs. Our April 19, 1982 letter requested the Committee to provide adequate documentation in support of travel for FEC related business and estimated additional computer costs. Since the Committee failed to provide the necessary documentation, the undocumented portion (\$2,658 and \$4,000 respectively) associated with the above two items has been excluded from our calculation of winddown expenses.
- d/ Since a deficit still existed on June 16, 1980, CFL, in our opinion, is entitled to additional fundraising expenses in order to eliminate such deficit.
- e/ This figure represents private contributions and matching fund payments received through July 2, 1980 per the Committee's bank records. Since this amount (\$469,016.69) is sufficient to extinguish the deficit of (\$450,540.55), the Committee is not entitled to further matching payments.

Based on a review of the Committee's revised NOCO statement and related documentation, the Audit staff determined that the Committee received sufficient private contributions and matching fund payments to eliminate its deficit (as calculated by the Audit staff as \$450,540.55) prior to its receipt on July 3, 1980, of a matching fund payment of \$17,996.35. Furthermore, the July 31, 1980 payment of \$89.07 was also received when no entitlement existed.

Concerning the financial records for the Teamsters Committee to Elect LaRouche (TCEL), the Office of General Counsel has received a letter from the bank* stating that no records exist with respect to TCEL. Since TCEL's reported activity totals only \$45.00 the effect on CFL's entitlement would be minimal, if any. Therefore, the Commission has determined that no further action should be taken with respect to this matter.

Summary

Item II.B.	Expenditures in Excess of New Hampshire State Limitation	\$36,586.42
Item II.C.	Matching Funds Received in Excess of entitlement	<u>18,085.42</u>
Revised Amount		<u>\$54,671.84</u>

III. Support for the Recommendation

Based on the Audit staff's review of the material submitted by the Committee, it is recommended that a downward adjustment of \$55,946.69 be reflected in the Commission's final repayment determination.

IV. Staff Coordination

A copy of this memorandum was furnished to the Office of General Counsel for their consideration. Their comments are attached.

* TCEL's statement of organization discloses the Michigan National Bank as its depository.



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

ADDITIONAL INFORMATION REGARDING THIS ORGANIZATION
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FILE RELEASED BY THE COMMISSION AND MADE PUBLIC IN
THE PUBLIC RECORDS OFFICE. FOR THIS PARTICULAR
ORGANIZATION'S COMPLETED COMPLIANCE ACTION FILE
SIMPLY ASK FOR THE PRESS SUMMARY OF MUR # 1158-1253, 1314
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF 1344
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.





FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
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SIMPLY ASK FOR THE PRESS SUMMARY OF MUR # 1202.
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.





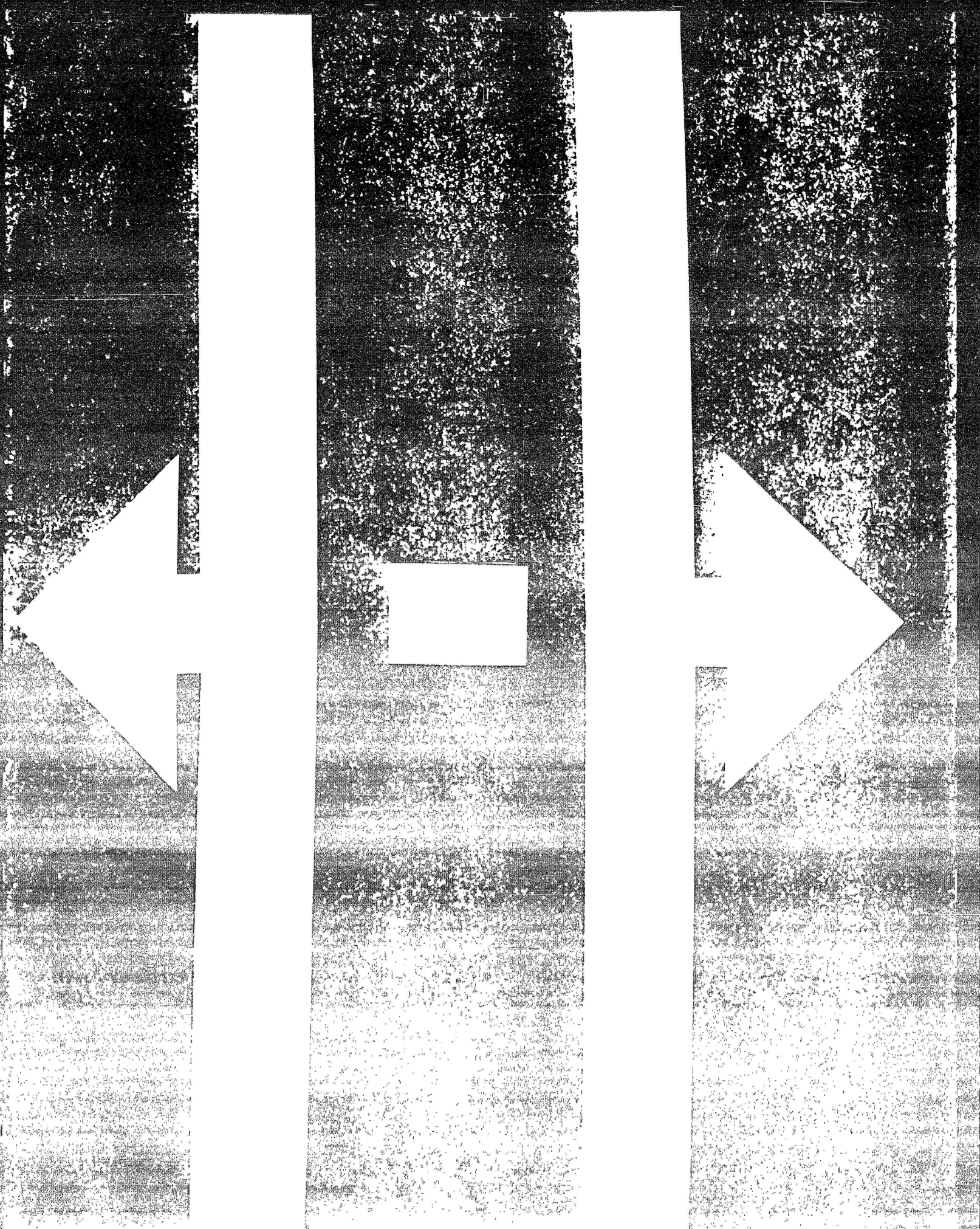
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ORGANIZATION'S COMPLETED COMPLIANCE ACTION FILE
SIMPLY ASK FOR THE PRESS SUMMARY OF MUR # 1384.
THE PRESS SUMMARY WILL PROVIDE A BRIEF HISTORY OF
THE CASE AND A SUMMARY OF THE ACTIONS TAKEN, IF ANY.







FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

December 23, 1982

Patricia Dolbeare, Treasurer
Citizens for LaRouche
304 West 58th Street
Fifth Floor
New York, New York 10019

Dear Ms. Dolbeare:

Pursuant to 26 U.S.C. § 9038(b), on December 16, 1982 the Federal Election Commission made a final determination that Lyndon LaRouche and the Citizens for LaRouche should repay \$54,671.84 in primary matching funds to the United States Treasury. Enclosed is the Statement of Reasons in support of the Commission's final repayment determination.

Please note that, under 11 C.F.R. § 9038.2(e), the \$54,671.84 should be repaid within twenty (20) days. The payment should be sent to the Commission, but made payable to the U.S. Treasury.

If you have any questions concerning this matter, please call Marsha Gentner of the Commission's Office of General Counsel, at (202) 523-4175.

Sincerely,

Charles N. Steele
General Counsel

A handwritten signature in dark ink, appearing to read "Kenneth A. Gross".

BY: Kenneth A. Gross
Associate General Counsel

Enclosure

cc: Mayer Morganroth, Esquire

STATEMENT OF REASONS

On December 16, 1982, the Federal Election Commission [hereinafter cited as Commission on FEC] made a final determination that Citizens for LaRouche [hereinafter cited as CFL] and Lyndon LaRouche should repay \$54,671.84 in primary matching funds to the Secretary of the United States Treasury. See 26 U.S.C. § 9038(b). Pursuant to 11 C.F.R. § 9038.2(b), the Commission submits to CFL the following statement of reasons in support of the FEC's final repayment determination.^{1/}

I. State Expenditure Allocations

A. Expenditures for Political Broadcasts on National Television

The Commission's audit staff discovered in the post primary audit of CFL that \$163,231.02 in CFL expenditures for political broadcasts on national television were not allocated to state expenditure limits by the committee. Accordingly, pursuant to 11 C.F.R. § 106.2(c)(1), these expenditures were allocated by the Commission to the fifty states in proportion to the estimated viewing audience of voting age in each state ("VAP"). On this basis, \$492.71 of these CFL expenditures were allocated by the

^{1/} This statement of reasons addresses only those issues raised by the Commission's preliminary repayment determination as contained in the Final Audit Report of the Citizens for LaRouche, Inc. (approved March 17, 1981), which remain contested by CFL in its Response to the Final Audit Report (May 6, 1981). See 11 C.F.R. § 9038.2(b), (c) and (d). (The CFL response is appended hereto as Attachment I.) Certain of these contested matters, however, were resolved in CFL's favor by the Commission on September 16, 1982, and therefore will not be addressed herein. See Addendum to Final Audit Report for Citizens for LaRouche, Inc. (September 21, 1982). (Attachment II).

Commission to New Hampshire. 2/ CFL in its Response to the Final Audit Report [hereinafter cited as CFL's response] acknowledges that the VAP formula used by the Commission is the most accurate allocation formula; however, CFL asserts that the political broadcasts in question should not be allocated to any state expenditure limitations. The regulations expressly provide to the contrary.

Section 106.2(c)(1) of title 11 of the Code of Federal Regulations states:

Expenditures for publication and distribution of newspapers, magazine, radio, television, and other types of advertisements distributed in more than one State shall be attributed to each State in proportion to the estimated viewing audience or readership of voting age which can reasonably be expected to be influenced by these advertisements.

The \$163,231.02 of expenditures were for media advertisements 3/, and were broadcast in more than one state, including New Hampshire, and therefore, by the express terms of the regulation quoted above were allocable, in part to New Hampshire, and all other states in which the broadcasts were received. CFL argues

2/ The formula used is specified at page 8 of the Final Audit Report of the Citizens for LaRouche, Inc., approved by the Commission on March 17, 1981, and received by CFL on April 8, 1981.

3/ CFL states in its response that in one of the national broadcasts at issue, LaRouche did not even mention his campaign, intimating that the broadcast was not to influence voters and thus should not be allocated to a state. Such reasoning does not support CFL's position, however, for if the expenditure, in fact, was not campaign related, then it was not a qualified campaign expenditure, see 26 U.S.C. § 9032.9(A) and 11 C.F.R. § 9032.9(a)(2), and thus CFL would be required to repay the entire amount of that expenditure to the U.S. Treasury. See 26 U.S.C. § 9038(b)(2)(A) and 11 C.F.R. § 9038.2(a)(2)(i).

in its response that these broadcast expenditures should not be allocated to any state because they were intended to affect "national opinion as a whole"; yet the committee cites no statutory or regulatory language that provides for such an exception to the clear and unequivocal language of 11 C.F.R. § 106.2(c)(1) requiring the allocation to states of media expenditures. Thus, the Commission has determined that \$492.71, or .402% of the \$123,231.02 of CFL national media expenditures are allocable to the committee's New Hampshire state expenditure limitation.

An additional \$13,760.34 in CFL media costs not allocated to any state was found by the auditors. See Final Audit Report at 7. Again, using the VAP formula over 50 states, \$55.32 or .402% of the \$13,760.34 was allocated by the Commission to CFL's New Hampshire state expenditures. While the CFL response did not specifically address this \$55.32 allocation, the basis for that allocation by the Commission is, as the foregoing demonstrates, that 11 C.F.R. § 106.2(c)(1) expressly requires such an allocation.

B. Expenditures Allocated to Massachusetts

CFL placed television, radio, and newspaper advertisements between January 9 and February 8, 1980, totalling \$57,393.62, and allocated these expenditures on the following basis: \$49,358.53 or 86% to Massachusetts; \$6,887.21 or 12% to New Hampshire; and \$573.94 or 1%, each, to both Vermont and Connecticut. Due to the structure of the Massachusetts Democratic delegate selection,

process, the fact that Lyndon LaRouche was not on the ballot in the Massachusetts primary, and that these expenditures occurred after the final ballot access date of January 4, 1980, the Commission made a preliminary determination that the \$57,393.62 in advertisement expenditures were not properly allocable by CFL to Massachusetts in any portion. Therefore, the Commission determined that CFL must amend its allocation schedules to attribute 85.71% of those expenditures to New Hampshire, or \$42,305.20. Despite the fact that LaRouche was not and could not have been on the Massachusetts ballot as of the time the \$57,393.62 was expended, CFL has asserted in its response that 86% of those expenditures were properly allocated to Massachusetts because the campaign was seeking to obtain the "no preference" vote in that state.

The Massachusetts primary was held on March 4, 1980. As previously noted, the final ballot access date for the primary was January 4, 1980. However, prior to the primary, district caucuses of the state Democratic party were held in Massachusetts on February 10, 1980. Specifically, a congressional district caucus was held on that date for each candidate on the Democratic primary ballot. Every participant in a particular candidate's caucus was required to sign a pledge in support of that candidate. ^{4/} Rule 9 of the Massachusetts Delegate Selection

^{4/} Each candidate for delegate was also required to file by February 4, 1980, a statement of delegate candidacy stating the presidential candidate whom the delegate candidate supported, or an uncommitted status. Rule 8 of the Massachusetts Delegate Selection Plan for the 1980 Democratic National Convention.

Plan for the 1980 Democratic National Convention [hereinafter cited as Delegate Plan Rule ___]. In addition, no person could participate in more than one district caucus. Id. These caucuses in turn selected those delegates who would represent the particular primary ballot candidate for whom the caucus was held.

Because the Massachusetts primary ballot also provided for a "no preference" selection, district caucuses were also held on February 10, 1980, for the no preference delegate selection. The chair of each no preference caucus was required to be appointed by the Chairman of the Massachusetts State Democratic Committee no later than January 15, 1980. See Delegate Plan Rules 5 and 6. The chairs of the no preference caucuses were required to sign an affidavit to the effect that the chair represented no candidate, announced or otherwise. Participants in the no preference caucuses also had to sign pledges that they supported no candidate at that time. Delegate Plan Rule 9. Delegates to represent the "no preference" choice were then selected at these caucuses.5/

Following the March 4, 1980 Massachusetts Democratic primary, delegates to the Democratic National Convention were

5/ All delegate candidates in the no preference caucuses were required to sign an affidavit by February 4, 1980, attesting to their uncommitted status, see n. 4, supra, and to maintain this uncommitted status through the primary. See Delegate Plan Rule 8. Thus CFL's contention in the affidavit of Lawrence Sherman (Exhibit A to CFL Response) and at page 8 of the CFL response that thirty delegates who were elected as uncommitted delegates "were in fact committed to . . . LaRouche's candidacy" is misleading and inaccurate.

designated based on the number of votes for each candidate on the ballot. See generally Delegate Plan Rule 15. Uncommitted delegates to the Democratic National Convention were designated on the basis of the percentage of "no preference" votes in the Massachusetts primary. 6/ Id. All candidates for delegate and elected delegates were required to be identified as to their respective presidential preference or uncommitted status at all levels of the process, from the caucus, to the primary, and up until the convention. Delegate Plan Rule 8. Furthermore, delegates selected for a particular primary ballot candidate were required to vote for that candidate at least through the first ballot at the Democratic National Convention. Id.

In light of the Massachusetts Democratic delegate selection procedures in 1980 as outlined above, it is clear that the CFL expenditures for the advertisements in question, dating from January 9 to February 8, 1980, could not reasonably be expected to influence the Massachusetts viewing voting age population to vote for Lyndon LaRouche, or for delegate candidates supporting LaRouche, in either the March 4, 1980 primary or the preceding district caucuses held on February 10, 1980. See 11 C.F.R. § 106.2(c)(1). Inasmuch as LaRouche was not on the primary ballot, no person could be influenced to vote for him in the

6/ The Massachusetts primary did provide a blankline for write in votes, see Mass. Gen. Stat. Chap. 53 570E, and if a write-in candidate secured enough votes, a caucus to choose delegates in support of that person to attend the national convention, would be held after the primary. Delegate Plan Rule 15. However, CFL acknowledges in its response to the Commission that the committee did not stage a write-in campaign in Massachusetts or seek to influence the write-in vote in that state.

primary and no caucus could be held to pick delegates to support him. Moreover, as all no preference delegates selected by virtue of the primary and no preference caucuses had to maintain their declared uncommitted status at least through the March 4 primary, see Delegate Plan Rule 8, CFL could not by its January 9 to February 8, 1980, advertisements influence the election of delegates who supported LaRouche through the no preference slot on the primary ballot. 7/

The essence of CFL's argument in support of its allocation of 86% of its media expenditures to Massachusetts is that the committee was attempting to influence the voters of that state to specifically vote "no preference", because it was CFL's opinion that uncommitted delegates might lead to the committee's goal of an "open" Democratic National Convention. Nothing in the record, however, supports CFL's contention that its January 9 to February 8, 1980, media advertisements were directed at influencing voters to cast a "no preference" vote in the Massachusetts primary. CFL acknowledges the only documentation it provides in support of its position is a campaign strategy memorandum from Barbara Boyd of the committee. See Exhibit B of CFL's response. That document is not probative on this issue, as it merely makes passing reference to the Massachusetts race in two places. First, on page 2 of the memorandum, there is a reference to a slate of

7/ Furthermore, since participants in the no preference caucuses were required to pledge they supported no candidate for the presidential nomination, CFL could not have influenced the outcome of the no preference delegate selection caucuses to select pro LaRouche candidates, either.

"uncommitted", however what appear to be relevant portions of this documentary reference have been "blacked-out" by the committee, making the document unreliable evidence for the purpose for which CFL proffers it. The second reference to Massachusetts in the document is on the third page, which simply notes the Massachusetts caucus date, and makes no mention of any CFL strategy for Massachusetts, let alone one by CFL to stage a no preference advertising campaign. Moreover, the fact that CFL did not even stage a write-in campaign on behalf of LaRouche in Massachusetts, although there were no legal impediments such as those for ballot access in initiating a write-in campaign, belies the assertion that CFL was attempting by its January 9 to February 8, 1980 advertisements to influence Massachusetts voters to in some way support the LaRouche campaign.

The Commission has consistently refused to permit a candidate to allocate expenditures to a state in which the candidate is not on the primary ballot, where the expenditures have been made after the ballot access date. 8/ See e.g. Final Audit Report of the [1976] Udall for President Committee. Moreover, the Commission also applies this policy to the candidate's benefit by not applying the "10% rule" of 26 U.S.C.

8/ However, if the expenditures are made prior to the ballot access date in a state primary, the Commission will permit them to be allocated to that state even if the candidate subsequently does not appear on the ballot. Thus, 1% of the January 9 to February 8, 1980, expenditures appropriately were allocated by CFL to Vermont, although LaRouche was not on the ballot in that state, since the final ballot access date in Vermont was February 12, 1980.

§ 9033(c)(1)(B) to the candidate in a state where the candidate is not on the ballot. 9/ See 11 C.F.R. § 9033.5(b). Thus, neither the record, the statute and regulations, nor prior Commission action support CFL's attempt to allocate 86% of its \$57,393.62 in expenditures to Massachusetts, where LaRouche was not on the ballot and did not even stage a write-in campaign, and only 12% of those expenditures to New Hampshire where the candidate was on the primary ballot. Cf. Gelman v. FEC, 631 F.2d 939,943 (D.C. Cir. 1980), cert. denied 449 U.S. 876 (1980) ("where [asserted] construction leads to a conclusion that is illogical or at odds with apparent purpose of the statute, there can be no doubt as to the correctness of the agency's position").10/

For the foregoing reasons, the Commission has also determined that CFL improperly allocated 86% of its \$2,200.20 of February 1980, television charges to Massachusetts, and that

9/ Had the Commission considered LaRouche to have actively campaigned in Massachusetts as CFL now asserts, the provisions of 26 U.S.C. § 9033(c)(1)(B) would have operated to make LaRouche ineligible for further matching fund payments, since it would have been the second consecutive primary in which LaRouche received less than 10% of the vote.

10/ The Commission notes that CFL has erroneously stated the position the FEC took in the Gelman action. The FEC position in that case was merely that LaRouche failed to get 20% of the votes cast in the Michigan Democratic presidential primary, and therefore that the requirement of 26 U.S.C. § 9033(c)(4)(B) to regain eligibility for matching funds had not been met by the candidate. It was CFL, however, that asserted to the court that votes cast for the "uncommitted" slot in a primary are not votes "for a candidate". See Gelman v. FEC, 631 F.2d at 941.

85% of those expenditures, or \$1,885.79, should have been allocated instead to New Hampshire. Therefore, since CFL already allocated \$796.63 of this amount to New Hampshire, the remaining \$1,089.16 has been attributed by the Commission to CFL's New Hampshire expenditure totals.

C. Rental of House in New Hampshire and Associated Telephone Expenditures

The Commission has determined that \$4,759.08 in rental payments, \$410.22 for telephone charges, and \$4,181 for damages associated with a house in New Hampshire leased by CFL from October 1979 through February 1980, and allocated by the committee to national overhead must be allocated to CFL's New Hampshire expenditure limitation. Section 106.2(b) of the Commission's regulations states that expenditures for goods and services used in a campaign in a specific state shall be allocated to that state. See also 11 C.F.R. § 106.2(a); FEC Advisory Opinion 1979-73, Fed. Elec. Camp. Fin. Guide (CCH) ¶5449. Based upon these regulatory provisions, the Commission has consistently required that the entire amount of candidate lodging while campaigning in a state be attributed to that state. The fact that the candidate lodging CFL expended funds on was a rental property rather than more transient lodging such as a hotel does not provide a sufficient basis for distinguishing those payments and waiving the state allocation requirement. The rental property was used in conjunction with the LaRouche campaign in New Hampshire; indeed it is clear that but for that

New Hampshire campaign CFL would not have rented a house (and thus paid for phone service for that house) in that state. CFL stated in its response to the Commission's preliminary repayment determination that the New Hampshire house was rented to mitigate the costs to the committee of flying Mr. LaRouche in and out of New Hampshire to campaign. Thus, admittedly the rental and telephone payments were for goods and services used in the campaign in New Hampshire, and therefore under 11 C.F.R. § 106.2(b) must be allocated to New Hampshire.

In support of its allocation of the amount in question to "national overhead", CFL states that a portion of the candidate's time spent at the New Hampshire rental property was devoted to work on a book and campaign materials, as well as for candidate "rest" and "other personal activities". The regulations define national overhead expenditures to be those for "administrative staff, and overhead costs directly relating to the national campaign headquarters." 11 C.F.R. § 106.2(b). Rental payments and associated telephone charges 11/ for candidate lodging in a state do not fall within this regulatory definition. Moreover,

11/ The Commission notified CFL by letter of July 2, 1981, that certain long distance telephone charges would not be required to be allocated to states if amended allocation schedules and detailed documentation supporting the charges, including copies of bills supporting the charges, was presented to the Commission within thirty days of receipt of the letter. The CFL response to the July 2, 1981 letter was originally due on August 19, 1981, but subsequently was extended by the Commission until December 15, 1981. To date, CFL has not submitted any amended allocation schedules or supporting documentation pursuant to the FEC's July 2, 1981 letter.

to the extent the Commission accepts CFL's assertion that the New Hampshire house paid for by public funds was used by LaRouche for personal matters and non-campaign related purposes (see CFL's response, at 18, 19), those payments were not qualified campaign expenditures and therefore are subject to 100% repayment, in any event. See 11 C.F.R. §§ 100.8(a)(1) and 9032.9(a)(2).

D. Expenditures in Excess of New Hampshire Limitation.

Pursuant to 11 C.F.R. § 9035.1(a), the expenditure limitation for New Hampshire in 1980, was \$294,400. Including the items noted above, \$330,986.42 of the funds CFL spent in the 1980 campaign were or should have been allocated by the committee to New Hampshire. Therefore, inasmuch as CFL exceeded the New Hampshire limit by \$36,586.42, these funds cannot be characterized as qualified campaign expenses. 11 C.F.R. § 9034.4(d). Accordingly, the Commission has determined \$36,586.42 must be repaid by CFL to the U.S. Treasury. 11 C.F.R. § 9034.4(a) and 9038.2(a)(2).

II. Excessive Payments of Matching Funds to Which The Candidate Was Not Entitled

On August 7, 1980, the Commission preliminarily determined that the statement of net outstanding campaign obligations [hereinafter cited as NOCO statement] submitted by CFL pursuant to 11 C.F.R. § 9034.5(b) on July 28, 1980, and the alternative NOCO statement submitted by CFL on August 4, 1980, were inaccurate. Specifically, the Commission determined that certain expenditures, inter alia "general legal expenses", claimed by CFL to be winding down expenses did not qualify as such, see

11 C.F.R. § 9034.4(c), and that other claimed outstanding campaign obligations were not adequately documented. See 11 C.F.R. §§ 9033.1(a)(1) and 9038.2(a)(3). The Commission notified CFL of this determination and the basis therefore by letter of September 3, 1980, and invited CFL to submit a response within 30 days. No response from CFL was received by the FEC within that time frame^{12/} and, accordingly, on October 5, 1980 the Commission's preliminary decision became final. CFL did not seek review of this decision in the court of appeals as provided for by 26 U.S.C. § 9041(a).

Subsequently, the Commission, in its final audit report of CFL again set forth the FEC audit verified NOCO Statement for CFL. Based on that NOCO Statement, it was preliminarily determined that CFL had received matching fund payments after the committee had reached the point where its net outstanding campaign obligations did not exceed its cash on hand and other assets (when CFL "zeroed out"), and that therefore CFL should repay those funds to the U.S. Treasury. See 26 U.S.C. §§ 9033(c)(1) and (2), and 9038(b)(1); 11 C.F.R. §§ 9034.4(c), 9034.5, and 9038.2(a)(1).

^{12/} CFL alleges to have sent a letter on September 19, 1980 responding to the Commission's September 3, 1980 letter. The mailroom dockets, as well as the records of the Commission, the Office of General Counsel, and the Audit Division show that this letter was never received by the Commission, and CFL offers no proof of receipt by the Commission. In any event, a copy of the letter is attached to the CFL response and thus has been reviewed by the Commission in making its final repayment determination.

CFL, in its May 6, 1981 response to the final audit report submitted yet another NOCO Statement. Upon review of this latest NOCO Statement, as well as additional documentation submitted by CFL on June 7, 1982, an addendum to the final audit report was issued by the Commission finding the committee "zeroed out" for purposes of the Presidential Primary Matching Payment Account Act, as of July 2, 1980, and that the \$36,586.42 in matching funds received by CFL after that date should be repaid. However, the Commission continues to reject as legitimate winding down expenses the \$13,400 for general legal fees that CFL has claimed in its July 28, 1980, August 4, 1980, and May 6, 1981 NOCO Statements, and \$4,000 of the \$13,750.90 CFL lists as other compliance/computer costs in its May 6, 1981 NOCO Statement.^{13/}

With respect to the \$13,400 in general legal fees disallowed by the Commission, a detailed basis for this determination was set forth and provided to CFL in the FEC's letter of September 3, 1980, and is hereby incorporated by reference to this statement of reasons. (See Attachment III). The committee's failure to timely exercise its right to judicially challenge the Commission's determination in this regard after it became final on October 5, 1980, arguably could be considered a waiver of any right to contest that decision. See 26 U.S.C. § 9041(a).

^{13/} The May 6, 1981 NOCO Statement was the first one in which CFL claimed \$13,750.90 for computer/compliance costs. Previous CFL NOCO Statements had claimed only \$9,250 for this category of expenses.

Assuming arguendo, however, that CFL is not estopped from now contesting this issue, CFL has not demonstrated the expenses claimed are qualified campaign expenditures. The \$13,400 was for legal fees in connection with three defamation suits against Lyndon LaRouche and CFL. Actions in defense of a defamation suit are not undertaken "for the purpose of influencing any election for Federal office", and thus expenses incurred in so doing are not "expenditures". See 11 C.F.R. § 100.8(a)(1). Therefore, these payments were not winding down or other qualified campaign expenditures. See FEC Advisory Opinions 1980-4 and 1979-37, Fed. Elec. Comp. Guide ¶¶ 5457, 5419. See also FEC Advisory Opinion 1980-57, id. at ¶5310. Cf. 11 C.F.R. § 9032.9(a)(3).

Consistent with this interpretation, the Commission has not required that the amounts spent by CFL in defending these defamation suits be allocated to CFL's overall or state expenditure limitations. See FEC Advisory Opinion 1980-4, supra.

The other item listed on the most recent CFL NOCO Statement that the Commission continues to reject as part of CFL's net outstanding campaign obligations is \$4,000 of the compliance and computer costs claimed by the committee. Notwithstanding extensive opportunities provided by the Commission to CFL to submit additional documentation, CFL has failed to provide the supporting materials for these \$4,000 of expenditures as required by 11 C.F.R. § 9033.1(a). Thus, the Commission rejects CFL's claim that this \$4,000 payment which was not documented in

accordance with the regulations may be defrayed by public matching funds. 11 C.F.R. § 9038.2(a)(3).^{14/}

As the NOCO Statement contained in the Commission's addendum to the CFL final audit report shows, as of July 2, 1980, CFL no longer had any net outstanding campaign obligations. Therefore, CFL was not entitled to the two matching fund payments it received on July 3 and July 31, 1980, totalling \$18,085.42. Accordingly, the Commission has determined that amount should be repaid by CFL and Lyndon LaRouche to the United States Treasury. See 26 U.S.C. § 9038(b)(1).

III. Summary of Repayment Determination

The Commission has determined CFL exceeded its state expenditure limitation for New Hampshire by \$36,586.42. In addition, the Commission has determined that CFL received matching funds of \$18,085.42 in excess of its entitlement. Therefore, pursuant to 26 U.S.C. § 9038(b)(1) and (2), Lyndon LaRouche and CFL must repay \$54,671.84 to the United States Treasury.

^{14/} CFL in its response to the final audit report also seems to challenge the Commission's August 7, 1980 determination that CFL expenditures in connection with travel to and lodging at the Democratic national convention were not legitimate winding down expenses. See 11 C.F.R. § 9034.4(c). However, the NOCO Statement submitted by CFL with its response does not list those expenditures as campaign obligations. In any event, as the CFL response acknowledges, CFL's attendance at the nominating convention was not an attempt to terminate campaign activity, but to continue and escalate it. *Id.* Therefore, since these expenses were incurred long after LaRouche's April 17, 1980 date of ineligibility, and since they do not qualify as winding down expenses, the statute mandates that these expenses not be defrayed with matching funds. 26 U.S.C. § 9033(c).

