



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BS002871

October 30, 1991

MEMORANDUM

TO: FRED S. EILAND
PRESS OFFICER

FROM: ROBERT J. COSTA *RC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
PAUL SIMON FOR PRESIDENT

Attached please find a copy of the Final Audit Report on Paul Simon for President which was approved by the Commission on October 22, 1991.

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

Attachment as stated

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D. C. 20463

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Approved 10-22-91

REPORT OF THE AUDIT DIVISION
ON
PAUL SIMON FOR PRESIDENT

I. Background

A. Overview

This report is based on an audit of Paul Simon for President ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. §9038(a) 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, 26 U.S.C. §9039(b) and 11 C.F.R. §9038.1(a)(2) 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 April 24, 1987. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from the Committee's inception, April 9, 1987 through May 31, 1988. During this period, the Committee reported an opening cash balance of \$0, total receipts of \$12,207,460.31, total disbursements of \$11,834,933.11 and a closing cash balance of \$371,527.20.* In addition, certain financial activity was reviewed through September 5, 1989 for purposes of determining the Committee's remaining matching fund entitlement based on its net outstanding campaign obligations. Under 11 C.F.R. §9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

*/ Totals do not foot due to Committee math errors.

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This report is based upon documents and workpapers which support each of its 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 Treasurer of the Committee during the period reviewed was Mr. James C. Rosapepe.

C. Scope

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

II. Finding and Recommendation Related to Title 2 of the United States Code

Matters Referred to the Office of General Counsel

Certain matters noted during the audit have been referred to the Commission's Office of General Counsel.

III. Findings and Recommendations Related to Title 26 of the United States Code

A. Calculation of Repayment Ratio

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 payment 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 Regulations at 11 C.F.R. §9038.2(b)(2)(iii) state that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

Pursuant to 11 C.F.R. §9033.5(a), the Commission determined Senator Simon's date of ineligibility to be April 7, 1988.

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The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

Total Matching Funds Certified through the Date
of Ineligibility - April 7, 1988

Numerator plus Private Contributions Received through Date
of Ineligibility

\$2,766,544

= .331449

\$2,766,544 + \$5,580,271

Thus, the repayment ratio for non-qualified campaign expenses is 33.1449%.

B. Apparent Non-Qualified Campaign Expenses - Post-Ineligibility Expenditures/Other

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 payment 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.

Section 9032(9) of Title 26 of the United States Code and Section 9032.9 of Title 11 of the Code of Federal Regulations, in part, define a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred by a candidate or his authorized committee in connection with his campaign for nomination for election neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid from the date the individual became a candidate through the last day of the candidate's eligibility.

Furthermore, included in the examples of disbursements that are not qualified campaign expenses under 11 C.F.R. §9034.4(b)(3) are "post-ineligibility expenditures" or expenses incurred after a candidate's date of ineligibility, to the extent that they do not qualify as winding down costs.

Sections 9034.4(a)(3) and (b)(3) of Title 11 of the Code of Federal Regulations provide that any expenses incurred after a candidate's date of ineligibility are not qualified campaign expenses except for winding down costs associated with the termination of political activity, such as the costs of

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complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility.

1. Convention Related Expenditures

During our review of the Committee's post-ineligibility expenditures, the Audit staff identified 20 convention related expenditures totaling \$9,570.18 all of which were incurred after April 7, 1988, the candidate's date of ineligibility.

2. Payroll Tax Penalties

The Audit staff also identified expenditures totaling \$13,873.54 representing payments to satisfy tax penalties assessed by various taxing authorities for late filings. Included in this amount is \$579.40 of Iowa related tax penalties for which repayment is requested at Finding III.D.1.

3. Non-Winding Down Expenditures

During our review of the Committee's post-ineligibility expenditures, the Audit staff also identified 4 expenditures totaling \$1,950.94 for such items as campaign photos, satellite link, fundraising^{*} and expenses associated with a labor meeting which did not appear to meet the requirements cited at 11 C.F.R. §§ 9034.4(a)(3) and (b)(3) for winding down costs.

The Committee was presented with schedules detailing the above mentioned expenditures at the exit conference. The Committee representative responded that expenses incurred relative to the Democratic Convention in Atlanta July 17-22, 1988 were qualified campaign expenses since the Committee was engaged in fundraising activities in order to raise funds to extinguish debt remaining from the campaign and to defray administrative expenses. According to the Committee a meeting of its National Finance Board was held on July 18, 1988 to discuss fundraising strategies which was attended by the Committee's National Finance Director and Senator Simon and his family. Furthermore from July 17 through July 22, 1988 numerous meetings

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Based on the Audit staff's analysis of the Committee's NOCO as presented at Finding III.E. expenses made for fundraising activities are not considered winding down costs, (See page 72, footnote 3).

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were held, formally and informally, to request assistance with the debt effort; many of which were attended by the Committee's National Finance Director. As the expenses in Atlanta during the latter part of July 1988 were directed toward fundraising goals, the Committee contends the expenses were genuine fundraising expenses and are therefore qualified campaign expenses. In support of this the Committee stated that the Regulations on travel at 11 C.F.R. § 106.3 appear to mandate that the Committee pay for travel of the fundraising staff since prearranged fundraising activity went past the incidental contact test.

The Committee further stated that it would submit documentation detailing its fundraising activities in Atlanta and documentation regarding the non-winding down expenses to the Audit staff for review.

No documentation was provided by the Committee on January 24, 1990 to associate any of the convention related expenditures identified by the Audit staff with any of the above described fundraising events, nor was any documentation provided with respect to payroll tax penalties or non-winding down expenditures. Therefore, the Audit staff's position remains unchanged.

The following recommendation was presented to the Commission on June 26, 1990:

"The Audit staff recommends that within 30 calendar days of the date of service of this report the Committee submit:

- a detailed accounting, with supporting documentation of all expenses related to the Committee's activities conducted July 17-22, 1988 at the Democratic Convention in Atlanta, to include a detailed schedule of all Committee functions, meetings and activities of a political or 'fundraising' nature, a listing of all locations at which such meetings/activities held by Committee personnel were conducted and the costs incurred for each meeting (i.e., room rentals, catering); a list of all Committee personnel in attendance and all costs associated with their attendance, (i.e., travel to Atlanta, lodging and subsistence while in Atlanta); a detailed billing statement from the Ramada Capital Plaza Hotel in Atlanta itemizing the charges for the Illinois Delegation Office in the Rabun Room, the Simon scheduling office, Room #1214 and the Simon Press office Room #1216; and
- documentation demonstrating that the payments in question are qualified campaign expenses;
- absent such documentation, the Audit staff will recommend that the Commission make an initial

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determination that the Committee make a pro rata repayment of \$8,224.99; [(\$9,570.18 + (\$13,873.54 - \$579.40) + \$1,950.94) x .331449] to the United States Treasury.

During the Commission's consideration of this recommendation the Commissioners could not reach a conclusive decision.

A motion was made to approve the above recommendation as written, that motion failed by a vote of 2-3 [Commissioners Elliott and Josefiak voting in the affirmative and Commissioners McDonald, McGarry and Thomas voting against].

A second motion was made to approve the recommendation, provided the original amount of non-qualified post-ineligibility expenses subject to repayment (\$24,815.26) be further reduced by the value of those non-qualified campaign expenses paid with matching funds after the candidate's date of ineligibility (\$24,815.26). The pro rata portion to be repaid to the United States Treasury would in turn decrease to \$-0- [(\$24,815.26 - \$24,815.26) x .331449]. That motion failed by a vote of 3-2 [Commissioners McDonald, McGarry and Thomas voting in the affirmative and Commissioners Elliott and Josefiak voting against].

A third motion was made to require the pro rata repayment of \$-0- at this time, as calculated above, and to add language to the report to explain the issue on which the Commission did not reach a majority decision. This motion passed by a vote of 5-0 [Commissioners McDonald, McGarry, Thomas, Elliott and Josefiak voting in the affirmative].

The discussion with respect to the recommendations involved the appropriateness of seeking a repayment under 26 U.S.C. §9038(b)(1), as found at Finding III.F.1.; while at the same time seeking a repayment under 26 U.S.C. §9038(b)(2). The Commission focused on the question of whether or not a "double counting" existed since as part of the calculation of the Committee's remaining entitlement, non-qualified campaign expenses were not recognized for purposes of determining the Candidate's deficit in accordance with 11 C.F.R. §9034.5(b). Also a pro rata repayment was being sought for the amount of non-qualified campaign expenses paid with matching funds but not permitted to be recognized for NOCO purposes.

Based on the Commission's deliberations as described above, it was therefore recommended in the Interim Audit report that within 30 calendar days after service of this report the Committee submit to the Audit staff for review:

- a detailed accounting, with supporting documentation of all expenses related to the Committee's activities conducted July 17-22, 1988 at the Democratic Convention

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in Atlanta, to include a detailed schedule of all Committee functions, meetings and activities of a political or "fundraising" nature, a listing of all locations at which such meetings/activities held by Committee personnel were conducted and the costs incurred for each meeting (i.e., room rentals, catering); a list of all Committee personnel in attendance and all costs associated with their attendance, (i.e., travel to Atlanta, lodging and subsistence while in Atlanta); a detailed billing statement from the Ramada Capital Plaza Hotel in Atlanta itemizing the charges for the Illinois Delegation Office in the Rabun Room, the Simon scheduling office, Room #1214 and the Simon Press office Room #1216; and

- documentation demonstrating that the payments in question are qualified campaign expenses.

The Committee made no response relative to this finding in its January 31, 1991 response to the Interim Audit Report. The Audit staff's review of documentation submitted in response Finding III.C. Apparent Non-Qualified Campaign Expenses- Undocumented Expenditures noted one additional convention related expenditure totaling \$1,050. Therefore, convention related expenditures now total \$10,620.18.

Additionally, in its response to the Interim Audit Report the Committee provided documentation with respect to Finding III.F.1. Matching Funds in Excess of Entitlement which resulted in a revised calculation which indicated that the Committee did not receive matching funds in excess of entitlement. Therefore, the issue of "double counting" as described above no longer exists.

The Audit staff recalculated the pro rata repayment amount as follows:

-Convention Related Expenditures	\$10,620.18
-Payroll Tax Penalties (net of Iowa related of \$579.40)	13,294.14
-Non-Winding Down Expenditures	1,950.94

Total Non-Qualified Campaign Expenses	\$25,865.26
Multiplied by Repayment Ratio	X.331449

Amount Subject to Repayment	\$ 8,573.01

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Recommendation #1

On August 29, 1991 the Commission made an initial determination that the \$25,865.26 in convention related expenses, payroll tax penalties, and non-winding down, are non-qualified campaign expenses; and that the Committee make a pro rata repayment of \$8,573.01 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2).

III.C. Apparent Non-Qualified Campaign Expenses-Undocumented Expenditures

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

Section 9038.2(b)(3) of Title 11 of the Code of Federal Regulations states the Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 C.F.R. 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 C.F.R. 9038.2(b)(2)(iii).

During the Audit staff's review of the Committee's disbursements, it was noted that disbursements totaling \$245,466.55 were not documented in accordance with 11 C.F.R. §9033.11. The various categories of undocumented disbursements are explained below.

1. Disbursements from National Accounts

a. Payee Unknown

During the Audit staff's review of the Committee's disbursements, it was noted that 7 wire transfers, 2 withdrawals and 1 check totaling \$30,294.22 were undocumented as to the payee. During fieldwork and at the exit conference, the Committee was presented with photocopies of schedules detailing these disbursements.

b. Payments to Various Committee Vendors

The Audit staff noted 9 payments totaling \$18,637.69 to various vendors for such services as telephone, and printing made either by cashier's checks or Committee checks for which there was no documentation.

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c. Checks Written to Individuals

The Audit staff's review of Committee checks made payable to individuals, categorized by the Committee as primarily expense reimbursements, identified 45 disbursements totaling \$38,055.74 which were undocumented.

d. Drafts Written to Individuals

The Audit staff's review of drafts made payable to individuals identified 801 drafts totaling \$70,211.88 that were not documented, or were not documented sufficiently to comply with 11 C.F.R. §9033.11. These payments as determined from the draft memo entry were for such items as "field expenses", "trip expenses", "petty cash" and "reimbursements", as well as "Expenses-Simon Office Sioux Falls", and in many instances the purpose was undetermined.

2. Disbursements Made from State Accounts

a. "Committee Authorized Accounts"

The Committee maintains it authorized 3 state accounts, the Banker Trust account in Iowa, the Midway Bank account in Minnesota, and the Community Savings Bank account in Massachusetts. The Audit staff's review of the disbursements from these accounts identified 157 disbursements totaling \$69,429.11 as undocumented. The majority of the undocumented payments from the Bankers Trust account in Iowa were to individuals, of which approximately 35% were reimbursements for conducting the Six for Simon canvass or the GOTV canvass, and for the remaining payments the purpose could not be determined. The majority of the payments from the Midway Bank account in Minnesota were to individuals and lacked adequate supporting documentation. The majority of payments from the Community Savings Bank account in Massachusetts were to individuals, dated 2/18/88, the purpose of which was "expenses" and were also not adequately documented.

b. "Accounts Not Authorized by the Committee"

During the bank reconciliation, the Audit staff noted the existence of an additional campaign depository. The account noted was at 1st Interstate Bank of Washington.

Initially, the Committee stated the account at 1st Interstate Bank of Washington was not a Committee account.

A review of the canceled checks eventually provided to the Audit staff from the 1st Interstate Bank of Washington identified 8 transactions totaling \$5,555.07 as undocumented.

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3. Expenditures Made Post Date of Ineligibility

The Audit staff's review of Committee expenditures made April 8, 1988 through September 12, 1989 (date on which the Committee expended the last matching fund payment to which it was entitled) identified 20 expenditures totaling \$13,282.84 which were not documented as required.

Based upon the above reviews, the amount subject to repayment is calculated below:

Disbursements from National Accounts	
Payee Unknown	\$ 30,294.22
Payments to Various Committee Vendors	18,637.69
Checks Written to Individuals	38,055.74
Drafts Written to Individuals	70,211.88
Disbursements from State Accounts	
Committee Authorized Accounts	69,429.11
Non-Committee Authorized Accounts	5,555.07
Expenditures Made Post Date of Ineligibility	<u>13,282.84</u>
Total Non Qualified Campaign Expenses - Undocumented Expenditures	\$245,466.55
LESS: Those amounts included at Findings III.D.1 and D.2. which were allocated either by the Committee or the Audit staff to New Hampshire or Iowa and are included in the repayment calculation at Findings III.D.1 and D.2.	
Iowa Undocumented included at Finding III.D.1.	(38,335.27)
New Hampshire Undocumented included at Finding III.D.2.	(20,503.12)
	<u>\$186,628.16</u>
Multiplied by the Repayment Ratio (III.A.)	<u>.331449</u>
Preliminary Calculation of the Amount Subject to Repayment	\$61,857.72 -----

At the exit conference the Committee was presented with detailed schedules of the above mentioned expenditures. In response, the Committee representatives stated they would review the schedules and attempt to provide the necessary documentation.

The following recommendation was presented to the Commission on June 26, 1990:

"The Audit staff recommends that within 30 calendar days of receipt of this report the Committee provide

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documentation to support that the expenditures in question are qualified campaign expenses. Absent such documentation, the Audit staff recommends the Commission make an initial determination that the Committee make a pro rata repayment of \$61,857.72 to the United States Treasury."

During the Commission's consideration of this recommendation the Commissioners could not reach a conclusive decision.

A motion was made to approve the above recommendation as written, that motion failed by a vote of 2-3 [Commissioners Elliott Josefiak voting in the affirmative and Commissioners McDonald, McGarry and Thomas voting against].

A second motion was made to approve the recommendation, provided the original amount of non-qualified post-ineligibility expenses subject to repayment (\$186,628.16) be further reduced by the value of those non-qualified campaign expenses paid with matching funds after the candidate's date of ineligibility (\$15,380.44). The pro rata portion to be repaid to the United States Treasury would in turn decrease to \$56,759.89 $[(\$186,628.16 - \$15,380.44) \times .3314497]$. That motion failed by a vote of 3-2 [Commissioners McDonald, McGarry and Thomas voting in the affirmative and Commissioners Elliott and Josefiak voting against].

A third motion was made to require the pro rata repayment of \$56,759.89, as calculated above, and to add language to the report to explain the issue on which the Commission did not reach a majority decision. This motion passed by a vote of 5-0 [Commissioners McDonald, McGarry, Thomas, Elliott and Josefiak voting in the affirmative].

The discussion with respect to the recommendations involved the appropriateness of seeking a repayment under 26 U.S.C. §9038(b)(1), as found at Finding III.F.1.; while at the same time seeking a repayment under 26 U.S.C. §9038(b)(2). The Commission focused on the question of whether or not a "double counting" existed since as part of the calculation of the Committee's remaining entitlement, non-qualified campaign expenses were not recognized for purposes of determining the Candidate's deficit in accordance with 11 C.F.R. §9034.5(b). Also, a pro rata repayment was being sought for the amount of non-qualified campaign expenses paid with matching funds but not permitted to be recognized for NOCO purposes.

Based on the Commission's deliberations as described above, the Audit staff recommended in the Interim Audit Report that within 30 calendar days after service of this report the Committee provide documentation to support that the expenditures in question are qualified campaign expenses. Absent such documentation, the Audit staff recommended that the Commission make an initial determination that the Committee make

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a pro rata repayment of \$56,759.89 to the United States Treasury.

The Committee submitted its response to the Interim Audit Report on January 31, 1991. Based upon a review of the documentation submitted, the Audit staff determined that the Committee provided documentation to support that 341 expenditures totaling \$87,839.79 were indeed qualified campaign expenses. During this review it was noted that the Committee submitted documentation which had been used to document drafts previously reviewed and determined to be documented by the Audit staff.

Additionally, in its response the Committee provided documentation with respect to Finding III.F.1. Matching Funds in Excess of Entitlement which resulted in a revised calculation which indicated that the Committee did not receive matching funds in excess of entitlement. Therefore, the issue of "double counting" as described above no longer exists.

In the Interim Audit Report the Committee was requested to provide additional documentation with respect to payments made to Progress Printing, which appeared to be duplicate payments, i.e., payments for goods/services which had previously been paid for by the Committee. The Committee's response did not address this matter. Therefore, the Audit staff has included in the repayment calculation for undocumented non-qualified campaign expenses \$19,931.50 of duplicate payments to Progress Printing.

The Audit staff recalculated the pro rata repayment amount as follows:

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1
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9
1
9
0
1
0

Total Non-Qualified Campaign Expenses -
 Undocumented Expenditures in the Interim
 Audit Report \$ 245,466.55

LESS: Amounts Documented in response to the
 Interim Audit Report

Payee Unknown (19,961.72)
 Payments to Various Committee Vendors (11,724.69)
 Checks Written to Individuals (17,876.48)
 Drafts Written to Individuals (19,411.07)

Disbursements from State Accounts
 Committee Authorized Accounts (10,235.36)
 Non-Committee Authorized Accounts -0-
 Expenditures Made Post Date of
 Ineligibility (8,630.47)

ADD: Progress Printing 19,931.50

Total Non-Qualified Campaign Expenses
 Undocumented Expenditures \$ 177,558.26^{*/}

LESS: Those amounts included at Findings
 III.D.1 and D.2. which were allocated
 either by the Committee or the Audit
 staff to Iowa or New Hampshire and are
 included in the repayment calculation
 at Findings III.D.1 and D.2.

Iowa Undocumented included
 at Finding III.D.1. (33,270.35)

New Hampshire Undocumented included at
 Finding III.D.2. (10,207.20)

Amount Subject to Repayment \$ 134,080.71
 Multiplied by the Repayment Ratio (III.A.) .331449

Repayment Amount \$ 44,440.92

^{*/} Should the documentation provided indicate that an
 adjustment is required for expenditures subject to
 allocation to the Iowa or New Hampshire state limitations
 Finding III.D will be revised as appropriate.

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Recommendation #2

On October 3, 1991 the Commission made an initial determination that the \$134,080.71 in undocumented expenditures are non-qualified campaign expenses; and that the Committee make a pro rata repayment of \$44,440.92 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2).

D. Apparent Non-Qualified Campaign Expenses:
Iowa and New Hampshire Expenditures Paid in Excess of
State Limitations

Section 9035(a) of Title 26 of the United States Code and Section 9035.1(a)(1) of Title 11 of the Code of Federal Regulations state, in part, that no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2 of the United States Code.

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. Section 9038.2(b)(2)(ii)(A) of Title 11 of the Code of Federal Regulations states that an example of a Commission repayment determination under paragraph (b)(2) of this section includes determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 C.F.R. §9035.

1. Iowa

The Committee's FEC Form 3P, Page 3, covering activity through December 31, 1989, disclosed \$792,504.34 allocable to the Iowa expenditure limitation of \$775,217.60.

The Audit staff requested the Committee to provide allocation schedules and workpapers supporting the amounts disclosed on FEC Form 3P, Page 3, but was instead provided with allocation schedules for second, third, and fourth quarter 1987, and January and February 1988 with an explanation that the Committee had prepared these revised schedules in June 1988. Summary workpapers only, however, were provided supporting the Committee's second and third quarter 1987 allocations which are on the public record. The Committee stated it would amend its reports to reflect the revised allocations, however no such amendments had been filed by the end of audit fieldwork. Therefore, the Audit staff reviewed the allocation workpapers provided and determined the correct amount allocable to Iowa.

Discussed below are categories of costs which were not disclosed by the Committee on FEC Form 3P, Page 3, as allocable to Iowa as presented in the Interim Audit Report.

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Included within the applicable report section below is the Committee response, if any, to the Interim Audit Report.

a. Exempt Compliance and Fundraising Expenditures

Section 106.2(c)(5) of Title 11 of the Code of Federal Regulations states, in part, that an amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of the primary election.

If the candidate wishes to claim a larger compliance or fundraising exemption for any person the candidate shall establish allocation percentages for each individual working in that state. The candidate shall keep detailed records to support the derivation of each percentage in accordance with 11 C.F.R. § 106.2(e). Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance or fundraising exemption.

Section 106.2(b)(2)(iv) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

Section 100.8(b)(21)(iii) of Title 11 of the Code of Federal Regulations states that fundraising expenditures need not be allocated on a State by State basis, except where the fundraising activity is aimed at a particular State and takes place within 28 days prior to a primary election, convention, or caucus.

Section 110.8(c)(1) of Title 11 of the Code of Federal Regulations states that expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that state's primary election, convention, or caucus shall be presumed to be attributable to the expenditure limitation for that State, 11 CFR 100.8(b)(21) (relating to the 20% fundraising exemption) notwithstanding.

As previously noted, the Committee did not provide allocation schedules and workpapers supporting the amounts disclosed on its FEC Forms, 3P, (with the exception of second and third quarter 1987 summary workpapers) however it did provide revised allocation schedules and workpapers reflecting the amounts it believes are allocable to Iowa; as of the end of audit fieldwork amendments had not been filed which reflect the

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Committee's revised allocations.

The Audit staff noted that the allocation schedules and workpapers provided were based on the amounts coded on the Committee's general ledger to Iowa plus manual adjustments for items such as disbursements made from the Committee's Bankers Trust, Iowa depository. During fieldwork, a Committee representative stated the Committee applied a 10% compliance exemption and a 45% fundraising exemption to the total amounts expended in Iowa in determining the Committee's allocable expenditures. The revised allocation schedules provided to the Audit staff were prepared in accordance with the above. Furthermore, the Committee's pool of overhead expenditures included items which are not defined as "overhead" pursuant to 11 C.F.R. §106.2(b)(2)(iv). The Audit staff adjusted the Committee's allocation to comport with the regulations at 11 C.F.R. §106.2 and determined the total amount allocable to Iowa.

In the absence of documentary evidence supporting the reasonableness of the Committee's percentage rate (45%) used in its fundraising exemption calculation, the Audit staff adjusted the Committee's calculations to comport with the regulations at 11 C.F.R. §106.2. As a result, the Audit staff has determined that an additional \$375,762.55^{*/}, which represents an apparent misapplication of the fundraising exemption, should be allocated to the Iowa spending limitation.

At the exit conference Committee officials stated that the fundraising exemption was actually 50% of its total expenditures allocated to Iowa and its legal and accounting compliance exemption was actually 5% of its total expenditures allocated to Iowa, based on an analysis of AO 1988-06 and the John Glenn Audit Report [Report of the Audit Division on John Glenn Presidential Committee, Inc., Public Release 8/19/85]. The Committee stated that all activity in Iowa was composed equally of fundraising and political nature. Furthermore, the Committee contends its 50% exemption for fundraising is reasonable.

The Committee representatives also explained that prior to the Iowa caucus the Committee's dual purpose components of its activities did not change; i.e., the Committee continued its fundraising activity and therefore, this activity is exempt from the regulations at 11 C.F.R. §110.8(c)(2) which states that expenses targeted at a state within 28 days of a primary shall be presumed to go against that state's limit. The Committee's position is that the regulatory use of "presume" creates a presumption as opposed to the use of "is" or "are" and a presumption can be overcome by facts, stating the Commission recognizes this in 11 C.F.R. §110.3(b)(2)(a) and that AO 1984-30

^{*/} This includes an adjustment of \$7,577.49 for expenditures allocated by the Committee and determined during this analysis not to require allocation.

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states in a footnote that the regulatory use of presumption can be overcome by actual facts in specific situations. Furthermore, the presumption under the 28-day rule is that it is assumed most committees will initially conduct fundraising and later, prior to the election, focus their expenditures on influencing votes. According to the Committee representatives this was not so with the Simon for President case. Committee representatives feel that their facts can overcome the presumption set forth at 11 C.F.R. § 110.8(c)(2) and therefore the Committee is entitled to its 50% fundraising exemption within 28-days of the caucus/primary^{*}. The Committee also believes its fundraising exemption is reasonable, stating that Simon for President actually raised significant amounts of money in Iowa during December 1987 through March 1988 and that the Committee realized actual contributions after the Iowa Caucus from fundraising activities held prior to the caucus.

Committee officials stated they would review the Iowa State Allocation workpapers provided to them and provide documentation to support the Committee's 50% fundraising exemption.

On January 24, 1990 Committee officials submitted a state by state fundraising analysis of contributions received by the Committee, which indicated that Iowa ranked thirteenth out of the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands in the amount of money contributed and fifth in number of contributors.

Since the Committee has not provided any documentation which supports its exit conference comments with respect to the 50 percent fundraising exemption and 5 percent compliance exemption, the Audit staff rebuttal will address the 45 percent fundraising exemption which is supported by Committee allocation workpapers. Regardless of the percentage taken by the Committee, the Audit staff believes it has correctly applied the Regulations at 11 C.F.R. §106.2(c)(5). Neither the Act nor the Commission's Regulations provide for a 45% fundraising exemption as applied by the Committee. Even though the Committee contends that the activity conducted in Iowa actually raised significant amounts of money the same could be said for activities conducted in any state. A review of the fundraising report submitted by the Committee on January 24, 1990 indicates that the funds raised by the Committee in Iowa during December 1987 through March 1988 comprise only 1.98% of the total funds raised by the Committee during this period.

Furthermore, the Audit staff does not disagree that the Committee may have raised monies as a result of its

^{*}/ It should be noted that during fieldwork, the Committee stated it had taken a 20% fundraising exemption on expenditures occurring within 28 days of the caucus.

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activities in Iowa in the 28 days prior to the Iowa Caucus; however, the Committee appears to be ignoring completely 11 C.F.R. §100.8(b)(21)(iii) and §110.8(c)(2) which clearly require that fundraising activities targeted at a particular state and occurring within 28 days of a state's primary are chargeable to that state's expenditure limitation. In addition, the revised allocation schedules provided to the Audit staff by the Committee do not reflect a fundraising exemption for activities occurring within the 28 days prior to the Iowa caucus as discussed by Committee officials at the exit conference. Irrespective of the nature of the Committee's expenditures, the Committee can not exclude from state allocation costs for fundraising which occurred within 28 days of the caucus even if the activities were clearly fundraising. Therefore, the Audit staff's position remains unchanged.

b. Media

Section 106.2(b)(2)(i)(B) of Title 11 of the Code of Federal Regulations states that except for expenditures exempted under 11 C.F.R. 106.2(c), expenditures for radio television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry market data.

Section 106.2(c)(5)(i) of Title 11 of the Code of Federal Regulations states, in part, that exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031, 2 U.S.C. 431 and 11 C.F.R. Chapter I, including the costs of preparing matching fund submissions. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing.

Section 441d(a)(1) of Title 2 of the United States Code states, in part that, whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communicatin, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents shall clearly state that the communication has been paid for by such authorized political committee.

Section 431(9)(B)(vi) of Title 2 of the United States Code states, in part, that the term "expenditure" includes any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply

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with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 441a(b).

The Audit staff reviewed the Committee's allocation worksheets for Iowa as well as supporting documentation made available by the media vendor. Based upon its analysis, the Audit staff allocated an additional \$62,840.55 to the Iowa spending limitation. The Audit staff's analysis identified this adjustment to be the net result of the media vendor applying an allocation rate not based on industry market data (\$-12,084.12); the failure of the Committee to allocate January 1988 commissions (\$37,011.50), and where commissions were allocated by the Committee, an incorrect commission percentage rate was applied (\$2,054.54); and a 50% fundraising exemption on media placed January 1 through 8, 1988 was incorrectly taken by the Committee based on Advisory Opinion 1988-6 (A.O. 1988-6) (\$35,858.63)-.

The Committee stated at the exit conference that its media allocation as prepared by the vendor was made using industry market data and is therefore a reasonable allocation.

The Committee stated in its response to the Interim Audit Report on January 31, 1991 that the Committee overallocated its media by \$113,966.08 in Iowa, and \$52,602.43 in New Hampshire. This overallocation, according to the Committee, is the result of not taking a 50% compliance exemption on all media commissions paid, and by not taking a 50% fundraising exemption on its media purchases.

In its response the Committee admitted that it did not allocate to the states the 15% media commission paid, but contends that 50% of the commissions should be exempt from state allocation as compliance related. According to the Committee, its media firm, Axelrod and Associates, "charged the Committee a fifteen percent (15%) fee for purchasing media advertising time. The services provided by Axelrod to the Committee in connection with the purchase of media time included: researching the impact of proposed media purchases on state allocation limits; preparing detailed accountings for the

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It should be noted that the Committee's media spots did not contain any of the elements required in A.O. 1988-6 relative to the 50% fundraising exemption for media; i.e. each commercial must include a video message and a voice over soliciting contributions; a committee telephone number must be presented simultaneously on the screen conveying to the viewer a reinforcing message which suggests a responsive telephone call to the committee should the viewer wish to make a contribution.

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Committee on each media buy (in-state and out-of state viewing audiences) and revising these accountings according to whether particular advertisements were actually aired; working closely with the Committee's accounting and compliance team (particularly around FEC-reporting deadlines); and maintaining all documentation regarding media purchases to comply with FEC requirements."

Based upon the above activity the Committee contends that 50% of the media firm's services were compliance related and therefore 50% of the media commissions paid should be allocated to exempt compliance as opposed to a particular state. The Committee provided a statement from the vendor detailing the above duties to support its contention.

The Committee continues to pursue its position that 50% of its media purchase cost should be exempt as fundraising. Further, the Committee contends that the exemption may also be claimed as a compliance exemption since each advertisement contained the "FEC-required authorization disclaimer." Therefore the Committee believes, in either case, it is justified in applying a 50% exemption in its media allocation; and that the Audit staff has incorrectly applied the regulations, stating that the "regulations merely require that a Committee provide a 'reasonable' basis to claim a fundraising or compliance exemption."

The Committee claims that "the Federal Election Commission has defined 'in connection with the solicitation of contributions' to mean 'any cost reasonably related to fundraising activity.' (emphasis in original) 11 C.F.R. § 100.8(b)(21)(ii)" and states that the exemption for such fundraising costs is limited to 20% of the overall expenditure limitation in accordance with 2 U.S.C. §431(9)(B)(vi).

The Committee "asserts that the Commission should employ a 'reasonableness' standard when examining the Committee's decision to allocate various expenditures to fundraising." The Committee states its fundraising exemption for media should not be disallowed due to the fact that the media spots did not contain a fundraising appeal. The Committee claims that if a 50% exemption is allowed for those media spots which contain fundraising appeals, then a 50% fundraising exemption should also be allowed for "a presidential campaign committee which failed to include a fundraising appeal because it conceived of broadcast commercials as the first step in a multi-tiered fundraising strategy" in which media ads would be followed by direct mail and telemarketing fundraising appeals.

The Committee submits that "in its proposed rulemaking for the 1992 presidential elections, the FEC has abandoned the approach it adopted in A.O. 1988-6. The Commission has proposed that a presidential committee may 'treat up to 20% of the spending limit for each state as exempt fundraising

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costs.' 56 Fed. Reg. 110 (1991) (to be codified at 11 C.F.R. § 110.8(c)(2) (proposal would replace the current '28-day rule')."

The Committee believes that "the position embraced by the FEC in its proposed rulemaking is the approach which always has been permitted by §431(9)(B)(vi) because it affords a presidential campaign wide latitude to declare various expenditures as wholly or partially related to fundraising."

The Committee contends that it has provided a reasonable basis for its 50% exemption as required by the Act and the Regulations at 11 C.F.R. §100.8(b)(21)(ii). Additionally, the Committee cites 2 U.S.C. §431(9)(B)(vi) and states the broad language of the provision "permits a candidate to exclude 'any' cost made 'in connection with the solicitation of contributions.'"

The Committee then states that it believes "that the Commission should defer to campaign strategies in determining whether particular expenditures were reasonably related to fundraising," and that "the Commission should defer to a determination by the Committee that soliciting contributions for Senator Paul Simon was best achieved by a multi-tiered fundraising strategy." Therefore, based upon the above determination the Committee is entitled to its 50% exemption of media costs for fundraising.

With respect to the Committee's application of a 50% compliance exemption for the commissions paid for media based upon the purported "FEC compliance nature" of the services rendered by the media firm and the application of a 50% compliance exemption based upon the fact that the media spots contained an authorization disclaimer pursuant to 2 U.S.C. § 441d(a)(1) the Audit staff is of the opinion that such exemptions are inappropriate.

The regulations make no provision for a compliance exemption for media. The scope of the compliance exemption is strictly limited to expenditures with a purely compliance related purpose and does not include the cost of an expenditure which merely complies with the Act, Matching Payment Act, and Commission regulations. For example, the regulations include the costs of preparing matching fund submissions as exempt compliance, but do not include the costs of general contribution processing, even if the the procedures of general contribution processing comply with the legal requirements. Therefore, the mere presence of an informative disclaimer in a media commercial does not make the commercial a compliance expenditure.

Additionally, in the Audit staff's opinion, the costs associated with including such a disclaimer in the media commercials appears to be incurred at the production stage rather than at air time, and production costs need not be

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allocated to any state. Furthermore, the exceptions to the "solely to ensure compliance" test have been provided by Commission regulations. These exceptions relate to salary and overhead costs for both state and national headquarters operations. Percentages are given for compliance deductions for these categories of expenses. These exceptions are very specific and narrowly drawn, and do not cover broadcast media.

The Audit staff notes that in accordance with 2 U.S.C. §431(9)(B)(vi) a fundraising cost is any cost incurred in connection with the solicitation of contributions. Examples of such fundraising expenditures include printing and postage for solicitations, costs of refreshments for fundraising receptions and dinners, and the cost of air time for fundraising advertisements.

In A.O. 1988-6 the Commission addressed the criteria required for the fundraising exemption of media costs. The Commission noted in A.O. 1988-6 that "expenditures for broadcast time to run an advertisement which includes a fundraising solicitation may be allocated on 'a reasonable basis' to the fundraising exclusion for presidential candidates who accept matching Federal payments." The Commission noted that 50% of such media costs could be considered exempt fundraising expenditures.

Furthermore, the Commission noted that the following criteria must be met in order for this exemption to apply. Each commercial must include a video message and a voice over soliciting contributions. In addition, a Committee telephone number must be presented simultaneously on the screen conveying to the viewer a reinforcing message which suggests a responsive telephone call to the committee should the viewer wish to make a contribution.

During fieldwork the Audit staff reviewed each broadcast commercial the Committee aired. Not one of these commercials contained the criteria noted above for claiming the fundraising exemption. The Committee itself, in its response to the Interim Audit Report, admits that none of its broadcast commercials contained a fundraising message. The Committee claims however, that its broadcast media was the "first step in a multi-tiered fundraising strategy." The Committee contends that this statement provides a "reasonable basis" for determining that the expenditures made for the media broadcasts were in connection with the solicitation of contributions, and therefore the Committee is entitled to the 50% fundraising exemption as outlined in A.O. 1988-6.

In the Audit staff's opinion, the criteria for the fundraising exemption relative to media has been clearly defined by the Commission, and the Committee's broadcast commercials clearly do not meet that criteria. Therefore, the Audit staff's rejects the Committee's contention that it

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overallocated its media cost to Iowa and New Hampshire. The Audit staff's allocation of the Committee's media costs to both Iowa and New Hampshire remains unchanged.

c. Intra-State Travel and Subsistence Expenditures

Section 106.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. This same allocation method shall apply to intra-state travel and subsistence expenditures of the candidate and his family or the candidate's representatives.

i. Staff Assigned to Iowa Field Offices

The Audit staff's review of supporting documentation for expenditures incurred by staff assigned to Iowa field offices relative to intra-state travel, subsistence and related goods and services, indicated these expenditures were not allocated by the Committee to the Iowa state expenditure limitation. The Audit staff is of the opinion that the 5-day rule is not applicable in this situation and has determined that expenditures totaling \$37,448.53 should be allocated to the Iowa limitation.

Based upon a review of documentation submitted January 31, 1991 by the Committee in response to the Interim Audit Report with respect to Finding III.C. Apparent Non-Qualified Campaign Expenses-Undocumented the Audit staff noted \$1,062.55 of previously undocumented expenses which now require allocation to Iowa. The amounts allocated are in connection with expenditures incurred by staff assigned to Iowa field offices relative to intra-state travel, subsistence and related goods and services, and are not subject to the 5-day rule. Also noted were \$626.44 of expense reimbursements to an Iowa employee previously included as costs associated with the Committee's Rock Island office and an adjustment for an allocation made by both the Committee and the Audit staff totaling \$522.74. The Audit staff has revised its calculation of expenditures allocable to the Iowa limitation to be \$38,614.78 (\$37,448.53 + \$1,062.55 + 626.44 - \$522.74).

ii. Non Iowa Staff

The Audit staff's review of Committee expense reimbursement files identified persons who had incurred expenditures when in Iowa for five or more consecutive days relative to travel, subsistence and related goods and services

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(such as supplies, photocopying, equipment rental) used in Iowa. Based on this review the Audit staff has determined that \$26,802.70 in such expenditures require allocation to the Iowa limitation.

Also noted during the Audit staff's review of the Committee's response of January 31, 1991 with respect to undocumented expenses were additional costs totaling \$394.89 relative to persons who had incurred expenditures while in Iowa for five or more consecutive days for travel, subsistence, and related goods and services (such as supplies, photocopying, equipment rental) used in Iowa. The Audit staff's revised Iowa allocation totals \$27,197.59.

iii. Senator Paul Simon's American Express

Section 9035.2 of Title 11 of the Code of Federal Regulations states, in part, that expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear.

The Audit staff's review of Senator Simon's personal American Express Card activity, identified travel and subsistence expenditures by the candidate totaling \$10,561.54 which require allocation to the Iowa state limitation under the five day rule. Included in this total are February 1988 charges, totaling \$5,043.44 incurred in Waterloo and Davenport, Iowa as well as charter air service charges incurred in Iowa. During fieldwork the Audit staff requested additional documentation relative to these charges however, the Committee has yet to provide such documentation. Should the documentation be provided, the Audit staff will adjust its figure as necessary.

The Audit staff also noted that Senator Simon's use of his American Express Card was in accordance with 11 C.F.R. 9035.2 and that Senator Simon's personal expenditure limitation was not affected.

In its response to the Interim Audit Report, the Committee provided the Audit staff with documentation to verify that Senator Simon was in Iowa from January 29 to February 9, 1988. Based upon this information the Audit staff has revised its allocation of the February 1988 charges to be \$5,075.91.

The Committee made no response relative to the remaining \$5,518.10 (\$10,561.54 - \$5,043.44) allocated under the 5 day rule. As a result, the Audit staff has allocated to Iowa \$10,594.01 (\$5,518.10 + \$5,075.91) for travel and subsistence incurred by Senator Simon under the 5 day rule.

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In the Interim Audit Report the Audit staff determined that intra-state travel and subsistence expenditures, totaling \$74,812.77 (\$37,448.53 + \$26,802.70 + \$10,561.54) should be allocated to Iowa.

Based upon the Committee's response to the Interim Audit Report as noted above the Audit staff has revised the allocable amount to be \$76,406.38 (\$38,614.78 + \$27,197.59 + \$10,594.01) for intra-state travel and subsistence expenses.

d. Rock Island Office

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of the candidate for the office of the President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

During fieldwork the Audit staff noted a campaign office, identified as the Midwest Regional office, in Rock Island, Illinois, which is strategically located across the Iowa/Illinois state border from Davenport, Iowa. At that time a Committee representative stated that the Rock Island office was set up for the purpose of general campaign fundraising and volunteer recruitment activities which were solely directed toward the Illinois Primary. The Committee representative further stated that Rock Island staff did not commute back and forth from Rock Island into Iowa. When questioned again during fieldwork, the Committee representative stated that the Rock Island Office was the Southern Illinois Headquarters where fundraising and volunteer recruitment was conducted. The Committee had envisioned the Rock Island office to become the Midwest Regional office, however the Des Moines Office was actually the Midwest Regional office. The Committee representative further stated that the Rock Island Office was not set up as a surrogate Iowa Office. When questioned about the states encompassed in the Midwest region the Committee representative responded that it did not know which states were in the Midwest Region or the percentages developed to allocate costs associated with the Des Moines Regional Office. Additionally, the Committee did not exempt any Des Moines office expenditures on its allocation workpapers as related to a Regional Office.

Neither the documentation made available by the Committee nor the facts previously discussed and those presented below, support the Committee's claim that Des Moines was a regional office. The documentation made available by the Committee which makes reference to a regional office indicates that Rock Island was the Midwest Regional Office. Additionally,

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the documentation indicates that the expenditures made with respect to the Rock Island Office appear to be directed at the Committee's Iowa effort. An explanation of the patent inconsistencies with respect to the Committee's comments concerning the "Midwest Regional Office" has not been provided.

Internal Committee documents indicated that once the Iowa campaign plan was established the Illinois operation would be integrated into the Iowa campaign plan by increasing the "level of activity of Illinois volunteers through buses, caravans, and other selected 'visibility' projects." Additional evidence indicates that the Midwest Regional office Director approved employment of persons who worked in Iowa; and that a letter writing campaign from Iowa Caucus attendees to New Hampshire Households was apparently coordinated from the Rock Island Office.

In January 1988, additional phone lines were installed at the Rock Island service location and removed on February 20, 1988, one month before the Illinois primary. An analysis of the phone calls made determined that 79% of the total dollars charged on the February 1988 billing statement (calls made during January 1988) were for calls to Iowa; and, on the March 1988 billing statement (calls made through February 8, 1988) 93% of the total dollars charged were for calls to Iowa. It is the Audit staff's opinion that this data evidences the existence of Rock Island activity directed at Iowa. A review of Rock Island staff expense reimbursements also indicates that the bulk of the Rock Island staff's time and effort appears directed to Iowa. Furthermore, in March, the Rock Island Office space was reduced by 50%; and subsequent to the Iowa Caucus expenditures made by the Rock Island office dropped significantly.

Finally, the summary pages for the October 15th (1987) quarterly disclosure report provided to the Audit staff by the Committee, which detail the amounts allocated by the Committee to Iowa on its disclosure reports, indicate that the Committee itself allocates a portion (25%) of the Rock Island expenditures to Iowa. When questioned during fieldwork regarding this allocation the Committee stated it did allocate a portion of the Rock Island expenditures to Iowa because the Committee envisioned Rock Island as a Regional Office; however, in the revised Iowa Allocation schedules provided to the Audit staff, the Committee does not include any amounts relative to Rock Island.

Therefore, based upon our review of the available documentation the Audit staff has determined that an additional \$81,939.54 requires allocation to Iowa.

As previously noted, during audit fieldwork the Committee stated that the purpose of the Rock Island office was general campaign fundraising and volunteer recruitment, activities which were solely directed toward the Illinois

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individuals should therefore be allocated to Illinois because the BTB staff's duties could be discharged from the Rock Island Office and most of the recruitment activities were in Illinois. The Committee also allocated to Illinois the administrative and overhead expenses associated with the Rock Island Office.

With respect to the organized bus trips by the BTB into Iowa the Committee states "even though Brigade Coordinators and Canvass Directors may have spent time in Iowa, such activities were linked to the organized bus trips to Iowa, and to Iowa fundraising. These bus trips were of limited duration, such as for a weekend. Because Brigade Coordinators and Canvass Directors did not go in to Iowa for 5 consecutive days, their transportation, food and lodging expenses are exempted from attribution to Iowa."

According to the Committee BTB members and canvassers, on the other hand, "may have spent extended periods of time in Iowa because their activities were primarily focused at Iowa." Therefore, the Committee concurs with the Audit staff's allocation to Iowa of these individuals expenses.

In addition, the Committee provided a detailed summary of its allocation of the costs with respect to the Rock Island Office. The Committee submits that, of the \$78,448.54 identified in the Interim Audit Report as related to Rock Island \$70,731.04 is allocable to Illinois, and \$7,717.50 is allocable to Iowa.

The Audit staff maintains its position regarding the allocation of the costs associated with the Rock Island Office to Iowa. Based upon the information provided by the Committee in its response, the Audit staff was able to determine conclusively that the focus of the Rock Island Office activities as Iowa related.

The Rock Island Office apparently opened in July 1987 as evidenced by rental payments and consulting fee payments to Dale Smith the Rock Island Office Director. As previously noted, internal Committee memos indicate that it was planned to incorporate Rock Island into the Committee's Iowa campaign strategy by increasing "the level of activity of Illinois volunteers through buses, caravans, and other selected 'visibility' projects." One other Committee memo regarding Iowa suggests the integration of "the Bow Tie Brigade into the mailing program in September and October."

Additionally, according to the Iowa Campaign Plan Outline the following field program activities involving the BTB and Illinois Caravans were planned:

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Phase I

9/30/87 Bow Tie Brigade Letter #1 [to Iowa]
10/05/87 Special Project -- Illinois Caravans [to Iowa]
10/10/87 Special Project -- Illinois Caravans [to Iowa]
10/17/87 Special Project -- Illinois Caravans [to Iowa]
10/24/87 Special Project -- Illinois Caravans [to Iowa]
10/31/87 Special Project -- Illinois Caravans [to Iowa]
Bow Tie Brigade Literature Mailing [to Iowa]

Phase II

11/07/87 Special Project -- Illinois Caravans [to Iowa]
11/10/87 Special Project -- Illinois Caravans [to Iowa]
11/16/87 Special Project -- Illinois Caravans [to Iowa]
11/23/87 Special Project -- Illinois Caravans [to Iowa]
11/23/87 Bow Tie Brigade Third Mailing-Holiday Cards [to Iowa]
11/30/87 Special Project -- Illinois Caravans [to Iowa]

Phase III

12/07/87 Special Project -- Illinois Caravans [to Iowa]
12/14/87 Bow Tie Brigade Calls to Iowa [to Iowa]
12/21/87 Bow Tie Brigade Calls Continue [to Iowa]

Phase IV

01/04/88 Bow Tie Brigade visits [to Iowa]
01/11/88 Bow Tie Brigade visits [to Iowa]
01/18/88 Bow Tie Brigade visits [to Iowa]
01/25/88 Bow Tie Brigade visits [to Iowa]
02/01/88 Bow Tie Brigade visits [to Iowa]

In its response the Committee itself confirms that the Rock Island Office was an integral part of the Iowa campaign plan by admitting that the Rock Island Office's main function was to recruit volunteers for the BTB and to organize BTB bus trips into Iowa on the weekends.

The Committee details the costs of printing the 9/30/87 BTB mailing #1, the 10/31/87 and 11/23/87 mailings, as well as the holiday cards, as noted in the Iowa Campaign Plan Outline evidencing that the mailings actually occurred. Furthermore, the Committee confirms that the Illinois Caravans and BTB visits as outlined in the Iowa Campaign Plan Outline also actually occurred. The Committee states "Brigade activities included organized bus trips" and that "these bus trips were of a limited duration, such as for a weekend," and that "reimbursement requests by Rock Island staff can be matched to the various bus trips planned for Iowa."

A BTB Calender of Events also details the focus of the BTB to be Iowa. It states "Your first assignment as a Brigade Member is to complete a series of six (6) projects to establish contact with 20 Iowa households... The list of households, specific instructions, materials for mailings

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and maps for the trips will be provided by the campaign...the campaign will be available to answer questions and provide support resources." The six projects included:

1. Write a short letter to each household before the end of September;
2. Put notes on campaign literature and mail it to Iowans;
3. Telephone each household;
4. Visit each household in Iowa sometime during the first three weeks of November;
5. Put notes on a second piece of campaign literature and mail it to Iowa; and
6. Send a holiday greeting card.

Since the BTB was organized and operated from Rock Island it is reasonable to conclude that the duties of the BTB staff based in Rock Island included those detailed in the BTB Calender of Events.

In the Audit staff's opinion, based upon the evidence noted above the Rock Island Office activities were overwhelmingly aimed at influencing the Iowa Caucus; it is also the Audit staff's opinion based upon the above evidence that the Rock Island Office was indeed integrated into the Iowa campaign as suggested in the Committee's internal memos and the Iowa Campaign Plan Outline. Further, it is the Audit staff's opinion that based upon the integration of Rock Island into the Iowa campaign that the Rock Island Office was a surrogate Iowa field office and the costs associated with Rock Island should appropriately be allocated to Iowa.

Additionally, the Committee's argument that the administrative office costs and salaries of the Rock Island based staff are allocable to Illinois because the activity took place in Illinois is without merit. The Regulations at 11 C.F.R. § 106.2(a)(1) clearly state that costs for the purpose of influencing the nomination of a candidate for the office of the President with respect to a particular State shall be allocated to that state, and that an expenditure shall not necessarily be allocated to the State in which it is incurred or paid.

The duties of the BTB staff based in Rock Island included the recruitment of BTB members, whose main function was a 6 project assignment aimed at Iowa; the instruction of BTB members in their Iowa focused duties; the provision of support resources to the BTB members; and the organization of 11 weekend Illinois Caravans and 5 pre-Caucus BTB visits to Iowa. These duties are clearly related to Iowa, and were not, as the Committee claims, a "key component of the campaign's Illinois-related activity." Since the objective of the BTB activities was to influence Iowa voters, the location of the center of operations is irrelevant to the allocation of the costs associated with conducting the activity. Additionally, the argument regarding location is also irrelevant since the Rock

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Island Office is considered an Iowa field office by the Audit staff.

The Committee's argument that the salaries and travel costs of BTB Coordinators and Directors should be exempt from allocation to Iowa under the 5-day rule is also without merit. The exemption for salaries for an individual working in a state for less than 5 days is based upon the presumption that the individual will be working on national campaign strategy and not influencing the primary in that particular state (Federal Register Volume 48 No. 25 Part 106 page 5225 February 4, 1983). In the case of the Committee, the BTB activities are clearly to influence the Iowa Caucus, therefore there is no exemption. Furthermore, as an Iowa field office the 5-day rule does not apply to Rock Island based staff. Nor does the 5-day rule apply to the costs incurred by the BTB members while conducting activities in Iowa as the costs associated with the BTB members are considered direct costs of conducting the BTB program. And as previously stated, costs for the purpose of influencing the nomination of a candidate for the office of the President with respect to a particular State shall be allocated to that state.

The Audit staff reviewed the Committee's detail accounting of the Rock Island expenses, and made adjustments for expenses occurring from the inception of the Rock Island Office in July 1987 for rent, and consulting fees. Additionally, the Audit staff made adjustments for administrative and overhead expenses which were not previously allocated to Rock Island based upon vendors identified by the Committee that provided such services. Where applicable, the Audit staff made adjustments for the 10% legal and accounting exemption, and the 10% fundraising exemption.

Regarding the Committee's contention that all printing and postage cost are allocable to Illinois as fundraising, the Committee did not associate the BTB Recruitment letters submitted to the Audit staff with the costs for printing and mailing the letters; furthermore the Committee did not provide copies of the BTB Mailings which were detailed in the Iowa Campaign Plan Outline. In one instance the cost of recruitment printing was noted by check memo notation and was accordingly omitted from the allocation due to the fundraising nature of the BTB recruitment literature. Absent documentation which associates the costs of printing and mailing the BTB Recruitment letters submitted to the Audit staff, and absent copies of the BTB Mailings the Audit staff has not excluded these printing and postage costs from the Rock Island allocation.

Based upon our review, the Audit staff has calculated the total cost associated with the Rock Island Office to be \$103,997,25 and has included this amount in the Iowa state limitation calculation.

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As determined during the Commission's deliberations on August 29, 1991 described at Section III.D.3. of this report, \$40,722.62 in salary and travel and subsistence expenses have been deducted from the Rock Island Office allocation. This reduction represents travel and subsistence plus related salary expenses for those individuals who could not be placed in Iowa for five consecutive days or more based on our review of the documentation available. The revised Rock Island amount totals \$63,274.63 (\$103,997.25 - \$40,722.62).

On October 3, 1991 the Commission in its deliberations (described at Section III.D.3 of this report) determined that a 100% allocation of the costs associated with the Rock Island office would be made to Iowa. Therefore the Audit staff has recalculated the amount allocable to Iowa for the Rock Island office to be \$103,997.25.

e. Northwestern Bell

Section 106.2(b)(2)(iv)(A) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures in a particular State shall be allocated to that State. For the purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intra-state phone calls other than charges related to a special use such as voter registration or get out the vote efforts.

The Audit staff reviewed Committee allocation workpapers and available monthly bills with respect to 20 telephone service locations. Although requested by the Audit staff, not all telephone bills have been provided by the Committee to date. A comparative analysis of costs allocated to the Iowa expenditure limitation by the Committee and costs determined to be allocable by the Audit staff was performed. Should the Committee provide the missing documentation, the Audit staff will revise its analysis as required.

Based upon this review and a review of additional documentation provided by the Committee January 24, 1990, it is the opinion of the Audit staff that an additional \$51,847.83 should be allocated to Iowa. It appears the Committee neglected to allocate the allocable amount(s) of telephone deposits applied to final bills. The amount(s) of a telephone deposit when initially paid to the vendor was not allocated to a particular state(s).

In response to the Interim Audit Report, the Committee disputed the Audit staff's allocation of an additional \$51,847.83 with respect to Northwestern Bell. The Committee

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states "as of October 17, 1989 the Audit Division had allocated an additional \$30,659.86" to Iowa. The Committee then states that the Audit staff incorrectly allocated \$21,187.97 in Northwestern Bell charges based upon the Audit Division's review of documentation provided on January 24, 1990. The Committee maintains that

"This additional allocation involved the Committee's use of deposits from various phone lines to pay off the outstanding balance for a phone number (515/243-6232) established by the Committee in Des Moines, Iowa ("Des Moines number").

We believe that the Audit Division improperly allocated the additional \$21,187.97 because this amount double-counted payments for charges previously attributed by the Audit Division to Iowa on October 17, 1989. Once the Audit Division had allocated all outstanding charges for the Des Moines number, it could not also allocate payment for the same charges."

The Committee is incorrect in its assessment that the Audit staff made a duplicate allocation of \$21,187.97 in charges to Northwestern Bell. At the exit conference the Audit staff presented the Committee with a schedule detailing the additional allocation of \$30,659.86 in Northwestern Bell charges. Based upon our review of the documentation submitted by the Committee on January 24, 1990, which consisted of phone bills which had not previously been reviewed or allocated to Iowa by the Audit staff, the Audit staff increased its allocation of Northwestern Bell charges by \$21,187.97.

Our allocation of Northwestern Bell is based upon the current charges reflected on the billing statements provided by the Committee, and not on the amounts paid by the Committee to Northwestern Bell nor the deposits applied by Northwestern Bell to outstanding balances on billing statements.

The Audit staff reviewed its allocation of Northwestern Bell charges to Iowa and notes that the additional allocation to the Des Moines office phone was only \$5,441.32, and adjustments to other Iowa phones totaled \$1,274.14. The remaining adjustment of \$14,405.44 was the difference between what the Audit staff calculated as allocable to Iowa for Year End 1987 and January 1988 (\$23,537.93) and what the Committee allocated to Iowa (\$9,532.49). A mathematical error totaling \$466.74 was identified during our review and therefore the Audit staff has made a downward adjustment to its allocation of Northwestern Bell. The revised Northwestern Bell allocation to Iowa totals \$51,381.09.

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f. Payroll and Employer FICA

Section 106.2(b)(2)(ii) of Title 11 of the Code of Federal Regulations states that except for expenditures exempted under 11 C.F.R. 106.2(c), salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

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The Audit staff's review of Committee payroll records and allocation workpapers with respect to Iowa determined that an additional \$19,860.46 in payroll and payroll taxes relative to staff assigned to Iowa field offices requires allocation to Iowa. Also noted during this review were payroll checks totaling \$16,151.00^{*} to individuals classified by the Committee on its payroll registers as Iowa staff covering payrolls primarily from January 15 through February 15, 1988 which the Committee has either voided (\$4,036.18), not issued (\$7,058.59), or was apparently issued and the checks remain outstanding (\$5,056.23). The Audit staff noted that the Committee reissued payroll checks to 9 individuals whose payroll checks had either been voided or not issued, apparently only when these individuals had contacted the Committee demanding payment. During fieldwork, a Committee representative stated that the payrolls for pay periods in January and February 1988 which were not immediately issued were issued during June 1988 to all individuals who were legitimately owed payroll checks. The Committee offered no explanation regarding the circumstances surrounding the above mentioned payroll checks which were voided or not issued and further offered no explanation regarding the determination of those individuals who the Committee claims were legitimately owed paychecks and those who were not owed paychecks. Therefore, the Audit staff has included in the above payroll allocation those checks which as stated, have not been issued by the Committee (\$7,058.57) and those checks which remain outstanding (\$5,056.23).

Additionally, the Audit staff noted that payroll and payroll taxes totaling \$3,627.17 relative to individuals working in Iowa for five or more consecutive days had not been allocated by the Committee. As a result of the above, the Audit staff allocated in the Interim Audit Report an additional \$23,487.63 (\$19,860.46 + \$3,627.17) to Iowa.

In the Interim Audit Report the Audit staff recommended that the Committee provide an explanation regarding the circumstances surrounding the void or not issued payroll checks, and provide an explanation regarding the Committee's

^{*} The Audit staff has also included the related employer FICA in its allocation.

determination of those individuals the Committee regarded as having legitimate claims to wages and those individuals the Committee did not regard as having legitimate claim to wages.

The Committee did not address directly in its response to the Interim Audit Report the circumstances surrounding the Iowa payroll checks noted in the Interim Audit Report as void, not issued, or outstanding; nor did the Committee provide an explanation regarding the determination of those individuals the Committee regarded as having legitimate claims to wages and those the Committee did not regard as having legitimate claims to wages. The Committee did, however, provide evidence that certain payroll checks were voided and reissued.

The Audit staff reviewed the payroll and related employer FICA and reduced the Iowa allocation by \$1,863.69 for void payroll checks, including those outstanding checks noted above as void. The revised Iowa payroll and employer FICA allocation totals \$21,623.94.

g. Aircraft Charters

The Audit staff reviewed the airplane charters booked for Senator Simon for his travel during the campaign. Documentation regarding these charters (i.e., charter manifests, passenger lists, miles traveled, and cost per mile) was requested from the Committee during audit fieldwork but such documentation has not been provided.

Several charters were booked by Chartersearch Network in January and February 1988 for travel in Iowa. Evidence indicates that Senator Simon was traveling in Iowa from January 29, to February 9, 1988. Several other charters for intra-state Iowa travel were also noted, one of which occurred during a period of time when Senator Simon was in Iowa for five or more consecutive days.

The Audit staff's review of the limited documentation made available with respect to aircraft charters indicated that an additional \$64,819.85 required allocation to the Iowa spending limitation.

In its January 31, 1991 response to the Interim Audit Report the Committee provided the Audit staff documents relative to Chartersearch Network. Based upon a review of the documentation provided, the Audit staff has reduced the amounts to be allocated to Iowa by \$38,028.23 for this vendor. The amounts allocated are costs for travel associated with Iowa staff and individuals (non Iowa staff) who traveled for more than 5 consecutive days in Iowa. The new Iowa allocation for Chartersearch Network totals \$24,036.02.

Included in the documentation for Chartersearch Network was information relative to one of the

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other charters noted in the Interim Audit Report for intra-state Iowa travel. This documentation indicated the aircraft chartered was to accommodate the press. Therefore, the allocation for the other intra-state Iowa travel has been reduced by \$790 to \$1,965.60.

In summary, the Audit staff has allocated to Iowa for intra-state Iowa air travel \$26,001.62.

h. Vendors

The Audit staff conducted a thorough review of the Committee's vendor files which could be associated with the Iowa effort. Based upon that review, the Audit staff determined in the Interim Audit Report that an additional \$168,988.36 required allocation to the Iowa spending limit. This amount represents payments to vendors for such things as printing, rent, utilities, office supplies, shipping, and car rentals, as well as payments to consultants which are detailed below.

In response to the Interim Audit Report the Committee provided documentation which required the Audit staff to revise the state allocation relative to amounts paid to these vendors. Based upon our review, the Audit staff has determined the total Iowa vendor related allocation to be \$143,112.61. Included in this total are the following vendors.

i. Hickman Maslin Research

The Committee entered into a consulting contract with Hickman Maslin Research (HMR) to conduct polling, research and consulting services, which included the "design, execution and analysis of all public opinion research...including polls and focus groups... ." They were also to actively participate in strategic and tactical discussions, brief the Committee on public opinion and review and comment on brochures, newspaper ads, press releases and TV scripts and ads. The contract provides that the Committee compensate HMR for the activities specified above in the form of consulting fees, as well as 100% compensation for the cost of conducting surveys (polls) and for reimbursement for travel and lodging expenses for HMR personnel for consultations on projects (polls and focus groups) outside of the Washington, D.C. area.

Hickman Maslin Research apparently conducted seven polls and two focus groups which were related to Iowa. The Committee allocated correctly the cost of the polls to Iowa; however, they did not allocate the cost of two focus groups (\$10,000) and the travel and lodging expenses incurred by HMR personnel while in Iowa conducting the polls and focus groups (\$4,533.08). Further, the Committee did not allocate that portion of the consulting fee which represents compensation for the Iowa related polls and focus groups.

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The Audit staff requested during fieldwork that the Committee provide documentation from the vendor which associates the consulting fees with a particular survey. To date, the Audit staff has not been provided with such documentation.

The Audit staff has allocated \$24,000, (48% of the consulting fees) paid to Hickman Maslin Research which represents that portion of consulting fees determined by the Audit staff to be related to Iowa (Iowa polling and focus group fees + total polling and focus group fees).

At the exit conference, the Committee noted that HMR's consulting fee was for polling, political, and other activities which were not associated with any state and were appropriately allocated by the Committee to national headquarters overhead.

As previously stated, the contract provides for consulting fees to be paid to HMR by the Committee for the activities which HMR performed for the Committee. A review of the HMR billing statements indicates that all work billed by HMR was related to a specific state, therefore the Committee's contention that the consulting fees were for activities not associated with any state is invalid. Therefore the Audit staff has included in the vendor allocation above, \$38,533.08 (\$10,000 + \$4,533.08 + \$24,000) relative to HMR.

In its January 31, 1991 response to the Interim Audit Report, the Committee restates its position that it acted properly in allocating to national headquarters overhead all disbursements made to HMR for consulting services. In addition the Committee states that the cost of the focus groups are media production costs which are not allocable to any state.

The Committee cites a written agreement with HMR "which stipulated that HMR would perform general consulting functions in addition to providing polling services" and asserts that these general consulting services were not associated with any particular state. The Committee also points out that in Section 1.a. of the aforementioned agreement, the costs of polls and focus groups would be incorporated into a form of agreement and attached a copy of such an agreement. The Committee then states that "HMR would bill the Committee separately for costs, including fees, incurred in conducting polls and focus groups" and therefore, disbursements for consulting fees encompassed neither polling nor focus group costs. Additionally, the Committee makes references to other sections of the agreement to support its argument that these fees were for services unrelated to the polls or focus groups.

With respect to focus groups, the Committee's response states that these costs were not allocated to New Hampshire or Iowa by the Committee because these focus

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groups are exempt from allocation as media production costs. According to the Committee, the focus groups were conducted by HMR as part of the media production team and consisted of assembling citizens from the respective states to preview the proposed media advertising. The reactions of the focus groups were then used by the media consultants to produce and edit the advertising.

The Committee also provided signed statements from Paul Maslin of HMR and from David Axelrod of Axelrod and Associates (the Committee's media consultant) in support of the Committee's position as detailed above.

Based upon our review of the materials submitted by the Committee, the Audit staff notes that the contract and agreement language appear to contradict the Committee's assertions with respect to the consulting fees. Paragraph 7 of the contract which addresses fees of HMR states, in relevant part, that "for the performance of the services enumerated in paragraph 1 (a-f) hereof, the Committee agrees to compensate HMR \$10,000 per month through March 8, 1988."

Paragraph 1 of the contract which addresses duties of HMR states, in part, that

"the Committee hereby engages HMR to provide polling, research and consulting services including:

(a) assuming full responsibility for the design, execution, and analysis of all public opinion research for the Committee, including polls and focus groups, which shall be conducted for the Committee in accordance with the provisions of paragraph 2 hereof and, where convenient, in accordance with the terms of a form of Agreement similar to that attached hereto, ...;

(b) actively participating in strategic and tactical discussions as requested by the Committee...;

(c) briefing the Committee and/or its representatives on a regular basis concerning public opinion and other political information which may bear on Paul Simon's political activities;

(d) reviewing and commenting on speeches, brochures, newspaper ads, press releases, radio and television scripts and ads...;

(e) making presentations and/or submitting written statements to members of the press and/or potential contributors and/or potential supporters...;and

(f) working closely with any and all other consultants retained by the Committee."

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With respect to the form of agreement mentioned by the Committee and within paragraph 1 (a) of the contract as detailed above, the Audit staff notes that paragraphs 1. and 2. of this agreement state, in part, that: (1) the duties of HMR include the conducting of an agreed upon number of telephone interviews containing a predetermined number of questions with likely voters in a specific state; and (2) HMR will provide three separate reports to the Committee detailing the results of the survey. Paragraph 3. of this same agreement states, quite specifically, that the fees of HMR will be for the above mentioned services. Therefore, it appears to the Audit staff that this agreement relates only to the actual costs of the survey, which are in addition to the consulting fees noted in the contract.

With respect to the focus groups costs being media production, the Committee's argument is, with the exception of the vendor's statements, unsupported. The Committee did not provide in its response, evidence such as, which ads were viewed, the questionnaires answered by the focus group participants after viewing the ads and prior to the group discussion, the discussion summary, nor the the focus group reports; nor evidence to support the types of changes made or the ads to which changes were made as a result of the focus group discussions.

Also contained within the Committee's response was information relative to a \$9,000 payment to HMR for which additional information was requested in the Interim Audit Report to determine state allocation. According to the Committee the payment was for an Iowa related poll conducted before the Iowa caucus, and should therefore be allocated to Iowa. The Audit staff concurs with the Committee's position that the cost of this poll should be allocated to Iowa and has adjusted its allocation accordingly.

The Commission in previous considerations^{*/} has determined that the costs of focus groups are not allocable and has also determined that consulting fees arising out of agreements to provide polling services are not allocable.

Therefore, based upon the above, the Audit staff has reduced the amounts allocable to Iowa by the cost of the focus groups (\$10,000 + \$1,344.75 focus group travel) and by the amounts of the consulting fees (\$24,000). The total additional amount allocable to Iowa is now \$12,188.33 which consists of \$9,000 for the Iowa poll and \$3,188.33 for Iowa polling related travel.

^{*/} Report of the Audit Division on Dole for President, approved April 15, 1991 and Report of the Audit Division on Gephardt for President, Inc., approved June 10, 1991.

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ii. Fingerhut and Madison Opinion Research and Communications, Inc.

The Committee entered into a consulting contract with Fingerhut and Madison Opinion Research and Communications, Inc. (FM) for general political consulting services to include "all services customarily performed by political consultants to campaigns for the Office of the President of the United States," and polling services which included selecting the polling samples, instructing callers, advising the Committee on the tabulations of results, and providing a written analysis on the results of each poll. The terms of the contract provided compensation for the consulting services as well as compensation for the polling services, and reimbursement for "reasonable expenses incurred by FM in performing its obligations." The contract also stipulates that FM is an independent contractor.

The Audit staff reviewed the vendor's billing statement and all of the vendor's invoices and noted \$8,000 of polling consulting fees and \$2,509.43 of expenses for April 1987 Iowa radio ratings (\$240), May 1987 Iowa poll word processing (295.80), June 1987 polling expenses, which included data processing on the Iowa Baseline (\$1,313.98), and July 1987 polling expenses (\$659.65). However, no cost directly associated with conducting the Iowa polls were noted. No other polls or polling expenses were noted. These costs and the polling consulting fees were not allocated to Iowa by the Committee.

Therefore the Audit staff has included in the above allocation all of the polling consulting fees (\$8,000), and all of the polling expenses and other Iowa related expenses (\$2,509.43). In addition, on January 24, 1990 the Committee provided a general statement made by the vendor with respect to the services provided by Fingerhut & Madison. In lieu of additional documentation from the vendor which specifically breaks down the consulting fees (such as by time keeping records for each individual for billable hours with respect to each job) the Audit staff's position remains unchanged.

The Committee's response to the Interim Audit Report contained no mention of this vendor. However, the Audit staff reviewed its allocation with respect to the Commission's decision regarding the allocation of general consulting fees arising out of agreements to provide polling services.

In the vendor's statement, provided January 24, 1990 by the Committee, the vendor states:

"The invoices relating to Strategic Consulting and Polling Consulting are for the monthly retainers set forth in F&M's contract with the Committee (the

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Committee was invoiced monthly for retainers simply as a 'billing' reminder ...). As stated in the contract, F&M was retained by the Committee's national campaign staff as the Committee's chief political consultant, to perform general consulting and polling services on a nationwide basis, including the design and analysis of a poll in Iowa."

The vendor did not provide evidence to support the performance of any polls other than the Iowa poll and the Iowa polling expenses which were invoiced. Nor did the vendor provide documentation detailing all of the costs associated with conducting the Iowa poll.

In addition, the vendor claims in its statement that "These invoices were not related to specific jobs, polls..." This statement contradicts the language in the contract noted below.

As previously noted, the consulting contract between FM and the Committee included general political consulting services, and polling services. The contract stated that the Committee would pay FM on a monthly basis for "general political consulting services. Such services shall include consultation as to all services customarily performed by political consultants to campaigns for the Office of President..." The contract also stated the Committee would pay FM \$1,000 on the first and fifteenth of each month "to perform general polling services. These services shall include drafting of all polling instruments required by PS and selecting (drawing) the polling samples, instructing callers, advising PS on tabulations of results, and providing PS with a written evaluation and analysis of results of each poll." (Emphasis added)

Given that the Committee paid polling consulting fees in addition to the "Strategic Consulting" fees for the general consulting work FM performed, it is the Audit staff's opinion that the above mentioned polling services, as set forth in the contract between the Committee and FM, represent the actual work performed when conducting polling activities. Furthermore, as set forth in the contract, the fees paid on a monthly basis by the Committee represent payments for the actual polls performed. Although invoiced by FM as "Polling Consulting" the amounts paid are actually compensation for the poll(s) conducted, of which only one, the Iowa poll has been identified. Therefore, the Audit staff's allocation of the polling consulting fees and the Iowa related expenses remains unchanged.

iii. The Clinton Group

The Committee engaged the Clinton Group to conduct direct mail and telephone surveys. A review of the

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documentation made available indicated that the majority of the activity contained fundraising elements. In its allocations the Committee exempted 50% of the costs relative to programs directed at Iowa occurring outside of the 28 days prior to the Iowa caucus and allocated all of the costs relative to programs directed at Iowa occurring within the 28 days prior to the Iowa caucus. The Audit staff adjusted the Committee's allocations to exempt all fundraising costs outside the 28 day period prior to the Iowa Caucus and to include those fundraising costs within the 28 day period. As a result of its analysis the Audit staff has determined the Committee overallocated costs with respect to the Clinton Group. Therefore, the Audit staff has reduced expenditures subject to the Iowa limitation by \$26,985.

iv. Robert Francis Jones Associates

The Committee retained Robert Francis Jones & Associates (RFJ) to process Iowa tapes for each of the following data bases:

- 313,000 democratic Iowa voters, which included 75,000 active Iowa democrat caucus attendees;
- 1,100,000 Iowa voters; and
- 41,000 teachers database.

They were to produce three files, the "A" file which would contain 1980 and 1984 caucus attendee households and other activists, the "B" file which would contain those households not listed in the "A" file, and a Democratic Iowa Teachers file. Examples of the work produced are lists of undecided voters by city, and county, undecided teachers, supporters, and supporters with caucus locations, a complex target report for Iowa, keying and printing of labels for miscellaneous political lists, and numerous cheshire labels. In the Interim Audit Report the Audit staff included in the above allocation of expenditures to vendors \$19,335.39 relative to the work performed on the Iowa tapes. The Committee allocated these costs to various National Headquarters categories such as Press, National Political/Field and Office Management.

In response to the Interim Audit Report the Committee submitted a statement disputing the Audit staff's allocation of the costs of the Iowa tapes produced by RFJ. The Committee stated "the tapes generated by the Robert Francis Jones Associates were used for fundraising appeals."

The Committee paid \$12,059.23 to the Iowa Democratic Party during 1987 for computer services; \$10,000 of which was for the purchase/lease of the Iowa Democratic Party Voter Contact and Activist Database ("Iowa Database"). This database consisted of information regarding registered Iowa Democrats, their voter history since 1980, and their caucus

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attendance history and activist history since 1980. The Committee allocated appropriately these costs to Iowa indicating the use of the Iowa Database was political or campaign related, and not fundraising related.

As previously noted, RFJ prepared files for the Committee from a 313,000 democratic voter database; 75,000 active Iowa democrat caucus attendees database; a 1,100,000 Iowa voter database; and a 41,000 teacher database. One file prepared by RFJ contained 1980 and 1984 caucus attendee households and other activists, the "A" file. The "B" file would contain 1984 or 1986 primary voters, but not 1980 or 1984 caucus attendees. It is the Audit staff's opinion that the work performed by RFJ is obviously, in part, data processing of the Iowa Database.

An internal Committee memo dated September 18, 1987 written by John Fitzpatrick regarding the production of Iowa Precinct Target Reports states "I gave the data and formulae to Bob Jones (apparently a reference to Robert Francis Jones) ... he has promised we will have the first run on Monday." The first Iowa report was to include for each precinct within Iowa:

1. Projected voter turnout;
2. Target Simon vote;
3. Precinct rating;

and the report was to include for each Iowa county:

1. Projected voter turnout;
2. Target Simon vote;
3. Percent of EFFORT based on target Simon vote;
4. Percent of effort based on target vote and Delegate equivalency factors; and
5. Ranking of counties from 1 - 99.

Also noted in this memo is the fact that data obtained from the Iowa Democratic Party would be used in the preparation of future Iowa Precinct Targeting reports, further evidencing that the work performed by RFJ was on the Iowa Database.

Furthermore, the nature of the work produced by RFJ for the Committee, for example, lists of undecided voters by city and county, undecided teachers, supporters, and supporters with caucus locations, suggests the Iowa tapes which resulted from the data processing of the Iowa Database by RFJ were used primarily for political targeting and voter analysis rather than fundraising. In addition, the RFJ invoices which detail the above work make no mention with respect to fundraising.

Based upon the evidence noted above, it is the Audit staff's opinion that the Committee's argument that

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"the tapes generated by the Robert Francis Jones Associates were used for fundraising appeals" is without merit. Therefore the Audit staff's allocation of the costs associated with the work performed on the Iowa tapes/Iowa Database remains unchanged.

v. The Murphine Corporation

The Committee entered into a consulting agreement with The Murphine Corporation (TMC) to provide strategic political analysis and planning, assistance with voter contact programs, and consultation in developing management structures for both Iowa and New Hampshire and for the development of a written campaign plan for the presidential primary in New Hampshire. The contract also provided for compensation to TMC for its service in the form of consulting fees and for the reimbursement of all travel related expenses, out of pocket expenses and a living expense (per diem) for each work day personnel of TMC spent outside of the Washington, D.C. area. In the Interim Audit Report the Audit staff included in the vendor allocation above consulting fees of \$7,250 (50% of the total paid) and travel expense reimbursements of \$528.86 relative to the Iowa related portion of services provided.

With respect to the Murphine Corporation (TMC) the Committee stated in its response to the Interim Audit Report that TMC was engaged in fundraising activities and worked closely with the Committee's fundraising team. Further the Committee stated that "George Berger (sic) from Murphine Corporation worked closely with the Clinton Group, and developed the plan used as a basis for the Clinton Group's direct mail/telemarketing fundraising campaign." No documentation from either vendor was provided to support this contention.

An internal Committee memo written by George Burger dated September 10, 1987 entitled "Iowa Plan Campaign Plan -- Draft" (sic) contains as an attachment a draft of a preliminary campaign plan for Iowa, "Simon for President -- Iowa Campaign Plan Outline -- Draft." Another Committee memo dated September 17, 1987 written by John Fitzpatrick regarding the September 10, 1987 George Burger memo states "I received yesterday George Burger's memo titled 'Iowa Plan Campaign Plan -- Draft' dated September 10. It is my understanding that this document will be meshed with Pat Mitchell's memo ... to form the basis for the Simon for President campaign in Iowa."

Key elements contained in George Burger's Iowa campaign plan draft include Campaign Strategy; which focused on "bursts of 'paid' contact to the caucus attenders" and an attempt to increase the Committee's "percentage of the vote through concentrated periods of 'paid' communications (radio and television ads, mail and telephone contacts)." A Direct Voter Contact program is also outlined, as well as a Paid Media and Press program, Field program, and a Candidate Activity program among others.

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The Audit staff notes that the Direct Voter Contact program mentioned above apparently corresponds to the work performed by the Clinton Group, however the Committee did not provide documentation from TMC that details the portion of time spent on that particular program. Furthermore, the Voter Contact program is only one element of an 7 element activity schedule, which is itself only one phase of a 5 phase campaign plan; and the cost of including the Voter Contact plan in the Iowa campaign plan could be considered merely incidental to the cost of producing the entire Iowa campaign plan.

Based on our review of the documentation made available, it is the Audit staff's opinion that the services provided by TMC directly influenced the candidate's nomination for the Office of President with respect to Iowa, and therefore the amounts paid for the development of the Iowa related work performed are allocable to Iowa in accordance with the regulations at 11 C.F.R. § 106.2(a)(1).

i. Drafts Paid to Iowa Vendors

During the campaign the Committee utilized bank drafts which are bearer instruments having a maximum value stated on the face of the draft, (i.e., not more than \$25, \$50, \$100). When presented to the issuing bank for payment, a bank representative would contact the Committee and a Committee representative would approve the draft for payment. Drafts were provided to campaign staff and were used throughout the campaign to purchase goods and services at the state office level as well as to reimburse travel and subsistence expenses incurred by campaign staff.

The Audit staff's review of drafts used by the Committee and the associated documentation indicated an additional \$23,391.86 requires allocation to Iowa. The expenses incurred include postage, office supplies, car rentals, payments to various hotels and expense reimbursements for non-travel and subsistence items relative to Iowa.

During the Audit staff's review of documentation provided by the Committee in response to Interim Audit Report Finding III.C. Apparent Non-Qualified Campaign Expenses-Unclassified Expenditures it was noted that certain draft documentation had been submitted twice by the Committee and initially allocated twice by the Audit staff. The Audit staff has adjusted the allocation of draft expenditures for the duplication and has recalculated the allocable draft expenditures to be \$14,792.56.

j. Bankers Trust

The Audit staff's review of Committee workpapers relative to the Bankers Trust account indicated that

an additional \$1,667.04 (net) requires allocation to Iowa. This amount is the net result of under allocation by the Committee and exemptions for legal and accounting and fundraising being taken on items which were not overhead as defined by 11 C.F.R. 106.1, and an over allocation by the Committee in February 1988.

In its response to the Interim Audit Report the Committee provided the Audit staff with evidence that certain checks written from the Banker's Trust account were void. Therefore the Audit staff has decreased its allocation by \$3,187.40 resulting in a reduction of \$1,520.36 from the amount the Committee originally allocated on FEC Form 3-P Page 3.

k. Jefferson/Jackson Dinner

The Jefferson/Jackson Dinner ("JJ Dinner") was an event hosted by the Iowa Democratic Party on November 7, 1987. All candidates were invited to speak at the event. The Committee held an Illinoisans for Simon reception, a Paul Simon rally and a buffet dinner.

Based on the documentation made available the Audit staff identified \$10,939.33 in expenditures for the JJ Dinner which the Committee allocated to Iowa. The expenditures were for charter buses, American flags, rental of a tent to be set up outside of the Veterans Memorial Auditorium, rental of video equipment for use on November 7, at the Veterans Auditorium, and room rentals at the Des Moines Convention Center and Veterans Memorial Auditorium. Further review by the Audit staff identified an additional \$18,390.91 in expenditures associated with the JJ Dinner which have been allocated by the Audit staff to Iowa. These include an additional payment to the Veterans Memorial Auditorium Commission for the rental of the Urbandale Room, catering, banners, balloons and hardware supplies, a paging system, generator and per diem for several campaign staff who were in Iowa from November 1 through November 8, 1987.

Additionally, the Audit staff noted in the documentation provided January 24, 1990 receipts from Pratt Audio Visual and Copycat Photocopy for the following activities which could not be associated with a payment:

- ° Portable Panasonic Recorder, \$75.00;
- ° 1,000 copies made November 6, 1987, \$23.92.

In the Interim Audit Report the Audit staff recommended that the Committee provide a detailed accounting, with supporting documentation, of all expenses related to the Committee's participation in the Jefferson/Jackson Dinner, to include payments to vendors for goods and services, and expense reimbursements and per diem paid to individuals associated with supervising or participating in the event.

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A review of the Committee's response to the Interim Audit Report identified an additional \$100 allocable to Iowa for the JJ Dinner; and also identified the above noted expenses with the source of payment. The revised amount related to the JJ Dinner totals \$18,490.91, and is included in the allocation to Iowa.

Recap of Iowa Allocations

Presented below is a recap of Iowa allocations. Photocopies of workpapers and supporting documentation for the Audit staff's allocations as noted in the Interim Audit Report have been provided to the Committee.

	PER INTERIM AUDIT REPORT	PER FINAL AUDIT REPORT
Amount Allocated by the Committee	\$792,504.34	\$792,504.34
Adjustment for Voids		(213.74)
Net Amount Allocated by Committee	\$792,504.34	\$792,290.60
Additional Allocations by Audit Staff:		
Exempt Compliance and Fundraising Expenditures	\$375,762.55	\$375,762.55
Media	62,840.55	62,840.55
Intra-State Travel and Subsistence	74,812.77	76,406.38
Rock Island Office	81,939.54	103,997.25
Northwestern Bell	51,847.83	51,381.09
Payroll and Employer FICA	23,487.63	21,623.94
Aircraft Charters	64,819.85	26,001.62
Iowa Vendors	168,988.36	143,112.61
Drafts	23,391.86	14,792.56
Bankers Trust	1,667.04	(1,520.36)
Jefferson/Jackson Day Event	18,390.91	18,490.91
Sub Total Audit Allocation	<u>\$947,948.89</u>	<u>\$892,889.10</u>
Total Allocable to Iowa	\$1,740,453.23	\$1,685,179.70
Less: Iowa Limitation	<u>(775,217.60)</u>	<u>(775,217.60)</u>
Amount in Excess of Iowa Limitation	<u>\$ 965,235.63</u>	<u>\$ 909,962.10</u>

Although requested in the Interim Audit Report to amend its FEC Form 3P, Page 3 relative to state allocations, the Committee has not filed amendments as of January 31, 1991.

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2. New Hampshire

The Committee's FEC Form 3P, Page 3, covering activity through December 31, 1989, disclosed \$447,555.23 as allocable to the New Hampshire expenditure limitation of \$461,000. There were no amendments filed with regard to amounts reported as allocable to the New Hampshire limitation.

Presented below are categories of costs which were not reported as allocable on FEC Form 3P, Page 3. Included within the applicable report section below is the Committee response, if any, to the Interim Audit Report.

a. Telephone Related Charges

Section 106.2(b)(2)(iv)(A) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures in a particular State shall be allocated to that State. For the purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intra-state phone calls other than charges related to a special use such as voter registration or get out the vote efforts.

i. New England Telephone

The Audit staff reviewed available telephone bills, to include final bills, for 18 telephone service locations. Although requested by the Audit staff, not all telephone bills have been provided by the Committee to date. A comparative analysis of costs allocated to the New Hampshire expenditure limitation by the Committee and costs determined to be allocable by the Audit staff was performed. This analysis included a review of the application of deposits held (plus interest) to the final bills. Should the Committee provide the missing documentation, the Audit staff will revise its analysis, as required.

Based upon this review, it is the opinion of the Audit staff that an additional \$18,325.74 should be allocated to New Hampshire. It appears the Committee neglected to allocate the amount(s) of telephone deposits applied to final bills. The amount(s) of a telephone deposit when initially paid to the vendor was not allocated to a particular state(s).

On January 31, 1991, in response to the Interim Audit Report, the Committee submitted additional documentation with respect to these phone bills stating that only

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an additional \$13,285 should be allocated. Based on this documentation, the Audit staff has revised its analysis of the additional amount allocated in the Interim Audit Report. The Audit staff has revised its calculation and notes that an additional \$16,962.60 should be allocated to New Hampshire.

ii. Northwestern Bell, AT & T and Sprint

The Audit staff reviewed the available telephone bills for Northwestern Bell to determine the total amount of New Hampshire intra-state phone calls billed to this North Dakota Committee service location. Based on this review, it is the Audit staff's opinion that \$1,657.64 should be allocated to New Hampshire. In addition, the Audit staff's review of documentation with respect to AT & T and Sprint indicated that the cost (\$194.22) of intra-state phone calls (\$117.61 AT & T, and \$76.61 Sprint) also require allocation to the New Hampshire limitation.

Based upon the above noted reviews, to include review of additional documentation received January 31, 1991, the Audit staff determined that an additional \$18,814.46 should be allocated to New Hampshire (New England Telephone 16,962.60, Northwestern Bell \$1,657.64, AT & T \$117.61, Sprint \$76.61).

b. Salaries and Employer FICA

Section 106.2(b)(2)(ii) of Title 11 of the Code of Federal Regulations states that except for expenditures exempted under 11 C.F.R. 106.2(c), salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

Section 106.2(c)(5) of Title 11 of the Code of Federal Regulations states, in part, that an amount equal to 10% of campaign workers' salaries in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries may be excluded from allocation to that State as exempt fundraising expenditure, but this exemption shall not apply within 28 days of that State's primary election as specified in 11 CFR 110.8(c)(2).

i. Staff Assigned to New Hampshire Field Offices

During the review of Committee payroll records for employees assigned to New Hampshire and associated allocation worksheets, the Audit staff determined that additional salaries and employer FICA, totaling \$49,715.38, require allocation to New Hampshire. It appears that the Committee did not allocate salaries and employer FICA totaling \$22,116.65 for

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payrolls covering the period February 1-16, 1988 which were paid during March, 1988. In addition, the derivation of the Committee's figure for payroll used on its 1987 year-end allocation workpapers could not be determined by the Audit staff and appears to be understated by \$24,223.49. Finally, several payroll checks and employer's FICA (totaling \$3,375.24) not included on the Committee's computerized payroll for the period ending 11/15/87 were issued manually and do not appear to have been allocated to the New Hampshire limitation. Further, the Audit staff noted that the Committee utilized the standard 10% method for allocating a portion of the New Hampshire payroll as an exempt compliance cost or an exempt fundraising cost and has included the appropriate adjustment for the above discussed items at Finding III.D.2.d.

ii. Other Campaign Staff

The Audit staff's review of Committee reimbursement files for Committee staff not assigned to New Hampshire field offices identified persons who incurred expenses while in New Hampshire for five or more consecutive days. Their names were traced to payroll records to determine whether their salaries and associated employer FICA had been allocated to New Hampshire.

Based on this review, the Audit staff determined that an additional \$5,437.21 in salaries and employer FICA require allocation to New Hampshire. This figure (\$5,437.21) includes the appropriate adjustment excluding from allocation the exempt compliance/fundraising portion and, therefore, has not been included at Finding III.D.2.d.

Based upon the above reviews the Audit staff has determined that an additional \$55,152.59 (\$49,715.38 + \$5,437.21) requires allocation to New Hampshire for salaries and employer FICA.

c. Media Expenditures

Section 106.2(b)(2)(i)(B) of Title 11 of the Code of Federal Regulations states that except for expenditures exempted under 11 C.F.R. 106.2(c), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry data.

The Audit staff reviewed the Committee's media allocations for New Hampshire as well as supporting documentation made available by the media vendor. The Audit staff's analysis of these media expenditures indicates that an additional \$5,142.41 is allocable to the New Hampshire

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expenditure limitation. This adjustment results mainly from two television buys (\$4,714.45) which were not allocated by the Committee.

At the exit conference, Committee representatives stated they believe that their media allocation as prepared by the vendor was made using industry market data and is therefore a reasonable allocation.

The Committee's January 31, 1991 response to the Interim Audit Report and the Audit staff's analysis of that response has been addressed previously at pages 18 to 23 of this report. The Audit staff rejected the Committee's contention that it overallocated media costs in New Hampshire and, therefore, the Audit staff's allocation of additional media costs (\$5,142.41 remains unchanged.

d. Exempt Compliance and Fundraising Expenditures

Section 106.2(c)(5) of Title 11 of the Code of Federal Regulations states, in part, that an amount equal to 10% of campaign workers salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of that State's primary election.

With respect to payroll and overhead expenditures of its New Hampshire office, the Committee utilized (albeit inconsistently) the exemptions provided at 11 C.F.R. §106.2(c)(5).

As a result, the Audit staff reviewed all of the Committee's reported allocable expenditures and determined that the Committee is entitled to an additional compliance and fundraising exemption of \$20,677.95.

At the exit conference on January 9, 1990, Committee officials stated that the fundraising exemption was actually 50% of its total expenditures allocated to Iowa and New Hampshire that its legal and accounting compliance exemption was actually 5% of its total expenditures allocated to Iowa based on an analysis of AO 1988-06 and the John Glenn Audit Report [Report of the Audit Division on John Glenn Presidential Committee, Inc., Public Release 8/19/85]. The Committee stated that all activity in Iowa and New Hampshire was composed equally of a fundraising and political nature. Furthermore, the Committee contends its 50% exemption for fundraising is reasonable. The Committee stated it was not aware of a problem with the New Hampshire expenditure limitation and did not apply its formula as discussed above (50% exempt fundraising, 5% exempt compliance) to New

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Hampshire. It should be noted that the Committee was made aware, at an interim conference held August 7, 1989, that it was in excess of the New Hampshire state limitation. The Committee stated it would review its New Hampshire allocation and apply the fundraising exemption which would then properly reflect the New Hampshire activity.

The Committee representatives also explained that prior to the Iowa caucus and New Hampshire primary the Committee's dual purpose components of its activities did not change; i.e., the Committee continued its fundraising activity and therefore, this activity is exempt from the regulations at 11 C.F.R. §110.8(c)(2) which state that expenses targeted at a state within 28 days of a primary shall be presumed to go against that state's limit. The Committee's position is that the regulatory use of "presume" creates a presumption as opposed to the use of "is" or "are" and a presumption can be overcome by facts, stating the Commission recognizes this in 11 C.F.R. §110.3(b)(2)(a) and that AO 1984-30 states in a footnote that the regulatory use of presumption can be overcome by actual facts in specific situations. Furthermore, the presumption under the 28-rule is that it is assumed most committees will initially conduct fundraising and later, prior to the election, focus their expenditures on influencing votes. According to the Committee representatives this was not so with the Simon for President case. Committee representatives feel that their facts can overcome the presumption set forth at 11 C.F.R. §110.8(c)(2) and therefore the Committee is entitled to its 50% fundraising exemption within 28-days of the caucus/primary.

The Committee also believes its fundraising exemption is reasonable stating that Simon for President actually raised significant amounts of money in Iowa and New Hampshire during December 1987 through March 1988.

Committee Officials stated they would review the New Hampshire State allocation workpapers provided to them and provide documentation to support the Committees 50% fundraising exemption.

On January 24, 1990 Committee submitted a state by state fundraising analysis of contributions received by the Committee which indicated that New Hampshire ranked twenty-first in both amount contributed and number of contributors. However, no amendments were submitted revising Committee allocations to the New Hampshire limitation.

The Audit staff believes it has correctly applied the Regulations at 11 C.F.R. §106.2(c)(5). Neither the Act nor the Commission's Regulations provide for a 50% fundraising exemption as applied by the Committee. Even though the Committee contends that the activity conducted in New Hampshire actually raised significant amounts of money the same could be said for activities conducted in any state. A review of

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the Fundraising report submitted by the Committee on January 14, 1990 indicates that the funds raised by the Committee in New Hampshire during December 1987 through March 1988 comprise only 0.6% of the total funds raised by the Committee during this time period.

Furthermore, the Audit staff does not disagree that the Committee may have raised monies as a result of its activities in New Hampshire in the 28 days prior to the New Hampshire primary; however, the Committee appears to be ignoring completely 11 C.F.R. §§100.8(b)(21)(iii) and 110.8(c)(2) which clearly require that fundraising activities targeted at a particular state and occurring within 28 days of a state's primary are chargeable to that state's expenditure limitation. Thus, in accordance with 11 C.F.R. §§100.8(b)(21)(iii) and 110.8(c)(2) the Committee can not exclude from state allocation costs for fundraising which occurred within 28 days of the primary even if the activities were clearly fundraising in nature. Therefore, the Audit staff's position remains unchanged.

e. Regional/State Offices Adjacent to New Hampshire

Section 106.2(b)(2)(iv)(B) of Title 11 of the Code of Federal Regulations states, in part, that except for expenditures exempted under paragraph (c) of this section, overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to each State on a reasonable and uniformly applied basis. For purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone service base charges.

i. Regional Office Allocations (Manchester, New Hampshire Office)

Analysis of the available documentation by the Audit staff does not appear to support the regional office concept. Although not determinative, only the Committee's 1987 Year-end report contained allocated amounts based on adjustments noted in the Committee's New Hampshire allocation workpapers relative to a regional office. Committee allocation workpapers and documentation made available to the Audit staff provide no basis for the Committee derived figures exempting expenditures as related to the operation of a regional office. In addition, it appears that many of the expenditures being exempted as regional office expenses by the Committee do not relate to the regional office in Manchester, New Hampshire, but rather to other local New Hampshire state offices.

As a result, the Audit staff has reviewed Committee allocation workpapers associated with the

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regional allocations and has determined that an additional \$24,067.65 is allocable to the New Hampshire expenditure limitation.

At the exit conference, Committee representatives stated they believe the Manchester, New Hampshire office was quite clearly a regional office which supervised campaign activity and coordinated travel throughout the New England area.

ii. Boston Field Office

The Audit staff also noted the existence of a Boston, Massachusetts campaign office which apparently opened December 7, 1987. There were no other campaign offices located in Massachusetts. Internal Committee correspondence generated by Mike Marshall [NH Campaign Director] indicates that the "only gap in our [NH] field organization is the absence of a Boston office.....Massachusetts interest in Simon is growing and should be utilized. Even more important than the obvious press and cap (apparently a reference to the NH state spending limitation) advantages of a Massachusetts location, we need a Boston office to channel people and energy to New Hampshire. A Boston office will be run as a New Hampshire field office. [Emphasis added] The main objective of the Boston field office will be to support the New Hampshire campaign. I intend to assign a staff person to the office to ensure that goal."

A review by the Audit staff of the documentation made available identified expenditures totaling \$22,671.18 associated with Boston Office/Massachusetts activity, the bulk of which (98%) were expended prior to the New Hampshire primary on February 16, 1988. Further review indicated that 42% of the above mentioned expenditures could be associated directly with New Hampshire field staff for such things as postage (\$7,800) or reimbursements for expenses incurred in Boston; rental for the Boston office comprised 34% (\$7,600) of the above mentioned expenditures, and the remainder (24%) consisted of expenditures for such things as telephone, equipment rentals, and printing and supplies. Although the Boston office was opened in the beginning of December, the Committee did not specifically employ Massachusetts staff until the last payroll in January (payroll ending January 31, 1988, 16 hours) when one individual was employed.

Our review of telephone billing statements provided for January 11, 1988 through March 10, 1988 for the Boston service location indicates a previous balance of \$378.97 for the billing period which covered December 1987 through January 11, 1988 service; although requested by the Audit staff a billing statement for this time period was not provided by the Committee. An analysis of telephone activity for January

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11 through February 16, 1988 disclosed that 69% of net calling activity was directed to New Hampshire, the majority of which was to New Hampshire field offices.

During fieldwork, a Committee representative stated that an auditor would say the Boston office was set up as a guise, however, the Boston office was opened by Simon supporters which the National Headquarters could not control, based on the theory that Paul Simon could challenge Michael Dukakis. The Committee representative further stated that the Boston office was a Massachusetts related effort and that the Committee did not pay for the office, it sublet the office from two Simon supporters.

At the exit conference, the Committee restated its position regarding the Boston office stating the Boston office was set up as a fundraising office to encourage support in Massachusetts and to encourage college students to go to New Hampshire over weekends whose activity would be exempt from state allocation under the 5-day rule.

In the Audit staff's opinion, the Committee's comments are not persuasive given the stated purpose ("main objective") of this office was to support the New Hampshire campaign, and that the Office was set up and coordinated by the New Hampshire Campaign Director. The Audit staff's position remains unchanged, and an additional \$22,671.18 relative to the Boston Office requires allocation to New Hampshire.

iii. Community Savings Bank Account

The Audit staff reviewed and analyzed documentation and records with respect to expenditures which totaled approximately \$53,000 from a Massachusetts state account maintained by the Committee. Of these expenditures, the Audit staff noted \$3,883.97, incurred during the period October 14 through December 18, 1987, which the Committee allocated to New Hampshire.

In addition, however, the Audit staff identified an additional \$22,167.28 in expenditures reimbursing staff assigned to New Hampshire field offices for expenses incurred relative to that state (NH), as well as paying vendors or goods and services used in New Hampshire.

Finally, the Audit staff has identified 31 disbursements, totaling \$13,505.98 for which documentation has been requested to determine if the expenditures are allocable to New Hampshire.

Therefore based upon the above reviews, the Audit staff has determined that at least \$68,906.11

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(\$24,067.65 + \$22,671.18 + \$22,167.28) requires allocation to New Hampshire.

Committee officials stated that documentation regarding the regional office and the Boston office would be provided to the Audit staff.

In the Interim Audit Report the Audit staff requested, in part, that the Committee provide an explanation regarding the purpose and function of the Boston Office; a listing of all activities and programs conducted or coordinated by the Boston Office, to include a detailed accounting, with supporting documentation, of all expenses related to each activity or program.

The Committee's response to the Interim Audit Report, received January 31, 1991, in addition to reiterating the arguments presented above, noted the following reasons in support of its position that such expenditures should be exempted from the New Hampshire limitation. The Committee first notes that the terms of the lease (11-19-87 to 3-12-88) were keyed to the date of the Massachusetts primary (3-8-88) and by virtue of that fact, efforts were focused on Massachusetts campaign activity. The fact that this office may have encouraged volunteers or campaign workers to travel to New Hampshire is not relevant according to the Committee, as this would be covered by the interstate travel exemption (the five-day rule). Similarly, administrative expenses of those organizing such activity should not be applied against the visited states limit. Finally the Committee cites the "strong Massachusetts campaign effort", which included full participation in the delegate selection process. In support of this the Committee provided copies of a Delegate Recruitment Program binder, the Simon for President House Party Organizer Kit, and a copy of the Paul Simon for President Massachusetts Steering Committee list. The Committee's response did not address the Regional Office allocations or the Community Savings Bank Account.

The Audit staff again finds that the Committee's comments are not persuasive given the stated main objective of this office was to support the New Hampshire campaign. No documentation has been provided to support the Boston office as the focal point of a strong Massachusetts effort. Furthermore, the individual in charge of the Massachusetts delegate selection could not be identified as being associated with the Boston office effort. In addition, a Committee memo written by Michael Marshall discussing the Boston office opening states "for Paul's next trip to New Hampshire we have 2 big events planned...Following the town meeting will be the Boston office opening at 12 noon" indicating that the Boston office was a New Hampshire event.

With respect to the delegate selection process the Delegate Recruitment Binder portrays the bulk of the

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selection process as taking place between 3-24-88 and 6-11-88, well after the end of the lease period. Further, this manual directs information to be forwarded to addresses other than that on the lease. The Audit staff acknowledges that the House Party Kit, a fundraising tool, makes "special reference to the efforts needed after the New Hampshire primary", as pointed out in the Committee's response; however, the Committee fails to note that this reference is to "'Super Tuesday', on March 8th" which involved many states other than Massachusetts. Finally, the documentation provided by the Committee fails to associate any of the expenditures allocated by the Audit staff above with any fundraising program.

Based upon the above, the Audit staff has increased the amount allocable to New Hampshire by \$13,505.98 for those items for which the Committee failed to provide documentation as requested in the Interim Audit Report. Also noted during the Audit staff's review of documentation submitted in response to the Interim Audit Report with respect to Finding III.C. Apparent Non-Qualified Campaign Expenses-Undocumented were additional expenses incurred in Boston by New Hampshire head, Michael Marshall, in the amount of \$458.73. The Audit staff has determined that \$82,870.82 (\$68,906.11 + \$13,505.98 + \$458.73) requires allocation to New Hampshire.

As determined during the Commission's deliberations of August 29, 1991 described at Section III.D.3 of this report, \$2,423.66 of travel and subsistence expenses have been deducted from the Boston office allocation. This reduction represents travel and subsistence plus related salary expenses for those individuals who could not be placed in New Hampshire for five consecutive days or more based on our review of the documentation available. The revised amount allocable to New Hampshire totals \$80,447.16 (\$82,870.82 - \$2,423.66).

On October 3, 1991 the Commission in its deliberations (described at Section III.D.3 of this report) determined that a 100% allocation of the costs associated with the Boston office would be made to New Hampshire. Therefore the Audit staff has recalculated the amount allocable to New Hampshire for the Boston office to be \$22,704.91 (this amount includes an adjustment of \$425 for expenses not related to the Boston office).

The revised amount allocable to New Hampshire for regional/state offices adjacent to New Hampshire now totals \$82,445.82 (comprised of \$24,067.65 Regional Office allocation + \$22,704.91 Boston office + \$35,673.26 Community Savings bank).

f. Intra-State Travel, Subsistence, and Related Expenditures

Section 106.2(b)(2)(iii) of Title 11 of the

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Code of Federal Regulations states, in part, that travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. This same allocation method shall apply to intra-state travel and subsistence expenditures of the candidate and his family or the candidate's representatives.

i. New Hampshire Staff

The Audit staff's review of supporting documentation for expenditures incurred by staff assigned to New Hampshire offices relative to intra-state travel, subsistence and related goods and services used in New Hampshire indicated these expenditures were not allocated by the Committee to the New Hampshire state expenditure limitation. The Audit staff is of the opinion that the 5-day rule is not applicable in this situation and has determined that expenditures totaling \$8,595.99 should be allocated to the New Hampshire limitation.

ii. Non New Hampshire Staff

The Audit staff's review of Committee expense reimbursement files identified persons who had incurred expenditures in New Hampshire for five or more consecutive days relative to travel, subsistence and related goods and services (such as supplies, photocopying, equipment rental, etc. used in New Hampshire). Based on this review the Audit staff has determined that \$28,517.53 in such expenditures require allocation to the New Hampshire limitation.

iii. Senator Paul Simon's American Express

Section 9035.2 of Title 11 of the Code of Federal Regulations states, in part, that expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear.

The Audit staff's review of Senator Simon's personal American Express Card activity identified a charge to the Sheraton Tara, Nashua New Hampshire, dated February 12, 1988 in the amount of \$867.14, which appears to require allocation to the New Hampshire state limitation under the five day rule. The Audit staff requested additional documentation regarding the above expenditures during audit fieldwork which the Committee has yet to provide. Should the documentation be provided the Audit staff will adjust its figure as necessary.

The Audit staff also noted that Senator Simon's use of his American Express card was in accordance with

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11 C.F.R. 9035.2 and that Senator Simon's personal expenditure limitation was not affected.

Based on this review, the Audit staff determined that intra-state travel and subsistence expenditures, and related expenditures for goods and services used in New Hampshire totaling \$37,980.66 (\$8,595.99 + \$28,517.53 + \$867.16) should be allocated to New Hampshire.

In its January 31, 1991 response to the Interim Audit Report, the Committee addressed expenditures allocated with respect to two individuals. The Committee contends that the two individuals arrived by plane to Boston on 2-13-88, spent time at a relative's home, and did not arrive in New Hampshire until 2-14-88, exempting them under the five-day rule. In addition, the Committee argues two expenditures (\$127.90) associated with one of the individuals were exempt as compliance/fundraising related.

With respect to the two individuals' travel and subsistence expenditures the Audit staff notes that the hotel credit card slip provided by the Committee was imprinted on 2-12-88 and, absent further documentation to the contrary, the amount determined to be allocable remains unchanged. The Audit staff has decreased the amount allocable by \$127.90 for the associated expenses noted above. Further, the Audit staff has increased the amount allocable to New Hampshire by \$2,624.96 based upon our review of documentation submitted in response to Finding III.C. which addressed undocumented, non-qualified campaign expenses. Therefore, the revised amount allocable to New Hampshire was determined to be \$40,477.72 (\$37,980.66 + \$2,624.96 - \$127.90).

g. Review of Committee Vendor Files

The Audit staff reviewed all available files for vendors which could be associated with the Committee's New Hampshire effort. As a result of this review, the Audit staff determined that an additional \$56,172.19 in expenditures require allocation to the New Hampshire spending limitation. This amount includes payments to vendors for goods and services such as printing, postage, car rentals, shipping, supplies, posters, banners; as well as payments to consultants as detailed below.

Based on the Committee's January 31, 1991 response to the Interim Audit Report with respect to the consultants as detailed below, the Audit staff has revised the amount determined to be allocable to New Hampshire to \$39,319.62.

i. Hickman Maslin Research

The Committee entered into a consulting contract with Hickman Maslin Research (HMR) to conduct polling, research and consulting services, which included the "design,

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execution and analysis of all public opinion research...including polls and focus groups...". They were also to actively participate in strategic and tactical discussions, brief the Committee on public opinion and review and comment on brochures, newspaper ads, press releases and TV scripts and ads. The contract provides that the Committee compensate HMR for the activities specified above in the form of consulting fees, as well as 100% compensation for the cost of conducting surveys (polls) and for reimbursement for travel and lodging expenses for HMR personnel for consultations on projects (polls and focus groups) outside of the Washington, D.C. area.

Although the Committee appears to have allocated correctly some of the costs of the surveys/focus groups relative to New Hampshire, costs associated with one focus group (\$5,000) and a New Hampshire poll (\$4,500), and certain travel costs incurred by HMR personnel (\$3,106.10) do not appear to have been allocated by the Committee.

Further the Committee did not allocate that portion of the consulting fee which apparently represents compensation for the surveys and focus groups. The Audit staff requested documentation during fieldwork which would associate these fees with a particular service provided. In the absence of said documentation, the Audit staff has included in the above figure \$11,500 paid to Hickman Maslin Research which represents that portion of consulting fees based on the ratio of total polling and focus group expenses made relative to New Hampshire to the total amount of polling and focus group expenses.

At the exit Conference, the Committee noted that HMR's consulting fees, which were for polling, political, and other activities were not associated with any state and were allocated appropriately by the Committee to national headquarters overhead.

As previously stated above, the contract provides for consulting fees to be paid to HMR by the Committee for the activities which HMR performed for the Committee. A review of the HMR billing statements indicates that all work billed by HMR was related to a specific state, therefore the Committee's contention that the consulting fees were for activities not associated with any state is invalid.

Therefore the Audit staff has included in the vendor allocation above, \$24,106.10 (\$9,500 + \$3,106.10 + \$11,500) relative to HMR.

In its January 31, 1991 response to the Interim Audit Report, the Committee restates its position that it acted properly in allocating to national headquarters overhead all disbursements made to HMR for consulting services based upon

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the contract and supplemental agreement provided as part of the response (See pages 36 to 39 of this report for a complete discussion).

The Commission in previous considerations^{*/} has determined that the costs of focus groups are not allocable and has also determined that consulting fees arising out of agreements to provide polling services are not allocable.

Therefore, based upon the above, the Audit staff has reduced the amounts allocable to New Hampshire by the cost of the focus groups (\$5,000 + \$352.57 focus group travel) and by the amounts of the consulting fees (\$11,500). The total additional amount allocable to New Hampshire is now \$7,253.53 which consists of \$4,500 for the New Hampshire poll and \$2,753.53 for New Hampshire polling related travel.

ii. The Clinton Group

The Committee engaged the Clinton Group to conduct direct mail and telephone surveys. A review of the documentation made available by the Committee indicated the majority of the activity contained fundraising elements. In its allocations, the Committee apparently exempted approximately 50% of these costs relative to programs directed at New Hampshire. All of the activities occurred outside the 28 day period prior to the New Hampshire primary. The Audit staff adjusted the Committee's allocations to exempt from the New Hampshire state limitation all fundraising costs outside the 28 day period prior to the New Hampshire primary and to include those fundraising costs within the 28-day period. As a result of its analysis, the Audit staff has determined the Committee over allocated costs with respect to the Clinton Group. Therefore the Audit staff reduced expenditures allocable to the New Hampshire limitation by \$14,825.

iii. The Murphine Corporation

The Committee entered into a consulting agreement with the Murphine Corporation (TMC) to provide strategic political analysis and planning, assistance with voter contact programs, and consultation in developing management structures for both Iowa and New Hampshire and for the development of a written campaign plan for the presidential primary in New Hampshire. The contract also provided for compensation to TMC for its service in the form of consulting fees and for the reimbursement of all travel related expenses, out of pocket expenses, and a living expense (per diem) for each

^{*/} Report of the Audit Division on Dole for President, approved April 15, 1991 and Report of the Audit Division on Gephardt for President, Inc., approved June 10, 1991.

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work day personnel of TMC spent outside of the Washington, D.C. area. Included in the above figure are consulting fees of \$7,250 (50% of \$14,500 in fees received) and travel expense reimbursements of \$942.95 relative to the New Hampshire related portion of services provided.

With respect to the Murphine Corporation (TMC) the Committee stated in its response to the Interim Audit Report that TMC was engaged in fundraising activities and worked closely with the Committee's fundraising team. Further the Committee stated that "George Berger from Murphine Corporation worked closely with the Clinton Group, and developed the plan used as a basis for the Clinton Group's direct mail/telemarketing fundraising campaign." No documentation from either vendor was provided to support this contention.

With respect to New Hampshire, the Committee's New Hampshire campaign plan outline details the Committee's situation in New Hampshire, and sets the strategy to be one in which Senator Simon is separated from the "'pack of candidates' mired far behind Governor Dukakis" through a "'jump start'" program that would increase the Committee's "percentage of the vote through an early concentrated use of all communications channels available." [emphasis in original] The New Hampshire campaign plan details a Direct Voter Contact program, a Paid Media and Press program, a Field program, and Candidate Activity program, as well as two other programs.

As with Iowa, the Direct Voter Contact program noted above in New Hampshire apparently corresponds to the work performed by the Clinton Group. However, as with Iowa, the Committee did not provide documentation from the TMC that details the portion of time spent on that particular program. Furthermore, the Voter Contact program is only one element of an 7 element activity schedule, which is itself only one phase of a 3 phase campaign plan; and the cost of including the Voter Contact program in the New Hampshire campaign plan could be considered merely incidental to the cost of producing the entire New Hampshire campaign plan.

Based on our review of the documentation made available, it is the Audit staff's opinion that the services provided by TMC directly influenced the candidate's nomination for the Office of President with respect to New Hampshire and therefore the amounts paid for the development of the New Hampshire related work performed are allocable to New Hampshire in accordance with the Regulations at 11 C.F.R. § 106.2(a)(1).

h. Event - Octoberfest

The Audit staff reviewed Committee expenditure files for costs which could be identified as part of a Committee event, Octoberfest, which took place in New Hampshire during the period October 23-27, 1987. According to

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correspondence dated November 5, 1987 from Mike Marshall (New Hampshire Campaign Director) Octoberfest was used "to kick off the New Hampshire campaign" through the candidate's appearance at numerous events scheduled during this period in New Hampshire, as well as three brief stops outside the state. These events included receptions, visits to schools, visits with various groups, public appearances and a scheduled news conference.

The Audit staff's review identified expenditures relative to Octoberfest for such items as use of helicopter/airplane, newspaper ad, hotels, per diem, travel and subsistence, as well as other miscellaneous items.

Although Committee records indicate the expenditures were allocated to National scheduling and advance, the Audit staff's analysis determined that an additional \$20,902.53 requires allocation to the New Hampshire spending limitation.

On January 24, 1990, the Committee submitted additional documentation which states that expenses associated with this trip (Octoberfest) should not be allocated against the New Hampshire state limitation for the following reasons.

1. Senator Simon and his party left New Hampshire twice during this trip to attend prearranged events in Massachusetts and Vermont; and since the FEC regulations "do not mandate a particular method for calculating five consecutive days use of the 24-hour method of review is clearly more appropriate to the instant trip." The Committee then states the Senator was only in New Hampshire for 86.5 hours.

2. The Senator's Octoberfest activities in New Hampshire involved numerous fundraisers, and thus all expenses in connection with these events are exempt from state allocation pursuant to 11 C.F.R. § 106.2(c)(5)(ii).

3. The primary focus of the New Hampshire staff for several months was organizing Octoberfest events and thus at a minimum, should be allocated evenly between fundraising and political.

4. These activities exemplify how New England activity was scheduled, coordinated and organized through the Manchester office as a regional office.

5. Octoberfest activities typify the dual-purpose, fundraising and political, nature of the Committee's activity in New Hampshire throughout the campaign.

At the exit conference the Committee was provided with photocopies of workpapers detailing the costs considered allocable by the Audit staff.

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The Audit staff believes its assessment of these disbursements under the 5-day rule is consistent with the regulations and with past practice^{*/}. Further, the documentation submitted by the Committee, as discussed above, fails to associate any of the disbursements identified by the Audit staff as costs related to specific fundraising events.

Therefore, the Audit staff's determination of the amount (\$20,902.53) allocable is unchanged.

In the Interim Audit Report the Audit staff recommended that the Committee identify all costs associated with the Octoberfest event and provide documentation with respect to these costs for the Audit staff's review.

In its response to the Interim Audit Report, received January 31, 1991, the Committee repeated its previously stated position and provided copies of materials, some of which have already been made available to the Audit staff. One exception was a detailed invoice from the helicopter/airplane charter vendor, which detailed the flight segments made by each aircraft. The narrative portion of the Committee's response restates its position that the Octoberfest events had a fundraising purpose, but then states "[t]he fundraising nature of these events is not eliminated by the fact that contributions were received from follow-up appeals, rather than directly at the event." The Committee then concludes that all transportation, subsistence and lodging incurred in connection with fundraising events, identified by the Committee within the narrative portion of its response, are exempt under 11 C.F.R. §106.2(c)(5)(ii).

Except as noted below, the Audit staff believes its assessment of these disbursements under the five-day rule is still correct. The Committee's response does not provide documentation associating these disbursements with fundraising events. However, based upon the Audit staff's review of the charter service invoice, interstate segments which could be associated with events outside of New Hampshire, totaling \$8,322.50 were identified. The Audit staff has reduced the amount allocable to New Hampshire to \$12,580.03 (\$20,902.53 - \$8,322.50).

^{*/} The Commission's Explanation and Justification relative to the 5-day rule states, in part, that "For purposes of determining the length of time an individual remains in a State, the Commission will generally look to calendar days or any portion thereof that a person was in a State rather than using 24-hour periods." Federal Register, Vol. 48 No. 25, p.5225, 2/4/83.

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i. Miscellaneous Expenditures

Our review of Committee allocation workpapers resulted in the identification of \$292.22 in expenditures not allocated by the Committee to New Hampshire, which the Audit staff determined require such allocation. As a result, the Audit staff has increased expenditures subject to the New Hampshire limitation by a like amount (\$292.22).

On January 31, 1991, the Committee submitted its response to the Interim Audit Report. As part of that response the Committee submitted documentation with respect to Finding III.C., Apparent Non-Qualified Campaign Expenses-Undocumented Expenditures. The Audit staff's review of this documentation noted one additional expenditure allocable to New Hampshire in the amount of \$287.25. Therefore, the Audit staff has increased the expenditures subject to the New Hampshire state limitation by a total of \$579.47 (\$292.22 + \$287.25).

j. Conotabs Network

In the Interim Audit Report the Committee was requested to provide information relative to work performed by Conotabs Network. The Committee did not provide the information requested. Based upon the invoices available, the Audit staff has determined that an additional \$4,461.03 requires allocation to the New Hampshire limit.

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Recap of New Hampshire Allocations

Presented below is a recap of New Hampshire allocations. Photocopies of workpapers and supporting documentation for the Audit staff's allocations as presented in the Interim Audit Report have been provided to the Committee.

	<u>Per Interim Audit Report</u>	<u>Per Final Audit Report</u>
Amount Allocated by the Committee	\$447,555.23	\$447,555.23
Additional Allocations by the Audit Staff:		
Telephone related charges	20,177.60	18,814.45
Salaries and Employer FICA	55,152.59	55,152.59
Media Expenses	5,142.41	5,142.41
Exempt Fundraising/Compliance	(20,677.95)	(20,677.95)
Regional and State Offices	68,906.11	82,445.81
Intra-State Travel and Subsistence	37,980.66	40,477.71
Review of Vendor Files	56,172.19	39,319.61
Event - Octoberfest	20,902.53	12,580.03
Miscellaneous Expenditures	292.22	579.47
Conotabs Network		4,461.03
Total Allocable to New Hampshire	<u>\$691,603.59</u>	<u>\$685,850.43</u>
Less: New Hampshire Limitation	<u>(461,000.00)</u>	<u>(461,000.00)</u>
Amount in Excess of New Hampshire Limitation	<u>\$230,603.59</u>	<u>\$224,850.43</u>

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Although requested in the Interim Audit Report to amend its FEC Form 3P, Page 3 relative to state allocations, the Committee has not filed amendments as of January 31, 1991.

At the exit conference the Committee was informed that a pro rata repayment of the amounts in excess of the New Hampshire and Iowa State expenditure limitations would be requested. The Committee representatives responded they would review the New Hampshire and Iowa workpapers which had been provided.

In the Interim Audit Report it was recommended that within 30 calendar days after service of this report the Committee submit evidence demonstrating that the payments in question are qualified campaign expenses. Absent such a showing, it would be recommended that the Commission make an initial determination that the pro rata portions totaling \$347,796.25 (\$65,326.28 NH + \$282,469.97 IA) be repaid to the United States Treasury.

3. Repayment Calculation

As previously detailed above, in the Interim Audit Report, the Audit staff's review and analysis of expenditures allocable to Iowa, including those allocated by the Committee, indicated that \$1,740,453.23 should reasonably have been allocated to Iowa causing the Committee to exceed the state expenditure limitation by \$965,235.63. The Audit staff's review and analysis of expenditures allocable to New Hampshire, including those allocated by the Committee, indicated that \$691,603.59 should reasonably have been allocated to New Hampshire, causing the Committee to exceed the state expenditure limitation by \$230,603.59.

Based upon the Committee's response to the Interim Audit Report as detailed above, the Audit staff has revised its analysis and now calculates that the Committee exceeded the Iowa state limitation by \$909,962.10. The Audit staff also determined that, with respect to the expenditures in excess of the limitation, an adjustment for \$12,882.48 was required for those amounts which were paid or remained payable after February 28, 1990, the date on which the Committee expended the last matching funds to which it was entitled, and an adjustment of \$7,158.65 for payroll checks which were not issued.

*/ In the Interim Audit Report the Audit staff's calculation of the amount subject to repayment was reduced by \$121,047.95 (\$92,440.90 IA + \$28,607.05 NH) the value of the non-qualified campaign expenses paid after the candidate's date of ineligibility. See Findings III.B. pages 5-7 and III.C. pages 10-11 for the discussion of the Commission's consideration of the question of "double counting."

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With respect to New Hampshire, based upon the Committee's response to the Interim Audit Report as detailed above, the Audit staff has revised its analysis and now calculates that the Committee exceeded the New Hampshire state limitation by \$225,275.43. The Audit staff also determined that, with respect to the expenditures in excess of the limitation, an adjustment for \$4,778.54 was required for those amounts which were paid or remained payable after February 28, 1990, the date on which the Committee expended the last matching funds to which it was entitled.

The following recommendation was presented to the Commission on August 29, 1991.

The Audit staff recommends that the Commission make an initial determination that the amounts determined above to be in excess of the Iowa and New Hampshire state limitations are non-qualified campaign expenses, and that the Committee make a pro rata repayment to the United States Treasury in the amount of \$368,046.88 (\$294,963.41 Iowa + \$73,083.47 New Hampshire).

During the Commission's consideration of this recommendation the Commissioners could not reach a conclusive decision.

A motion was made to reduce the Iowa and the New Hampshire allocations relative to expenses of the Rock Island office and Boston office involving individuals who did not spend five consecutive days or more in Iowa or New Hampshire. That motion failed by a vote of 3-3 [Commissioners McDonald, McGarry and Thomas voting in the affirmative, and Commissioners Aikens, Elliott and Josefiak voting against].

A second motion was made to approve the recommendation as written; that motion failed by a vote of 3-3 [Commissioners Aikens, Elliott and Josefiak voting in the affirmative, Commissioners McDonald, McGarry and Thomas voting against].

A third motion was made to approve the recommendation provided the Iowa allocation and the New Hampshire allocation be reduced for expenses pertaining to salary or travel and subsistence expenses relating to Rock Island or Boston based individuals who did not spend five or more consecutive days in Iowa or New Hampshire and to add language to the audit report explaining the Commission's decision. This motion passed by a vote of 4-2 [Commissioners Josefiak, McDonald, McGarry and Thomas voting in the affirmative, and Commissioners Aikens and Elliott voting against].

The discussion with respect to the recommendation involved the application of 11 C.F.R. 106.2(b)(2)(D)(ii) regarding the allocation of salaries to states. Since the Rock Island and Boston offices were not located in Iowa and New

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Hampshire proper, the salaries and travel and subsistence expenses for the individuals working at those offices were deemed to be governed by the five day rule even though the activities conducted in the Rock Island and Boston offices influenced the caucus/primary in the respective states.

The Audit staff reviewed its allocations to both Iowa and New Hampshire and reduced the amounts allocable to Iowa with respect to Rock Island by \$40,722.62 for travel and subsistence and related salary expenses for those individuals who could not be placed in Iowa for 5 consecutive days or more, based upon the documentation available. Similarly, the Audit staff reduced the amount allocated to New Hampshire with respect to the Boston office by \$2,423.66 for travel and subsistence and related salary expenses for those individuals who could not be placed in New Hampshire for 5 consecutive days or more, based upon the documentation available.

On October 3, 1991, it was recommended that the Commission make an initial determination that the amounts in excess of the Iowa (\$869,239.48) and New Hampshire (\$222,851.77) state expenditure limitations are non-qualified campaign expenses, and that the Committee make a pro rata repayment to the United States Treasury in the amount of \$353,746.09 (\$281,465.34 Iowa + \$72,280.15 New Hampshire).

During its consideration of the amounts recommended as allocable to the Iowa and New Hampshire spending limits, the Commission's discussion focused on allocation relative to the Committee's Rock Island, Illinois operation (see report Section III.D.1.) and Boston, Massachusetts operation (see report Section III.D.2.c.ii).

A motion was approved to consider the Committee's Rock Island and Boston offices as offices of their respective states, rather than as offices of Iowa and New Hampshire. Further, based on the evidence available regarding the activities conducted in those offices, make a 100% allocation of the costs identified with respect to the Rock Island office to Iowa, and a 100% allocation of the costs identified with respect to the Boston office to New Hampshire. Additionally, the Committee would have the opportunity to provide evidence/documentation to the Commission demonstrating that activities other than Iowa or New Hampshire related were conducted in the Rock Island and Boston offices; and to include language in the audit report explaining the Commission's decision.

The Audit staff recalculated its allocations to both Iowa and New Hampshire based upon the Commission's deliberations of October 3, 1991. The total repayment for Iowa and New Hampshire is as follows:

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PAUL SIMON FOR PRESIDENT
 Audit Analysis of September 5, 1989 NOCO Statement

Assets

Cash	\$	121,032.15
Accounts Receivable		2,399.35
Capital Assets		11,882.00
Other Assets		-0-

Non-Qualified Campaign Expenses (4/8/88-9/5/89)1/		<u>137,706.06</u>
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TOTAL ASSETS		\$273,019.56
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Obligations

Accounts Payable Qualified Campaign Expenses		(\$30,666.01)2/
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Contribution Refunds Payable		(\$60,378.05)5/
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Winding Down Costs:

-Actual(9/6/89-12/31/90)		(198,986.78)
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-Estimated(1/1/91-10/31/91)

Salaries, Legal Consulting		(75,400.00)
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Rent		(7,205.00)
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Telephone		(1,521.50)
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Supplies		(767.80)
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Computer/Data Processing		(1,500.00)
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Fundraising3/		<u>-0-</u>
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Total Winding Down Costs		(\$285,381.08)4/
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TOTAL OBLIGATIONS

(376,425.14)

NOCO (Deficit)/Surplus

\$ (103,405.58)

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Footnotes to Audit Analysis of NOCO Statement

- 1/ The Audit staff has adjusted the assets on this post date of ineligibility (4-7-88) NOCO Statement for non-qualified campaign expenses paid between 4-8-88 and 9-5-89, which require exclusion under 11 C.F.R. §9034.5(b).
- 2/ With respect to these payables (\$30,666.01), although it appears that the Committee has entered into settlements with the vendors to reduce this amount by \$15,149.43, these amounts (\$15,149.43) are still included on subsequent Committee disclosure reports as debts owed by the Committee. The Committee has stated their intent is to pay all debts in full. Should the Committee submit these debt settlements to the Commission for approval, the Audit staff will assess any impact on the audited NOCO statement above and Committee entitlement.
- 3/ The Audit staff reviewed the Committee's \$15,000 estimated fundraising costs at 9/5/89 and determined that they should not be included on the audited NOCO due to the fact that the Committee had submitted a Matching Fund Request for \$113,607.40 on 9/5/89 and subsequently received \$68,238.31 in Matching Funds, which according to the Audit staff's calculations, materially eliminated the Committee's deficit. Therefore, there is no need for the Committee to engage in any additional fundraising.
- 4/ Since estimates were used in computing this amount, the Audit staff will review the Committee's disclosure reports and records to compare the actual figure with the estimates and prepare adjustments as necessary.
- 5/ The Audit staff has reduced this amount by \$4,217.43 in relation to amounts noted in the Interim Audit Report as prohibited in-kind contributions from vendors Kelly Scott Madison and Chartersearch Network which have now been determined not to be contributions to the Committee.

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Additional fieldwork may be required to assess the impact of future financial activity on the NOCO statement.

F. Matching Funds in Excess of Entitlement

Section 9038(b)(1) of Title 26 of the United States Code states, in part, 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 payments to which such candidate was entitled, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

Section 9038.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that a candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section.

Section 9038.2(b) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such payments include payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 C.F.R. §9034.5; and payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable.

1. Matching Funds Received in Excess of Entitlement:

As presented in Finding III.E. of the Interim Audit Report, the candidate's audited NOCO statement reflected a deficit on September 5, 1989 of \$696.74.

On September 29, 1989, the Committee received \$68,236.32 relative to Matching Fund Request #16 and several other Requests. Therefore, the Committee was determined to have received \$67,539.58 (\$68,236.32 - \$696.74) of matching funds in excess of its entitlement.

2. Excessive Portions of Contributions and Refunded Contributions which were Submitted for Matching

The Audit staff reviewed selected contributions submitted for matching. In one instance a contribution submitted for matching was refunded to the contributor and in 7 other instances, the Committee submitted for matching a contribution that, when aggregated with other contributions from the same contributor, exceeded in its entirety the contributor's \$1,000 limitation.

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For example, contributor A made a \$1,000 contribution to the Committee in April 1987 and a second \$1,000 contribution in October 1987. The Committee submitted for matching the second \$1,000 and received matching funds totaling \$250.00. It is the opinion of the Audit staff that the \$1,000 contribution made in October 1987 from contributor A is not matchable pursuant to 11 C.F.R. §9034.3(e), which states that contributions which are made or accepted in violation of 2 U.S.C. §441a are not matchable.

The contributions mentioned above were submitted for \$1,775 and were matched for \$1,673.

At the exit conference the Committee was presented with schedules detailing the above mentioned matching funds in excess of entitlement. The Committee representatives stated they would review the schedules and workpapers provided and submit any relative documentation to the Audit staff for review.

In the Interim Audit Report, the Audit staff recommended that within 30 calendar days of service of the report the Committee demonstrate that it had not received matching funds in excess of its entitlement. Absent such a showing, the Audit staff would recommend that the Commission make an initial determination that the Committee make a repayment of \$69,212.88 (\$67,539.58 + \$1,673.00) to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1).

1. Matching Funds Received in Excess of Entitlement

On January 31, 1991, in response to the Interim Audit Report, the Committee submitted documentation with respect to the NOCO statement. The Audit staff's review of this documentation, in conjunction with disclosure reports filed by the Committee to date, resulted in the updated NOCO statement which appears at Finding III.E. of this report. This NOCO statement reflects an increased deficit of \$103,405.58 (due in most part to winding down costs exceeding original estimates) and thus the Committee was entitled to all of Matching Fund Request #16 (\$68,236.32). Therefore, no repayment pursuant to 26 U.S.C. § 9038(b)(1) is necessary at this time.

2. Excessive Portions of Contributions and Refunded Contributions which were Submitted for Matching

The Committee's response to the Interim Audit Report, did not address the excessive portions of contributions and refunded contributions which were submitted for matching.

Recommendation #4

On August 29, 1991, the Commission made an initial determination that \$1,673.00 in matching funds received by the Committee represent matching funds received in excess of

entitlement, and that an equal amount must be repaid to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1).

G. Stale Dated Checks

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

During our reconciliation of Committee bank accounts to reported activity, the Audit staff identified 96 checks totaling \$28,248.62 which were stale dated.

The Committee was provided photocopies of schedules of the stale dated checks at the exit conference. The Committee representatives responded that they would try to locate the payees, noting that several of the outstanding checks had been reissued and had cleared the bank. The Committee representative also stated it would provide documentation regarding those reissued checks as well as explanations and evidence regarding those outstanding checks which were subsequently voided.

In the Interim Audit Report, the Audit staff recommended that within 30 calendar days of the date of service of this report the Committee (1) provide copies (front and back) of any of the above checks which have now cleared the bank; (2) inform the Commission of its efforts to encourage the payees to cash the outstanding checks or provide evidence documenting the Committee's efforts to resolve these items; and (3) submit a check payable to the United States Treasury for the total amount of such checks which are still outstanding at the conclusion of the response period.

The Committee's response, received January 31, 1991, details its efforts to resolve the above stale-dated checks either by issuing replacement checks or by documenting the item as a voided check.

The Audit staff is of the opinion that the Committee's efforts have, in fact, resolved only 42 items, totaling \$20,376.55, and the remaining 54 stale-dated checks, totaling \$7,872.07, require repayment to the United States Treasury.

The majority of these unresolved stale-dated checks, 50 checks totaling \$7,173.42 (see Attachment 1), involve Century Payroll checks for which the Committee was requested within Finding III.D.1.f. to provide an explanation regarding the circumstances surrounding the void or not issued payroll checks,

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and an explanation regarding the Committee's determination of those individuals the Committee regarded as having legitimate claims to wages and those individuals the Committee did not regard as having legitimate claim to wages. The Committee's response did not contain explanations regarding the void or not issued payroll checks noted above.

Recommendation #5

On August 29, 1991, the Commission made an initial determination that \$7,872.07 in stale-dated checks is repayable to the United States Treasury pursuant to 11 C.F.R. § 9038.6.

IV. Amounts Repayable to the United States Treasury

Presented below is a recap of the amounts recommended by the Audit staff as subject to the repayment provisions of 26 U.S.C. § 9038(b) or 11 C.F.R. § 9038.6.

Finding III.B	Apparent Non-Qualified Campaign Expenses - Post-Ineligibility Expenditures	8,573.01
Finding III.C.	Apparent Non-Qualified Campaign Expenses - Undocumented Expenditures	44,440.92
Finding III.D.	Apparent Non-Qualified Expenses: New Hampshire and Iowa Expenditures in Excess of State Limitation	367,906.03
Finding III.F.	Matching Funds in Excess of Entitlement	1,673.00
Finding III.G.	Stale-Dated Checks	<u>7,872.07</u>
	Total	<u>\$ 430,465.03</u>

It should be noted that these amounts are based on information made available as of January 31, 1991 and may be subject to change.

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SIMON FOR PRESIDENT COMMITTEE
STALE DATED CHECKS

<u>CHECK #</u>	<u>PAYEE</u>	<u>CHECK DATES</u>	<u>CHECK AMOUNT</u>
<u>Adams Bank</u>			
5360	Andich Bros. News Co.	1/11/88	351.05
6384	Southwestern Bell Telephone	4/13/88	105.42
<u>Sovran</u>			
2774	Dykes Lumber Co.	12/01/87	101.54
<u>Century Payroll</u>			
1183	Charlotte Jones	1/05/88	256.37
1201	Allen Seidner	1/05/88	293.41
1311	John Klasey	1/05/88	169.78
1365	Charlotte Jones	1/20/88	256.37
1370	Keith S. Lee	1/20/88	125.62
1383	Gary M. Prusaitis	1/20/88	45.00
1397	Alan Vandenburg	1/20/88	186.35
1400	John R. Weinberger	1/20/88	74.06
1419	Michael Marshall	1/20/88	1,426.18
1821	Scott Sanders	3/22/88	237.68
1825	Daniel Ackman	3/22/88	42.31
1826	Joseph P. Ahearn	3/22/88	41.18
1834	Ross Barlow	3/22/88	36.51
1840	Stephen B. Blakely	3/22/88	151.49
1842	Nancy J. Brougher	3/22/88	42.32
1847	Robyn Butler	3/22/88	138.73
1852	Francis A. Clanney	3/22/88	41.18
1853	Robert B. Clipper	3/22/88	41.17
1866	Patricia A. Fahy	3/22/88	42.31
1876	Elizabeth A. Forkins	3/22/88	41.10
1877	Terence L. Gasper	3/22/88	143.27
1883	Carolyn Gaukel	3/22/88	41.18
1897	Paul L. Jentel	3/22/88	42.32
1900	Charlotte Jones	3/22/88	82.87
1905	Arthur Kessler	3/22/88	41.18
1908	Diana S. Kim	3/22/88	42.32
1912	Mary V. Kunes	3/22/88	41.17
1916	Keith S. Lee	3/22/88	38.67
1921	Sarah D. Malm	3/22/88	42.32
1922	Roseanne McCargar	3/22/88	143.27
1927	Patrick Mitchell	3/22/88	392.69
1928	Holly M. Morris	3/22/88	41.18

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<u>CHECK #</u>	<u>PAYEE</u>	<u>CHECK DATES</u>	<u>CHECK AMOUNT</u>
<u>Century Payroll (continued)</u>			
1931	John R. Neimeyer	3/22/88	41.18
1636	John R. Neimeyer	3/22/88	126.68
1943	Jill A. Saponick	3/22/88	41.18
1947	Paul W. Shadle	3/22/88	41.17
1949	Julie Sloat	3/22/88	42.13
1951	Sarah S. Smith	3/22/88	42.32
1957	Michael S. Strimling	3/22/88	42.32
1963	Terry W. Teele	3/22/88	41.18
1964	David V. Thomas	3/22/88	42.31
1966	John Trasvina	3/22/88	42.32
1967	Alan Vandenburg	3/22/88	41.43
1972	John R. Weinberger	3/22/88	41.18
1975	Karen G. Wolin	3/22/88	41.17
2027	Janna L. Johnson	3/22/88	289.34
2028	Evan S. Simpson	3/22/88	391.82
2121	Evan S. Simpson	3/31/88	391.82
10054	Donald C. Jones	3/22/88	352.25
10055	Evan S. Simpson	3/22/88	340.06
Total			<u>7,872.07</u>

130 / 9190246



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

91070-5 110-

December 6, 1991

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

SUBJECT: Paul Simon for President Committee -
Extension of Time to Respond to the
Final Audit Report (LRA #355)

The Commission approved the Final Audit Report on the Paul Simon for President Committee ("Committee") on October 22, 1991. On October 29, 1991, the Committee received the Final Audit Report. Pursuant to 11 C.F.R. § 9038.2(c)(2), the Committee was also informed that if it disputed the Commission's initial repayment determination, it must submit factual and legal materials demonstrating that a lesser or no repayment is required on or before December 2, 1991.

In a letter dated November 26, 1991, the Committee requests additional time to respond to the Commission's initial repayment determination. The Committee raises two points in its request for additional time. First, the Committee contends that the original date of December 2, 1991 set for its response to the Commission's initial repayment determination should be revised to December 26, 1991 because the schedules supporting the findings related to post ineligibility expenditures; expenditures in excess of the state limitations; and matching funds in excess of entitlement were not included with the Final Audit Report. The Committee contends that the findings account for 88% of the initial repayment determination. The Committee asserts that it made numerous requests of the Audit Division to supply the supporting schedules. However, according to the

230/0190211

Committee, it did not receive the supporting schedules until November 25, 1991. The Committee argues that without this information it cannot prepare an effective response to the Final Audit Report. See Attachment 1.

Second, the Committee requests that it be granted an additional 60 calendar days from December 26, 1991 to respond to the Commission's initial repayment determination. The Committee contends that this time is necessary for it to compile the information required and prepare a written response. The Committee further notes that the other factors which make the additional time necessary include: (1) the fact that its response falls within the holiday season; (2) the difficulty of obtaining information concerning past transactions; and (3) the limited financial resources and lack of staff to assist the Committee in preparing a response. See Attachment 1.

237-1992-8
The Office of General Counsel does not believe that the due date for the Committee's response to the Commission's initial repayment determination should be revised to December 26, 1991. Although the Committee contends that it could not prepare an effective response without the supporting documentation, the Audit Division informed us that the findings related to post ineligibility expenditures and matching funds in excess of entitlement involved little or no change from the Interim Audit Report. Moreover, the Committee did not request the schedules supporting the changes in the expenses allocated to the Iowa and New Hampshire expenditure limitations until November 19, 1991. See Attachment 2. We note that on November 20, 1991, the Committee requested the opportunity to address the Commission in open session regarding the Final Audit Report and the initial repayment determination.^{1/} If the Committee's request is granted, it will have an opportunity to submit additional information after its oral presentation. However, in light of the difficulties noted by the Committee in preparing a response to the Commission's initial repayment determination, we believe that it is appropriate to grant the Committee a 60 day extension from the original due date of December 2, 1991 until January 31, 1992 to respond. See 11 C.F.R. § 9038.4(c)

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Deny the Committee's request to revise the due date to respond to the the initial repayment determination from December 2, 1991 to December 26, 1991;

^{1/} The Committee's request for an oral presentation will be presented following receipt of its response to the Final Audit Report. See 11 C.F.R. § 9038.2(c)(3).

Memorandum to The Commission
Extension of Time to Respond to Final Audit Report
Paul Simon for President
(LRA #355)
Page 3

2. Approve a 60 day extension until January 31, 1992 to allow the Committee to respond to the initial repayment determination; and

3. Approve the appropriate letter notifying the Counsel of the Commission's decision.

Staff Assigned: Lorenzo Holloway

Attachments

1. Request for Extension of Time to Submit Written Response to the Final Audit Report (November 26, 1991) (Attachments Omitted).

2. Memorandum from the Audit Division listing the chronology of events subsequent to the Commission's approval of the Final Audit Report. (December 5, 1991) (Attachments Included).

1307519020

EPSTEIN BECKER & GREEN, P.C.

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703) 684-1204

LEGAL & CONFIDENTIAL

November 26, 1991

† P.C. NEW YORK, WASHINGTON, D.C.,
CONNECTICUT, VIRGINIA AND
TEXAS ONLY

HAND-DELIVERED

Chairman John W. McGarry
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Paul Simon for President: Final Audit Report

Dear Chairman McGarry:

For the reasons detailed herein, Paul Simon for President ("the Committee") respectfully requests additional time in which to respond to the initial repayment determination included in the Final Audit Report ("the Report").

Specifically, the Committee requests (1) that the initial due date for the response be revised from December 2, 1991 to December 26, 1991, to reflect the fact that the Committee was provided only late yesterday afternoon (Monday, November 25, 1991) with the details of precisely which Committee expenditures were reallocated to Iowa and/or New Hampshire in the Report, and (2) that it be granted an extension-of-time from the revised December 26, 1991 due date of 39 business days (60 calendar days), until February 24, 1992, to respond to the Report.

I. REQUEST THAT ORIGINAL DUE DATE BE REVISED.

The Committee received a copy of the Report on October 29, 1991. Attached to the Report were schedules supporting the repayment amounts at Finding III.C. and Finding III.G. (these findings related to undocumented expenditures and stale-dated checks). However, the supporting schedules for Finding III.B. (post-ineligibility expenditures), Finding III.D. (expenditures in excess of state limitations) and Finding III.F. (matching funds in excess of

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FEDERAL ELECTION COMMISSION

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Chairman John W. McGarry
November 26, 1991
Page 2

entitlement) were not included with the Final Report.¹ The initial repayment amount in connection with those three findings for which no supporting schedules were provided to the Committee totalled \$378,152.04, which is 88% of the entire initial repayment determination.

As you are aware, the supporting schedules detail precisely which expenditures were reallocated to Iowa and/or New Hampshire or otherwise resulted in an initial repayment determination. Without this information, it would be impossible for the Committee to prepare an effective response to the initial repayment determination. (For example, lacking the supporting schedules the Committee would not know which disbursements in connection with the Rock Island office and the so-called Bow-Tie Brigade to obtain affidavits regarding.)

During the last four weeks, the Committee made numerous requests for the supporting schedules for the referenced three findings. Representatives of the Audit Division were sympathetic to the Committee's predicament, and repeatedly assured the Committee that the supporting schedules would be forthcoming shortly. However, due apparently to the Audit Division's enormous work-load over the last several weeks, the supporting schedules were only made available to the Committee late yesterday afternoon, November 25, 1991 -- three days before Thanksgiving and four business days prior to the December 2, 1991 due date. (Copies of the supporting schedules provided to the Committee yesterday are attached hereto, as Exhibit A).

The Regulations at 11 C.F.R. §9038.2(c)(1) mandate that the Commission's notice to a candidate of an initial repayment determination include "...the evidence upon which any such determination is based." Until such time as the candidate or Committee receive schedules to support Finding III.B., Finding III.D. and Finding III.F., the "evidence" notice required by 11 C.F.R. §9038.2(c)(1) clearly is not satisfied. Thus, it follows that the thirty-day response period set forth at 11 C.F.R. §9038.2(c)(1) should begin only after the referenced supporting schedules were made available to the Committee, which was November 25, 1991, and not simply when the Report without supporting documents was provided to the Committee.²

Based on the Committee's November 25, 1991 receipt of the supporting schedules -- which we note are lengthy, detailed documents -- the initial due date for the Committee's response would be December 26, 1991. The Committee requests that the Commission revise the initial due date accordingly.

¹The Committee is not aware of any reason why it was provided with supporting schedules for only two of the five findings.

²The Committee did not actually receive yesterday the schedules supporting Finding III.B. and Finding III.F. However, it is willing to waive receipt of these documents for purposes of revising the response due date.

Chairman John W. McGarry
November 26, 1991
Page 3

II. REQUEST FOR AN EXTENSION-OF-TIME.

Based on a revised due date of December 26, 1991, the Committee requests an extension-of-time of 39 business days (60 calendar days), until February 24, 1992, in which to file a response to the Report. This additional time is absolutely necessary for the Committee to adequately compile information and prepare a written response to the numerous components of the Commission's initial repayment determination. (For example, the Committee believes that it will take about three months from yesterday's receipt of the supporting schedules in connection with the Rock Island office and the Bow-Tie Brigade to analyze the allocations, locate those individuals who made or received the disbursements in question, have those individuals prepare affidavits for the Commission, and assimilate all this information into a written response).

The magnitude of the initial repayment determination makes this extension-of-time crucial to the Committee's ability to file a meaningful response. Other factors which make this additional time essential to the Committee include: (1) the fact that this response period falls during the holiday season, when many individuals, whose assistance is critical to preparing the Committee's response, are on vacation, (2) the difficulties inherent in obtaining information on transactions which took place years ago, and (3) the fact that the Committee has limited financial resources and no staff to assist it in preparing a response.

It is the Committee's understanding that its request for an extension-of-time of 60 calendar days is 15 days longer than the extension-of-time previously granted to the Kemp for President Committee. However, given the size of the Committee's initial repayment determination, the Committee believes the additional 15 days is certainly justified.

CONCLUSION

The Committee thus respectfully requests (1) that the initial due date for its response be revised from December 2, 1991 to December 26, 1991, and (2) that it be granted an extension of time of 39 business days (60 calendar days) from the revised due date, until February 24, 1992, in which to file a response to the Report.

Please do not hesitate to contact this office if you have any questions regarding this matter.

Sincerely,



Leslie J. Kerman
General Counsel
Paul Simon for President

Enclosure

ATTACHMENT 1
Page 3 of 3

AR-91-49



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

AB000436

December 5, 1991

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

THROUGH: John C. Surina
Staff Director

FROM: Robert J. Costa *ARC*
Assistant Staff Director
Audit Division

SUBJECT: Chronology of Events Post Final Audit Report
("FAR") - Paul Simon for President

339/01992

The Audit staff has reviewed the request, dated 11/26/91, submitted by the Committee in which the Committee requests that the "initial due date for the response [to the FAR] be revised from December 2, 1991 to December 26, 1991" and that the Committee be granted a 60 day extension from 12/26/91 to respond to the FAR. We have prepared for your consideration the attached chronology detailing events which took place after Commission approval of the Final Audit Report on Paul Simon for President. [The attachment to the chronology includes page references with respect to the state allocation finding (III.D.) in the FAR. The explanation for changes made to the amount considered allocable to IA/NH per the Interim Audit Report is found at the referenced page(s).] Further, with respect to three findings involving repayments presented in the FAR and for which supporting schedules were not included^{*/}, the Audit staff presents the following for your consideration.

The repayment amount addressed at Finding III.B., Apparent Non-Qualified Campaign Expenses - Post-Ineligibility Expenditures is composed of three parts and the Committee received detailed schedules for these at the exit conference. Two of these parts, payroll tax penalties and non-winding down costs, remain unchanged from the Interim Audit Report ("IAR"). The only change occurred with respect to the first part, convention-related expenditures. The repayment amount was

^{*/} The Committee stated in its 11/26/91 letter that it "is not aware of any reason why it was provided with supporting schedules for only two of the five findings."

increased by \$1,050 representing a single expenditure previously included in Finding III.C., Apparent Non-Qualified Campaign Expenses-Undocumented Expenditures; and for which the Committee was provided detailed schedules at the exit conference.

With respect to Finding III.D., Apparent Non-Qualified Campaign Expenses: New Hampshire and Iowa Expenditures in Excess of State Limitation, since the Committee did not request audit workpapers detailing the changes to the NH/IA allocations on 10/22/91 when detailed schedules were requested for undocumented expenditures, it was felt that the explanations provided in the FAR were sufficient (see Attachment #1 to chronology). When detailed schedules were requested on 11/18/91 or 11/19/91, the Audit Staff provided the information on 11/25/91.

As for Finding III.F., Matching Funds in Excess of Entitlement, the only change was the elimination of the 2 U.S.C §9038(b)(1) repayment addressed in the first part of this Finding. The remaining repayment of \$1,673 is exactly the same as presented in the IAR. It should be noted that Attachment 5 to the IAR was a detailed listing of the individual contributions relative to this repayment determination.

Based on the above, the Audit Staff is of the opinion that the Committee's request for a change to the due date for their response to the FAR from December 2, 1991 to December 26, 1991 is without merit. However, the Audit Staff believes that a 60-day extension from December 2, 1991 should be granted, in light of extensions granted previously by the Commission. If the extension is granted, the Committee's response to the FAR would be due on January 31, 1992.

Should you have any questions with respect to this matter, please contact Alex Boniewicz or Rick Halter at 219-3720.

Attachments:

Post Final Audit Report Chronology of Events

Attachment 1 - Changes to Amount Allocable to Iowa (page 1)
Changes to Amount Allocable to New Hampshire
(page 2)

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Paul Simon for President
Post Final Audit Report Chronology of Events

- | <u>DATE</u> | <u>EVENT(S)</u> |
|-------------------------|---|
| 1. 10-22-91 | Commission approves FAR. |
| 2. 10-22-91 | Committee requests schedules detailing NQCE-Undocumented (Finding III.C.); no other documentation is requested. |
| 3. 10-29-91 | Audit Division holds up forwarding FAR to Committee until today. Requested audit workpapers for NQCE-Undocumented are copied for the Committee. The due date for response to the FAR is calculated to be December 2, 1991. The Committee picked up the FAR and requested schedules on 10-29-91. |
| 4. 10-30-91 | Committee requests copies of our copies of <u>THEIR</u> allocation workpapers for IA/NH and the return of documents included as part of <u>THEIR</u> response to the IAR, which included original documents; no other documents requested. The Audit staff never took possession of the Committee's original allocation workpapers with respect to IA allocations and returned the Committee's (original) NH workpapers on 12-28-89. Further, it should also be noted that the Committee's response to the Interim Audit Report made no mention that the Committee would require the return of the documents submitted in response to the IAR. Also on this date, Audit staff completed photocopying our copies of available Committee allocation workpapers with respect to IA/NH. |
| 5. 11-13 to
11-14-91 | Audit staff, as available, made copies of Committee's IAR response documents. |
| 6. 11-18 or
11-19-91 | Committee first requests copies of audit workpapers showing changes from IAR to FAR for IA/NH allocations. See Attachment 1. |
| 7. 11-20-91 | Committee picks up documents included in IAR response and copies of our copies of <u>THEIR</u> allocation workpapers for NH/IA. |
| 8. 11-25-91 | Copies of audit workpapers showing changes in IA/NH allocations from IAR to FAR provided to the Committee. |

CHANGES TO AMOUNTS ALLOCABLE TO IOWA
DETAILED IN THE FINAL AUDIT REPORT

	<u>Per Interim Audit Report</u>	<u>Per Final Audit Report</u>	<u>FAR Page Reference</u>
Amount Allocated by the Committee	\$792,504.34	\$792,504.34	
Adjustment for Voids	<u> </u>	<u>(213.74)</u>	*/
Net Amount Allocated by Committee	\$792,504.34	\$792,290.60	
Additional Allocations by Audit Staff:			
Exempt Compliance & Fundraising Expenditures	\$375,762.55	\$375,762.55	No Change
Media	62,840.55	62,840.55	No Change
Intra-State Travel and Subsistence	74,812.77	76,406.38	Page 23-25
Rock Island Office	81,939.54	103,997.25	Page 32
Northwestern Bell	51,847.83	51,381.09	Page 33
Payroll and Employer FICA	23,487.63	21,623.94	Page 35
Aircraft Charters	64,819.85	26,001.62	Page 35-36
Iowa Vendors	168,988.36	143,112.61	Page 36-45
Drafts	23,391.86	14,792.56	Page 45
Bankers Trust	1,667.04	(1,520.36)	Page 46
Jefferson/Jackson Day Event	<u>18,390.91</u>	<u>18,490.91</u>	Page 46-47
Sub Total Audit Allocation	<u>\$947,948.89</u>	<u>\$892,889.10</u>	

*/ This adjustment resulted from documentation submitted by the Committee with respect to the State Dated Check Finding contained in the IAR.

ATTACHED
Page 4 of 5

**CHANGES TO AMOUNTS ALLOCABLE TO NEW HAMPSHIRE
DETAILED IN THE FINAL AUDIT REPORT**

	<u>Per Interim Audit Report</u>	<u>Per Final Audit Report</u>	<u>FAR Page Reference</u>
Amount Allocated by the Committee	\$447,555.23	\$447,555.23	
Additional Allocations by the Audit Staff:			
Telephone related charges	20,177.60	18,814.46	Page 49
Salaries/Employer FICA	55,152.59	55,152.59	No Change
Media Expenses	5,142.41	5,142.41	No Change
Exempt Fundraising and Compliance	(20,677.95)	(20,677.95)	No Change
Regional/State Offices	68,906.11	82,445.82	Page 53-57
Intra-State Travel and Subsistence	37,980.66	40,477.72	Page 58-59
Review of Vendor Files	56,172.19	39,319.62	Page 59-62
Event - Octoberfest	20,902.53	12,580.03	Page 64
Miscellaneous Expenditures	292.22	579.47	Page 65
Conotabs Network		4,461.03	Page 65
Total Allocable to New Hampshire	<u>\$691,603.59</u>	<u>\$685,850.43</u>	

ATTACHMENT 2
 Page 5 of 5



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
F.E.C.
MAY 20 1992

May 20, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Lorenzo Holloway
Attorney

SUBJECT: Paul Simon for President - Request
for Oral Presentation (LRA #355)

The Commission approved the Final Audit Report on Paul Simon for President ("Committee") on October 22, 1991. In a letter dated November 20, 1991, Counsel for the Committee requested the opportunity to address the Commission in open session regarding the audit report and the initial repayment determination. Pursuant to the Commission's regulations, at 11 C.F.R. § 9038.2(c)(3), the Committee was informed that the Commission would consider its request for an oral presentation after it submitted its written response to the Final Audit Report.^{1/} The Committee submitted its written response to the Final Audit Report on January 31, 1991. We recommend that the Commission grant the Committee's request for an oral presentation and set the date for the presentation for August 5, 1992.

^{1/} On November 26, 1991, the Committee requested an extension of time to submit its written response to the Final Audit Report. The Committee was granted an extension until January 31, 1991 to submit its written response.

The Commission's regulations provide publicly funded candidates with the opportunity to respond to an initial repayment determination by submitting written legal and factual materials to demonstrate that no repayment, or a lesser repayment, is appropriate. 11 C.F.R. § 9038.2(c)(2). A candidate may request an opportunity to address the Commission in open session. 11 C.F.R. § 90038.2(c)(3). The Commission may grant this request by an affirmative vote of four of its members, and inform the candidate of the date and time set for the oral presentation. 11 C.F.R. § 9038.2(c)(3).

Counsel for the Committee requests to make an oral presentation to elaborate upon the Committee's position with respect to the Commission's initial repayment determination made pursuant to 26 U.S.C. § 9038(b)(2). Specifically, the Committee disputes several of the amounts allocated to its Iowa and New Hampshire expenditure limitations. We believe that an oral presentation, with questions from Commissioners and staff, may help the Commission in reaching a final repayment determination.

If the Commission grants the request, we propose that procedures similar to those used for previous presentations be followed. Prior to the date of the presentation, the Office of General Counsel will prepare an analysis of the issues presented. This analysis will be provided to the Commission and the Committee. This Office will also prepare an agenda document containing materials relevant to the Committee's oral presentation.

At the presentation, the Chairman will make an opening statement. The Committee will then be permitted 30 minutes to make a presentation on the issues raised in its response. Following the presentation, individual Commissioners, the Special Deputies, the General Counsel, and the Audit Division may ask questions. The letter to Counsel for the Committee will inform her of these procedures and also state that any additional materials she may wish to have the Commission consider should be submitted to the Office of General Counsel within five days following the presentation.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the request by Counsel for Paul Simon for President to make an oral presentation under 11 C.F.R. § 9038.2(c)(3);

Memorandum to The Commission
Request for Oral Presentation
Paul Simon for President (LRA #355)
Page 3

2. Set the date for the oral presentation for August 5, 1992; and

3. Approve the appropriate letter notifying Counsel of the Commission's decision.

Attachment

Paul Simon for President's Request for an Oral Presentation, dated November 20, 1991.

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EPSTEIN BECKER & GREEN, P.C.
ATTORNEYS AT LAW

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November 20, 1991

*P.C. NEW YORK, WASHINGTON, D.C.
CONNECTICUT, VIRGINIA AND
TEXAS ONLY

HAND-DELIVERED

Chairman John W. McGarry
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Paul Simon for President: Final Audit Report

Dear Chairman McGarry:

Pursuant to 11 C.F.R. §9038.2(c)(3), Paul Simon for President ("the Committee") hereby requests a hearing before the Federal Election Commission ("the Commission") on the initial repayment determination made in the course of the recently-completed audit of its 1988 presidential campaign activities.

Assuming the Commission is amenable to the Committee's request, it is the Committee's understanding that the hearing will be scheduled for a date subsequent to the Commission's receipt of the Committee's written response to the Final Audit Report.¹ As part of its response to the Final Audit Report, the Committee will set forth for the Commission the issues it will address at the hearing.

Please do not hesitate to contact this office if you have any questions, or need additional

¹For your information, the Committee plans to file with the Commission a request for an extension-of-time in which to file a written response to the Final Audit Report.

Page 1 of 2

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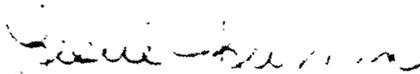
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Chairman John W. McGarry
November 20, 1991
Page 2

information, in connection with this request.

Respectfully submitted,



Leslie J. Kerman
General Counsel
Paul Simon for President

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Public Disclosure
(Cooper)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 10, 1993

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Lorenzo Holloway
Attorney

**SUBJECT: Paul Simon for President, Inc.
Final Repayment Determination and
Proposed Statement of Reasons (LRA #355)**

1307019023

Attached for the Commission's information is the revised Statement of Reasons supporting the Final Repayment Determination in the audit of the Paul Simon for President Committee ("the Committee"). On March 4, 1993, the Commission made a final determination that the Committee must make a repayment to the United States Treasury. The Commission also approved the Statement of Reasons in support of the Final Repayment Determination. The Office of General Counsel had proposed a repayment in the amount of \$413,764.88. However, the Commission subtracted an amount representing the Committee's payments to the Murphine Corporation for national consulting services from the Iowa and New Hampshire expenditure limitations. As a result of this adjustment to the amounts subject to the Iowa and New Hampshire expenditure limitations, the Final Repayment Determination has been reduced from \$413,764.88 to \$412,162.87. Furthermore, the Office of General Counsel was directed to revise the language on pages 30 and 49 of the Statement of Reasons.

Memorandum to The Commission
Paul Simon for President
Final Repayment Determination
(LRA #355)
Page 2

The Office of General Counsel has made the revisions to comport with the Commission's directions and, based on the reduction in the amount allocable to the Iowa and New Hampshire expenditure limitations, recalculated the repayment amount. All of the revisions are marked in the Statement of Reasons, accordingly. It should be noted that, due to the length of the document when all of the attachments are included, we are only circulating the revised Statement of Reasons and Attachment 12 (The Audit Division's memorandum, dated March 8, 1993, on the revised repayment amount). If you have any questions, please contact Lorenzo Holloway, the attorney assigned to this audit.

Attachment

Revised Statement of Reasons

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Senator Paul Simon)
and Paul Simon for President)

STATEMENT OF REASONS

On March 4, 1993, the Commission made a final determination that Senator Paul Simon and Paul Simon for President ("the Committee") must repay \$412,162.87 to the United States Treasury. This determination was based on the Committee receiving public financing in excess of its entitlement and using public funds for nonqualified campaign expenses. 26 U.S.C. §§ 9038(b)(1) and 9038(b)(2). Therefore, the Committee is ordered to repay \$412,162.87 to the United States Treasury within 30 days of its receipt of this determination. 11 C.F.R. § 9038.2(d)(2). Pursuant to 11 C.F.R. § 9038.2(c)(4), this Statement sets forth the legal and factual basis for the Commission's determination.1/

1/ Throughout the Statement of Reasons, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455, and "Matching Payment Act" refers to the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042.

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I. BACKGROUND

Paul Simon for President is the principal campaign committee of Senator Paul Simon, a candidate for the Democratic presidential nomination in 1988. The issues relevant to the repayment determination first arose in the Interim Audit Report, which was approved by the Commission on July 9, 1990. See Attachment 1. The Committee responded to the Interim Audit Report on January 11, 1991.^{2/} See Attachment 2. On January 31, 1991, the Committee submitted a supplemental response to the Interim Audit Report. See Attachment 3.

On October 22, 1991, the Commission approved the Final Audit Report and made an initial determination that the Committee must repay \$430,465.03 to the United States Treasury. See Attachment 4. In a letter dated November 20, 1991, the Committee requested the opportunity to address the Commission in open session regarding the report and the initial repayment determination. See Attachment 5. On December 19, 1991, the Commission granted the Committee's request for an extension of 60 days to submit its written response to the Final Audit Report and the initial repayment determination. Certification, Agenda Document 91-134 (December 19, 1991). At that time, the Committee was informed that the Commission would consider its request for an oral presentation after it submitted its written response to the Final Audit Report. See 11 C.F.R. § 9038.2(c)(3). The Committee submitted its written response to

^{2/} The Committee was granted three extensions of time totaling 171 days to respond to the Interim Audit Report.

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Final Audit Report on January 31, 1992. See Attachment 6. The Commission granted the Committee's request for an oral presentation on May 26, 1992. Counsel for the Committee made an oral presentation before the Commission on August 5, 1992. See Attachment 7. On August 14, 1992, the Committee submitted additional documentation to support its contentions at the oral presentation. See Attachment 8.

The Commission's initial determination that the Committee must repay \$430,465.03 to the United States Treasury was based on the following five findings included in the Final Audit Report: 1) a repayment of \$1,673.00 for the excessive portion of contributions found not to be matchable; 2) nonqualified campaign expenses incurred after the candidate's date of ineligibility resulting in a pro rata repayment of \$8,573.01; 3) a pro rata repayment of \$44,440.92 for undocumented disbursements; 4) nonqualified campaign expenses paid in excess of the Iowa and New Hampshire expenditure limitations resulting in a pro rata repayment of \$367,906.03; and 5) stale-dated checks in the amount of \$7,872.07.

The Committee contests all five bases for the initial repayment determination in its written response to the Final Audit Report and incorporates by reference its response to the Interim Audit Report. Attachment 6 at 1. In addition, the Committee's written response to the Final Audit Report asserts that the Commission failed to comply with the requirement of notifying the Committee of any repayments within three years

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after the end of the matching payment period pursuant to 26 U.S.C. § 9038. Id.

Based on a review of the Committee's written and oral responses to the Final Audit Report, the Commission has reduced the amount the Committee must repay to the United States Treasury from \$430,465.03 to \$412,162.87. This reduction is the result of the Committee documenting certain disbursements and adjustments to expenses allocable to the Iowa and New Hampshire expenditure limitations. Specifically, the Committee submitted information documenting certain disbursements and, therefore, reducing the amount of its pro rata repayment for undocumented disbursements to \$32,990.40. Compare Attachment 4 at 11 (Final Audit Report schedule on undocumented disbursements) with Attachment 9 at 5 and Attachment 11 at 9. In addition, the Commission has made three adjustments to the expenses allocable to the state expenditure limitations. The expenses subject to the Iowa expenditure limitation were reduced by \$14,096.32 to account for the cost related to the Committee's acquisition of a mailing list from the Iowa Democratic Party that was reallocated to fundraising. Attachment 11 at 10. The Commission reduced the Iowa and New Hampshire expenditure limitations each by \$240.00 to account for nonallocable media production cost.

Attachment 11 at 4. Finally, the Commission reduced the amount applicable to the Iowa and New Hampshire expenditure limitations by \$4,833.33 to account for expenses paid to the Murphine Corporation for national consulting services. Attachment 12.

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II. FUNDS RECEIVED IN EXCESS OF THE CANDIDATE'S ENTITLEMENT

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A candidate may continue to receive matching funds if he or she demonstrates that the amount of net outstanding campaign obligations exceeds campaign assets. 11 C.F.R. § 9034.5(g)(3). However, the Commission may seek a repayment for these funds if it is later determined that there were no net outstanding campaign obligations. 11 C.F.R. § 9038.2(b)(1)(i). The Commission may also seek a repayment for contributions that were submitted for matching, but were later determined not to be matchable. 11 C.F.R. § 9038.2(b)(1)(iii). Contributions that are not matchable include those contributions that exceed the amount individuals may contribute to a committee. See 11 C.F.R. § 9034.3(e).

The Final Audit Report found that the Committee submitted \$1,673 in excessive portions of contributions that were matched with public funds. Accordingly, the Commission made an initial determination that the Committee must repay \$1,673 to the United States Treasury for receiving funds in excess of its entitlement.^{3/} The Committee has failed to submit any information to show that the excessive portions of contributions

^{3/} This repayment amount was comprised of (1) portions of excessive contributions that were matched with public funds equalling \$1,673.00 and (2) \$67,539.68, representing the September 29, 1989 matching fund payment minus the deficit reflected in the Committee's Statement of Net Outstanding Campaign Obligations (\$68,236.32 - \$696.74). See 11 C.F.R. § 9038.2(b)(1)(i); see also 11 C.F.R. § 9034.5(g)(3). Based on the Committee's response to the Interim Audit Report, the deficit increased from \$696.74 to \$103,405.58. Therefore, the Final Audit Report found that the Committee's entitlement had not exceeded the net outstanding campaign obligations.

were not matched for public financing. Therefore, the Commission has made a final determination that the Committee must repay \$1,673 to the United States Treasury.

III. EXPENSES INCURRED AFTER DATE OF INELIGIBILITY

The Commission may seek a repayment for the use of public funds for nonqualified campaign expenses. 26 U.S.C. § 9038(b)(2); 11 C.F.R. § 9038.2(b)(2)(i)(A). Expenditures that are incurred after the candidate's date of ineligibility are nonqualified campaign expenses. 11 C.F.R. § 9034.4(b)(3).

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The Interim Audit Report found that the Committee incurred \$24,815.26 in nonqualified campaign expenses after the candidate's date of ineligibility. Attachment 1 at 48. The Committee's response to the Interim Audit Report showed that there was an additional expense in the amount of \$1,050 that was incurred after the candidate's date of ineligibility. Attachment 4 at 10. Moreover, the Committee did not submit any information in response to the Interim Audit Report to demonstrate that a lesser repayment is owed for nonqualified campaign expenses paid after the candidate's date of ineligibility. Id. at 10. Accordingly, the Commission made an initial determination that the Committee must repay \$8,573.01 $[(\$24,815.26 + \$1,050.00) \times .331449]$ to the United States Treasury.^{4/} The Committee's response to the Final Audit Report

^{4/} The pro rata repayment based on the Committee incurring expenses after the date of ineligibility was not included in the preliminary repayment calculation because the Interim Audit Report found that the Committee received matching funds in excess of its entitlement. Attachment 1 at 61; see supra p. 5. In cases where the Committee incurs expenses after the

did not include any additional information with respect to this finding and, therefore, the Committee did not demonstrate that a lesser repayment is owed to the United States Treasury. See 11 C.F.R. § 9038.2(c)(2). Thus, the Commission has made a final determination that the Committee must repay \$8,573.01 for nonqualified campaign expenses incurred after the date of ineligibility.

IV. UNDOCUMENTED DISBURSEMENTS

Pursuant to 11 C.F.R. § 9038.2(b)(3), the Commission may seek a pro rata repayment for disbursements that were not documented in accordance with 11 C.F.R. § 9033.11. The Commission's regulations require presidential committees to document disbursements in excess of \$200.00 with: 1) a receipted bill from the payee; 2) a canceled check negotiated by the payee with a bill or invoice; 3) a canceled check stating the purpose of the disbursement; or 4) a canceled check with collateral

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(Footnote 4 continued from previous page)
candidate's date of ineligibility and the candidate receives matching funds in excess of his or her entitlement, the Commission will not seek a repayment on both bases. See generally Explanation and Justification of Regulations on Public Financing of the 1992 Presidential Primary, 56 Fed. Reg. 35907 (July 29, 1991). This procedure is designed to avoid counting the same expenditures as both nonqualified campaign expenses incurred after the candidate's date of ineligibility and expenses used from the funds the candidate received in excess of his or her entitlement. Compare 11 C.F.R. § 9038.2(b)(1)(i) with 11 C.F.R. § 9034.4(b)(3) and 9038.2(b)(2)(i)(A); contra Explanation and Justification of Regulations on Public Financing of the 1992 Presidential Primary, 56 Fed. Reg. 35907 (July 29, 1991). Since the Final Audit Report did not find that Senator Simon received matching funds in excess of his entitlement, the pro rata repayment for nonqualified campaign expenses was included in the Commission's initial repayment determination. Attachment 4 at 10.

supporting evidence. 11 C.F.R. § 9033.11(b)(i)-(iv).
Furthermore, the presidential committee must demonstrate that disbursements made on behalf of the candidate are qualified campaign expenses. 11 C.F.R. § 9033.11(a).

The Final Audit Report found that the Committee had \$134,080.71 in undocumented disbursements. The Committee's pro rata repayment for undocumented disbursements was \$44,440.92 ($\$134,080.71 \times .331449$). In response to the Commission's initial repayment determination, the Committee submitted documentation verifying certain disbursements, which reduce the amount of undocumented expenses to \$99,533.86. Compare Attachment 4 at 14 with Attachment 9 at 5 and Attachment 11 at 9. Therefore, the Commission has made a final determination that the Committee must make a repayment for undocumented disbursements in the amount of \$32,990.40 ($\$99,533.86 \times .331449$). 11 C.F.R. §§ 9038.2(b)(2)(i)(A) and 9038.2(b)(3).

V. EXPENDITURES PAID IN EXCESS OF IOWA AND NEW HAMPSHIRE EXPENDITURE LIMITATION

Section 441a(b)(1)(A), Title 2 of the United States Code establishes national and state expenditure limitations for candidates seeking the presidential nomination who receive public financing. The Commission may seek a pro rata repayment for expenses that are paid in excess of the expenditure limitations. 11 C.F.R. § 9038.2(b)(2)(ii)(A).

The Commission's regulations, as set forth at 11 C.F.R. § 106.2, govern the allocation of expenditures by publicly-financed primary candidates to particular states. The

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regulations include a general rule that expenses incurred for the purpose of influencing the nomination of a candidate in a particular state are allocated to that state. 11 C.F.R. § 106.2(a)(1). There are specific rules for allocating certain enumerated expenses. 11 C.F.R. § 106.2(b). For example, overhead expenses for regional offices are allocated to each state within the region on a reasonable and uniform basis. 11 C.F.R. § 106.2(b)(2)(iv)(B). In addition, the regulations provide for specific expenses that are exempt from state allocation. 11 C.F.R. § 106.2(c). For example, a limited amount of compliance costs and fundraising expenses are exempt from state allocation. 11 C.F.R. § 106.2(c)(5). If the Commission disputes a committee's method of allocation or claim to an exemption, the committee must demonstrate, with supporting documentation, that its proposed method of allocation was reasonable. 11 C.F.R. § 106.2(a)(1). If the committee cannot support its proposed method of allocation with documentation, the Commission's method of allocating the expenses will be upheld. See John Glenn Presidential Committee, Inc. v. Federal Election Commission, 822 F. 2d 1097, 1103 (D.C. Cir. 1987).

The Iowa and New Hampshire expenditure limitations for the 1988 presidential election were \$775,217.60 and \$461,000.00, respectively. See 2 U.S.C. § 441a(b)(1)(A). The Final Audit Report found that the Committee paid expenses in excess of the Iowa expenditure limitation by \$899,920.97 and the New Hampshire limitation by \$220,071.89. Since the Committee's repayment ratio was .331449, the repayment amount for exceeding the state

limitations was \$367,906.03 [(\$899,920.97 + \$220,071.89) x .331449].

The Committee objects to the initial repayment determination, arguing that certain expenses are not allocable to the Iowa and New Hampshire expenditure limitations. At the oral presentation, the Committee expanded this argument by using two charts to illustrate how the hypothetical expenditures of two campaigns might be allocated depending on how each campaign is structured. Attachment 7 at 30-34. The Committee contended that "[i]n both cases the campaigns would spend an equal amount of dollars on these particular expenditures, but the resulting allocable amounts to the targeted states due to the different allocation methods in effect right now would be grossly different." Attachment 7 at 32.

The Committee asserts that, where allocation is concerned, there is disparate treatment between a "a well financed, high tech, centrally controlled campaign" and the Committee. Attachment 7 at 31. This argument, however, is not persuasive. All committees are free to structure their campaigns as they see fit. It is the Commission's responsibility to treat them fairly and consistently in accordance with the law. The fact is that, while the Committee puts forth a theoretical argument that some types of expenditures are not allocable to the states, it has failed to adequately support its contention with the appropriate documentation. Other specific issues raised by the Committee with respect to the allocation of expenses to the Iowa and New

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Hampshire expenditure limitations in this audit are addressed in the following discussion.

A. Fundraising Exemption

Expenditures incurred for the purpose of influencing the nomination of a candidate with respect to a particular state are allocable to that state. 11 C.F.R. § 106.2(a)(1). However, "any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate" is not an expenditure to the extent that such costs do not exceed 20% of the committee's overall expenditure limitation. 2 U.S.C. § 431(9)(B)(vi); 11 C.F.R. § 100.8(b)(21)(i). The Commission's regulations define the term "in connection with the solicitation of contributions" to mean "any costs reasonably related to fundraising activity...." 11 C.F.R. § 100.8(b)(21)(i). These fundraising costs are exempt from state allocation as long as they are not incurred within 28 days of a state's primary election. 11 C.F.R. § 100.8(b)(21)(iii); see 11 C.F.R. § 110.8(c)(2). If a presidential committee claims that it is entitled to this exemption, it must submit documentation supporting its method of allocation. 11 C.F.R. § 106.2(a)(1).

In AO 1988-6, the Commission held that the Albert Gore, Jr. for Presidential Committee ("the Gore Committee") may allocate 50% of the cost of broadcasting television commercials to exempt fundraising. The Gore Committee proposed to broadcast a 60 second television commercial for the purpose of garnering political support and soliciting contributions. While the first

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57 seconds of the commercials attempted to garner political support for the candidate, the final 3 seconds were devoted to soliciting contributions. Since the commercial served a dual purpose, the Commission reasoned that the costs for the commercials must be allocated to the state expenditure limitation and to fundraising on a reasonable basis. AO 1988-6.

The Committee raises three arguments with respect to the allocation of expenses to the fundraising exemption. First, the Committee claims that it should be allowed to automatically allocate 50% of all its expenditures incurred in Iowa and New Hampshire to fundraising. Attachment 7 at 28. Second, the Committee contends that 50% of its media expenses incurred in Iowa and New Hampshire should be allocated to fundraising. Attachment 7 at 9. Finally, the Committee asserts that expenditures incurred for the purpose of acquiring and processing a mailing list which it acquired from the Iowa Democratic Party, as well as other similar expenses, are allocable to exempt fundraising. Attachment 8 at 13-14.

1. Fifty Percent Exemption of all Expenses

The Committee claims that it should be allowed to allocate 50% of all its expenditures incurred in Iowa and New Hampshire to exempt fundraising. Attachment 7 at 28. The Committee contends that it had dual goals in incurring the expenditures in the Iowa and New Hampshire campaigns - to further the candidate's political objectives and to solicit contributions. Id. The Committee asserts that it deliberately developed and implemented a campaign that included an interconnected political

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and fundraising program. Id. The Committee contends that this program allowed it to raise more money in Iowa and New Hampshire than most, if not all, of the other committees involved in the 1988 presidential election. Id. at 29.

The Committee purports that its proposed method of allocating 50% of its Iowa and New Hampshire expenses to fundraising is reasonable and legally justified under the FECA and the Commission's regulations. Attachment 7 at 29. The Committee contends that neither the FECA, the Commission's regulations, the Commission's Financial Control and Compliance Manual, nor advisory opinions issued prior to the Committee's fundraising and political activity in Iowa and New Hampshire "set forth a litmus test for determining whether a particular disbursement constitutes a nonallocable fundraising expenditure or for determining the application of the fundraising exemption to multipurpose campaign expenses." Id. at 26-27. The Committee also notes that Advisory Opinion ("AO") 1988-6 was issued after the occurrence of the activity in question. Id. at 27. As a result, the Committee contends that the only test that existed prior to activity in question was the "reasonably related to" test set forth at 11 C.F.R. § 100.8(b)(21)(i). Id.

Furthermore, the Committee contends that this approach is consistent with the Commission's regulations for the 1992 presidential election cycle, which permit presidential committees to exempt up to 50% of allocable expenditures to fundraising. Id. at 30. The Committee claims that the Commission made these revisions because it recognized that many

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campaign activities include both a fundraising and a political component. Id. at 11. The Committee also asserts that the Commission's revised regulations reflect an interest in accommodating the needs of candidates who must devote time to fundraising during the initial primaries in order to be considered viable. Id. at 12.

The Commission rejects the Committee's argument that it should be allowed to allocate 50% of its expenses incurred in Iowa and New Hampshire to fundraising. The Committee is correct in stating that the Commission's regulations, at 11 C.F.R. § 100.8(b)(21)(i), set forth a reasonableness test for determining whether expenses will be exempt fundraising.

However, the issue in this case is not whether a particular expense "constitutes a nonallocable fundraising expenditure," as a matter of law, but whether the Committee has demonstrated that the expense at issue was, in fact, reasonably related to the solicitation of contributions. See 11 C.F.R. § 106.2(a)(1). The Commission concludes that the Committee has not submitted any documentation to support its claim that 50% of all expenses incurred in Iowa and New Hampshire should be allocated to fundraising.

The requirement that the Committee demonstrate, with supporting documentation, that the expenses at issue were related to fundraising is consistent with the Commission's determinations in other audits of 1988 presidential campaigns. See Pete duPont for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 10 (December 14,

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1989); Dole for President Committee Inc., Statement of Reasons Supporting the Final Repayment Determination at 8 (February 6, 1992); Dukakis for President, Statement of Reasons Supporting the Final Repayment Determination at 19 (February 25, 1993). The duPont for President Committee, Inc. ("the duPont Committee") argued that it was entitled to a fundraising exemption for expenses incurred in connection with its telemarketing program. Pete duPont for President Inc., Statement of Reasons Supporting the Final Repayment Determination at 6 (December 14, 1989). The Commission rejected the duPont Committee's claim of a fundraising exemption because there was no evidence that the telemarketing scripts included an explicit fundraising message. Id. at 10-11. The Commission reasoned that the lack of an overt fundraising message made the telephone calls "indistinguishable from campaign devices intended to educate voters and garner voting support." Id. at 11.

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Similarly, the Dole for President Committee, Inc. ("the Dole Committee") contended that it was entitled to exempt Senator Dole's costs for travel to events which were associated with its exempt fundraising direct mail costs. Dole for President Committee, Inc., Statement of Reasons Supporting the Final Repayment Determination at 7 (February 6, 1992). The Commission held that the Dole Committee was not entitled to the fundraising exemption because the committee did not submit any documentation demonstrating that the expenditures were exempt fundraising activity. Id. at 8. Furthermore, the Commission

noted that the Dole Committee's assertion that the candidate verbally requested contributions was not sufficient to support its claim of a fundraising exemption. Id. at 9.

The Dukakis for President Committee ("the Dukakis Committee") contended that 50% of the costs of the events held in Iowa and New Hampshire should be allocated to fundraising. The Dukakis Committee submitted a sworn affidavit indicating solicitation literature was distributed at most of the events. Dukakis for President, Statement of Reasons Supporting the Final Repayment Determination at 17-18 (February 25, 1993). The Commission rejected the Dukakis Committee's argument and noted "the affidavit submitted by the Committee [was] not sufficient to demonstrate that the events in question were substantially fundraising in nature." Id. at 19.

In these audits, the Commission did not hold, as a matter of law, that the expenditures at issue were unrelated to fundraising. Rather, the Commission found that the committees failed to demonstrate that the expenses were incurred for the purpose of soliciting funds. The Commission had a different focus in AO 1988-6. Unlike the audits of the duPont, Dole and Dukakis committees and the case at bar, AO 1988-6 involved an explicit fundraising message in a television commercial. The opinion did not address the question of whether the commercials, in fact, included a solicitation for funds. The issue presented was how expenses for commercials, which contain both a political message and a fundraising appeal, should be allocated to fundraising. In holding that the Gore Committee could allocate

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50% of the costs to fundraising, the Commission set the parameters for allocating the cost of commercials containing solicitations for contributions.^{5/} Thus, the requirement that committees demonstrate, with supporting documentation, that the activity in question included a fundraising appeal was not altered by AO 1988-6 and the fact that opinion was issued subsequent to the activity in question does not diminish this requirement.

In the case herein, the Committee has failed to submit documentation which supports the contention that it is entitled to exempt 50% of all expenses incurred in Iowa and New Hampshire to fundraising. Instead, the Committee proffers a theoretical argument that its activities involved both fundraising and political goals in order to automatically allocate 50% of the expenses incurred in Iowa and New Hampshire to exempt fundraising. Furthermore, the fact that the Committee claims that it raised a significant amount of money in Iowa and New Hampshire is not sufficient to support its claim to a fundraising exemption. The Committee did not establish the link between its dual component campaign activity and the money it actually received as a result of its efforts.

^{5/} The Commission's holding in AO 1988-6 was in accord with its earlier decision to allow the John Glenn for President Committee, Inc., to allocate 50% of costs for broadcasting a television commercial to fundraising. The 30-minute commercial included one sentence that solicited contributions. John Glenn for President Committee, Inc., Statement of Reasons Supporting the Final Repayment Determination at 14 (May 15, 1986).

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Although the Committee claims that the application of the fundraising exemption in this matter would result in it being treated unfairly, the Commission concludes that allowing the Committee to enjoy an automatic fundraising exemption without submitting any supporting documentation would actually result in the unfair treatment of other committees that sought to claim a similar exemption. Since the Committee cannot support its claim to an exemption with documentation, the Commission will maintain its original allocation. See John Glenn Presidential Committee, Inc. v. Federal Election Commission, 822 F. 2d 1097, 1103 (D.C. Cir. 1987).

2. Fifty Percent Exemption for Media Expenses

The Final Audit Report allocated an additional \$62,480.55 and \$5,142.41 to the Iowa and New Hampshire expenditure limitations, respectively, to account for media expenses that were not allocated by the Committee. Attachment 4 at 20 and 51-52. The Committee believes that it should be allowed to exempt 50% of its media expenses as fundraising. Attachment 7 at 10. The Committee contends that it is entitled to this exemption, although its radio and television commercials did not include explicit fundraising solicitations. Attachment 6 at 2. The Committee argues that the inclusion of a solicitation in an advertisement as in AO 1988-6 cannot be the litmus test as to whether the expenses for the media will be classified as exempt fundraising. Attachment 7 at 9. The Committee claims that the commercials were the first step in a "multi-tiered fundraising strategy" and, therefore, the commercials were reasonably

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related to fundraising. Attachment 6 at 5. According to the Committee, the campaign commercials were followed by direct mail and telemarketing fundraising appeals. Id. at 3. In support of its argument, the Committee submitted "Campaign Plan Outline(s)" for its Iowa and New Hampshire campaigns that were prepared by the Murphine Corporation.^{6/} Attachment 8 at 41-69.

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The Committee further argues that basic principles of equity require the allocation of 50% of its media expenses incurred in Iowa and New Hampshire to exempt fundraising. Attachment 7 at 13. The Committee contends that other campaigns have been allowed to allocate "50 percent of their media costs to exempt fundraising based solely on the fact that their campaign ads included minor solicitation language without regard to whether the commercials were actually designed to, or in fact did, raise monies in the targeted state or whether the commercials were part of an in-state fundraising effort." Id. at 14. The Committee argues that it is unfair to allow other presidential committees to allocate "hundreds of thousands of dollars to exempt fundraising" based on the retroactive application of AO 1988-6. Id. The Committee asks, to the extent that the Commission's decisions are applied retroactively, that the 1991 revisions to the regulations on the Public Financing of the 1992 Presidential Primary be applied retroactively. Id. at 14-15. The Committee contends that this will achieve the same result as sought in its initial argument,

^{6/} The Murphine Corporation provided consulting and management services to the Committee. See Infra p. 34.

i.e., to allocate 50% of its media expenses to exempt fundraising. Id. at 15.

Finally, the Committee contends that in the analogous context of expenditures incurred by political action committees, the Commission has allowed political action committees wide latitude in characterizing certain expenses as fundraising. Attachment 7 at 13. The Committee claims that in AO 1983-24, the Commission permitted a political action committee to characterize expenses incurred for the purpose of cocktail receptions as fundraising, although there was no solicitation and there was no informational material available to the attendees. Id. The Committee asserts that the Commission reasoned that the cocktail receptions were sufficiently related to the political committee's fundraising activities. Id.

The Commission concludes that the Committee's media expenses, which it claims were part of a multi-tiered fundraising strategy, are not allocable to exempt fundraising. In order for the Committee to allocate its media expenses to fundraising, the Committee must demonstrate, with supporting documentation, the fundraising component of its commercials.^{7/} See supra pp. 15-19; Pete duPont for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 11.

^{7/} The requirement that the Committee demonstrate that its commercials had a fundraising component does not result in the unfair treatment of the Committee. Any other presidential committee attempting to allocate "hundreds of thousands of dollars to exempt fundraising" was required to demonstrate the fundraising component of the campaign activity. See supra pp. 15-19.

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However, in AO 1983-24, the Commission held that pursuant to 2 U.S.C. § 441b((b)(2)(C), a corporation may pay for a cocktail reception sponsored by its separate segregated fund to thank its major contributors, although no contributions were accepted at the reception.^{8/} The Commission reasoned that the event was "sufficiently related to the [c]ommittee's fundraising activities to bring it within this exemption." AO 1983-24. Therefore, the Commission found that the event included the necessary fundraising component to entitle the separate segregated fund to the exemption. AO 1983-24.

The Committee, in the case herein, has failed to demonstrate the fundraising component of its commercials. Its assertion that the cost of the commercials should be allocated to fundraising because they were followed by letters requesting funds is insufficient. Pete duPont for President, Inc., Statement of Reasons Supporting the Final Repayment Determination at 11. While the campaign plan outlines, submitted by the Committee in support of its multi-tiered program indicate there was a strategy for increasing political support, the plan does not document any intent to solicit contributions through its commercials. Attachment 8 at 41-69. According to the campaign plan outlines, the Committee's "strategy" was "to increase [its] percentage of the vote" in Iowa and use a "jump start approach [in New Hampshire] that will

^{8/} Under 2 U.S.C. § 441b(b)(2)(C), a corporation may pay for the establishment, administration, and solicitation of funds to a separate segregated fund.

rapidly increase [its] percentage of the vote." Attachment 8 at 43 and 60. While the Committee contends that its commercials were a part of its multi-tiered approach to raising funds, the Commission concludes that the Committee cannot allocate the media expenditures to fundraising based on a plan designed to garner political support, when the Committee failed to demonstrate that its media expenditures were actually incurred for the purpose of fundraising. In contrast, the direct mail portion of the plan was intended to raise funds on behalf of the Committee. Therefore, the Commission allocated the cost of the direct mail program to exempt fundraising.^{9/} Attachment 4 at 42-43 and 62. Therefore, the \$62,840.55 and the \$5,142.41 paid in connection with the Committee's media program in Iowa and New Hampshire, respectively, are allocable to the state expenditure limitations.

3. Iowa Democratic Party Mailing List

The Committee acquired a mailing list from the Iowa Democratic Party containing the names of past Iowa Caucus attendees. Attachment 8 at 13. The Committee asserts that the \$10,000.00 cost for acquiring the mailing list and the \$19,335.39 paid to Robert Francis Jones Associates for processing the mailing list should be allocated to fundraising. Id. The Committee contends that the Commission allowed the Dukakis Committee, which acquired the same mailing list from the

^{9/} The expenditures related to the direct mail program were allocated to exempt fundraising to the extent that they were not incurred within 28 days of the primary. 11 C.F.R. § 110.8(c)(2).

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Iowa Democratic Party, to allocate 100% of the acquisition cost to fundraising, although the Dukakis Committee used the list for other purposes in addition to fundraising. Attachment 7 at 10. The Committee contends that, since it obtained the same list, the Commission should allocate the Committee's acquisition and processing cost to fundraising. Id. at 51; Attachment 8 at 13.

The Committee also contends that its polling and staff expenses are allocable to fundraising because they were incurred for purposes similar to the acquisition and use of its mailing list. The Committee claims that its Iowa and New Hampshire polling expenses are allocable to fundraising because the polling "data was used, among other things, to target fundraising appeals." Id. (emphasis in original). The Committee asserts that the expenses for its Iowa and New Hampshire field staffs are allocable to fundraising because the staffs "worked, among other things, on soliciting contributions." Id. (emphasis in original).

The Commission permitted the Dukakis Committee to allocate the cost of purchasing the mailing list from the Iowa Democratic Party to exempt fundraising. Final Audit Report on Dukakis for President Committee, Inc. at 19-20 (December 9, 1991). In accordance with its decision in the Dukakis audit, the Commission concludes that the Committee's expenditures paid in connection with its acquisition of the mailing list from the Iowa Democratic Party are exempt as fundraising expenses. Compare Attachment 4 at 43-45 with Attachment 11 at 3 and the Final Audit Report on Dukakis for President at 19-20. The total

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amount allocable to fundraising is \$14,096.42. Attachment 11 at 3. This includes the \$10,000.00 acquisition costs and \$4,096.42 in associated costs for telephone lists, mailing lists, copies, and letters. Id. Accordingly, the amount allocable to the Iowa expenditure limitation is reduced by \$14,096.42.

Nevertheless, the Commission has determined that the expenses related to polling and the costs associated with the Iowa and New Hampshire field staff are not allocable to exempt fundraising. See Final Audit Report on the Dukakis Committee at 19-20. The Commission acknowledges, as it did in the audit of the Dukakis Committee, that the mailing list is uniquely fundraising in nature and the costs of acquiring it must be allocated to fundraising. However, any expenses associated with the further use of the mailing list as a vehicle to garner political support or otherwise influence the nomination in a particular state are allocable to that state's expenditure limitation. See 11 C.F.R. § 106.2(a)(1). Although the Committee contends that it is entitled to allocate its polling expenses to fundraising, the Committee has not shown any fundraising activities associated with its polling expenses.^{10/} See 11 C.F.R. § 100.8(b)(21)(i). Moreover, the Committee has not demonstrated that it is entitled to allocate the costs of field staff in Iowa and New Hampshire to fundraising beyond the 10% fundraising exemption permitted under 11 C.F.R.

^{10/} If the Committee had demonstrated with supporting documentation that these expenses were related to fundraising, the expenses would have been allocated to fundraising on a reasonable basis. See supra p 15-19.

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§ 106.2(c)(5). The Committee's mere assertion that its polling activities and the activities of the Iowa and New Hampshire field staff included a fundraising component is not sufficient to permit the allocation of these expenses to fundraising.

Furthermore, the Commission concludes that the \$19,335.39 in expenses associated with processing the mailing list are allocable to the Iowa expenditure limitation. The Committee incurred these expenses for the purpose of influencing the nomination in Iowa. 11 C.F.R. § 106.2(a)(1). The mailing list was processed to produce a database that was used to facilitate the development of a report to project voter turnout and the voters' support for Senator Simon. Attachment 4 at 44-45.

Therefore, these expenditures were incurred for the purpose of influencing Senator Simon's nomination in Iowa, not for fundraising. Thus, they are allocable to the Iowa expenditure limitation. 11 C.F.R. § 106.2(a)(1).

B. Compliance Exemption

The Commission made an initial determination to allocate an additional \$62,840.55 and \$5,142.41 to the Iowa and New Hampshire expenditure limitations, respectively for expenses paid to the Committee's media firm Axelrod and Associates ("Axelrod"). Attachment 4 at 24 and 52. The Committee contends that it paid Axelrod a 15% commission for services performed with respect to its Iowa and New Hampshire campaigns. Attachment 6 at 4. The Committee contends that 50% of the commission is exempt from allocation to Iowa and New Hampshire because Axelrod performed tasks for the Committee that were

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related to compliance. Id. The Committee argues that Axelrod expended a considerable amount of time and resources ensuring that the Committee was in compliance with the Commission's regulations. Attachment 5 at 2. This activity included: (1) researching the impact of proposed media purchases on state allocation; (2) preparing detailed accountings on each media buy; (3) working closely with the Committee's "accounting and compliance" team; and (4) maintaining documents to comply with the Commission's reporting and recordkeeping requirements. Id.

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The Commission concludes that these activities do not fall within the purview of the compliance exemption. The compliance exemption applies to those expenditures that are incurred solely for the purpose of compliance with the statute and regulations. See 11 C.F.R. § 106.2(c)(5)(i). For example, the costs of preparing matching fund submissions are exempt from state allocation, but not the costs of general contribution processing. Explanation and Justification of 11 C.F.R. § 106.2(c)(5)(i), 52 Fed. Reg. 208665 (June 3, 1987). The Commission makes this distinction because the scope of the compliance exemption is limited "to costs directly related to compliance with the format and matchability requirements." Id. Therefore, expenses which may have an incidental purpose of helping a committee's compliance efforts are not exempt.

Although the Committee contends that Axelrod spent a considerable amount of time ensuring that the Committee was in compliance with the Commission's regulations, the Committee has failed to demonstrate that these costs were incurred solely to

ensure compliance. Indeed, the fact that the payment was in the form of a commission implies that the expenses paid were for the media services provided by Axelrod rather than compliance with the regulations. Furthermore, the agreement states that Axelrod would perform media services, but there is no indication that it would perform compliance services for the Committee. Therefore, the Commission has made a final determination to allocate an additional \$62,840.55 and \$5,142.41 to the Iowa and New Hampshire expenditure limitations, respectively, for expenses paid to Axelrod.

D. Consulting, Polling and Media Services

1. Axelrod and Associates

Expenditures incurred for media advertising production need not be allocated to any state. 11 C.F.R. § 106.2(c)(2). The Commission has treated consulting fees as nonallocable media production costs when the fees can be directly related to the production of particular commercials. Reagan for President Committee, Statement of Reasons Supporting the Final Repayment Determination at 4 (May 26, 1983). Nevertheless, the Commission has disallowed such a classification when it appeared that the consulting fees were a substitute for a commission, which is allocable to the state expenditure limitation. See id. Further, if the media commission is less than the normal and usual charge, then the difference between the amount charged and the normal and usual charge is an in-kind contribution to the committee. 11 C.F.R. § 100.7(a)(1)(iii)(A). In the past, committees were charged a standard commission for media

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placement of 15%. The Commission, however, has recognized a change in the industry practice with respect to media commissions and it no longer views media commissions of less than the standard 15% as in-kind contributions to the committee. See Reagan-Bush '84, Statement of Reasons Supporting the Final Repayment Determination at 13 (February 9, 1988)(8.3%)^{11/}; see also Final Audit Report on George Bush for President Committee, Inc., (February 18, 1992) (3.5%); Final Audit Report on Jack Kemp for President, (July 25, 1991) (5%); Final Audit Report on Dukakis for President Committee, Inc., (December 9, 1991) (5%).

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The Committee contends that none of the fees paid to Axelrod should be allocated to the Iowa and New Hampshire expenditure limitations. Attachment 7 at 17. The Committee asserts that upon entering into the agreement with Axelrod, it was aware of the Commission's position that media commissions must be allocated to the state expenditure limitation. Id. at 15. Therefore, the Committee contends that it avoided characterizing its fees paid to Axelrod as commissions. Id. The Committee, however, claims that it was also aware of the Commission's position that a media commission of less than the standard 15% was unreasonable and may result in a prohibited contribution from the media firm. Id. at 16. The Committee

^{11/} The Reagan-Bush '84 Committee submitted articles in support of its position to pay its media firm less than the standard media commission. Media firms will accept a lower commission "when budgets are large, the client is prestigious, and opportunity for growth is present..." Reagan-Bush '84, Statement of Reasons Supporting the Final Repayment Determination at 13.

asserts that during the course of the 1988 audit process the Commission's position underwent an evolution as to what would be considered a reasonable commission. Id. The Committee contends that Gephardt for President Committee, Inc. ("the Gephardt Committee") was allowed to "simply amend its media contract to eliminate any media placement fees whatsoever and substitute [its] commissions for 100 percent increase in the previously agreed to consulting fees." Id. at 17. Therefore, under the approach taken in the Gephardt Committee audit, the Committee argues that the fees it paid to Axelrod should not be allocated to the Iowa and New Hampshire expenditure limitations. Id.

The Commission concludes that the expenses paid to Axelrod in connection with the media placement are allocable to the Iowa and New Hampshire expenditure limitations. The Commission has been accepting lower commission fees since the 1984 presidential election cycle. See Reagan-Bush '84, Statement of Reasons Supporting the Final Repayment Determination at 13. This policy was continued in the 1988 election cycle. See, e.g. Final Audit Report on George Bush for President Committee, Inc., (February 18, 1992) (3.5%). The Committee could have negotiated a lower commission, but it cannot avoid allocating expenses by merely characterizing its cost as consulting fees instead of commissions. See Reagan for President Committee, Statement of Reasons Supporting the Final Repayment Determination at 4 (May 26, 1983).

Contrary to the Committee's contention, the Gephardt Committee did not eliminate its media commission. The agreement

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between the Gephardt Committee and the media firm required the firm to perform both consulting and media placement services. The Commission determined that the Gephardt Committee amended its contract with the media firm to properly reflect the fact that fees paid to the firm after a certain date were for consulting services and therefore not allocable to the state expenditure limitation. Gephardt for President, Statement of Reasons Supporting the Final Repayment Determination at 27 (May 21, 1992). The Committee, in the case herein, desires to characterize all of its fees paid to Axelrod as nonallocable without establishing that Axelrod did, in fact, perform consulting services for the Committee and without demonstrating what percentage of the fees paid are attributable to consulting. See 11 C.F.R. § 106.2(a)(1). The agreement between the Committee and Axelrod required the vendor to perform consulting services; to develop communications and message strategy; and place campaign commercials with media outlets. There is no indication of what percentage of consulting services were performed to the exclusion of the other services. Therefore, the Commission concludes that the Committee's media expenses paid to Axelrod are allocable to the Iowa and New Hampshire expenditure limitations.

2. Fingerhut and Madison Opinion Research

The Committee entered into an agreement with Fingerhut and Madison Opinion Research ("Fingerhut") for consulting and polling services. The Final Audit Report allocated \$10,509.43 to the Iowa expenditure limitation for expenses paid to

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Fingerhut for polling and consulting services. The Final Audit Report classified \$8,000.00 of this amount as polling costs. The remaining \$2,509.43 were classified as expenses related to conducting the polls in Iowa.

The Committee contends that the expenses paid to Fingerhut are not allocable to the Iowa expenditure limitation. Attachment 8 at 17. The Committee notes that the Commission decided in the audits of the Gephardt and Dole committees that expenses paid for consulting services were not allocable to the state expenditure limitations. Id. The Committee asserts that it paid Fingerhut \$8,000.00 for consulting services in Iowa and New Hampshire. Id.

The Committee raises three contentions with respect to the \$2,509.43 in fees related to conducting the polls. First, the Committee contends that only a portion of the amount, \$954.00, is allocable to the Iowa expenditure limitation. Attachment 8 at 18. This amount includes \$295.80 for word processing and \$658.20 for data processing. Id. Second, the Committee argues that \$393.75 in expenditures for data processing of a "Seniors Survey" was not related to the Iowa poll. Id. Finally, the Committee asserts that the \$480.00 fee paid to Fingerhut for radio ratings in Iowa and New Hampshire is a media production cost and, therefore, is not allocable to the Iowa and New Hampshire expenditure limitations. Id.

Based upon the information submitted in response to the Final Audit Report, the Commission has made a final determination that the \$480.00 paid to Fingerhut for radio

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ratings in Iowa and New Hampshire are a media production costs, which are not allocable to the state expenditure limitations. 11 C.F.R. § 106.2(c)(2). Accordingly, the Iowa and New Hampshire expenditure limitations are each reduced by \$240.00 to account for these expenditures.

Nevertheless, the Commission has made a final determination that the remaining \$10,269.43 (\$10,509.43 - \$240.00) paid to Fingerhut were incurred in connection with conducting polls in Iowa and, therefore, these expenditures are allocable to that state's expenditure limitation. Expenditures that are paid for the taking of a poll in one state are allocable to that state. 11 C.F.R. § 106.2(b)(2)(iv). However, expenditures that are paid in connection with national consulting services are not allocable to the state expenditure limitations. See Final Audit Report on Gephardt for President Committee, Inc., (June 10, 1991); Final Audit Report on Dole for President Committee, Inc., (April 25, 1991).

Although Fingerhut performed consulting services in addition to polling, the Committee was billed separately for these services. Specifically, the cost associated with word processing and the "Seniors Survey" was billed as polling. Attachment 11 at 4. The fact that the costs for polling and consulting services were billed separately suggests that the Committee and Fingerhut understood that these services were independent of each other. Contrary to the Committee's assertions, the agreement between the Committee and Fingerhut noted that the \$8,000.00 in polling fees included services such

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as the drafting of polling instruments, selecting polling samples, instructing callers, and advising the Committee on the tabulation of results. These duties are associated with the provision of polling services and not necessarily with consulting.

Moreover, Fingerhut's agreement to perform consulting services for the Committee does not convert all of the payments into consulting fees. While the results of the polls may have been used in consulting with the campaign, the expenses incurred in actually conducting the polls are allocable to the Iowa expenditure limitation. See 11 C.F.R. § 106.2(b)(2)(vi). For example, if Fingerhut relied on the results of campaign advertising targeted at Iowa voters to consult with the Committee, the cost of the media placement would still be allocated to the Iowa expenditure limitation. See 11 C.F.R. § 106.2(b)(2)(i)(B). Therefore, the Commission has determined that \$10,269.43 paid to Fingerhut in connection with conducting the polls, the results of which may have been used in consulting with the campaign, are allocable to the Iowa expenditure limitation.

3. The Murphine Corporation

The Committee entered into an agreement with the Murphine Corporation for consulting and management services from July 27, 1987 to February 22, 1988. Attachment 8 at 75. The Committee notes that the plan outlines for Iowa and New Hampshire prepared by the Murphine Corporation included "a significant fundraising component." Id. at 74. First, the Committee argues that its

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payments to the Murphine Corporation should not be allocated to the New Hampshire and Iowa expenditure limitations pursuant to the approach taken by the Commission with respect to the Iowa Democratic Party mailing list in the audit of the Dukakis Committee. Id. Second, the Committee contends that the expenditures for consulting fees should be treated as expenses for national consultants that are not allocable to the state expenditure limitation. Id.

The Commission made an initial determination that the Committee's \$14,500 payment for services rendered by the Murphine Corporation were equally allocable to the Iowa and New Hampshire expenditure limitations. Attachment 4 at 45-46 and 62-63. Although the Committee asserts that the Murphine Corporation's outlines included "a significant fundraising component," the Committee has not provided any evidence of expenses that were incurred for a specific fundraising activity other than its direct mail portion of the campaign plans. See Supra p. 23. The Committee's assertion that the plans included a fundraising component is not sufficient to allow the Committee to allocate the payment to fundraising. Id.

The Commission, however, notes that a portion of the fees paid to the Murphine Corporation were for national consultant services. See Gephardt for President Committee, Inc., Statement of Reasons Supporting the Final Repayment Determination at 25 (May 21, 1992). The agreement required the Murphine Corporation to develop "[s]trategic political analysis and planning related to the Democratic Presidential caucuses campaign" in Iowa and

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New Hampshire; to develop "an organization and management structure for the National Headquarters"; and to provide "[c]onsultation with respect to the development of national themes and strategies." Attachment 8 at 75. Therefore, the \$14,500 in expenses paid to the Murphine Corporation are equally attributable to the Iowa and New Hampshire primaries and national consulting services. Thus, the Commission has made a final determination that the amount allocable to both the Iowa and New Hampshire expenditure limitations is \$4,833.33. Attachment 12.

D. Regional and State Campaign Offices

Pursuant to 11 C.F.R. § 106.2(b)(2)(iv)(B), the overhead expenditures of a committee's regional office with responsibilities in two or more states shall be allocated to each state on a reasonable and uniformly applied basis. In determining "whether or not an office is a bona fide regional office, the Commission will consider factors such as the geographic proximity of the states covered, the timing of the primaries involved, and the amount of effort directly focused on seeking the nomination in each state." Explanation and Justification of 11 C.F.R. § 106.2(b)(2)(iv), 52 Fed. Reg. 20864 (June 3, 1987); see Addendum to the Final Audit Report on the Cranston for President Committee, approved October 27, 1987 (the Commission rejected the Cranston Committee's contention that the Iowa office was a regional headquarters because there was insufficient evidence that the Iowa office had a regional purpose or function). In the audit of the Dole for President

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Committee, the Commission recognized that certain campaign offices can serve a dual purpose as both a state and a regional office. Statement of Reasons Supporting the Final Repayment Determination at 15 (February 6, 1992). The expenses arising out of such an office will be allocated to reflect the dual nature of the office. Id. at 16.

1. Manchester, New Hampshire Regional Office

The Commission reviewed the disbursements and correspondence from the Manchester office and has found that the expenses arising out of the Manchester office were related to the other local New Hampshire state offices. The correspondence from the Manchester office indicated that the activity arising out of this office was directed toward influencing the voters in New Hampshire. Therefore, the Final Audit Report allocated an additional \$24,067.65 from the Manchester office to the New Hampshire expenditure limitation to account for expenses the Committee had otherwise proportionally allocated to other New England states on a regional office basis.

The Committee contends that the Manchester office was a New England area regional office. Attachment 6 at 6. Specifically, the Committee argues that its staff in the Manchester office organized events and activities throughout the New England area. Id. In support of its proposition, the Committee submitted documentation which shows Manchester office scheduled an event in Maine and another in Boston. Attachment 8 at 23.

The Commission concludes that the Manchester office was not a regional office. The Committee has not demonstrated the

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regional purpose or function of the Manchester office. While the information submitted by the Committee in this case shows that staff in the Manchester office scheduled two events which were directed at other states, the Committee has not shown that this office had a regional purpose or function. This information may prove that the specific expenses associated with the events in question are allocable to the Maine and Massachusetts expenditure limitations, but this information does not show a regional plan or otherwise demonstrate that the expenses arising out of the Manchester office warrant classifying this office as a regional office for the purpose of allocating overhead expenses. The Committee did not submit any information documenting the amount of time its staff spent in states covered by the region or any other evidence of a regional approach to the campaign, such as newsletters or plans. See Dole for President Committee, Inc., Statement of Reasons Supporting the Final Repayment Determination at 15 (February 6, 1992). Therefore, the Commission has made a final determination that an additional \$24,067.65 in expenses are allocable to the New Hampshire expenditure limitation.

C. Boston, Massachusetts State Office

The Final Audit Report allocated an additional \$22,671.18 to the New Hampshire expenditure limitation to account for expenses arising out of the Boston, Massachusetts office. The Final Audit Report found that 98% of the expenses arising out of the Boston office were incurred prior to the New Hampshire primary, and that 42% of this amount was incurred in connection

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with campaign activity, such as postage for mailings, conducted by the New Hampshire field staff. The remainder of the expenditures were related to rental fees, telephones, equipment rentals, and printing for the Boston office. In addition, the auditors identified an internal Committee memorandum which indicated that the Boston office would be used as a vehicle to "channel people and energy to New Hampshire." The memorandum further states that the Committee's "Boston office will be run as a New Hampshire field office." Attachment 4 at 56. Although all of the expenses arising out of the Boston office were initially allocated to the New Hampshire expenditure limitation, the Final Audit Report informed the Committee that it would be allowed to submit documentation to show that these expenses were for the purpose of influencing the voters in states other than New Hampshire.

The Committee objects to the allocation of the \$22,671.18 in expenses arising out of the Boston office to the New Hampshire expenditure limitation. Attachment 6 at 5. The Committee contends that it used the Boston office to conduct the Massachusetts campaign. Attachment 3 at 11. In support of this argument, the Committee notes that the Boston office was the "focal point of a strong Massachusetts campaign effort" and that the office was used to solicit contributions.^{12/} Id. at 12. Furthermore, the Committee's response to the Final Audit Report

^{12/} The Committee claims that it raised \$87,642.54 in Massachusetts. The Committee submitted a state-by-state analysis of campaign contributions which indicated that Massachusetts ranked 12 out of 50 states in contributions.

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included a letter dated February 12, 1988 from the Committee to a Massachusetts supporter, which enclosed a supporter list prepared by the Boston office. Attachment 8 at 108. The letter requested that the supporter organize meetings to recruit volunteers, and increase the candidate's visibility in the state. Id. The letter also requested that the supporter hold organizational meetings on the weekend of February 21st, following the New Hampshire primary. Id.

Moreover, the Committee argues that the terms of the lease and the sublease for the Boston office were keyed to the Massachusetts primary. Id. at 11. The terms of the lease and sublease were from November 19, 1987 to March 12, 1988. Id. The New Hampshire primary was held on February 16, 1988 and the Massachusetts primary was held March 8, 1988. The Committee also asserts that the fact that some volunteers and campaign staff were encouraged by the Boston office to travel to New Hampshire to conduct campaign activities in that state is not relevant to the issue of allocating expenses arising out of the Boston office to the New Hampshire expenditure limitation. Attachment 3 at 11. The Committee argues that such travel is covered by either the interstate travel or the fundraising exemptions. Id. As an extension of this argument, the Committee claims that the administrative expenses incurred in organizing such travel are also not allocable to the New Hampshire limitation. Id.

After reviewing the documentation, the Commission has now made a final determination that the expenses arising out of the

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Boston office were for the purpose of influencing the New Hampshire primary. The fact that the Boston office may have been used for activities related to the Massachusetts primary, as the Committee intimates in its response to the Final Audit Report, does not preclude a finding that the Boston office was also used for the purpose of influencing the voters of New Hampshire. See 11 C.F.R. § 106.2(a)(1). Although the letter to the Massachusetts supporter references an anticipation to engage in activity related to the Massachusetts primary, the Committee has not provided documentation of any expenditures arising out of the Boston office to produce the supporter list and to engage in organizational meetings for the campaign in that state. Moreover, the dates of the lease and sublease are not determinative since they do not necessarily reflect the level of activity directed toward the voters of one state versus the other. Finally, with regard to the Committee's contention that the expenditures are not allocable to New Hampshire because of the interstate travel exemption or the fundraising exemption, the Committee has not established that the expenditures in question were related to interstate travel or fundraising. Therefore, there is no basis for excluding these expenses from the New Hampshire expenditure limitation pursuant to either of these exemptions. See 11 C.F.R. § 106.2(a)(1).

3. Rock Island, Illinois

In June 1987, the Committee opened a campaign office in Rock Island, Illinois which is located across the state border from Davenport, Iowa. One of the main activities organized and

operated out of the Rock Island office was the Committee's Bow-Tie-Brigade ("the Brigade"), the purpose of which was to raise funds and mobilize volunteers. The duties of the Brigade members included canvassing drives, recruiting other individuals to join the Brigade and organizing bus trips. The members also took weekend trips to Iowa to engage in activity related to the Committee's campaign in that state.

The Final Audit Report allocated all of the expenses arising out of the Rock Island office, \$103,997.25, to the Iowa expenditure limitation. In support of this method of allocation, the Final Audit Report included several examples where the activity arising out of the Rock Island office was directed toward influencing the Committee's campaign in Iowa. The Final Audit Report noted that the Committee's internal memoranda indicated that it planned to incorporate the activity of the Rock Island Office into its Iowa campaign strategy by increasing the "level of activity of Illinois volunteers through buses, caravans, and other selected visibility projects." Attachment 4 at 28. Further, the Final Audit Report cited several Brigade activities that included caravans, visits and calls to Iowa. In addition, there was a Brigade Calendar of Events which detailed additional contacts with potential Iowa voters through letter writing and house visits. Although \$103,997.00 in expenses arising out of the Rock Island office were initially allocated to the Iowa expenditure limitation, the Final Audit Report informed the Committee that it would be allowed to submit documentation to show that the expenses were

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for the purpose of influencing the voters in states other than Iowa. Attachment 4 at at 71.

The Committee "vehemently protests the [A]udit [D]ivision's unprecedented characterization of its Rock Island office as an Iowa field office and the [A]udit [D]ivision's allocation to the Iowa expenditure limit of \$103,997.00 of primarily fundraising and Illinois administrative expenses." Attachment 7 at 18. The Committee asks that the Commission recognize the Rock Island office as a multifaceted office that was primarily engaged in raising money. Attachment 7 at 24. The Committee contends that the Rock Island office functioned as the center for fundraising and volunteer recruitment for its entire presidential campaign. Attachment 3 at 5; Attachment 7 at 19. The Committee argues that the fact that the budget for the office included costs for direct mailings and other solicitations is proof that it anticipated raising funds through activities there. Attachment 7 at 9.

In addition, the Committee states that the Rock Island Office played a key role in the candidate's campaign in Illinois. Attachment 3 at 5. According to the Committee, the Brigade was composed of Illinois residents who were participants in the presidential campaign. Attachment 3 at 5. The Committee asserts that the Brigade was used as a mechanism to generate a grass roots base of support for the campaign. Attachment 7 at 19. The Committee contends that the Brigade was active in Illinois and would have been active in other states had Senator Simon not withdrawn from the presidential election. Id.

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In support of its arguments, the Committee submitted a statement from Mr. Dale Smith, former director of the Rock Island office. Attachment 8 at 25. The statement indicates that the Rock Island office served as a vehicle for fundraising and volunteer activity and it "played an integral role in the Committee's Illinois campaign through its extensive fundraising efforts." Id. Mr. Smith also states that the "office's activity included encouraging Illinois citizens to contact individuals from, and engage in volunteer week-end activity in, early primary/caucus states." Id. The Committee's response to the Final Audit Report also included sample letters that were written by Illinois citizens who volunteered for the campaign. Id. at 30-34.

After reviewing the information, the Commission has now made a final determination that the Committee has not demonstrated that the expenses arising out of the Rock Island office were for purposes of influencing the Illinois campaign. The Committee has not documented the cost associated with the sample letters and there is no indication that they were actually targeted at voters in the Illinois primary. Furthermore, the mere fact that the Illinois citizens were used to prepare sample letters does not entitle the Committee to allocate any expenses arising out of the Rock Island office to the Illinois expenditure limitation since the letters were not targeted to influence the voters in that state.

Similarly, the Committee cannot allocate any Rock Island office expenses to the Illinois expenditure limitation merely

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because this office was used as a base for recruiting volunteers. In order to justify allocating these expenses to the Illinois expenditure limitation, there must be some indication that the volunteers were engaged in activity to influence the voters in that state. See 11 C.F.R. § 106.2(a)(1). Rather, the Brigade Calendar of Events indicates that the volunteers were involved in letter writing and house visits that were intended to influence potential Iowa voters. Attachment 4 at 32. Accordingly, the Commission has made a final determination that the \$103,997.25 in expenses arising out of the Rock Island office are allocable to the Iowa expenditure limitation.

E. Salary, Intrastate Travel and Subsistence Expenses

In the Final Audit Report, the Commission allocated to the Iowa expenditure limitation the Committee's travel and subsistence expenses associated with the Illinois residents' travel to the Jefferson/Jackson Day events held in Iowa on November 7, 1987. Attachment 4 at 48. The Commission allocated an additional \$40,722.62 to the Iowa expenditure limitation for salary and travel expenses arising out of the Rock Island office. Attachment 4 at 71. Further, the Commission also allocated \$12,580.03 in travel expenses related to the Octoberfest events, which were held in New Hampshire from October 23-27, 1987, to the New Hampshire expenditure limitation. Id. at 66. Finally, the Commission allocated \$2,423.66 to the New Hampshire expenditure limitation for salary and travel arising out of the Boston office. Id. at 71.

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The Committee contends that the expenses for the Jefferson/Jackson Day and Octoberfest events should not be allocated to the Iowa and New Hampshire expenditure limitations under the approach that was taken by the Commission in the Final Audit Report on George Bush for President. Attachment 8 at 19. The Committee contends that in the Final Audit Report on George Bush for President, the Commission reversed its position regarding the allocation of travel and subsistence expenses and decided not to allocate these expenses to the state expenditure limitations. Attachment 7 at 22-23.

Further, the Committee argues that the salaries and expenses for travel and subsistence arising out of the Boston, Massachusetts office are not allocable to the New Hampshire expenditure limitation under the 5-day rule as set forth at 11 C.F.R. §§ 106.2(b)(2)(ii) and (iii). The Committee also contends that \$40,722.62 in salary and expenses for intrastate travel and subsistence expenses of the Brigade staff working out of the Rock Island office are not allocable to the Iowa expenditure limitation under the 5-day rule. The Committee notes that the Brigade staff falls into two categories. Attachment 3 at 6. One category, composed of administrative staff, coordinators and directors, was based in the Rock Island office. Id. The duties of these members included organizing recruitment mailings and supervising canvassing drives. Id. The Committee contends that the other category is composed of actual members of the Brigade. Attachment 3 at 6. According to the Committee, the Brigade members spent extended periods of

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time in Iowa and their activities were primarily focused on Iowa. Id. Therefore, the Committee concedes that the expenditures associated with the members of the Brigade are allocable to the Iowa expenditure limitation. Id.

While the Committee also admits that the administrative staff and coordinators spent time in Iowa, the Committee claims that their salary and intrastate travel expenses are allocable to the Illinois expenditure limitation. Attachment 3 at 7. The Committee notes that the administrative staff and the coordinators were not in Iowa for 5 consecutive days. Id. The Committee asserts that it "is aware of no other instance where expenses incurred in connection with short term visits by campaign staff or volunteers to early primary states from an adjacent state [were] allocated to the visited state." Attachment 7 at 22. The Committee cites the Commission's approach in the Final Audit Report on Bush for President in support of this proposition.

Finally, the Committee notes that the Commission did not allocate phone bank expenses to the Iowa expenditure limitation in the audit of the Dole Committee, although the phone banks were established in another state and the calls were targeted at the Iowa voters. Attachment 7 at 22. Therefore, the Committee contends that, since the Brigade coordinators did not stay in Iowa for extended periods of time, their salary and travel expenses are exempt from allocation to the Iowa expenditure limitation under the approach that was taken in the Dole Committee audit. Id.

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The Commission has made a final determination that the salary, travel and subsistence expenses at issue in this case are allocable to the respective Iowa and New Hampshire expenditure limitations. Pursuant to the 5-day rule as set forth at 11 C.F.R. § 106.2(b)(2)(ii) and (iii), expenses for salaries and travel and subsistence for campaign staff working in a state for 5 or more consecutive days are allocated to that state in proportion to the amount of time the staff person works in that state during the payroll period. Generally, the Commission uses calendar days rather than 24 hour periods to determine if an individual was in the state for 5 consecutive days. Explanation and Justification of 11 C.F.R.

§ 106.2(2)(ii), 48 Fed. Reg. 5225 (February 4, 1983).

Individuals in a state for less than 5 consecutive days are "presumed to be working on national campaign strategy and not influencing the primary in [a] particular state." Id.

The Commission consistently applied these principles to other 1988 presidential election campaigns. For example, in the Final Audit Report on George Bush for President ("the Bush Committee"), the Commission allocated the travel and subsistence expenses and the salary of all individuals who worked in New Hampshire for 5 or more consecutive days to that state's expenditure limitation. The Commission also determined that the salary and travel expenses of those who were working in the state for less than 5 consecutive days were not allocable to the New Hampshire expenditure limitation. Final Audit Report on George Bush for President at 40 (February 18, 1992).

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Nevertheless, the Commission has not applied the 5-day rule to exclude the salaries and travel expenses of individuals who were involved in specific activity intended to influence the voters of a particular state. See Explanation and Justification of 11 C.F.R. § 106.2(2)(ii), 48 Fed. Reg. 5225 (February 4, 1983). For example, in the audit of the Dole for President Committee, the Commission found that the Dole Committee was engaged in activity outside Iowa that was intended to influence the Iowa voters. Specifically, the Commission allocated the overhead expenses and the salary of staff working on phone banks in Kansas City and Nebraska to the Iowa expenditure limitation.^{13/} Final Audit Report on the Dole for President Committee (April 25, 1991). The Commission found that the Dole Committee used the phone banks to influence the Iowa voters. Id. Therefore, the Commission did not apply 5 day rule to exclude the salaries of the Dole Committee's staff from the Iowa expenditure limitation.

In the case at bar, the Commission made an initial determination to allocate the \$12,580.03 in travel and subsistence expenses associated with the Octoberfest events to the state expenditure limitations based on the fact that the Committee's staff was working in New Hampshire for 5 or more consecutive days. Attachment 4 at 66. Therefore, the Commission allocated the travel and subsistence expenses. See 11 C.F.R. § 106.2(b)(2)(ii) and (iii); accord Final Audit Report

^{13/} The costs of the phone banks were not allocated to the Iowa expenditure limitation.

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on George Bush for President at 40. The Committee has not submitted any documentation supporting an alternative method of allocation. Therefore, the Commission has made a final determination that the \$12,580.03 in travel and subsistence expenses are allocable to the New Hampshire expenditure limitation.

The Commission concludes that the \$1,150.00 in travel and subsistence expenses related to the Jefferson/Jackson Day event are allocable to the Iowa expenditure limitation.

Jefferson/Jackson Day was an event sponsored by the Iowa Democratic Party. The Committee allocated \$10,939.33 in expenses for charter buses, flags, and the rental of a tent and video equipment for this event. The Final Audit Report identified an additional \$18,490.91 related to this event that were allocated to Iowa. All of the presidential candidates were invited to speak at this event. Therefore, the Committee used this event as a vehicle to garner political support and to influence the Iowa campaign. Accordingly, the Commission made an initial determination to allocate these expenses to the Iowa expenditure limitation. Attachment 4 at 47-48. The Committee has not since argued or submitted any documentation showing that there was another purpose for this event.

The 5-day rule is a method of allocating the travel and subsistence expense of individuals who are "presumed to be working on national campaign strategy and not influencing the primary in [a] particular state." Explanation and Justification of 11 C.F.R. § 106.2(2)(ii), 48 Fed. Reg. 5225 (February 4,

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1983). Therefore, the 5-day rule cannot be used as a vehicle to exclude the salaries of individuals who were engaged in activity intended to influence the voters in a particular state. Since the purpose of the Jefferson/Jackson Day event was to influence the Iowa nomination, the Committee cannot exclude its staff's salary and travel expenses by relying on the 5-day rule.

Furthermore, the Commission has made a final determination that the \$22,671.18 in expenses arising out of the Boston office and \$103,997.25 in expenses related to the Rock Island office were incurred for the purpose of influencing the nominations in New Hampshire and Iowa, respectively. Therefore, the Commission allocated these expenses to the respective state expenditure limitations. See supra. pp. 40 and 44. The expenses at issue are the salaries of individuals who were assigned to these offices. Since the expenses arising out of these office were related to the New Hampshire and Iowa campaigns, the Commission has made a final determination that the Committee cannot exclude the salaries under the 5-day rule. The Committee has not submitted any documentation to show that the individuals were involved in activities other than those intended to influence the voters in New Hampshire and Iowa.

Although the Committee contends that the Brigade coordinators' salaries are excluded from state allocation under the 5-day rule, the Brigade coordinators provided the necessary administrative support to permit the Brigade members to engage in activity to influence the nomination in Iowa. The Committee concedes that the Brigade members spent extended periods of time

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in Iowa influencing the campaign in that state. The Committee also notes that the Brigade, as a campaign fundraising and recruitment vehicle, was involved in activities intended to influence the voters of Iowa. The fact that some of the individuals involved in the Brigade participated as coordinators or administrators does not support the exclusion of their salaries and expenses from the Iowa expenditure limitation. The intent of their activities was to influence the voters of Iowa. Finally, the Committee has not demonstrated that, by virtue of their positions, the Brigade administrators and coordinators were involved in activities other than those related to Iowa. Therefore, the Commission has made a final determination that these expenses are allocable to the Iowa expenditure limitation.

F. Post-Primary Expenditures

The Committee claims that an \$800.00 payment to a restaurant in Manchester, New Hampshire was incorrectly allocated to the New Hampshire expenditure limitation. Attachment 8 at 70. The Committee contends that this expense was incurred for an election night party that did not begin until after New Hampshire polls had closed. Id. Therefore, the Committee concludes that this expense could not have been paid for the purpose of influencing the nomination in New Hampshire. Id.

The Commission concludes that the expenses at issue are allocable to the New Hampshire expenditure limitation. Expenditures that are made in a state after the primary election, which relate to that primary election are allocable to

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that state's expenditure limitation. 11 C.F.R. § 110.8(c)(1); see also FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988). The fact that the expenditure was incurred for an election-night party does not preclude a finding that it was related to the New Hampshire primary. The determination of whether to allocate expenses to a primary election does not rely solely on when the expenditures were incurred. The test is whether the expenses were related to the primary election. Therefore, certain costs incurred after the primary election, such as costs for closing a campaign office, for example, are allocable to a state's expenditure limitation.^{14/} Gephardt for President Committee, Inc., Statement of Reasons Supporting the Final Repayment Determination at 12 (May 21, 1992) (Costs of calls made after Iowa primary are allocable to that state's expenditure limitation). Thus, the \$800.00 payment is allocable to the New Hampshire expenditure limit.

VI. STALE-DATED CHECKS

A publicly financed presidential committee is required to pay the United States Treasury the amount of any stale-dated checks. 11 C.F.R. § 9038.6. Stale-dated checks are those committee checks made payable to creditors and contributors that have not been cashed. Id. The Interim Audit Report noted that the Committee had 96 stale-dated checks totaling \$28,248.62.

^{14/} If this expenditure is associated with an election-night party in New Hampshire, but unrelated to the primary in that state, then it would be a non-qualified campaign expense because it was not incurred in connection with Senator Simon's nomination. 11 C.F.R. § 9032.9(a)(2).

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Attachment 1 at 62. The Committee's response to the Interim Audit Report resolved 42 stale-dated checks in the amount of \$20,872.07.

The Final Audit Report reflects that the Committee has 54 stale-dated checks in the amount of \$7,872.07 that are outstanding. Attachment 4 at 78. The Committee has not submitted any additional information to demonstrate that the payees have cashed the remaining checks. Therefore, the Commission has made a final determination that the Committee must pay the amount owed in outstanding stale-dated checks, \$7,872.07, to the United States Treasury. 11 C.F.R. § 9038.6.

VII. THREE YEAR NOTIFICATION REQUIREMENT FOR COMMISSION REPAYMENT DETERMINATION

Pursuant to the Matching Payment Act and the Commission's regulations, the Commission will conduct a thorough examination and audit of the qualified campaign expenses of every candidate and committee which received public funds after each presidential election and matching payment period. See 26 U.S.C. § 9038; 11 C.F.R. § 9038.2. The Commission may notify the candidate and committee of the amounts of public funds that must be repaid to the United States Treasury based upon the results of the Commission's audit. See 26 U.S.C. § 9038.

The Matching Payment Act specifies further that no repayment notification shall be made by the Commission more than three years after the end of the matching payment period. 26 U.S.C. § 9038(c). The Commission's regulations provide that the Commission will notify the candidate of any repayment

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determinations as soon as possible, but not later than three years after the end of the matching payment period for primary candidates. 11 C.F.R. § 9038.2(a)(2).

While the Matching Payment Act requires that the Commission conduct audits of publicly funded committees and sets forth the bases for repayment determinations, it does not describe the audit and repayment processes. The Commission has promulgated regulations to delineate the stages in the audit process. See 11 C.F.R. Part 9038. The Commission's regulations provide that after the completion of audit fieldwork, the Commission will issue an Interim Audit Report, which will include findings, recommendations, and "[p]reliminary calculations regarding future repayments to the United States Treasury." 11 C.F.R. § 9038.1(c)(1) v). The audited committee has an opportunity to submit a written response to the Interim Audit Report, including legal and factual materials within 30 days. 11 C.F.R. § 9038.1(c)(2). If the candidate submits a response, the contents of the Final Audit Report may differ from the Interim Audit Report based on the response. 11 C.F.R. § 9038.1(c)(3).

The publicly released Final Audit Report contains the Commission's findings and recommendations on matters addressed in the Interim Audit Report, including any adjustments based on the committee's response. 11 C.F.R. § 9038.1(d). In addition, this report may contain an "initial repayment determination made by the Commission ... in lieu of the preliminary calculations set forth in the interim report." Id. This report provides the

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candidate and the public with written legal and factual reasons for the initial determination. 11 C.F.R. § 9038.2(c)(1).

If the candidate does not dispute an initial repayment determination within 30 days after service of the notice, the determination will become final. Id. To dispute the initial repayment determination, the candidate may submit legal and factual materials in writing within 30 days after service of notice, and may request an opportunity to address the Commission in open session, subject to Commission approval. 11 C.F.R. §§ 9038.2(c)(2) and (3). The Commission will consider any written response and oral presentation in making a final repayment determination. 11 C.F.R. § 9038.2(c)(4). The final repayment determination will be accompanied by a written statement of reasons which explains the repayment determination and the results of any investigation which resulted in the determination. 11 C.F.R. § 9038.2(c)(4).

The three year notification period for Democratic candidates expired on July 20, 1991. The Commission approved the Interim Audit Report on July 9, 1990. The Committee's response to the Interim Audit Report was due on August 13, 1990. However, the Committee requested three extensions of time totaling 171 days to respond to the Interim Audit Report. In a letter dated January 16, 1991, notifying the Committee of the Commission's decision to grant its third request for an extension of time to respond to the Interim Audit Report, the Audit Division stated "the Commission is mindful that the three year statute of limitations contained in 26 U.S.C. § 9038(c)

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expires July 20, 1991." In a letter dated July 17, 1991, the Audit Division informed the Committee that the notice requirement under 26 U.S.C. § 9038(c) was satisfied with the Committee's receipt of the Interim Audit Report.^{15/}

The Committee argues that the notice requirement under 26 U.S.C. § 9038(c) was not satisfied.^{16/} Attachment 6 at 8. The Committee contends that it was not notified of any repayment to the United States Treasury until October 29, 1991 when it received the Final Audit Report containing the Commission's initial repayment determination. Id. The Committee asserts that the plain meaning of 11 C.F.R. § 9038.2(a)(2) supports its position that the issuance of the Interim Audit Report did not satisfy the notification requirement. Attachment 8 at 2. The Committee also argues that the Interim Audit Report did not satisfy the notification requirement because it was sent to the Committee and not Senator Simon. The Committee notes that the Matching Payment Act requires the Commission to provide notice to the candidate. Id. at 5. The Committee also claims that the July 17, 1991 letter informing it that the preliminary repayment calculation satisfies the three year notification is an

^{15/} Four other presidential committees received similar letters informing them that the interim audit report satisfied the notice requirement of any repayment determination. These committees were Dukakis for President, Americans for Robertson, Inc., Jackson for President '88 Committee and George Bush for President Committee, Inc.

^{16/} The Committee has not stated whether this should be a basis for concluding that it owes no repayment or a lesser repayment to the United States Treasury. See 11 C.F.R. § 9038.2(c)(2)

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"apparent contradiction to the [Audit Division's] statement in the January 16, 1991 letter." Attachment 6 at 8.

Finally, the Committee contends that the notification requirement set forth at 26 U.S.C. § 9038(c) and 11 C.F.R. § 9038.2(a)(2) is a statute of limitations. Attachment 8 at 8. The Committee asserts that the notification requirement is analogous to the time limitation noted in the Internal Revenue Code for the assessment of federal taxes. Id. at 9. The Committee contends that tax assessments have been dismissed in cases where the statute of limitations expired prior to the Internal Revenue Service providing timely notice of a tax assessment. Id.

The Commission concludes that the preliminary repayment calculation contained in the Interim Audit Report satisfies the three year notification requirement pursuant to 26 U.S.C. § 9038(c). Therefore, the Committee received, by virtue of the Commission's issuance of the Interim Audit Report, adequate notification of a Commission repayment determination and must, as a consequence, repay the United States Treasury \$412,162.87.

Although the Commission's regulations and the language used in the audit reports reveal a number of apparent differences between the preliminary repayment calculation and the initial and final repayment determinations, the preliminary calculation is a determination which satisfies the notification requirement. In practice, the preliminary repayment calculation is similar to

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an initial repayment determination.^{17/} The procedures used for preparation of the Interim Audit Report containing the preliminary repayment calculation are similar to those used for a Final Audit Report containing an initial repayment determination. For both Interim and Final Audit Reports, the Audit Division prepares the report, the Office of General Counsel comments on the legal issues raised in the report, and the Commission approves the report and recommendations. Thus, a preliminary repayment calculation is subject to Commission approval like an initial or final determination -- all of which require a majority vote by the Commission. See 2 U.S.C. § 437c(c). Significantly, if a committee chooses not to respond to the Interim Audit Report, the findings and repayment amount may be included in the Final Audit Report. 11 C.F.R. § 9038.2(c)(1). Indeed, a committee may simply make the repayment called for in the preliminary repayment calculation.^{18/}

Thus, the preliminary calculation supplies adequate notice of a committee's repayment obligations, even though the exact figure may be modified. This notification provides the full force and effect of the requirements contemplated by the

^{17/} Committees are first notified of potential repayment findings at the exit conference. During the 1988 election cycle, the Commission permitted committees to supply additional factual material, but not legal arguments, during the two weeks following the exit conference. These responses were considered in the preparation of the preliminary repayment calculation.

^{18/} In fact, a number of campaigns from the 1988 election cycle made payments and partial payments based on the Interim Audit Report: (1) Bush (Primary); (2) Hart; (3) Fulani; (4) Gore; (5) Bush/Quayle (General); and (6) Dukakis.

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Matching Payment Act. The fact that the preliminary calculation may be modified in the continuing audit process does not diminish the effect of this notification. Similarly, this notification is in no way negated by the fact that the Interim Audit Report was not forwarded to Senator Simon. In order to receive public financing, both the Committee and the candidate must agree to make a repayment when appropriate. See 11 C.F.R. § 9033.1(b)(6). Therefore, the obligation to repay funds pursuant to a Commission determination cannot be eliminated when the Committee was legally and timely notified.

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The Commission recently revised its regulations to clarify this construction of the three year notification requirement. Specifically, the regulations now state that the notification requirement of section 9038 is satisfied by the Interim Audit Report. 11 C.F.R. § 9038.2(a)(2). See also Explanation and Justification, 56 Fed. Reg. 35904, 35907 (July 29, 1991). In January, 1991, before the expiration of the three year period for the 1988 presidential campaigns, the Commission sought public comment on the inclusion of the new language in the regulations. The notice of proposed rulemaking provided, in relevant part, that, "[t]he Commission's written notice of its preliminary calculations regarding future repayments under 11 C.F.R. § 9038.1(c) will constitute notification for purposes of the 3 year period." See 56 Fed. Reg. 151 (Jan. 2, 1991). The Committee did not comment on the proposed rules.

The Commission's view that the Interim Audit Report constitutes adequate notice is not new. For example, on

November 21, 1991, Chairman McGarry addressed this issue in a letter to Senator Wendell H. Ford, Chairman of the Senate Committee on Rules and Administration. See Attachment 14. In a November 4, 1991 letter, Senator Ford had expressed his concerns over the length of the audit process and the fact that certain provisions of the revised regulations might extend the audit process to an even greater extent. See Attachment 13. In his reply, Chairman McGarry noted that "[t]he regulations to which you refer do not establish a new rule, but rather clarify the Commission's past practice." Attachment 14, page 1. Chairman McGarry stated further that "[t]he Commission believes that the preliminary repayment calculation contained in the Interim Audit Report is a determination which satisfies the three year notification requirement of 26 U.S.C. § 9039(c), and does put committees on notice of their repayment obligation." Id.

Furthermore, the public financing system would be undermined if the Committee's arguments were to prevail in this instance. Throughout the audit process, the Committee was repeatedly notified, both formally and informally, that a repayment would be due. The Commission's Audit staff discussed the repayment with representatives of the Committee during the exit conference. The Commission formally notified the Committee of the repayment in the Interim Audit Report prior to the end of the matching payment period. Similarly, the Committee was explicitly informed of the Commission's policies regarding the

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notification issue prior to the expiration of the three year period and did not challenge it.19/

Most significantly, the Committee's reading of the statute would serve no purpose other than to unjustly enrich it at the taxpayer's expense. The Committee's construction would enable a campaign to avoid its repayment obligation entirely merely by using stalling tactics to delay the conclusion of the Commission's audit.20/ The Commission's construction, in contrast, assures that the committees have timely notice of their repayment obligations and provides campaigns additional opportunities thereafter to submit legal and factual materials to try to reduce the repayment, while protecting the fisc by ensuring that those additional procedures cannot be used to avoid repayment altogether by extending the conclusion beyond the three year deadline. This result, unlike the Committee's

19/ The Committee's contention that the Audit Division's July 17, 1991 letter is in contradiction to the January 16, 1991 letter is without merit. The January 16, 1991 letter informs the Committee that the Commission approved its extension of time to respond to the Interim Audit Report and mentions the three year period for repayment notification. The letter does not indicate what constitutes sufficient repayment notification. The July 17, 1991 letter explicitly informs the Committee that its receipt of the Interim Audit Report satisfied the repayment notification requirement.

20/ The Committee contributed greatly to the delay in processing the audit because the Committee was granted three extensions of time to respond to the Interim Audit Report totaling 171 days.

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construction, properly balances the policies of the Act in the manner Congress envisioned.

revised { The Committee's arguments essentially amount to a justification for its retaining thousands of taxpayer dollars to which it was not entitled or which it spent in violation of the law. Specifically, the Committee's interpretation of the statute would permit it to retain \$412,162.87 in public funds. The Committee's effort to bar the Commission from recouping these public funds runs contrary to its obligations under the letter of candidate agreements and certifications in which the candidate promised not only to fully cooperate with the audit process and to comply with the expenditure limitations, but also to repay any public funds required to be repaid under 11 C.F.R. Part 9038. 26 U.S.C. § 9033; 11 C.F.R. 9033.1(b)(6).

Since repayments under the Matching Payment Act are deposited into the matching payment account, the result urged by the Committee deprives the public financing system of funds needed to sustain the system. See 26 U.S.C. § 9038(d). Therefore, future candidates who qualify for public financing would not have the same opportunity to enjoy the type of campaign financing used by Senator Simon during his 1988 presidential campaign. Congress certainly did not intend the application of the three year notification requirement to "create a windfall for some beneficiaries at the expense of others and the ... system as a whole." Bechtel v. Pension Guaranty Corporation, 781 F.2d 906, 907 (D.C. Cir. 1986). The Commission's regulation addressing the three year notification

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issue is supported by these equitable tenets and avoids the inequities noted above.

In summary, the facts presented in the instant matter warrant the exercise of the Commission's broad powers under the Matching Payment Act to recover public funds to protect the public fisc and the integrity of the presidential public financing system. Therefore, the Commission has rejected the Committee's arguments based on the three year notification requirement of 26 U.S.C. 9038(c) and made a final determination that Senator Simon and the Committee must repay \$412,162.87 to the United States Treasury.

IX. FINAL REPAYMENT DETERMINATION

Therefore, the Commission has made a final determination pursuant to 11 C.F.R. § 9038.2(c)(4) that for the foregoing reasons, Senator Paul Simon and the Paul Simon for President Committee must repay \$412,162.87 to the United States Treasury.

Attachments

1. Interim Audit Report, approved July 9, 1990 (portions redacted).
2. Committee's response to the Interim Audit Report, January 11, 1991 (portions redacted.)
3. Committee's Supplemental Response to the Interim Audit Report, January 31, 1991.
4. Final Audit Report, approved October 22, 1991.
5. Letter from Committee's Counsel Requesting Oral Presentation, dated November 20, 1991.
6. Committee's Written Response to the Final Audit Report, January 31, 1992.
7. Transcript of the Committee's Oral Presentation, August 5, 1992 and Charts of Campaign Expenditures (Exhibits A and B).
8. Documentation Submitted by the Committee After the Oral Presentation, August 12, 1992.
9. Memorandum from Robert J. Costa to Lawrence M. Noble, Re: Review of Paul Simon for President Response to the Final Audit Report, March 19, 1992.

23070199727
revised {

10. Memorandum from Robert J. Costa to Lawrence M. Noble, Re: Comments Related to August 5, 1992 Simon Hearing, dated August 13, 1992.
11. Memorandum from Robert J. Costa to Lawrence M. Noble, Re: Simon for President - Audit Division's Analysis of Documentation Submitted Related to the Oral Presentation, dated November 16, 1992.
12. Memorandum from Robert J. Costa to Lawrence M. Noble, RE: Simon for President - Revision To Final Repayment Amount.

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AR-93-16



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461

MW004996

March 8, 1993

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REVISION TO FINAL REPAYMENT AMOUNT -
PAUL SIMON FOR PRESIDENT

Based upon the Commission's decision with respect to the Murphine Corporation during the March 4, 1993 Open Session, the revisions to the amounts repayable with respect to exceeding the Iowa and New Hampshire state limitations are as follows:

Amount Paid in excess of Iowa Expenditure Limitation Per 11/16/92 Memo and Draft Statement of Reasons	\$875,584.65
Less: Murphine Corp. at 50%	(7,250.00
Add: Murphine Corp. at 1/3	4,833.33

Amount Allocable Final Statement of Reasons March 4, 1993	873,167.98
Multiplied by Repayment Ratio	.331449

Repayment Amount	\$289,410.65

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MEMORANDUM TO LAWRENCE M. NOBLE
 March 8, 1993
 Page 2

Amount paid in excess of New Hampshire Expenditure Limitation Per 11/16/92 Memo and Draft Statement of Reasons	\$218,569.75
Less: Murphine Corp. at 50%	(7,250.00
Add: Murphine Corp. at 1/3	4,833.33

Amount Allocable Final Statement of Reasons March 4, 1993	216,153.11
Multiplied by Repayment Ratio	.331449

Repayment Amount	\$ 71,643.74

For your convenience, presented below is a recap of the amounts subject to the repayment provisions of 26 U.S.C. § 9038(b) or 11 C.F.R. § 9038.6.

FAR Finding III.B. Non-Qualified Campaign Expenses-Post Ineligibility Expenditures	\$ 8,573.01
FAR Finding III.C. Non-Qualified Campaign Expenses-Undocumented Expenditures	32,990.40
FAR Finding III.D. Non-Qualified Expenses in Excess of State Limitations:	
Iowa	289,410.65
New Hampshire	71,643.74
FAR Finding III.F. Matching Funds in Excess of Entitlement	1,673.00
FAR Finding III.G. Stale Dated Checks	7,872.07

TOTAL	\$412,162.87

Should you have any questions, please contact Alex Boniewicz or Rick Halter at 219-3720.

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Public
Records



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DATE & TIME TRANSMITTED: WEDNESDAY, NOVEMBER 24, 1993 4:00

BALLOT DEADLINE: TUESDAY, NOVEMBER 30, 1993 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, MCGARRY, POTTER, THOMAS

SUBJECT: RATIFICATION OF REPAYMENT DETERMINATIONS
FOR 1988 PRESIDENTIAL CAMPAIGNS. MEMORANDUM
TO THE COMMISSION FROM THE OFFICE OF THE
GENERAL COUNSEL DATED NOVEMBER 24, 1993.

- () I approve the recommendation(s)
- () I object to the recommendation(s)

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

RECEIVED
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SECRETARIAT

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November 24, 1993

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

SUBJECT: Ratification of Repayment Determinations for 1988
Presidential Campaigns

On November 9, 1993, the Commission approved the Office of General Counsel's recommendation to ratify the repayment determinations made with respect to the 1988 presidential campaigns in light of FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). Accordingly, we have prepared this memorandum to effect the ratification of each preliminary repayment calculation, initial repayment determination, and final repayment determination for each publicly financed presidential campaign for the 1988 presidential election cycle in which the repayment determination is not yet finally closed and paid. The ratification would confirm the repayment determinations made with respect to Americans for Robertson, Inc., Paul Simon for President, Dukakis for President Committee, Inc., and LaRouche Democratic Campaign. Each of these committees instituted suits challenging the Commission's repayment determinations that are ongoing.

Attached for your information are copies of the certifications for the previous approval of the preliminary repayment calculation, initial repayment determination, and final repayment determination for each committee.^{1/}

^{1/} It should be noted that the preliminary repayment calculation is contained in the interim audit report and the initial repayment determination is set forth in the final audit report for each committee. The final repayment determination is supported by a statement of reasons. The certifications are for the Commission's approval of these documents.

RECOMMENDATION

The Office of General Counsel recommends that the Commission ratify the preliminary repayment calculations, initial repayment determinations, and final repayment determinations made with respect to the following 1988 publicly financed presidential candidates and committees:

Marion G. Robertson and Americans for Robertson, Inc.;
Michael S. Dukakis and Dukakis for President Committee, Inc.;
Senator Paul Simon and Paul Simon for President; and
Lyndon H. LaRouche and LaRouche Democratic Campaign.

Attachments

Certification of Commission votes on the interim audit reports, final audit reports and statements of reasons

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Americans for Robertson, Inc. -) Agenda Document #92-46
Final Audit Report.)

CERTIFICATION

I, Delores R. Harris, recording secretary for the Federal Election Commission open meeting on Thursday, March 26, 1992, do hereby certify that the Commission took the following actions in the above-captioned matter:

1. Decided by votes of 5-0 to approve recommendations 1-8, as submitted in Agenda Document #92-46.

Commissioners Aikens, Elliott, McDonald, McGarry and Thomas voted affirmatively for the decisions; Commissioner Potter was not present.

(continued)

Federal Election Commission
Certification for Americans
for Robertson, Inc. - Final
Audit Report
Thursday, March 26, 1992

2. Decided by a vote of 5-0 to approve the Final Audit Report - Americans for Robertson, Inc., as submitted in Agenda Document #92-46, and as amended by the Audit Division to add a footnote regarding the overall limitation.

Commissioners Aikens, Elliott, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Potter was not present.

Attest:

March 27, 1992
Date

Delores R. Harris
Delores R. Harris
Administrative Assistant

Federal Election Commission
Certification for
American for Robertson, Inc.
Final Repayment Determination and
Proposed Statement of Reasons
(LRA #335).
September 23, 1993

2. Decided by a vote of 5-1 to:

- a. Determine that Marion G. Robertson and Americans for Robertson, Inc. must repay \$290,793.66 to the United States Treasury;
- b. Order Marion G. Robertson and Americans for Robertson, Inc. to refund \$105,634.56 to certain press organizations; and
- c. Approve the Statement of Reasons in support of the final repayment determination and refund order, as recommended in Agenda Document #93-76, subject to the amendments agreed upon pursuant to the meeting discussion.

Commissioners Aikens, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented and will issue a statement of reasons.

Attest:

September 24, 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Interim Audit Report -)
Dukakis for President)
Committee, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 14, 1990, the Commission decided by a vote of 5-1 to approve the Interim Audit Report - Dukakis for President Committee, Inc., as submitted under staff memorandum dated February 8, 1990.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

2-14-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thursday, Feb. 8, 1990 3:05 p.m.
Circulated to the Commission: Friday, Feb. 9, 1990 12:00 p.m.
Deadline for vote: Tuesday, Feb. 13, 1990 4:00 p.m.
Objection received: Monday, Feb. 12, 1990 5:17 p.m.
Placed on Agenda for: Tuesday, Feb. 27, 1990
Objection withdrawn: Wednesday, Feb. 14, 1990 12:20 p.m.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Dukakis for President Committee, Inc.) Agenda Document #91-99

CERTIFICATION

I, Delores R. Harris, recording secretary for the Federal Election Commission open meeting on October 10, 1991, do hereby certify that the Commission took the following actions on Agenda Document #91-99:

1. Decided by votes of 5-0 to:
- a. approve recommendation 1, as found on page 6 (bottom pagination).
 - b. approve recommendation 2, as found on page 7 (bottom pagination).
 - c. approve recommendation 3, as found on page 25 (bottom pagination).
 - d. approve recommendation 5, as found on page 35 (bottom pagination).
 - e. approve recommendation 6, as found on page 37 (bottom pagination).

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decisions; Commissioner Josefiak was not present.

(continued)

Federal Election Commission
Certification for Dukakis for
President Committee, Inc. -
Final Audit Report
October 10, 1991

2. Decided by a vote of 4-1 to approve recommendation 4, except have the Audit Division revise the calculations to back out of the surplus calculation, those contributions which the committee has indicated were transferred over to the General Election Legal and Compliance Fund within 60 days or less.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented; and Commissioner Josefiak was not present.

Attest:

October 11, 1991
Date

Delores R. Harris
Delores R. Harris
Administrative Assistant

0507012110

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Governor Michael S. Dukakis and) Agenda Document
the Dukakis for President Committee,) #93-14
Inc. - Proposed Final Repayment)
Determination and Statement of Reasons)
(LRA #340).)

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, February 25, 1993, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to the above-captioned matter:

1. Determine that Governor Michael S. Dukakis and the Dukakis for President Committee, Inc. must repay \$491,282.31 to the United States Treasury; and
2. Approve the draft Statement of Reasons in support of the final repayment determination, as recommended in the General Counsel's report dated February 8, 1993.

(continued)

Federal Election Commission
Certification for
Governor Michael S. Dukakis and
the Dukakis for President Committee,
Inc. - Proposed Final Repayment
Determination and Statement of Reasons
Thursday, February 25, 1993

3. Direct the General Counsel's office to reopen negotiations with Governor Michael S. Dukakis and the Dukakis for President Committee, Inc.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter was not present at the time of the vote.

Attest:

March 1, 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

050701911

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Interim Audit Report on Paul Simon) Agenda Document
for President) #X90-039

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 26, 1990, do hereby certify that the Commission took the following actions with respect to the Interim Audit Report on Paul Simon for President as submitted under FEC Audit Division memorandum dated June 13, 1990:

1. Decided by a vote of 5-0 to approve recommendation #1 on pages four and five of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

2. Decided by a vote of 5-0 to approve recommendation #2 on page seven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

Federal Election Commission
Certification for Interim Audit
Report on Paul Simon for President
June 26, 1990

3. Decided by a vote of 5-0 to approve recommendation #3 on page eight of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

4. Decided by a vote of 5-0 to approve recommendation #4 on page ten of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

5. Decided by a vote of 5-0 to approve recommendation #5 on page eleven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

6. Decided by a vote of 5-0 to approve recommendation #6 on page twelve of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

7. Decided by a vote of 5-0 to approve recommendation #7 on page twelve of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

8. Decided by a vote of 5-0 to approve recommendation #8 on page thirteen of of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

9. Decided by a vote of 5-0 to approve recommendation #10 on page forty-two of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

10. Decided by a vote of 5-0 to approve recommendation #9 on page twenty-seven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

11. Decided by a vote of 5-0 to approve recommendation #11 on page forty-three of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

12. Failed in a vote of 2-3 to pass a motion to approve recommendation #12 on pages forty-six and forty-seven of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented; Commissioner Aikens was not present.

13. Failed in a vote of 3-2 to pass a motion to approve recommendation #12 on pages forty-six and forty-seven of the audit report, subject to amendment of the last section to delete the third part, thereby reducing the recommended repayment to zero.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented; Commissioner Aikens was not present.

(continued)

14. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to show the split votes with respect to recommendation #12 on pages forty-six and forty-seven, using the language incorporated in previous audit reports.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

15. Failed in a vote of 2-3 to pass a motion to approve recommendation #13 on page fifty-one of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented. Commissioner Aikens was not present.

16. Failed in a vote of 3-2 to pass a motion to approve recommendation #13 on page fifty-one of the audit report, subject to amendment of the dollar amount to a figure of \$56,759.89, and that the preceding text be revised to include appropriate language in accord with this adjustment in the figures.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented. Commissioner Aikens was not present.

(continued)

17. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to reflect the split votes with respect to recommendation #13, and that the alleged double counting figure that was not agreed to would be deleted, so that the repayment figure would be \$56,759.89, and that necessary language changes be made to conform with this.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

18. Failed in a vote of 2-3 to pass a motion to approve recommendation #14 on page 53 of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented; Commissioner Aikens was not present.

19. Failed in a vote of 3-2 to pass a motion to approve recommendation #14 on page 53 of the audit report, subject to amendment of the figures to read: \$347,796.25 (\$65,326.28 + \$282,469.97), and that the accompanying text would be revised to include these adjustments.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented; Commissioner Aikens was not present.

(continued)

20. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to reflect the votes taken by the Commission on recommendation #14, and that the alleged double counting figure be excluded from the repayment figures, so that the repayment figure would read \$347,796.25, and make the appropriate changes to the other figures and changes to the text.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

21. Decided by a vote of 5-0 to approve recommendation #15 on page 58 of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

Federal Election Commission
Certification: Interim Audit Report
on Paul Simon for President
June 26, 1990

22. Decided by a vote of 5-0 to approve recommendation #16 on page fifty-nine of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

23. Decided by a vote of 5-0 to direct the Audit Division to amend the report as agreed at this meeting and to circulate the amended report for Commission approval on a tally vote basis.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

Attest:

7-3-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Paul Simon for President -) Agenda Document #91-82
Final Audit Report.)

CERTIFICATION

I, Delores Harris, recording secretary of the Federal Election Commission open meeting on August 29, 1991, do hereby certify that the Commission took the following actions with respect to Agenda Document #91-82:

1. Decided by a vote of 6-0 to:
 - a. Approve recommendation #1, as found on page 9 (bottom pagination).
 - b. Approve recommendation #2, as found on page 15 (bottom pagination).

Commissioners Aikens, Elliott, Josefiak, McDonald McGarry and Thomas voted affirmatively for the decision.

(continued)

Federal Election Commission
Certification for Paul Simon
for President - Final Audit
Report
Thursday, August 29, 1991

Page 2

2. Failed by a vote of 3-3 to pass a motion to have the Audit Division back out of Iowa and New Hampshire any cost that upon review could be identified as cost related to individuals who did not spend five days or more in Iowa or New Hampshire, and that any such provision be included in a revised audit report to be circulated to the Commission for approval on a tally vote basis.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

3. Failed in a vote of 3-3 to pass a motion to approve recommendation 3, as submitted in Agenda Document #91-82.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion and Commissioners McDonald, McGarry and Thomas dissented.

continued)

4. Decided in a vote of 4-2 to approve recommendation 3, as revised by backing out those expenses pertaining to salary or travel and subsistence that upon review the Audit Division finds relating to individuals who did not spend five or more days in Iowa or New Hampshire working out of the Rock Island or Boston Office, and revised to include language explaining the 3-3 split vote. The amount of repayment will be reduced accordingly.

Commissioners Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

Attest:

September 3, 1991
Date

Delores Harris
Delores Harris
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Paul Simon for President, Inc.
Final Repayment Determination and
Proposed Statement of Reasons
(LRA #355).

)
)
) Agenda Document #93-25
)
)
)

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting for Thursday, March 4, 1993, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions on Agenda Document #93-25:

1. Determine that Senator Paul Simon and the Paul Simon for President Committee must make a repayment to the United States Treasury, subject to the finding that the expenditures by the campaign for the Murphine Corporation be allocated as follows: 1/3 to national consulting services; 1/3 to Iowa limitations; and 1/3 to New Hampshire limitations.
2. Approve the Statement of Reasons in support of the final repayment determination, subject to the amendments agreed upon during the meeting discussion.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

March 9, 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

FEDERAL ELECTION COMMISSION
CERTIFICATION FOR INTERIM AUDIT
REPORT ON LAROUCHE DEMOCRATIC CAMPAIGN
SEPTEMBER 19, 1989

PAGE 2

5. Failed on a vote of 3-3 to pass a motion to approve recommendation 5 on page 8 of the subject audit, as recommended by the Audit Division.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry and Thomas dissented.

6. Failed on a vote of 3-3 to pass a motion to revise recommendation 5 on page 8 of the subject audit to reduce the amount to be repaid to the U.S. Treasury to \$3,658.25.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

7. Decided by a vote of 5-1 to amend recommendation 5 on page 8 of the subject audit, to add certain language to be approved by the Commission.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

(continued)

FEDERAL ELECTION COMMISSION
CERTIFICATION FOR INTERIM AUDIT
REPORT ON LAROUCHE DEMOCRATIC CAMPAIGN
SEPTEMBER 19, 1989

PAGE 3

8. Failed on a vote of 3-3 to pass a motion to approve recommendation 6 on page 10 of the subject audit, as recommended by the Audit Division.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry and Thomas dissented.

9. Failed on a vote of 3-3 to pass a motion to approve recommendation 6 on page 10 of the subject audit to reduce the amount to be repaid to U.S. Treasury to \$41,924.68.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

10. Decided by a vote of 5-1 to amend recommendation 6 on page 10 of the subject audit, to add certain language to be approved by the Commission.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

(continued)

FEDERAL ELECTION COMMISSION
CERTIFICATION FOR INTERIM AUDIT
REPORT ON LAROUCHE DEMOCRATIC CAMPAIGN
SEPTEMBER 19, 1989

PAGE 4

11. Decided by a vote of 6-0 to approve the Interim Audit Report on LaRouche Democratic Campaign as contained in Agenda Document #89-73, as amended at the meeting, and noted above.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

12. Decided by a vote of 6-0 to circulate to the Commission for approval, on a tally vote basis, the Interim Audit Report on LaRouche Democratic Campaign, as amended at this meeting.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

9/21/89
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant
Office of the Secretariat

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Final Audit Report on the) Agenda Document #90-47
LaRouche Democratic Campaign)

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission meeting on May 17, 1990, do hereby certify that the Commission took the following actions with respect to Agenda Document #90-47:

Decided by a vote of 6-0 to:

1. Approve the recommendation of the Audit staff that no further action be taken with respect to Transactions Related to LaRouche Democratic Campaign Special Legal Account.
2. Make an initial determination that \$1,160.95 in stale-dated checks is repayable to the United States Treasury pursuant to Section 9038.6 of Title 11 of the Code of Federal Regulations.
3. Make an initial determination that \$109,148.88 in matching funds received by the Committee represents matching funds received in excess of entitlement, and that an equal amount must be repaid to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1).

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

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Decided by a vote of 5-1 to:

1. Make an initial determination that the pro rata portion of \$3,634.37, concerning New Hampshire Expenditures in Excess of State Limitation, is repayable to the United States Treasury.
2. Make an initial determination that the pro rata portion of \$40,949.93, concerning Apparent Non-qualified Campaign Expenses: Post-Ineligibility Campaign Expenditures, is repayable to the United States Treasury.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision. Commissioner Aikens dissented.

Decided by a vote of 6-0 to:

Approve the proposed final audit report of the LaRouche Democratic Campaign as found in Agenda Document #90-47, subject to the motions already approved at this meeting.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

May 18, 1990
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Proposed Final Repayment Determination) Agenda Document
and Statement of Reasons -- Lyndon H.) #92-119
LaRouche Democratic Campaign (LRA #326).)

CERTIFICATION

I, Delores R. Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, September 17, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to Agenda Document #92-119:

1. Determine that Lyndon H. LaRouche, Jr. and the LaRouche Democratic Campaign must repay \$151,259.76 to the United States Treasury; and
2. Approve the draft Statement of Reasons in support of the final repayment determination, as recommended in the General Counsel's report dated September 3, 1992.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

September 18, 1992
Date

Delores R. Hardy
Delores R. Hardy
Administrative Assistant