REPORT OF THE AUDIT DIVISION

ON

CLINTON/GORE '96 GENERAL COMMITTEE, INC, AND CLINTON/GORE '96 GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND

Approved June 3, 1999

FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

The Honorable William J. Clinton
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Mr. President:

Attached please find the Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund. The Commission approved the report on June 3, 1999. As noted on page 5, of the attached report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9007.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of $16,412 is required within 90 calendar days after service of this report (September 13, 1999).

Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9007.2(c)(2)(i) provide you with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (August 13, 1999), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9007.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if you so elect. If you decide to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530.

If you do not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will placed on the public record on or about June 15, 1999. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Mary Moss or Thomas Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

Ms. Joan Pollitt, Treasurer
Clinton/Gore '96 General Committee, Inc.
Clinton/Gore '96 General Election Legal and Accounting
Compliance Fund
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht and MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, DC 20006

Dear Ms. Pollitt:

Attached please find the Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund. The Commission approved the report on June 3, 1999. As noted on page 5 of the attached report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9007.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of $16,412 is required within 90 calendar days after service of this report (September 13, 1999).

Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9007.2(c)(2)(i) provide the Candidate with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (August 13, 1999), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9007.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the repayment determination, please contact Kim L.

Bright-Coleman of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on or about June 15, 1999. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Mary Moss or Thomas Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

TABLE OF CONTENTS

CLINTON/GORE '96 GENERAL COMMITTEE, INC. AND CLINTON/GORE '96 GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND

APPROVED JUNE 3, 1999

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON CLINTON/GORE '96 GENERAL COMMITTEE, INC. AND CLINTON/GORE '96 GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND[1]

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the Clinton/Gore '96 General Committee, Inc. (the General Committee) and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund (GELAC). The audit is mandated by Section 9007(a) of Title 26 of the United States Code. That section states that "after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President."

Also, Section 9009(b) of Title 26 of the United States Code states, in part, that the Commission may conduct other examinations and audits as it deems necessary to carry out the functions and duties imposed on it by this chapter.

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

B. AUDIT COVERAGE

The audit of the General Committee covered the period from its inception, August 1, 1996, through March 31, 1997. In addition, the Audit staff conducted limited reviews of reported activity through June 30, 1998. During the audit period, the General Committee reported an opening cash balance of $-0-, total receipts of $66,192,639, total disbursements of $65,367,154 and a closing cash balance of $825,485.

---

[1] The results of the audit of Victory '96, a joint fund-raiser between the Democratic National Committee and the GELAC, will be addressed in a separate audit report.

The audit of the GELAC covered the period from its inception, September 7, 1995 through March 31, 1997. During this period, the GELAC reported an opening cash balance of $-0-, total receipts of $8,032,732 total disbursements of $5,343,065 and a closing cash balance of $2,689,667.

C. CAMPAIGN ORGANIZATION

The General Committee registered with the Federal Election Commission on August 1, 1996. The GELAC registered with the Federal Election Commission on September 7, 1995. The Treasurer of both the General Committee and GELAC was Joan Pollitt.

During the audit period through present, the campaign maintained its headquarters office in Washington, DC.

To handle its financial activity, the General Committee used 9 bank accounts. From these accounts the campaign made approximately 36,333 disbursements.

To handle its financial activity, the GELAC used 1 bank account. From this account the GELAC made approximately 736 disbursements. Approximately 173,016 contributions were received from individuals. These contributions totaled $6,421,556.

The General Committee received $61,820,000 in funds from the United States Treasury on August 30, 1996. Other receipts received by the General Committee through December 31, 1997 include loans totaling $2,484,000 to finance expenses prior to August 30, 1996; $1,458,230 in refunds and rebates from vendors and proceeds from the sale of assets; $1,250,000 transfer from the GELAC apparently for reimbursement of exempt legal and accounting compliance expenses paid by the General Committee; and $691 in interest income. Between January 1, 1998 and June 30, 1998, the General Committee received additional receipts including transfers totaling $612,000 from the GELAC apparently for reimbursement of exempt legal and accounting compliance expenses paid by the General Committee; $261,285 in refunds and rebates from vendors and $3,295 in interest income.

D. AUDIT SCOPE AND PROCEDURES

In addition to a review of the committees' expenditures to determine the qualified and non-qualified campaign expenses incurred by the campaign, the audit covered the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations;

2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding II.A.);

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;

4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;

5. proper disclosure of campaign debts and obligations;

6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;

7. adequate recordkeeping for campaign transactions;

8. accuracy of the Statement of Net Outstanding Qualified Campaign Expenses filed by the General Committee to disclose its financial condition (see Exhibit 1);

9. the campaign's compliance with spending limitations (see Finding III.A.); and,

10. other audit procedures that were deemed necessary in the situation (see Findings III.B., C. and D., and IV.A.).

As part of the Commission's standard audit process, an inventory of campaign records is normally conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state.

Delays encountered with respect to the production of records during fieldwork on the Clinton/Gore '96 Primary Committee, Inc. (Primary Committee) were also encountered during fieldwork on the General Committee and GELAC. Records consisting of bank statements and enclosures for six campaign depositories; deposit batches and contributor check copies for GELAC contributions; vendor invoices; check registers for operating and payroll accounts; records relative to in-kind contributions, refunds/rebates, wire transfers, campaign materials, campaign travel, General Committee's use of credit cards, media placements, public opinion polls; workpapers detailing FEC report preparation and components for the Statement of Net Outstanding Qualified Campaign Expenses; copies of all contracts/agreements, travel reimbursement

policies and IRS forms 940 and 941; and, Computerized Magnetic Media for disbursements were requested during the period April 10, 1997 through December 1997.

The Audit staff was informed that attorneys had to review all records prior to them being made available. The General Committee refused to make available bank records pertaining to the bank account maintained by the media vendors who placed and paid for media buys on behalf of the General Committee. Further, the General Committee refused to make available, without conditions and/or restrictions, copies of polls conducted on its behalf.

As a result, on August 1, 1997, September 10, 1997 and February 3, 1998 the Audit staff requested the Office of General Counsel to prepare subpoenas for the production of records. The Commission issued 13 subpoenas to either the General Committee, GELAC or respective vendors in order to obtain records.

As a result of the above, it is the opinion of the Audit staff that delays in production of records by the General Committee resulted in wasting numerous staff hours which directly delayed the completion of the audit fieldwork a minimum of four months.

Accordingly, the scope of work performed was limited due to delays encountered in obtaining records necessary to perform the audit. Certain findings in this audit report were supplemented with information obtained from sources other than the General Committee.

The General Committee as part of its response to the Exit Conference Memorandum (the Memorandum) made various comments concerning the Audit staff's discussion of the scope of the audit. The General Committee asserts that this section of the audit report provides a distorted and incomplete view of the process, and then provides certain examples of "mischaracterizations" included therein. Further, the General Committee claims that "[d]espite its full cooperation with these numerous and often conflicting requests, always maintained a cooperative posture during the audit process for *all information requested that was reasonably within the scope of the audit.*" Emphasis not in original.

Various examples and explanations were cited, such as: logistical problems inherent with the Primary/General Committee's move to new offices; the auditors' demand for additional office space at that location; that " no existing record in the General Committee's possession was refused;" that the Audit Division refused all attempts at cooperative compromise pertaining to gaining access to the General Committee's media vendor's records; and that the auditors repeatedly insisted that particular records which the General Committee "did not have" in a computerized format be created.

The Audit staff stands by the scope limitation and related discussion as presented in the Memorandum and this Audit Report. The candidate agreed as a

condition to obtaining Presidential Election Campaign Funds to: furnish all documents related to disbursements and receipts, including computerized information; furnish all documentation relating to disbursements made on the candidate's behalf by other organizations; permit an audit and examination of all receipts and disbursements including those made by the candidate, authorized committee or any agent authorized to make expenditures on behalf of the candidate or authorized committee. Further, the candidate agreed to facilitate the audit by making available in one central location office space, records and such personnel as are necessary to conduct the audit and examination. The candidate and committee agreements provided for at 11 CFR §§9003.1 and 9003.2 were signed in August, 1996.

As detailed above, certain records necessary to the conduct of the audit were not made available at the commencement of audit fieldwork in June, 1997 and in some cases were not made available until subpoenas were issued by the Commission to compel production. The General Committee is entitled to express its opinion and attempt to explain why it feels " [i]t would be utterly inappropriate for such a distorted and one-sided description of the process to be included in the proposed draft Final Audit Report." The General Committee's response will be included in the documents available to the Commission in open session when the audit report is considered.

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

In a series of meetings between December 3, 1998, and March 4, 1999, the Commission considered the findings and recommendations contained below. The action taken with respect to each issue is described at the end of the respective finding.

II. AUDIT FINDINGS AND RECOMMENDATIONS - NONREPAYMENT MATTERS.

A. APPARENT PROHIBITED CONTRIBUTIONS RESULTING FROM EXTENSION OF CREDIT BY A COMMERCIAL VENDOR

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution in connection with any election at which presidential and vice presidential electors are to be voted for, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

Sections 116.3(a) and (b) of Title 11 of the Code of Federal Regulations state, in relevant part, that a commercial vendor that is not a corporation, and a corporation in its capacity as a commercial vendor may extend credit to a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary

course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

Finally, 11 CFR §116.3(c) of Title 11 of the Code of Federal Regulations states that in determining whether credit was extended in the ordinary course of business, the Commission will consider:

1. Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

2. Whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and,

3. Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

1. World Wide Travel Services, Inc.

During the course of fieldwork, the Audit staff reviewed a reconciling invoice from World Wide Travel Services, Inc. (WWT),[2] dated January 23, 1997, which reflected the General Committee had incurred travel expenses between August 9, 1996 and November 8, 1996[3] totaling $1,620,521. The total due as of January 23, 1997 was $775,876.

On March 31, 1997, the General Committee forwarded for payment to the Democratic National Committee the total outstanding balance of $775,876 (see 2 U.S.C. § 441a(d)(2)).[4] At the time, it appeared that approximately $775,180 of the $775,876 had been outstanding for no less than 143 days (November 8, 1996 through March 31, 1997).

In response to the Audit staff's request for documentation which detailed the airfare costs incurred, the General Committee provided an invoice from WWT, dated May 31, 1997, which listed charges made to the General Committee's account from September 18, 1996 through January 29, 1997 and a separate schedule from WWT entitled "Customer Activity Report, Receivables and Checks Combined" (Customer Activity Report), dated January 20, 1997, which detailed all airfare charges between August 9, 1996 and January 10, 1997. During audit fieldwork, the Audit staff

---

2 WWT was incorporated on November 30, 1979 and remains incorporated as of April 1998.

3 The majority of the travel was charged during this time period, with the exception of 3 charges totaling $696 that occurred subsequent to November 8, 1996; most of the charges involved the purchase of airline tickets.

4 Based on our review of DNC reports filed, as of 9/30/98, the DNC reported $845,461 in 2 U.S.C. 441a(d) payments on behalf of the General Committee to WWT.

noted an invoice, dated October 13, 1996, in the General Committee records from WWT; the ending balance on that invoice did not agree with the beginning balance on the May 31, 1997 invoice. During fieldwork a request was made to the General Committee for all invoices received from WWT between October 13, 1996, and May 31, 1997, and/or evidence that WWT attempted to collect the debt due during that period. Other than the aforementioned documents, the General Committee did not provide any additional invoices or evidence responsive to the Audit staff's request.

As can be noted from the above invoices, no records made available by the General Committee provided a regularly scheduled (e.g., at the end of each month), continuous and consistent billing of charges.[5]

The Audit staff reviewed a Travel Agent Agreement dated August 30, 1996 between the General Committee and WWT which stated, in part, "cash settlement will occur no later than thirty (30) days after receipt of invoice. Each invoice paid more than thirty (30) days past date of receipt will be charged a late fee of 10% per annum (.833% per month) of the outstanding balance".[6]

The Audit staff discussed this matter with General Committee representatives at a conference held at the end of fieldwork and provided a schedule pertaining to the disbursements made to WWT. General Committee officials acknowledged receipt of the schedule, and on April 8, 1998, provided an affidavit from the General Committee Treasurer which stated, in relevant part:

> "On September 30, 1996, after reviewing current bills and anticipating future ones, the Committee made the decision that all bills from WWT for expenses incurred after October 1, 1996, would be paid for by the Democratic National Committee (DNC) from §441a(d) funds. This decision was communicated about the same time to WWT.
>
> After the General Election was over and the bill was assembled, on January 23, 1997, the Committee received WWT invoice #999999 totaling $761,650.70 for air and rail travel that occurred after October 1, 1996.
>
> Once the Committee reconciled the bill to its own accounting records and verified that the charges were correct, on March 31, 1997, the Committee

---

5 There was no regularly scheduled billing for airfare costs only. There appeared to be separate, monthly invoices for lump sum interest charges and transaction fees.

6 The reconciling invoice dated January 23, 1997 detailed an application of accrued interest through January 3, 1997 at .8333 monthly. There was no evidence presented which reflected interest was billed on outstanding balances prior to January 3, 1997. The General Committee did provide invoices for August 1996, September 1996 and October 1996 pertaining to transaction fees, (also referred to as client handling fees and/or general handling fees), but the invoices were not specific concerning how those fees were calculated.

forwarded WWT's revised invoice for $775,876.39 to the DNC for payment."[7]

It was noted that no evidence or documentation, other than the aforementioned affidavit, was provided with which to verify that (a) WWT invoiced the General Committee (or the DNC) on a monthly basis for airfare costs, (b) the General Committee informed WWT that the DNC would be paying for all expenses incurred by the General Committee after October 1, 1996,[8] or (c) any agreement was reached between WWT and the General Committee or WWT and the DNC regarding the payment by the DNC of travel expenses incurred by the General Committee after October 1, 1996.

In the Memorandum the Audit staff recommended the General Committee provide additional documentation, to include statements from WWT that demonstrated that the credit extended was in the normal course of the vendor's business and did not represent a contribution by WWT. The Memorandum advised the General Committee the information provided from WWT should include examples of other customers and clients of similar size and risk for which similar services had been provided and similar billing arrangements had been used. Also, information from WWT concerning its billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles were to be included.

In response to the Memorandum, the General Committee provided a duplicate copy of the previously discussed Travel Agent Agreement, dated August 30, 1996, along with an affidavit from Mr. Steve Davison, Vice President of Marketing and Client Services at WWT. Mr. Davison stated the General Committee advised WWT in September 1996 that it intended to forward invoices for travel to the Democratic National Committee (DNC) for payment from 441a(d) funds and that staff travel could accumulate to as much as $700,000; WWT sought and received an increase in transaction fees to cover the additional accounting expenses and, in addition, an agreement whereby WWT would charge interest on an unpaid balance forwarded to the DNC.

Mr. Davison further stated "the volume of travel that occurred during the last weeks of the general election period was greater and more erratic than expected, causing a large volume of unused tickets to be reconciled with actual tickets used," and due to the extra effort required to reconcile the amount due, WWT did not issue the Committee a final invoice until January 23, 1997. With respect to collection of

---

[7] The General Committee did not provide a copy of the original invoice totaling $761,651. It was noted the revised January 23, 1997 invoice reflected a balance due of $1,025,393. After the payments made on February 5, 1997 totaling $249,517 were applied, the total balance due was $775,876 ($1,025,393 - $249,517). The Audit staff noted, however, that the May 31, 1997 invoice reflected a balance due of $761,651. There was no information which detailed a $14,000 adjustment to the May 31, 1997 invoice. The General Committee did not provide an explanation concerning this discrepancy.

[8] Between 10/1/96 and 3/31/97, the General Committee itemized debts incurred totaling $553,200. As of 3/31/97, the General Committee's report reflected $0 owed to WWT.

debt, Mr. Davison related WWT treated each client on an individual basis, and after January 1997 applied pressure on the General Committee and the DNC to pay and had even gone so far as to consult an attorney on how to proceed.

Lastly, Mr. Davison stated since WWT received large monthly payments from the General Committee during the months of August through December 1996, and then again in February 1997,[9] including interest during those months; it did not extend credit to the General Committee outside the normal course of business; and, there was no intention on the part of WWT to make a contribution to the General Committee. WWT cited similar billing experience with clients of similar size through its provision of services to the DNC, the Clinton For President Committee and the Clinton/Gore '92 Committee.

The General Committee also provided an affidavit from its Chief Accountant, who stated that after receiving the final invoice from WWT in January 1997, the General Committee began the necessary reconciliation and verification process and on February 7, 1997 made a payment of $249,517 to WWT for the outstanding balance owed by the General Committee; the General Committee continued reconciling and verifying the final invoice, until March 31,1997, when the $775,876 was forwarded to the DNC for payment; and, after the $775,876 was forwarded to the DNC, received "several telephone calls a month" from WWT regarding the amount owed by the DNC, and continued to receive these telephone calls in a regular and persistent manner for over a year.

The General Committee also stated in its response that the Audit staff overlooked binders which contained September through December 1996 invoices, and at no time did WWT bill the General Committee less than every 30 days. The response continued that the General Committee made large monthly payments to WWT between August and October 1996,[10] and when it became apparent that General Committee travel would exceed $700,000, the General Committee made large payments in November and December 1996 to pay the additional charges.

The General Committee's assertion that the Audit staff overlooked binders which contained September through December 1996 invoices is not correct. The Audit staff did, in fact, note that the General Committee received monthly invoices for lump sum transaction fees and interest charges; but these invoices did not detail the actual

---

[9] The General Committee made the following payments to WWT: September 30, 1996 - $45; October 16, 1996 - $3,278; November 7, 1996 - $300,000; November 15, 1996 - $405; December 11, 1996 $100,000; and, February 5, 1997 - $249,517. In addition, between August 31, 1996 and October 15, 1996, the General Committee made payments totaling $325,029 directly to Transworld Airlines (TWA), which were booked by and through WWT using a General Committee credit card.

[10] Between August 1996 and October 1996, the General Committee made 2 payments to WWT totaling $3,323 (September 30, 1996 - $45 and October 16, 1996 - $3,278); also during this period the General Committee made payments totaling $325,029 directly to Transworld Airlines (TWA), which were booked by and through WWT using a General Committee credit card.

travel expenses. Based upon the documentation provided by the General Committee in response to the Memorandum, it still appeared WWT issued 3 invoices to the General Committee which covered travel costs incurred, dated October 13, 1996, January 23, 1997 and May 31, 1997. The October 13, 1996 invoice detailed all travel charges incurred by the General Committee through October 10, 1996, and reflected an ending balance or amount owed WWT of $497,016. The reconciling invoice, dated January 23, 1997, was apparently supported by a Customer Activity Report dated January 20, 1997, that consisted of a computerized listing of all charges incurred (including those charges paid directly to TWA) between August 9, 1996 and January 10, 1997. This Customer Activity Report reflected that the General Committee incurred total airfare expenses of $1,620,521 which corresponded to the total travel costs listed on the January 23, 1997 invoice.

Finally, an invoice dated May 31, 1997, detailed all travel charges incurred by the General Committee between October 18, 1996 and May 9, 1997. In light of the information reviewed to date, it appears this invoice reflected travel costs to be assumed by the DNC and paid pursuant to 2 U.S.C. §441a(d). This May 31, 1997 invoice did not reflect any carryover balance from October 17, 1996; however, it did indicate an ending balance of $761,651. Although requested, the General Committee, as of September 1, 1998, has not yet provided any additional detail or reconciliation pertaining to the November and December 1996 invoices.[11]

WWT's explanation that the agreement to transfer the travel billings after September 1996 (or after October 1, 1996 according to the General Committee) in exchange for increased transaction fees and interest charges is not borne out by the evidence presented. Specifically, the Travel Agent Agreement, although signed October 11, 1996 and October 14, 1996 by the parties involved, was in effect as of August 30, 1996, at least 1 month before WWT was advised of the proposed DNC transfer arrangements. It appears WWT was already receiving the increased transaction fees and interest charges prior to the September 30, 1996 discussion concerning the transfer to the DNC.

The General Committee response did not contain documentation to demonstrate the credit extended by WWT to the General Committee was similar to credit

[11] In their response, the General Committee referred to a weekly trip report, and stated the Audit staff should not have relied on these unreconciled, unverified reports to develop the dates when travel costs were incurred. The Audit staff did not use any documents entitled "weekly trip reports" during its testing to develop the dates when travel was incurred, and it was unclear why the General Committee made this statement in its response. It is possible the General Committee confused the weekly trip reports with the Customer Activity Report, however, this report was an accumulation of all travel expenses incurred by the Committee between August 9, 1996 and January 10, 1997, and the total travel costs incurred according to this report could be traced to the reconciling invoice dated January 23, 1997.

WWT extended to other nonpolitical debtors of similar size and risk[12] especially regarding the approximate $775,000 in travel services received prior to the date of the general election and for which assignment to the DNC did not occur until 4 ½ months later with payments by the DNC occurring later still. WWT also did not provide any information concerning advance payment policies, debt collection policies or billing cycles as it pertained to other nonpolitical debtors. Such documentation is critical in determining if an extension of credit was made in the ordinary course of business.

In view of the above, it is the Audit staff's opinion that the General Committee did not demonstrate that the extension of credit by WWT conformed to the usual and normal practice in its business or in its industry as required by 11 CFR §116.3. As a result, the amount of the contribution made by WWT was at least $775,180.[13] This amount was outstanding from November 8, 1996 to, at a minimum, March 31, 1997, the date on which the General Committee forwarded WWT's revised invoice for $775,876 to the DNC for payment.[14]

The Commission voted to receive this finding, without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

2. AT&T Uniplan Services

During the course of fieldwork, the Audit staff reviewed a copy of a letter apparently faxed by the AT&T Accounts Payable department, dated March 4, 1997, which stated that the General Committee owed AT&T a total of $342,515, apparently for telephone usage expenses. The letter stated "after your (sic) make a payment of $30,000 today, check #:_____, the new balance will be: $312,515.27." The General Committee subsequently issued a check to AT&T Uniplan Services (AT&T), dated March 4, 1997, in the amount of $30,000.

During fieldwork, the Audit staff requested copies of contracts between all vendors and the General Committee. There was no contract pertaining to AT&T made available to the Audit staff. The Audit staff also could not identify any

---

12 As previously stated, WWT did cite similar billing experience with clients of similar size: the DNC, Clinton for President, and Clinton/Gore '92 Committee. Documentation in support of the above was not made available. However, based on our review of workpapers relative to WWT and the Clinton 1992 audits, it appeared that WWT billed and the Clinton 1992 Committees paid in a timely manner.

13 Since a description of WWT's normal billing practice has not been made available, this amount is subject to increase. WWT may have extended credit, not in the normal course of its business, with respect to travel costs incurred relevant to the General Committee's payments totaling $249,517 on February 5, 1997.

14 The question of whether WWT may have extended credit to the DNC outside its normal course of business is not within the scope of this audit.

deposits made to this vendor prior to services being rendered, nor did there appear to be any Letters of Credit issued by the General Committee to secure these services.

Between October 16, 1996 and April 16, 1997, the General Committee made a total of seven payments to this vendor, totaling $189,267; there was no evidence of payments being made between April 17, 1997 and September 30, 1997.

The Audit staff could not locate any additional invoice(s) from AT&T which would identify the dates the General Committee incurred the telephone charges totaling $342,515 mentioned in the letter. However, a copy of an invoice from AT&T, dated October 16, 1996, attached to two check tissue copies dated subsequent to the March 4, 1997 ($30,000) payment, indicated that the General Committee had an outstanding balance of $204,408. It should be noted that the General Committee paid the vendor $50,314 (October 16, 1996) which was not reflected on the October 16, 1996 invoice. Therefore, it appeared that the General Committee had an outstanding balance of at least $154,094 ($204,408 - $50,314) between October 16, 1996 and March 4, 1997 (the date of the letter), or 139 days.

The Audit staff discussed this matter with General Committee representatives at a conference held at the end of fieldwork and provided a schedule pertaining to the disbursements made to AT&T. General Committee officials acknowledged receipt of the schedule and on April 8, 1998, provided documentation and a written response in which the General Committee stated that AT&T and itself were involved in a long-running dispute regarding the telephone bills and were in constant contact by both letter and telephone trying to resolve numerous billing questions. In addition, the General Committee noted that a disputed debt owed to AT&T was disclosed on its Schedule D-P filed for the period ending December 31, 1997. A chronology of events which detailed the telephonic and written contact between the General Committee and AT&T was also provided, including documentation in support thereof. One document was a letter from AT&T Claims Recovery Division dated November 17, 1997, which advised the General Committee that its delinquent account balance of $86,632 was in a collection status. Another piece of correspondence from AT&T, dated February 18, 1998, related that the General Committee still owed $36,651 and if not paid immediately, the account would be referred to an outside collection agency. In addition, the General Committee provided a copy of part of the contract between the Clinton/Gore '96 Primary Committee and AT&T, dated September 26, 1995, which covered a 12 month term and detailed the schedule of fees AT&T would charge for long distance services. This portion of the contract did not appear to specify that AT&T required a deposit or other form of security such as a Letter of Credit prior to establishing service. Further, that portion of the contract made available did not address provisions regarding late payments or disputed charges. There was no evidence or documentation provided that indicated this contract was extended and/or assumed by the General Committee. The General Committee also related in its written response that the contract provided no provisions regarding late payments or disputed charges.

It was the opinion of the Audit staff that the explanation and documentation provided by the General Committee did not support the General Committee's contention that AT&T's extension of credit was within the normal course of AT&T's business. In September 1996, the outstanding balance on this account was $88,154. By October 16, 1996, the balance had increased to $204,408. At this point, it appeared the 12 month contract between the Primary Committee and AT&T had expired, however, AT&T allowed additional charges to be incurred against this account, increasing the total due to $330,187 as of November 16, 1996. As of February 27, 1997, the total due on this account was $342,515, with the last payment ($50,314) being credited by AT&T on its November 16, 1996 invoice.[15]

In the Memorandum the Audit staff recommended the General Committee provide additional documentation, to include statements from AT&T that demonstrated that the credit extended was in the normal course of the vendor's business and did not represent a contribution by the vendor. The Memorandum advised the General Committee the information provided should include examples of other customers and clients of similar size and risk for which similar services had been provided and similar billing arrangements that had been used. Also, information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles should have been included.

In response to the Memorandum, the General Committee provided the same documentation provided on April 8, 1998 which detailed the telephonic and written contact between the General Committee and AT&T, including collection action initiated by AT&T. The General Committee also provided an affidavit from Ms. Kristina Womack, manager of the General Committee's Accounting Department. Ms. Womack stated it took a substantial amount of time over a 10 month period to reconcile the AT&T bills as numerous errors had to be corrected; was in frequent contact with AT&T; and, the General Committee made "good faith" payments as they were trying to reconcile the bill.

In addition, the General Committee provided an affidavit from Carol Ford, a Political Markets Manager at AT&T, who stated "[I]n the ordinary course of its business, after election day AT&T will discuss billing detail with campaign accounting staff." Ms. Ford further related AT&T was in periodic telephone communication with the Committee in the immediate months following the election and stated "AT&T received a total of $138,953.55 from the Committee during the months of March and April 1997. This was approximately 42% of the total amount owed to AT&T" and "[d]uring the remainder of 1997, AT&T and the Committee were in regular telephonic and written communication regarding charges on the final Uniplan service bill." In addition, Ms. Ford stated "[d]espite AT&T's diligent efforts to receive prompt payment, it is our experience, that it often takes more than a year to settle accounts for presidential campaigns." Lastly, the General Committee's response conveyed that the

---

[15] Based on documentation made available and disclosure reports filed by the General Committee, it appears that AT&T received payment in full in May 1998.

AT&T affidavit stated "any high volume customer with a good payment record would have been accorded the same treatment as the [General] Committee."

It should be noted that the General Committee's assertion that the AT&T affidavit stated "any high volume customer with a good payment record would have been accorded the same treatment as the Committee" is not accurate. The affidavit contained no such language. Further, the General Committee stated that significant portions of the bill were disputed, however, a review of the documentation made available indicates that only $7,274 in charges was disputed.

AT&T has documented its efforts to attempt to collect the amount owed. However, documentation which demonstrates the credit extended the General Committee, as being similar to credit extended to other nonpolitical debtors of similar size and risk was not made available. In fact, AT&T specifically addressed its practices with respect to political campaigns: "In the ordinary course of its business, after election day, AT&T will discuss billing detail with campaign accounting staff." The vendor also did not provide any information concerning advance payment policies, debt collection policies or billing cycles as it pertained to other nonpolitical debtors. Such documentation is critical in determining if an extension of credit was made in the ordinary course of business.

Based upon the above, it is the Audit staff's opinion that the General Committee did not demonstrate that the extension of credit by AT&T conformed to the usual and normal practice in its business or in its industry as required by 11 CFR §116.3. As a result, the amount of the contribution made by AT&T remains at $154,094.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

3. Excelsior Hotel

Lastly, the Audit staff reviewed documentation which indicated the General Committee incurred expenses totaling $157,209 at the Excelsior Hotel[16] for an election night event ($89,763), election night rooms ($54,165) and room service, including reception, food and beverages ($13,281). These expenses were incurred November 5, 1996 through November 7, 1996.

On August 19, 1997, the General Committee made the first payment of $4,500 towards the election night event expenses ($89,763). This payment was applied to an invoice dated November 6, 1996. As of September 30, 1997, the

[16] According to the Arkansas Secretary of State, the Excelsior Hotel is a d.b.a. for M.S. Green - Little Rock Corporation, which was incorporated on December 20, 1988 and remained incorporated as of April 1998.

General Committee had made payments totaling $44,500. A debt identified as disputed with Excelsior Hotel for $45,353 was itemized on the General Committee's Schedule D-P filed for the period July 1, 1997 to September 30, 1997. In response to a request by the Audit staff during fieldwork, the General Committee offered the following concerning the debt with the Excelsior Hotel: the "[i]nvoice was originally thought to include expenses not incurred by Committee. Documentation has been furnished and invoice will be paid."

With respect to the election night rooms ($54,165) and room service ($13,281), the only invoices made available for review were dated June 19, 1997. The General Committee paid these charges on August 19, 1997 and February 10, 1998 respectively. The General Committee appears to have included these debts on its Schedule D-P covering the period January 1, 1997 through March 31, 1997, indicating the General Committee was aware of this debt prior to receiving the June 19, 1997 invoice.

Although the General Committee considered a certain portion of the amount invoiced by the Excelsior Hotel to represent services it did not receive, no documentation was made available to the Audit staff which indicated the Excelsior Hotel initiated collection procedures or communicated with the Committee concerning payment. The total charges for all expenses were outstanding no less than 287 days (November 5, 1996 through August 19, 1997), prior to any payments being made by the General Committee.

The Audit staff discussed this matter with General Committee representatives at the end of fieldwork and provided schedules pertaining to the disbursements made to Excelsior Hotel. Committee officials acknowledged receipt of the schedules and on April 8, 1998 provided a written response which stated, in part:

> "The Committee was billed by and paid Arkansas' Excelsior Hotel within its ordinary course of business for costs incurred and services rendered in connection with the official election night party held on November 5, 1996. The Committee disputed being responsible for the total cost of the bill and Excelsior billed and made repeated attempts to collect payment from the Committee. In an attempt to resolve the matter, representatives from the Committee and Excelsior met face-to-face in Little Rock, AR in June 1997. As a result of the meeting, Excelsior re-billed the Committee for its portion of the total cost. Within 60 days, the Committee began making payments.
>
> The Committee disputes the accuracy of the auditors' worksheets detailing review of the Excelsior disbursements. The auditors incorrectly list the date of the invoices as being November 6 and 7, 1996. These dates were listed on the invoices as the dates that the costs were incurred. The correct date on the Committee's invoices is June 19, 1997. This date represents

the date that Excelsior re-billed the Committee, two days after the meeting in Little Rock."

In addition, the Committee provided a written affidavit from the General Committee's Treasurer which related, in part, the billing from the Excelsior Hotel was disputed because portions of the total cost were to be paid by other entities, including the Democratic National Committee, the White House, The Democratic Governors' Association and state party committees. In addition, the affidavit related that due to the size of the event, numerous hours were required for the General Committee personnel to determine that they could not identify the General Committee's portion of the total cost based on the invoices provided, and therefore, the meeting between the General Committee and Excelsior Hotel representatives was arranged and conducted on June 17, 1997. As a result of that meeting, the General Committee was subsequently rebilled on June 19, 1997. According to this affidavit, only after this meeting did the General Committee receive the revised invoices, totaling $157,209; this amount was paid in 15 installments between August 1997 and February 1998.

Although the General Committee's response appeared to indicate that other invoices were issued by the Excelsior Hotel and received relative to election night rooms and room service, albeit for a larger amount, such invoices were not made available for our review. The Audit staff reviewed two different invoices, one dated November 6, 1996 and the other dated June 19, 1997. Both invoices reflected the charges for election night event expenses of $89,763. Based upon the above, it was the opinion of the Audit staff that the total charges for all expenses ($157,209) were outstanding no less than 286 days (November 6, 1996 through August 19, 1997), prior to any payments being made by the General Committee. At the close of Audit fieldwork no evidence was made available to show that the Excelsior Hotel attempted to collect the debt totaling $157,209 in a timely manner. Consequently, the Audit staff considered this extension of credit to be an apparent prohibited contribution of $157,209.

In the Memorandum, the Audit staff recommended that the General Committee provide additional documentation, to include statements from the Excelsior Hotel, that demonstrated the credit extended was in the normal course of the vendor's business and did not represent a contribution by the vendor. The information provided should have included examples of other customers and clients of similar size and risk for which similar services had been provided and similar billing arrangements that had been used. Also, information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles were also requested.

In addition to the above, the Audit staff recommended the General Committee obtain from the Excelsior Hotel all invoices related to the election night event, including invoices or expenses allocated to other entities. Further, the Audit staff recommended that if any of the costs related to the event in question were apportioned or allocated to the other entities, the General Committee should provide detailed information

to establish the basis for such allocation with sufficient information to show how the allocable amounts were derived.

In response to the memorandum, the General Committee, in conjunction with affidavits from its Chief Accountant and the General Manager of the Excelsior Hotel stated that the invoices received subsequent to the event were disputed. Further, it is the ordinary course of business for the Excelsior to expect payment within 30 days of having been billed and if prompt remittance is not the case, then the hotel will follow up with phone calls until full payment is made. Finally, the General Committee stated "[i]n the case of associations or organizations who pay for their guests, Excelsior sends billings within 3 days after the date of the event." The Excelsior Hotel also provided copies of 7 invoices addressed to various representatives of the General Committee, dated November 14, 1996 through June 19, 1997, which reflected its continuous billing pertaining to this matter.[17] In the affidavit of Mr. Linus Raines (General Manager of the Excelsior Hotel) he explained that the "[h]otel experienced having to deal with different and shifting Committee personnel who kept asking the Hotel to resend invoices." In addition to telephone calls, written demands for payment and invoices, Mr. Raines related he also requested assistance from Mike Malone, Deputy Assistant to the President, on this matter.[18] Lastly, Mr. Raines states "the Hotel has employed similar techniques to collect overdue statements from national and regional organizations using the Hotel for special events."

Our analysis of the invoices made available indicated that the Excelsior Hotel billed the General Committee by invoice dated November 14, 1996 for an Election Night Party ($89,763) and room service and equipment charges ($9,900). Apparently, the General Committee did not dispute these charges - the final bill, dated June 19, 1997, agreed to by the General Committee included the same amount for event expenses ($89,763) and an increased amount for room service and equipment charges ($13,281). We also noted there was no evidence made available which indicated the General Committee had been required to make an advance deposit prior to the date of the event (Election Night Party).

Further, based on the invoices made available in response to the Memorandum, it appears that the Excelsior Hotel did not bill the General Committee for room charges ($66,324) until February 20, 1997, which does not comport with the General Committee assertions that the Excelsior Hotel bills within 3 days of an event. Apparently, the General Committee disputed this bill. The final bill, dated June 19, 1997, included room charges totaling $54,165.

---

17 Only the last invoice, dated June 19, 1997, was made available to the Audit staff during the fieldwork phase of the audit.

18 Although Mr. Raines indicated documentation to support this telephone call was attached in his response, it was not included in the response to the Memorandum.

Even after the General Committee apparently agreed that it owed the vendor $157,209, it did not start making payments until 60 days later (14 installments between August 1997 and February 1998). In itself, this payment schedule appears to conflict with what the General Committee portrays to be the Excelsior Hotel policy "to expect payment within 30 days of having been billed."[19]

The Excelsior Hotel provided evidence of numerous invoices sent and telephone calls made. However, documentation which demonstrates the credit extended the General Committee, as being similar to credit extended to other nonpolitical debtors of similar size and risk was not made available. The vendor also did not provide any information concerning advance payment policies, debt collection policies or billing cycles as it pertained to other nonpolitical debtors. Such documentation is critical in determining if an extension of credit was made in the ordinary course of business.

Finally, although the General Committee had acknowledged that other entities were to be billed with respect to the cost of the event, no documentation with respect to the allocable costs or method of allocation was made available. Absent such documentation, a determination with respect to the permissibility of other entities sharing in the cost of this event could not be made.

For the reasons cited above, the Audit staff does not consider the General Committee's arguments on this matter to be persuasive. As a result, the amount of the apparent prohibited contribution made by Excelsior remains at $157,209.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

III. AUDIT FINDINGS AND RECOMMENDATIONS - AMOUNTS DUE TO THE U.S. TREASURY

A. EXPENDITURE LIMITATION

Sections 441a(b)(1)(B) and (c) of Title 2 of the United States Code, in relevant parts, state that no candidate for the office of President of the United States who is eligible under section 9003 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in excess of $20,000,000 as adjusted for the increase in the Consumer Price Index.

Section 9007(b)(2) of Title 26 of the United States Code states that if the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate

[19] In its 1997 October Quarterly report, the General Committee reported beginning cash on hand as of July 1, 1997 totaling $155,175.

payments to which the eligible candidates of a major party were entitled under section 9004, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary of the Treasury an amount equal to such an amount.

Section 9004.4(a) of Title 11 of the Code of Federal Regulations limits the use of such payments to expenditures for the following purposes: to defray qualified campaign expenses; to repay loans or to otherwise restore funds used to defray qualified campaign expenses; to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred prior to the beginning of the expenditure report period; and winding down costs in accordance with 11 CFR 9004.4(a)(4)(i) and (ii).

Section 9003.4(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that a candidate may incur expenditures before the beginning of the expenditure report period if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign. Examples cited include expenditures for: Establishing financial accounting systems, organizational planning, and polling.

Further, 11 CFR §9003.4(b), in relevant part, limits the sources of funds used to make expenditures prior to the expenditure report period to: a candidate obtaining a loan which meets the requirements for loans in the ordinary course of business; borrowing from his or her legal and accounting compliance fund; use of the candidate's personal funds up to his or her $50,000 limit; and, for a candidate who has received federal funding under 11 CFR part 9031 et seq., borrowing from his or her primary election committee(s) an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c).

Section 9034.4(e)(1) of Title 11 of the Code of Federal Regulations provides that the general rule applicable to candidates who receive public funding in both the primary and the general election is that any expenditure for goods or services that are used exclusively for the primary election campaign are attributable to primary election limitations; and, any expenditure for goods or services that are used exclusively for the general election campaign shall be attributed to general election limitations. Sections 9034.4(e)(2) through (7) of Title 11 of the Code of Federal Regulations address the attribution of the following expenses between the primary and general campaigns:

- Polling costs shall be attributed according to when the results are received. If received on or prior to the date of the candidate's nomination, the expenses shall be considered primary election expenses. If results from a single poll are received both before and after the candidate's date of nomination, expenditures shall be prorated between the primary and general election limits based on the percentage received of results during each period;

- Overhead expenditures and payroll costs incurred in connection with state or national campaign offices shall be attributed according to when usage occurs or the work is performed. Expenses for usage of offices or work performed on or before the date of the candidate's nomination shall be attributed to the primary election, except for periods when the office is used only by persons working exclusively on general campaign preparations;

- Campaign materials, such as bumper stickers, campaign brochures, buttons and pens, that are purchased by the primary election campaign committee and later transferred to and used by the general election committee shall be attributed to the general election limits. Materials transferred to but not used by the general election committee shall be attributed to the primary election limits;

- For media communications that are broadcast or published before and after the date of the candidate's nomination, 50% of the media production costs shall be attributed to the primary election limits and 50% to the general election limits. Distribution costs, such as airtime and advertising space in newspapers shall be attributed depending when the communication is distributed or broadcast;

- Campaign communications such as solicitation costs shall be attributed depending on the purpose of the solicitation. If the solicitation is for both the primary committee and the GELAC, the costs will be attributed 50% to each. Other campaign communications shall be attributed based upon the date of broadcast, publishing or mailing;

- Travel costs shall be attributed according to when the travel occurs. If it occurs on or before the date of the candidate's nomination it will be considered a primary election expense. Travel to and from the convention shall be attributed to the primary election. Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if it occurs before the candidate's nomination.

Section 9004.9(d)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term capital asset means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40% to account for depreciation.

Finally, 11 CFR §9003.3(a)(2)(ii)(D) provides, in part, that expenditures for computer services, a portion of which are related to ensuring compliance with Title 2 and Chapter 95 of Title 26, initially paid from the candidate's federal fund account may later be reimbursed by the compliance fund. A candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 50% of the costs (other than payroll) associated with computer services. Such costs include but

are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

The expenditure limitation for the 1996 general election for the office of the President of the United States was $61,820,000.

From inception through September 30, 1997, the General Committee reports reflected net operating expenditures [subject to the limitation] of $61,718,608.[20]

The Memorandum contained an analysis of expenditures subject to the limitation at 2 U.S.C. §441a (b) (1) (B) which indicated the General Committee had actually exceeded the limitation by $529,387.[21] The Audit staff analysis included $592,808 in disputed debt. The General Committee was advised that when the disputed debt was resolved a downward adjustment may be necessary. Further, the Audit staff identified $2,472,374 in expenditures paid by the General Committee and charged to the limit that could have been paid by the GELAC. The GELAC had reimbursed the General Committee $1,000,000 prior to September 30, 1997. Therefore, as of September 30, 1997, GELAC could have reimbursed the General Committee up to $1,472,374 to bring the General Committee within the expenditure limitation

In the Memorandum the Audit staff recommended that General Committee provide evidence that the expenditure limitation had not been exceeded. Further, the Audit staff recommended that the General Committee provide complete documentation with respect to all disputed debts including but not limited to up-to-date documentation from each vendor confirming the full amount owed and the amount in dispute. The General Committee was advised, that based upon our review of the documentation made available, expenditures subject to the limit would be adjusted accordingly.

In response to the Memorandum, the General Committee calculated expenditures subject to the limit up through June 30, 1998. However, no documentation was provided to support its calculations. Further, no documentation was made available with respect to any disputed debt. Based upon the General Committee's response and disclosure reports filed, the Audit staff made certain adjustments to the expenditures subject to the limit as deemed appropriate. As calculated, the Audit staff determined that the General Committee exceeded the limitation at 2 U.S.C. §441a(b)(1)(B) in the amount of $581,910. However, it should be noted that the General Committee provided evidence that it received reimbursements from GELAC as an offset against this amount. As a result, the General Committee's spending is within the limitation.

---

20 The General Committee did not report these numbers on FEC Form 3P before the end of audit fieldwork, therefore the Audit staff calculated this amount based on reports filed.

21 The amount in excess of the limitation was calculated as of 9/30/97. GELAC's reimbursements, totaling $1,000,000, which occurred prior to 9/30/97 have been factored into the calculation.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

Shown below is a presentation of the Audit staff's analysis of expenditures subject to the limitation. In addition, the Audit staff's analysis of the General Committee's financial position as of 12/5/96 may be found at Exhibit #1.

Audit Calculation of Expenditures Subject to Limitation as Reported		$61,718,608
Add:	Accounts Payable at 9/30/97	897,949 a/
	Due to Primary Committee	309,447 b/
Less:	Accounts Receivable at 9/30/97	472,216 c/
	Due from Primary Committee	51,878 d/
Adjusted Expenditures Subject to the Limitation		62,401,910
Less: Expenditure Limitation		61,820,000
Amount over/(under) the Limit as of 9/30/97		581,910 e/

a/ Includes disputed debt of approximately $592,808 which, according to the General Committee, a portion has been resolved. However, no documentation has been made available to substantiate such resolution.

b/ Represents an amount due to the Primary Committee for payments it made on an AT&T telephone lease ($63,736), GTE refund ($439), Bismark Enterprises ($22,984) and Morris and Carrick ($30,000). Also includes payments made by the Primary Committee after the Candidate's date of ineligibility for salary and overhead ($192,288) (see Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc., at Findings III.B.1.a., b., c., and III.B.2., and III.D.).

c/ Represents open receivables at 9/30/97.

d/ Represents an amount due from the Primary Committee relative to convention-related and pre-DOI travel ($12,427) (see Finding III.B.1.). Also includes 3 sublease payments from Dickstein & Shapiro paid to the Primary Committee in error ($39,451). Such payments should have been made to the General Committee (see Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc., at Finding III.D.4.).

e/ The Audit staff identified expenditures, totaling $1,472,374 paid by the General Committee through 9/30/97 that could have been paid by the GELAC. The General Committee received reimbursements in 1998 from GELAC sufficient to offset the calculated amount in excess of the limit.

B. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES

Section 9002.11 of Title 11 of the Code of Federal Regulations states, in part, that qualified campaign expense means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred to further a candidate's campaign for election to the office of President or Vice President of the United States.

Further, 11 CFR §9003.5 states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his authorized committee are qualified campaign expenses.

In addition, 11 CFR §9034.4(e)(7) states, in part, expenditures for campaign-related transportation, food, and lodging by any individual, including a candidate, shall be attributed according to when the travel occurs. If the travel occurs on or before the date of the candidate's nomination, the cost is a primary election expense. Travel to and from the convention shall be attributed to the primary election. Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if the travel occurs before the candidate's nomination.

Lastly, 11 CFR §9007.2(b)(2)(i) states, in part, that if the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than to defray qualified campaign expenses, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

1. Non-campaign Related Travel

The Audit staff identified General Committee payments totaling $40,900 made to TWA covering the cost of air travel which occurred between August 21, 1996 and September 6, 1996 relative to individuals traveling to and from Chicago just prior to or soon after the Democratic National Convention (the Convention). In addition, the Audit staff identified General Committee payments totaling $5,136 made to White House Airlift Operations covering the cost of air travel for the Vice President and 11 individuals from Chicago to Cape Girardeau, MO on August 30, 1996. The Candidate was nominated on August 28, 1996.

On April 8, 1998, the General Committee provided affidavits and documentation in support of its position - airfare for employees who were either traveling to Chicago to attend general election training (in Chicago), or were performing functions exclusively for the General Committee while in Chicago were general election expenses.

Based on our review of the documentation provided by the General Committee, these expenses may be categorized as airfare costs for:

- Individuals who traveled to and from Chicago prior to the Convention for general election training. The General Committee paid a total of $11,376 in airfare for persons in this category;

- Individuals who traveled to Chicago prior to the convention to attend general election training, but elected to remain in Chicago for the Convention (at their own expense). According to the General Committee's response, return airfare was provided after completion of the Convention because these individuals would have been provided return airfare if they had not elected to stay. The General Committee paid a total of $22,233 in airfare for persons in this category.

- Individuals who arrived in Chicago prior to the Convention to work as Primary Committee employees, but departed after the Convention to perform General Committee advance duties. These individuals initially received round-trip airfare to and from Chicago that was paid by the Primary Committee. The General Committee then purchased an additional one way ticket from Chicago to a location where General Committee activities would occur. The Primary Committee apparently received a credit for the unused return airfare. The General Committee paid a total of $7,291 in airfare for persons in this category.

With respect to the travel from Chicago to Cape Girardeau, MO, the General Committee provided a written response which stated, in part, that:

> " the Vice President did not return to his original place of origin after the convention. The convention concluded on Thursday, August 29, 1996. The Vice President remained in Chicago on August 30, 1996 to attend political events pertaining to the general election. Subsequently, he traveled to Cape Girardeau, MO for General Committee events The Committee believes this travel is General Committee travel because it exclusively involved general election activity."

First, as to those individuals who performed Primary Committee duties during the Convention, but then departed Chicago to participate in general election activities, including the Vice President and the 11 individuals who departed Chicago for Cape Girardeau, MO, the Audit staff notes that these exact circumstances are addressed in the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing, dated January 1996 (the Manual). The Manual at Chapter I (C)(2)(c) states, "the costs associated with campaign travel will be attributed to the primary or general election campaigns depending on the date of the travel. The cost of travel occurring on or before the date of nomination is a primary expense; after the date of nomination it is a general election expense. Two exceptions are provided to

this general rule; first, travel on or before the date of nomination by a person traveling for work exclusively on the general election campaign is a general election expense, and second, travel both to and from the convention is primary election travel. The travel back from the convention need not be to the point of departure. Therefore, even if the individual is traveling to another campaign stop, the cost of transportation from the convention city to that destination will be a primary campaign expense. For purposes of this section travel shall include transportation, food, lodging and incidentals. When travel is to be allocated under either of these exceptions, it is the committee's responsibility to maintain documentation that establishes the purpose of the travel." See 11 CFR § 9034.4 (e) (7).

Second, for those individuals who attended general election training, the General Committee did not provide sufficient documentation to demonstrate that the individuals, while at the Convention site, did not participate in other activities in preparation for the Convention. Documentation such as the agenda for the general election training, including attendees, speakers, and dates and times of training sessions should be made available. Other documentation that demonstrates that these individuals did not participate in Convention activities, planning, etc., should also be made available.

In the opinion of the Audit staff, the General Committee did not provide, as of the end of audit fieldwork, sufficient evidence to substantiate that any employee was performing duties exclusively for the General Committee. Accordingly, the Primary Committee should have paid airfare for all employees who arrived and departed Chicago immediately prior to and subsequent to the Convention. The Audit staff therefore considered $46,036 to be a non-qualified campaign expense paid by the General Committee.

In the Memorandum the Audit staff recommended that the General Committee demonstrate that the aforementioned expenses were incurred to further the Candidate's campaign for election to the office of President. Absent such a showing, the Audit staff recommended the General Committee obtain a reimbursement from the Primary Committee of $46,036, representing the value of the airfare expenses paid by the General Committee on behalf of the Primary Committee.

In response to the Memorandum, the General Committee provided a copy of the Campaign Training Schedule, which detailed training and instruction conducted on behalf of the General Committee. The schedule indicated training commenced on Friday, August 23, 1996 and concluded on Sunday, August 25, 1998. The General Committee also provided a copy of the Campaign Training Accommodations Information Form which was to be completed by all trainees. The form requested that the trainees indicate if they were requesting a room reservation at the Sheraton for the remainder of the convention (Sunday, August 25 through Thursday, August 29). The trainees were advised on this form that the rooms would not be paid for by "Clinton/Gore"; and, that the trainees would be billed for the room personally.

In addition, the General Committee also disagreed with the Audit staff's categorization of airfare costs. The General Committee preferred to group the airfare costs as follows:

1. Individuals who traveled both to and from Chicago prior to the Convention for General Election Training ($11,376).

2. Individuals who traveled to Chicago prior to the convention for General Election training, but stayed in Chicago after the completion of the training at their own expense ($22,233).

3. Individuals who traveled to Chicago in an unofficial capacity at their own expense and then departed Chicago after the convention to perform General Election duties ($4,265).

4. Individuals who traveled to Chicago at the Primary Committee's expense and then departed Chicago for a different location to perform General Election duties ($3,026).

5. The Vice President and eleven staff members who departed after the convention to perform General Election duties ($5,136).

The Audit staff noted the General Committee did not disagree with the calculation of airfare costs identified by the Audit staff. However, categories 3 and 4 identified by the General Committee had been grouped together by the Audit staff, while category 5 had been discussed separately.

With respect to the airfare costs in categories 1, 2 and 3, the General Committee contended these individuals were working exclusively on general election campaign preparation. The General Committee stated with respect to those travelers in categories 2 and 3, they "had no official role at the Convention. The Committee did not ask them to attend the convention and indeed, informed them that they were not needed at the convention and they were not compensated." The General Committee contended that since the individuals in all 3 categories were working exclusively on general election activities, either upon arrival or when they departed, the exception to the travel cost allocation cited under 11 CFR §9034.4(e)(7) applied, and the General Committee would be responsible for all airfare costs.

Lastly, the General Committee stated although it did not agree, it would no longer dispute travel totaling $8,162 which included individuals in category 4 who traveled to Chicago at Primary Committee expense but departed the Convention to perform General Election advance duties ($3,026), and the Vice President and other staff personnel in category 5 who traveled from the Convention to Cape Girardeau, MO for general election activities ($5,136).

With respect to the airfare costs in category 1 ($11,376), the Audit staff reviewed documentation pertaining to the General Election training and agrees that the individuals appear to have been working exclusively on general election activities and that the airfare costs should have been paid by the General Committee.

With respect to the airfare costs in category 2, based on the representations included in the General Committee's response, it now appears that the airfare expense may be borne by the General Committee.

With respect to the airfare costs in category 3, the Audit staff does not agree with the General Committee's position that these individuals were working exclusively on general election activities. No documentation was made available that demonstrated the individuals were working exclusively on behalf of the General Committee while in Chicago. These individuals did not participate in the General Election training. No exception concerning the return trip from the convention city for personnel who attended the convention at their own expense is provided at 11 CFR §9034.4(e)(7). The fact that these individuals were in Chicago, and apparently attended the convention, runs counter to the General Committee position that the individuals were working exclusively on general election activities. In our view, the airfare costs for individuals identified in category 3 ($4,265) represent an expense of the Primary Committee.

Therefore, the General Committee should seek a reimbursement from the Primary Committee for airfare costs totaling $12,427 ($46,036-11,376-22,233 [categories 1 and 2]). If such reimbursement is not made, the amount paid ($12,427) by the General Committee represents a non-qualified campaign expense.

Recommendation

The Audit staff recommended that the Commission make a determination that the General Committee be required to make a repayment of $12,427 to the United States Treasury, pursuant to 11 CFR §9007.2(b)(2). Should the General Committee provide evidence that it has been reimbursed by the Primary Committee, the recommended repayment will not be necessary.

The Commission approved the Staff recommendation.

2. Undocumented Media Disbursements

Payments, totaling $1,001,370, were made to Uniworld Group Inc., (Uniworld), a media firm for the stated purpose of purchasing radio and television air time. The General Committee provided station invoices and copies of checks issued by Uniworld in response to a Commission subpoena; subsequently in response to the conference held at the conclusion of audit fieldwork additional information was provided.

Based on our review of the documentation made available, $175,162 paid to Uniworld is not adequately documented; $73,309 in checks issued by Uniworld to broadcast stations are not supported by station invoices; $3,553, although identified by the General Committee as a refund due from the media firm, is not supported by documentation from the firm[22]; and the remaining $98,300 which may represent all or a portion of the commission charged by Uniworld cannot be verified since no contract or written arrangement has been provided to document the amount of the commission.

In the Memorandum the Audit staff recommended that the General Committee provide information to document the aforementioned $175,162 in media expenses. Specifically, provide station invoices, an executed copy of the contract or written agreement which set forth the amount of the commission relative to the media time purchased, and evidence in the form of an account reconciliation from Uniworld establishing the amount of any refund due the General Committee.

In response to the Memorandum, the General Committee provided evidence to document the $175,162 in media expenses, to include copies of requested station invoices, an affidavit from the Chairman and CEO of Uniworld regarding an agreement between Uniworld and the General Committee concerning a 10% commission rate, and an unexecuted, draft, Consulting Agreement, which also details the 10% commission rate, and a reconciliation from Uniworld establishing the amount of refunds due the General Committee.

Based upon the records made available, the General Committee materially documented the $175,162 in media expenses.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

C. INTEREST EARNED

Section 9004.5 of Title 11 of the Code of Federal Regulations states, in relevant part, that investment of public funds or any other use of public funds that results in income is permissible, provided that an amount equal to all net income derived from such a use, less Federal, State and local taxes paid on such income shall be paid to the Secretary.

Section 9007.2(b)(4) of Title 11 of the Code of Federal Regulations states that if the Commission determines that a candidate received any income as a result of an investment or other use of payments from the fund pursuant to 11 CFR 9004.5, it shall so notify the candidate, and such candidate shall pay the United States Treasury an amount

---

[22] Documentation supporting a $63,970 refund from the media firm has been provided.

equal to the amount determined to be income, less any Federal State or local taxes on such income.

The General Committee reported receiving $3,985 in interest income, the majority of which represented interest earned on telephone deposits; the interest related to those deposits was reportedly received in 1998.

Recommendation

The Audit staff recommended that the Commission make a determination that the General Committee make a payment of $3,985, less applicable Federal, State and local taxes due, to the United States Treasury pursuant to 11 CFR §9004.5.

The Commission approved the Staff recommendation.

D. STALE DATED CHECKS

Section 9007.6 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 review of the General Committee's disbursement activity, the Audit staff identified 44 stale-dated checks totaling $12,326 dated between August 26, 1996 and June 3, 1997. The Audit staff provided to the General Committee a schedule of the stale-dated checks.

In Memorandum, the Audit staff recommended that the General Committee present evidence that the checks were not outstanding (i.e., copies of the front and back of the negotiated checks), or that the outstanding checks were voided and/or that no General Committee obligation exists.

In response to the Memorandum, the General Committee provided evidence that 5 checks for $1,520 had cleared the bank; 26 checks totaling $7,871 had been voided, reissued and subsequently cleared the bank; and, 2 checks totaling $1,612 had been voided because the amounts were either not owed to the vendor or represented a duplicate payment. Information was also provided which indicated action had been taken regarding the remaining 11 items ($1,323); however evidence of resolution was not yet available.

Based on the information provided, the General Committee has complied materially with the recommendation.

IV. FINDING AND RECOMMENDATION - REPAYMENT MATTER CLINTON/GORE '96 GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND

A. STALE-DATED CHECKS

Section 9007.6 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 review of the GELAC's disbursement activity, the Audit staff identified 21 stale-dated checks totaling $3,659 dated between June 28, 1996 and March 3, 1997. The Audit staff provided a schedule of the stale-dated checks to GELAC officials.

In the Memorandum, the Audit staff recommended that, the GELAC present evidence that the checks were not outstanding (i.e., copies of the front and back of the negotiated checks), or that the outstanding checks were voided and/or that no GELAC obligation exists.

In response to the Memorandum, the GELAC provided evidence that 7 checks totaling $1,709 had been voided, reissued and subsequently cleared the bank. Information was also provided which indicated action had been taken regarding the remaining 14 items ($1,950); however, evidence of resolution was not yet available.

Based on the above, the GELAC has complied materially with the recommendation.

V. SUMMARY OF AMOUNTS DUE TO THE U.S. TREASURY

Finding III.B.1.	Apparent Non-Qualified Campaign Expense-Convention related Travel	$12,427
Finding III.C.	Interest Earned	3,985[23]
	Total Due U.S. Treasury	$16,412

[23] Less applicable Federal, State and local taxes due

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 1, 1998

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

Delbert K. Rigsby DKR
Attorney

SUBJECT: Proposed Audit Report on the Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund (LRA #508)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Audit Report on the Clinton/Gore '96 General Committee, Inc. ("GEC") and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund ("GELAC") submitted to this Office on September 17, 1998.[1] As you note in your cover memorandum transmitting the proposed Report to this Office,

[1] Since the proposed Audit Report concerns the audit of a candidate and his authorized committee that received public financing in the general election, this Office recommends that the Commission consider this document in open session in accordance with 11 C.F.R. § 9007.1(e)(1). See also 11 C.F.R. § 2.4.

it appears that at this time the Commission seeks to address this matter in early November 1998. This proposed scheduled necessarily requires an expedited legal review from this Office. In order to efficiently perform our review and to provide you with time to make our suggested revisions, this Office intends to provide you with "rolling" comments. The following memorandum lists sections of the proposed Report in which we concur with your findings and recommendations. This Office has no comments on such sections. We understand that the proposed Audit Report was submitted to this Office prior to the completion of the referencing process and, therefore, we request that you alert us to any changes to these sections that may be made during this process. This Office is drafting comments on sections of the proposed Report that are not listed herein, and will submit those comments in future memoranda. If you have any questions concerning our comments, please contact Delbert K. Rigsby, the attorney assigned to this audit.

II. DISCUSSION

This Office concurs with your findings and recommendations on the following sections of the proposed Report and has no comments on such sections:

Apparent Non-Qualified Campaign Expenses - Undocumented Media Disbursements (III.B.2)

Interest Earned (III.C)

Clinton/Gore '96 General Election Legal and Compliance Fund - Stale Dated Checks (IV.A)

Other Staff Assigned
Delanie Dewitt Painter
Andre D. Pineda
Joel J. Roessner

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 21, 1998

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

SUBJECT: Proposed Audit Report on the Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund (LRA #508)

I. INTRODUCTION

The Office of General Counsel is continuing its review of the proposed Audit Report on the Clinton/Gore '96 General Committee, Inc. ("General Committee") and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund ("GELAC") submitted to this Office on September 17, 1998. As noted in our October 1, 1998 memorandum, this Office will present its comments to you as they are prepared. The following memorandum contains our comments on several sections of the proposed Report. We understand that the proposed Audit Report was submitted to this Office prior to the completion of the referencing process and, therefore, we request that you alert us to any changes to these sections that may be made. This Office is drafting comments on matters that are not included in this memorandum or in our memorandum dated October 1, 1998. We will submit such comments in a future memorandum. If you have any questions concerning our comments, please contact Delbert K. Rigsby or Delanie DeWitt Painter.

II. APPARENT PROHIBITED CONTRIBUTIONS RESULTING FROM EXTENSION OF CREDIT BY A COMMERCIAL VENDOR (II.A)[1]

The proposed Report concludes that it appears that the General Committee received a prohibited contribution from World Wide Travel (WWT) because the extension of credit by WWT did not conform to the usual and normal practice in its business or in its industry as required by 11 C.F.R. § 116.3. This Office concurs with the Audit staff's finding. However, this Office disagrees with the language in footnote 15 that suggests that WWT's billing experience with Clinton for President (the 1992 primary committee) is not considered relevant. In considering whether credit was extended in the ordinary course of business, the Commission will consider, *inter alia,* whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee.[2] 11 C.F.R. § 116.3(c)(2). Since Mr. Clinton was a candidate in 1992 and 1996, this Office believes that either the phrase "although not considered relevant" should be deleted from this footnote or there should be a statement that WWT's billing experience with Clinton for President was not similar to their billing experience with the Clinton/Gore '96 Primary Committee.

III. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES (III.B.1)

The proposed Report identifies certain payments by the General Committee for airfare costs as non-campaign related travel and classifies them into three categories. The Audit staff determined that these expenses were expenses of the Primary Committee. Therefore, the proposed Report concludes that the General Committee's payment of such airfare costs totaling $34,660 resulted in a non-qualified campaign expense of the General Committee, and states that the General Committee should seek a reimbursement from the Primary Committee or make a payment of $34,660 to the United States Treasury. 26 C.F.R. § 9007(b)(4). 11 C.F.R. § 9007.2(b)(2). This Office concurs with the finding as it relates to the air fare costs for category 1 and category 3. However, this Office disagrees with the finding as it relates to air fare costs for category 2. Such costs totaling $22,233 involve individuals who were in Chicago for general election training prior to the Democratic National Convention and who decided to remain in Chicago during the convention at their own expense.

Expenditures for campaign-related transportation, food and lodging by any individual, including a candidate, shall be attributed based on when the travel occurs. 11 C.F.R. § 9034.4(e)(7). Travel by a person who is working exclusively on general election campaign preparations shall be considered a general election expense even if the travel occurs before the date of the candidate's nomination. *Id.* In regard to the category 2 expenses, the General

---

[1] Parenthetical references are to the relevant sections of the proposed GEC audit report.

[2] In determining whether credit was extended in the ordinary course of business, the Commission also considers whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit, and whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. *See* 11 C.F.R. § 116.3.

Committee paid the airfare costs for the individuals to travel to Chicago to attend the training. The General Committee also paid their return airfare. In the Exit Conference Memorandum ("ECM"), the Audit staff classified the expense as a non-qualified campaign expense. In its response to the ECM, the General Committee provided the campaign training schedule for those individuals, and stated that the airfare costs of the individuals in category 2 should be an expense of the General Committee because those individuals "had no official role at the convention. The Committee did not ask them to attend the convention and indeed, informed them that they were not needed at the convention and they were not compensated."

In light of the General Committee's response to the ECM, there must be some evidence that these individuals in fact worked on Primary Committee activities. *See Robertson v. Federal Election Commission*, 45 F.3d 486, 493 (1995)(In case involving primary committee state expenditure limitations, the court stated that "while recipients of matching funds bear the burden of accounting for allocation and documentation of campaign expenses, the agency cannot reject uncontroverted documentation relevant to state expenditure limits"). However, the proposed Report does not identify any evidence that suggests that they worked or volunteered for the Primary Committee. Thus, this Office recommends that, absent any evidence that such individuals worked on Primary Committee activities in either a paid or volunteer capacity, the proposed Report conclude that they worked exclusively on General Committee activities, and that the category 2 airfare costs were a qualified campaign expense of the General Committee.

This Office notes that the Audit staff's recommendation on non-campaign related travel lists the amount due to the United States Treasury as a payment instead of a repayment. When a committee accepting public financing makes payments that are considered to be non-qualified campaign expenses, the amount of such non-qualified campaign expenses must be repaid to the United States Treasury because public funds have been spent for impermissible purposes. 11 C.F.R. § 9007.2(b)(2). Thus, this Office recommends that the proposed Report's recommendation use the term "repayment" instead of "payment" when referring to the amount due from the General Committee for expenditures on non-campaign related travel.

IV. STALE DATED CHECKS (III.D)

In the ECM, the Audit staff identified 44 stale dated checks, and recommended that the General Committee provide evidence that the checks were not outstanding, were voided and/or that no obligation existed. The proposed Report identifies 15 stale dated checks that are outstanding, and states that "information was also provided which indicated action had been taken regarding the remaining 15 items; however evidence of resolution was not yet available." If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. 11 C.F.R. § 9007.6. The committee shall inform the Commission of its efforts to locate payees, if such efforts have been necessary, and its efforts to encourage the payees to cash outstanding checks. *Id.* The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury. *Id.* The proposed Report notes simply that the General Committee has "complied materially" with

the Audit staff's recommendation. Although the General Committee may have complied materially with the recommendation in the ECM, this Office notes that the General Committee still has a legal obligation to resolve these matters. 11 C.F.R. § 9007.6. Thus, this Office recommends that the proposed Report include a recommendation that the General Committee pay the outstanding amount of stale dated checks to the United States Treasury.

Staff Assigned: Delanie DeWitt Painter
Delbert K. Rigsby
Andre D. Pineda
Joel J. Roessner

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

The Honorable William J. Clinton
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Mr. President:

Attached please find the Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund. The Commission approved the report on June 3, 1999. As noted on page 5, of the attached report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9007.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of $16,412 is required within 90 calendar days after service of this report (September 13, 1999).

Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9007.2(c)(2)(i) provide you with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (August 13, 1999), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9007.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if you so elect. If you decide to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 694-

1650 or toll free at (800) 424-9530. If you do not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will placed on the public record on or about June 15, 1999. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Mary Moss or Thomas Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

Ms. Joan Pollitt, Treasurer
Clinton/Gore '96 General Committee, Inc.
Clinton/Gore '96 General Election Legal and Accounting
Compliance Fund
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht and MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, DC 20006

Dear Ms. Pollitt:

Attached please find the Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund. The Commission approved the report on June 3, 1999. As noted on page 5 of the attached report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9007.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of $16,412 is required within 90 calendar days after service of this report (September 13, 1999).

Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9007.2(c)(2)(i) provide the Candidate with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (August 13, 1999), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9007.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the repayment determination, please contact Kim L.

Bright-Coleman of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on or about June 15, 1999. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Mary Moss or Thomas Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

CHRONOLOGY

CLINTON/GORE '96 GENERAL COMMITTEE, INC
AND
CLINTON/GORE '96 GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND

Audit Fieldwork	4/28/97 - 03/18/98
Exit Conference Memorandum to Committee	5/15/98
Response Received to the Exit Conference Memorandum	7/29/98
Final Audit Report Approved	6/3/99

CLINTON/GORE '96 GENERAL COMMITTEE, INC.
STATEMENT OF NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES
AS OF 12/5/96
(Determined as of 12/31/97)

ASSETS	
Cash on Hand	$ 500
Cash in bank	1,694,972 a/
Accounts Receivable	1,775,709
Capital Assets	216,477
Due from Primary Committee	51,878 b/
Total Assets	3,739,536
LIABILITIES	
Accounts Payable	
Actual (12/6/96 - 12/31/97)	3,472,186 c/
Outstanding at 12/31/97	770,924 d/
Payable to Primary Committee	309,447 e/
Payable to US Treasury	3,985 f/
Winding Down Expenses	
Actual (12/6/96 - 12/31/97)	801,747
Estimated (1/1/98-12/31/99)	1,200,000
Total Liabilities	6,558,289
Net Outstanding Qualified Campaign Expenses (Deficit)	($2,818,753) g/

FOOTNOTES TO STATEMENT OF NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES

a) Stale-dated checks totaling $5,359, representing expenses incurred on or prior to the end of the Expenditure Report Period have been added back into cash in bank (see Finding III.D.).

b) Represents $12,427 in convention related and pre-DOI travel paid by the General Committee that should have been paid by the Primary Committee (see Finding III.B.1.) and $39,451 in sublease payments received and deposited by the Primary Committee, whereas such payment should have been deposited by the General Committee (see Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. at Finding III.D.4.b.).

c) Represents payments for qualified campaign expenses.

d) Includes disputed debt of approximately $592,808 which, according to the General Committee, a portion has been resolved. However, no documentation has been made available to substantiate such resolution.

e) Represents an amount due the Primary Committee for payments it made on an AT&T telephone lease ($63,736), GTE refund ($439) and Bismark Enterprises ($22,984) and Morris and Carrick ($30,000). Also includes payments made by the Primary Committee after DOI for salary and overhead ($192,288) (see Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. at Findings III.B.1.a., b., c., and III.B.2. and III.D.).

f) Represents interest income earned (see Finding III.C.).

g) The deficit noted ($2,818,753), once adjusted agrees with the Audit staff's calculation of expenditures made in excess of the limitation ($581,910).

NOQCE - Deficit		($2,818,753)
Adjustments		
Add:	Actual winding down expenses (10/1/97-12/31/97)	147,233
	Estimated winding down expenses (1/1/98-12/31/99)	1,200,000
	Transfer from GELAC to General Committee	1,000,000
	Audit Adjustment	64,131
Less:	Unliquidated capital assets ($216,477 - 41,956)[1]	(174,521)
Adjusted NOQCE - Deficit		($581,910)

[1] The General Committee reported it received $90,605 from the sale of assets subsequent to the close of the expenditure report period. Although requested, the General Committee did not provide documentation which demonstrated what portion of the $90,605 represented the sale of capital assets versus the sale of non-capital assets. Our analysis viewed the reported "sale of assets" in excess of $1,200 ($2,000 - 40% depreciation) or $41,956 as related to the sale of capital assets. Accordingly, if the actual sale of capital assets were higher, the unexplained difference would be reduced in a like amount.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 16, 1999

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON CLINTON/GORE '96 GENERAL COMMITTEE, INC., AND CLINTON/GORE '96 GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND

Attached please find a copy of the final audit report and related documents on Clinton/Gore '96 General Committee, Inc., and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund which was approved by the Commission on June 3, 1999.

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

P.R.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 7, 1999

TO: THE COMMISSION

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REPAYMENTS RECEIVED FROM CLINTON/GORE '96 PRIMARY COMMITTEE, INC. & CLINTON/GORE '96 GENERAL COMMITTEE, INC.

On August 12, 1999 the subject committees submitted their responses to the audit reports approved by the Commission. In the case of the Clinton/Gore 1996 primary campaign, a check in the amount of $11,180, payable to the United States Treasury, was included to satisfy the amount due the Treasury related to stale-dated checks.[1] The repayment ($114,450) related to non-qualified campaign expenses cited in the audit report was obviated by virtue of the primary campaign having made or received reimbursements to/from the general campaign as discussed in the audit report.

With respect to the Clinton/Gore 1996 general campaign a check in the amount of $3,241, payable to the United States Treasury, was included to satisfy the amount due the Treasury related to interest earned (less applicable taxes). The repayment ($12,427) related to non-qualified campaign expenses cited in the audit report was obviated by virtue of the general campaign having received a reimbursement from the primary campaign as discussed in the audit report.

Photocopies of the receipts indicating delivery of the repayment checks to the United States Treasury are attached. If you have any questions, please contact Ray Lisi or Tom Nurthen at 694-1200.

Attachments as stated
96cgprim/admin/repayments

[1] The amount ($12,230) cited in the audit report was adjusted to account for $1,050 in checks which cleared the bank, leaving $11,180 due the Treasury.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 31, 1999

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on August 31, 1999 from the Federal Election Commission (by hand delivery) a check drawn on Nations Bank, N. A. for $3,241.00. The check represents a payment for interest income on federal funds from the Clinton/Gore '96 General Committee, Inc.

The payment should be deposited into the General Fund of the U. S. Treasury.

Clinton/Gore '96 General Committee, Inc.

Amount of Payment: $3,241.00

Presented by:	Received by:
for the Federal Election Commission	for the United States Treasury

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 31, 1999

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on August 31, 1999 from the Federal Election Commission (by hand delivery) a check drawn on Nations Bank, N. A. for $11,180. The check represents a payment for stale dated checks from Clinton/Gore '96 Primary Committee, Inc.

The payment should be deposited into the General Fund of the U. S. Treasury.

Clinton/Gore '96 Primary Committee, Inc.

Amount of Payment: $11,180

Presented by:

Jerry S. Wood
for the
Federal Election Commission

Received by:

Michael Bell
for the
United States Treasury

Public Record Copy

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble
Press Office Ron Harris

FROM: Mary W. Dove/Veneshe Ferebee-Vines VFV
Commission Secretary

DATE: July 6, 1999

SUBJECT: Statement for the Record in Audits of
1996 Clinton/Gore and Dole/Kemp Campaigns

Attached is a copy of the Statement of Reasons regarding Audits of 1996 Clinton/Gore and Dole/Kemp Campaigns signed by Chairman Scott E. Thomas and Commissioner Danny Lee McDonald. This was received in the Commission Secretary's Office on July 6, 1999 at 11:42 a.m.

cc: V. Convery

Attachments

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

Statement for the Record in Audits of 1996 Clinton/Gore and Dole/Kemp Campaigns

---

Chairman Scott E. Thomas
Commissioner Danny L. McDonald

Our colleagues, Commissioners Sandstrom, Wold, Elliott and Mason, recently joined in what must be seen as a very odd Statement of Reasons regarding the audits of the 1996 Clinton and Dole campaigns.[1] Little is written of the audits. Instead, the thrust of their statement is a tirade against an innocuous shorthand reference the Commission coined in Advisory Opinion 1985-14[2] to analyze whether party communications are subject to the statutory limits on support of particular candidates. The energy expended by our colleagues to savage the Commission's own advisory opinion process is surprising. The strangest aspect of the Sandstrom *et al.* Statement, though, is that it claims to abhor vagueness but, in the end, is itself very confusing.

We write this Statement to explain the state of the law in this area, and to clarify that the Sandstrom *et al.* Statement does **not** effect a 'sea change' when analyzing which party communications should be subjected to the statutory limits on coordinated expenditures. In particular, we wish to emphasize that 'express advocacy' is not required.

I.

The limits on coordinated expenditures by party committees on behalf of their candidates have been on the books for over 24 years. They were part of the Federal Election Campaign Act Amendments of 1974.[3] In addition to the

---

[1] Statement of Reasons of Vice Chairman Wold and Commissioners Elliott, Mason and Sandstrom issued June 24, 1999 (hereinafter "Sandstrom *et al.* Statement").
[2] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 5819.
[3] Pub. L. 93-443, 88 Stat. 1263, § 101.

$5,000 per election contribution limit available to all political committees,[4] parties have coordinated expenditure allowances permitting additional spending in connection with the general election campaigns of their candidates.[5]

The party coordinated expenditure limits serve an important role in preventing party donors from having an indirect way of effecting a 'quid pro quo' arrangement with candidates for federal office-- the link between money and official government action the statute is designed to prevent. If a party committee is able to undertake only a limited amount of coordinated expenditure activity on behalf of a particular candidate, donors or groups of donors will not be able to expect large-scale donations to the party to result in large-scale spending by the party on behalf of such candidate. For example, ten banking industry PACs who donate $15,000 each to a party's House campaign committee and who are close to a particular House committee chairman running for reelection would not be able to expect $150,000 in coordinated expenditures by the party on behalf such candidate because the coordinated expenditure limit would prevent it.

The direct payment of funds to a candidate's campaign has been treated as a "contribution"[6] subject to the contribution limit. A party's coordinated payment to a third party on behalf of a candidate has been treated as either an in-kind "contribution" or a coordinated "expenditure,"[7] at the option of the expending committee.[8] If treated as a coordinated expenditure, the party has to

---

[4] Currently codified at 2 U.S.C. § 441a(a)(2)(A).

[5] 11 C.F.R. § 110.7(a)(3), (b)(3). Codified at 2 U.S.C. § 441a(d), the coordinated expenditure allowance provides:

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

Subsections (2) and (3) set forth formulas that in the last presidential election permitted a national party committee to spend over $12 million on behalf of its presidential candidate, and that in the 1998 congressional elections permitted a national and state party committee **each** to spend $32,550 for a House candidate and **each** to spend amounts ranging from $65,100 in small states like Wyoming to over $1.5 million in California for a Senate candidate.

[6] 2 U.S.C. § 431(8).

[7] 2 U.S.C. § 431(9).

[8] FEC Campaign Guide for Party Committees (1996) at 16. The FEC for many years operated with a presumption that all party spending was coordinated with the parties' eventual nominees. 11 C.F.R. § 110.7(a)(5), (b)(4) (1996). The Supreme Court invalidated that presumption in Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996) (hereinafter "Colorado I"). As a result, only party spending that can be shown to meet the legal test of 'coordination' can be subjected to the limits at 2 U.S.C. § 441a(a)(2)(A) and (d). The legal test for coordination is set forth at 2 U.S.C. § § 431(17) and 441a(a)(7)(B) and at 11 C.F.R. § 109.1(b)(4) and (d)(1).

keep within the coordinated expenditure limit, but only the party need report the transaction.[9]

Because party committees are primarily in the business of electing candidates, the Commission has required virtually all party-building activity to be at least allocated so that indirect federal candidate support is not paid for with funds not permitted under federal law.[10] At the same time, recognizing party committees sometimes undertake generic party-building activities that may help their candidates only in a general way-- a way that should not result in a contribution to or coordinated expenditure on behalf of a particular candidate-- the Commission has tried to clarify when a party activity need not be subjected to a candidate-specific limitation. Thus, the Commission has specified at 11 C.F.R. § 106.1(c) that an expenditure for rent, personnel, overhead, general administrative costs, educational campaign seminars, training of campaign workers, or registration or get-out-the-vote drives need not be attributed to individual candidates unless the expenditure is "made on behalf of a clearly identified candidate, and the expenditure can be directly attributed to that candidate."

When identifying which party activities fall under the candidate-specific limits, though, the Commission must deal first and foremost with the underlying statutory terms. A "contribution" is a payment or gift of value made "for the purpose of influencing any election for Federal office."[11] A coordinated "expenditure" is a payment, advance or gift of anything of value made "for the purpose of influencing any election for Federal office" and "in connection with the general election campaign" of a candidate for Federal office.[12]

Over the years, the Commission has grappled with the difficult factual distinctions that make a party communication a generic party-building expenditure on the one hand, or an in-kind contribution or coordinated expenditure on the other. The best-known instances were Advisory Opinion 1984-15[13] and the aforementioned Advisory Opinion 1985-14. In each of those opinions, the Commission analyzed the facts according to the basic underlying statutory provisions cited above.

In Advisory Opinion 1985-14, the Commission developed a shorthand reference to the legal analysis to be used. Instead of repeating the statutory phrases, "for the purpose of influencing" and "in connection with," the Commission described the process as a search for whether the communication

---

[9] 11 C.F.R. § 104.3(a)(3)(iii).
[10] 11 C.F.R. § 106.5.
[11] 2 U.S.C. § 431(8).
[12] 2 U.S.C. §§ 431(9) and 441a(d).
[13] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 5766

contained an "electioneering message."[14] The Commission then cited a Supreme Court decision for further guidance as to what was meant by "electioneering message."[15] There, the Court simply described its view of the reach of the corporate and union prohibition at 2 U.S.C. § 441b: whether a communication is "designed to urge the public to elect a certain candidate or party."[16] This phrasing, of course, is virtually indistinguishable from the "for the purpose of influencing any election for Federal office" language at the heart of any "contribution" or "expenditure" inquiry. Thus, at most, the Commission in Advisory Opinion 1985-14 was paraphrasing the statutory language underlying any coordinated party expenditure analysis.

II.

Our colleagues grossly overstate the significance of the "electioneering message" phrase and then gyrate into an inappropriate constitutional hypothesis regarding the vagueness of that phrase and other phrases used in Advisory Opinions 1984-15 and 1985-14. Along the way, they grumble about perceived improper rulemaking through the advisory opinion process.

A.

Dealing with the last 'red herring' first, to our knowledge no commissioner has been confused about the legal effect of advisory opinions. While advisory opinions clearly have binding consequences, the statute is clear that general rules of law have to emanate from the statute or from regulations of the Commission.[17] Nonetheless, our colleagues seem convinced that the Commission's use in Advisory Opinions 1984-15 and 1985-14 of paraphrases and synonyms for the statutory test was, in fact, the creation of a new substantive rule of law.[18] The reality, of course, is that there are only so many words in the English language, and after citing the underlying statutory provisions, the Commission simply attempted to explain the legal test in other helpful ways.[19]

---

[14] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶5819 at 11,185.

[15] United States v. United Auto Workers, 352 U.S. 567 (1957) (hereinafter "UAW").

[16] Id. At 587.

[17] 2 U.S.C. §437f(b).

[18] At one point our colleagues call the phrases used a "test" and at other times they refer to them as an "amalgam." Sandstrom *et al.* Statement at 2 and 4.

[19] Lest our colleagues be struck down by a bolt of lightning for insinuating they would never stoop to helpful descriptions of the underlying statutory and regulatory provisions, they should concede that only recently in Advisory Opinion 1999-11, they engineered a description of the statute's reach that depended on whether there was "any campaign activity" at the event in question. See Memorandum from Commissioner Sandstrom, Agenda Doc. No. 99-61-A; Advisory Opinion 1999-11 (unpublished) at 3.

Thus, our colleagues have felled a demon they didn't need to imagine in the first place. The regulated community has had notice of the underlying statutory provisions at 2 U.S.C. §§ 431(8) and (9) and 441a(d) all along. Advisory Opinions 1984-15 and 1985-14 neither expanded nor diminished those underlying rules of law.

Interestingly, our colleagues do not purport to supersede Advisory Opinions 1985-14 and 1984-15, but rather disagree with the phrasing of the legal analysis therein. We take that to mean the Commission's conclusions regarding specific proposed ads in those opinions still serve as valid legal precedent in terms of the underlying statute. For example, a party committee that ran ads under materially indistinguishable circumstances could 'rely upon' the conclusions reached by a majority of commissioners in those opinions in determining whether the ads would be a coordinated expenditure or not.[20] This rightly diminishes the negative impact of our colleagues' statement and suggests only that the Commission cease using the pesky "electioneering message" phrase when explaining its interpretations under the statute.

We must address our colleagues' suggestion that an advisory opinion may not be used as a "sword of enforcement." Sandstrom *et al.* Statement at 3. Apparently, they disregard the statutory language quoted in the previous footnote. Someone who receives an advisory opinion that certain conduct would be illegal, as well as anyone in materially indistinguishable circumstances, surely may 'rely on' that legal conclusion to file a complaint against someone else engaging that conduct. Essentially, that is what happened when Democratic Party representatives received a response in Advisory Opinion 1985-14 that certain targeted communications attacking a likely opponent would be coordinated expenditures subject to limit. Other Democratic Party representatives then filed a complaint against the Colorado Republican Party regarding certain ads that attacked the likely Senate nominee, Tim Wirth. That enforcement case became the subject of the Supreme Court's decision in Colorado I, supra.

Our colleagues may have missed the fact that the 10th Circuit in that case upheld the FEC's use of Advisory Opinion 1985-14 (even its "electioneering message" phrase) to bolster its claim.[21] Although the Supreme Court vacated the 10th Circuit's opinion on other grounds, Colorado I, this is a strong indication advisory opinions can be used as a "sword."

---

[20] The statute provides that any advisory opinion rendered by the Commission "may be relied upon" by the person to whom the opinion is issued or by "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects . . . ." 2 U.S.C. § 437f(c)(1).

[21] FEC v. Colorado Republican Federal Campaign Committee, 59 F. 3d 1015 (10th Cir. 1995).

This proposition is supported by a 9th Circuit decision, a case our colleagues cite but misconstrue.[22] There, in a successful enforcement action against a committee that accepted excessive contributions, the FEC used its advisory opinion precedent as a "sword," and the court specifically sanctioned this approach.[23]

The courts have strongly indicated the Commission is bound to apply its advisory opinion precedent consistently.[24] We caution our colleagues not to get so agitated over the use of paraphrases and shorthand references in prior advisory opinions that they issue statements undermining the ability of the agency to enforce the law.

B.

Our colleagues go well beyond their role as commissioners by opining about the possible unconstitutional vagueness and overbreadth of the words "electioneering message."[25] First, as just explained, everyone should agree that "electioneering message" is not a rule of law and, hence, it is not the proper focus of any constitutional debate. Second, even if it were, Commissioners are not members of the judiciary entitled to render their own rules unconstitutional.[26] It is one thing to interpret the statute in an advisory opinion, or to interpret the

---

[22] FEC v. Ted Haley Congressional Committee, 852 F.2d 1111, 1115 (9th Cir. 1988) (hereinafter "Haley") ("interpretation of FECA by the FEC through its regulation and advisory opinions is entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute").

[23] We cannot fathom our colleagues' attempt to distinguish Haley. They appear to argue the court's reliance on advisory opinions is insignificant because there happened to be a relevant regulation to apply as well. Sandstrom *et al.* Statement at 4, n. 9. As our colleagues well know, the existence of a regulation is not essential to the legal value of an advisory opinion. The law, 2 U.S.C. § 437f(a), specifically contemplates advisory opinions applying the **statute** as well-- just as was the case in Advisory Opinions 1984-15 and 1985-14. As precedent, such opinions may be "relied upon" just as much as advisory opinions applying a regulation. 2 U.S.C. § 437f(c).

[24] See Common Cause v. FEC, 676 F. Supp. 286 (D.D.C. 1986) (certain FEC commissioners, including Commissioner Elliott, ordered to issue statement of reasons in dismissed enforcement case where advisory opinion precedent seemingly inconsistent); Common Cause v. FEC, Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 9263 (D.D.C. 1988) (related case noting, "The importance of respect for the Rule of Law . . . requires that courts be vigilant to ensure that in the process 'prior policies and standards are being deliberately changed, not casually ignored.'").

[25] Sandstrom *et al.* Statement at 4.

[26] Commissioners have an obligation to seek compliance with the statute passed by Congress. 2 U.S.C. § 437c(b)(1). The D.C. Circuit has stated, "[A]dministrative agencies . . . cannot resolve constitutional issues." American Coalition for Competitive Trade v. Clinton, 128 F.3d 761, 766 n. 6 (D.C. Cir. 1997). See also, Gilbert v. National Transportation Safety Board, 80 F.3d 364, 366-67 (9th Cir. 1996) ("challenges to the constitutionality of a statute or a regulation promulgated by an agency are beyond the power or the jurisdiction of an agency").

statute through a clarifying regulation.[27] It is altogether different to opine that a mere shorthand reference used to paraphrase the statute is unconstitutional.[28]

That said, we believe it important to note a fundamental flaw in our colleagues' 'judicial detour.' Their reliance on Supreme Court analysis of independent spending provisions is simply inapposite. In the area of **coordinated** expenditures, there is no basis for applying the "express advocacy" standard created in Buckley[29] and FEC v. Massachusetts Citizens for Life[30] where **independent** disbursements were at issue. Indeed, Buckley could not have been clearer that its "express advocacy" test did not apply to coordinated expenditures. When analyzing former 18 U.S.C. § 608(e), the independent expenditure limit struck down by the Court, the *per curiam* opinion noted:

> The parties defending § 608(e)(1) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of **paying directly for media advertisements or for other portions of the candidate's campaign activities**. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet **such controlled or coordinated expenditures are treated as contributions** rather than expenditures under the Act. [footnote omitted] Section

---

[27] The D.C. Circuit has noted that the advisory opinion process provides an opportunity "to reduce uncertainty or narrow the statute's reach" and that "the susceptibility of the [Federal Election Campaign Act] to challenge on the grounds of vagueness has consequently been reduced." Martin Tractor Co. v. FEC, 627 F.2d 375, 386 (D.C. Cir.), cert. denied, 449 U.S. 954 (1980).

[28] This would apply, as well, to our colleagues' constitutional analysis of other phrases used at one time or another by the Commission to explain the application of the underlying statutes, such as whether the communication would "tend to diminish support for one candidate and garner support for another candidate." Sandstrom *et al.* Statement at 4, n. 11, discussing Advisory Opinion 1984-15.

We are baffled by our colleagues' suggestion that the Supreme Court's phrase in UAW ("designed to urge the public to elect a certain candidate or party") is but "charming" and of little "practical use" because it dates back to the days of a '57 Chevy. Sandstrom *et al.* Statement at 5, n. 13. That might explain why the old case of Marbury v. Madison, 5 U.S. 137, 178 (1803) (It is for Article III judges to consider constitutional disputes and "say what the law is."), is of little value to them. More importantly, because the phrasing used in UAW is so close to the current language of the statute governing coordinated expenditures ("for the purpose of influencing any election for Federal office"), we hope our colleagues are not suggesting the latter is unconstitutionally vague. In Buckley v. Valeo, 424 U.S. 1(1976), the Court made crystal clear that it viewed the phrase "for the purpose of influencing" in the context of coordinated expenditures to be free of constitutional vagueness concerns ("We construed [the term 'contribution' which relies on a 'for the purpose of influencing' test] to include . . . expenditures placed in cooperation with or with the consent of a candidate. . . . So defined, 'contributions' have a sufficiently close relationship to the goals of the Act, for they are connected with a candidate or his campaign."). 424 U.S. at 78, referring back to n. 24 at 23.

[29] 424 U.S. at 42-44, 76-82.

[30] 479 U.S. 238, 249-50 (1986) (hereinafter "MCFL").

608(b)'s contribution ceilings . . . prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. **By contrast, § 608(e)(1) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign.**[31]

Similarly, in MCFL, the Court made clear that its "express advocacy" construction need only apply to the provision in 2 U.S.C. § 441b "that directly regulates independent spending."[32]

III.

We can only hope our colleagues' statement does not get misconstrued by the regulated community and the courts. We note with interest, for example, that one business day after our colleagues' statement was circulated at the Commission, counsel for the defendant in FEC v. Christian Coalition[33] filed a pleading suggesting its relevance to the issue in that case: whether a corporation made in-kind contributions or independent expenditures prohibited under 2 U.S.C. § 441b. In fact, no allegation in that case involves a claim that depends on the phrase "electioneering message."[34]

---

[31] 424 U.S. at 46,47. See also Buckley at 78-80 (defining coordinated expenditures as "contributions" and defining non-coordinated "expenditures" covered by former 2 U.S.C. § 434(e) to reach only communications containing 'express advocacy').

[32] 479 U.S. at 249.

[33] No. 96-1781 (D.D.C., filed 1996).

[34] Interestingly, the Commission passed a regulation in 1995 that implements 2 U.S.C. § 441b as it relates to certain voter guides. It uses the phrase "electioneering message." Specifically, for voter guides prepared with the candidates' cooperation and participation, the regulation specifies that such guides "shall not score or rate the candidates' responses in such way as to convey an electioneering message." 11 C.F.R. § 114.4(c)(5)(ii)(E). As it post-dates the activities at issue in FEC v. Christian Coalition, supra, it should not enter the debate there, but that has not stopped the defendant's counsel. For activities properly subject to this regulation, we can only ponder what our colleagues will say.

The confusion generated by our colleagues is regrettable. While the Commission's efforts to apply the in-kind contribution and coordinated expenditure provisions in the statute must focus, as always, on the words of the statute, surely a great deal of energy now will be expended on what to make of the banning of the innocuous "electioneering message" phrase. The answer is, "not much." Sadly, a lot of explaining will be required to get there.

7/2/99
Date

Scott E. Thomas, Chairman

7/6/99
Date

Danny L. McDonald, Commissioner

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble
Press Officer Harris

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: June 25, 1999

SUBJECT: Statement of Reasons for the Audits of Clinton/Gore '96 and Dole/Kemp '96.

Attached is a copy of the Statement of Reasons in the Audits of Clinton/Gore '96 and Dole/Kemp '96 signed by Vice-Chairman Darryl R. Wold, Commissioner Lee Ann Elliott, Commissioner David M. Mason and Commissioner Karl J. Sandstrom. This was received in the Commission Secretary's Office on Thursday, June 24, 1999 at 3:47 p.m.

cc: V. Convery

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

STATEMENT OF REASONS of
VICE CHAIRMAN DARRYL R. WOLD and
COMMISSIONERS LEE ANN ELLIOTT,
DAVID M. MASON and,
KARL J. SANDSTROM
On The Audits Of
"DOLE FOR PRESIDENT COMMITTEE, INC." (PRIMARY),
"CLINTON/GORE '96 PRIMARY COMMITTEE, INC.,"
"DOLE/KEMP '96, INC." (GENERAL),
"DOLE/KEMP '96 COMPLIANCE COMMITTEE, INC." (GENERAL),
"CLINTON/GORE '96 GENERAL COMMITTEE, INC.," and
"CLINTON/GORE '96 GENERAL ELECTION
LEGAL AND COMPLIANCE FUND"

Pursuant to 26 U.S.C. §§ 9038(a) and 9007(a), the Federal Election Commission ("the Commission") audited the "Dole For President Committee, Inc.," the "Clinton/Gore '96 Primary Committee, Inc.," "Dole/Kemp '96, Inc.," the "Dole/Kemp '96 Compliance Committee, Inc.," the "Clinton/Gore '96 General Committee, Inc." and the "Clinton/Gore '96 General Election Legal And Compliance Fund." In doing so, our Audit Division and Office of General Counsel (collectively the "staff") analyzed media advertisements the Democratic and Republican National Committees (collectively "the parties") ran during 1995 and 1996. The purpose of this analysis was to determine whether the cost of these advertisements constituted in-kind contributions (coordinated expenditures) by the parties on behalf of their respective presidential candidates' committees (which, among other things, could have caused the presidential committees to exceed their primary or general election spending limits in violation of 2 U.S.C. § 441a(b)).

In analyzing these advertisements,[1] the staff examined their content for the presence of two factors to determine whether the advertisement were "for the purpose of influencing" an election for Federal office, as that phrase is used in 2 U.S.C. § 431 (8)(A) ("contribution") and (9)(A) ("expenditure"): Whether the advertisements referred to a "clearly identified candidate" and whether they contained an "electioneering message."[2]

---

[1] *See, e.g.*, "Report of the Audit Division on the Dole For President Committee, Inc. (Primary)" ("Report on DFP"), Agenda Document 98-87, 11/19/98 at 14 & 50; "Report of the Audit on Clinton/Gore '96 Primary Committee, Inc." ("Report on CGP"), Agenda Document 98-85, 11/19/98 at 10, 32-35 & 36-38.

[2] The staff cited Advisory Opinions ("AO")1984-15 and 1985-14 as the authority for using "electioneering message" as a test of the content of a communication. Only AO 1985-14 used that phrase, and it did so in erroneously concluding that the Commission had employed the "electioneering message" test in AO 1984-15, *see* AO 1985-15 at 7; in fact, those words never appear in AO 1984-15. *See* footnote eleven, *infra*, for a discussion of the problems with the staff's interpretation of these opinions.

Because the staff found that both factors were present,[3] the staff recommended that the Commission determine that the costs of the advertisements were in-kind contributions from the parties to their respective presidential campaign committees.[4] The staff also recommended that the Commission determine that the applicable spending limits were exceeded based in part on the cost of the advertisements, and that the Commission require a repayment of presidential matching funds. For various reasons, the Commissioners unanimously rejected the staff's repayment recommendations.

We write here to express our disagreement with the use of "electioneering message" as a test to determine whether communications are "for the purpose of influencing" elections and, therefore, constitute expenditures or contributions under the Federal Election Campaign Act ("FECA"). Specifically, we agree that: (1) The phrase "electioneering message" cannot serve as a substantive test to describe the content of communications that are "for the purpose of influencing" an election because it is derived only from advisory opinions and is not found either in the FECA or in regulations promulgated by the Commission in accordance with the rulemaking procedures specified in the FECA; and (2) The phrase "electioneering message" cannot be used as a shorthand expression of the Commission's interpretation of the statutory standard of "for the purpose of influencing" an election because the advisory opinions from which the phrase is drawn do not convey a clear and consistent application of the statutory standard, and the phrase, standing alone, is both too vague and too broad to have a sufficiently definite meaning. Therefore, we conclude that the phrase "electioneering message" should not be used to describe the content of communications which the Commission would determine to be "for the purpose of influencing" an election to Federal office.

Procedural Defects With Employing The "Electioneering Message" Standard

Congress included an express prohibition in the FECA against the Commission using advisory opinions to establish rules of conduct. Subpart (b) of 2 U.S.C. § 437f, the section governing the use of such opinions, provides that the Commission may employ rules of law that are not set forth in the FECA only if it complies with the procedures set forth in 2 U.S.C. § 438(d) in promulgating them.[5] By necessary implication, subpart (b) of § 437f prohibits the Commission from using advisory opinions as rules of law, for the

[3] *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 50; Report on CGP, Agenda Document 98-85, 11/19/98 at 38.

[4] *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 52; Report on CGP, Agenda Document 98-85, 11/19/98 at 43.

[5] *See id.* at § 437f(b) ("Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title."); *United States Defense Committee v. Federal Election Commission*, 861 F.2d 765, 771 (2nd Cir. 1988) (*USDC*) (citing 2 U.S.C. § 438(d)) ("A rule of law may initially be proposed by the Commission only as a rule or regulation pursuant to very elaborate procedures involving submission of the rule or regulation to the Congress.").

Commission does not follow the requirements of 2 U.S.C. § 438(d) in drafting such opinions; instead, it follows the requirements of § 437f.[6]

As a result, the Commission may not use advisory opinions as a substitute for rulemaking. Rulemaking is not simply the preferred method for filling in gaps in the FECA. It is the required method. 2 U.S.C. § 437f(b), note five, *supra*. Where the law is of uncertain application, advisory opinions cannot be used as a sword of enforcement. *See generally id.* The regulated community can, however, use advisory opinions as shields against Commission enforcement actions in appropriate circumstances. 2 U.S.C. § 437f(c).

> Advisory opinions are binding only in the sense that they may be relied on *affirmatively* by any person involved in the specific transaction or activity discussed in the opinion or in any materially indistinguishable transaction or activity. . . . On the other hand, to the extent that the advisory opinion *does not affirmatively approve* a proposed transaction or activity, it is binding on no one—not the Commission, the requesting party, *or third parties*.[7]

This reading of the FECA's rulemaking requirements, of course, does not prevent the Commission from enforcing the FECA in novel or unforeseen circumstances. It only requires that, absent controlling regulations or the authoritative interpretations of the courts, the Commission's enforcement standard be the natural dictate of the language of the statute itself.[8]

The threshold problem with the "electioneering message" standard, then, is that it is not a rule. It is only a shorthand phrase that purports to describe the Commission's reasoning in two advisory opinions. See note two, *supra*. The phrase is not defined in either of those opinions. In fact, it does not appear at all in one of them. Rather than being promulgated pursuant to the requirements of the FECA (*see* 2 U.S.C. §§ 438(d) and

---

[6] *See* 2 U.S.C. § 437f(b) ("... No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provision of this section [i.e., § 437f].").

[7] *USDC*, 861 F.2d at 771 (emphasis added) (citing 2 U.S.C. §§ 438(d) and 437f (b)&(c)); *see also Weber v. Heaney*, 793 F. Supp. 1438, 1452 n. 9 (D. Minn 1992) ("... Commission advisory opinions are binding in the sense that they may be relied upon affirmatively by any person involved in the specific transaction or activity discussed in the opinion or in any materially indistinguishable transaction or opinion."), *aff'd*, 995 F.2d 872 (8th Cir. 1993); *Stockman v. Federal Election Commission*, 138 F.3d 144, 149 n. 9 (5th Cir. 1998) (same). Some argue that *Orloski v. Federal Election Commission*, 795 F.2d 156 (D.C. Cir. 1986), supports the contrary conclusion. Unlike *USDC*, however, *Orloski* did not address the FECA's clear prohibitions on using advisory opinions as rules of conduct. Instead, *Orloski* analyzed the advisory opinions implicated there for purposes of determining whether the Commission's interpretation of the FECA was reasonable and consistent and thus should be accorded deference. 795 F.2d at 164-167.

[8] *See Sullivan v. Everhart*, 494 U.S. 83, 89 (1990) (Scalia, J.) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) and *National Labor Relations Board v. Food and Commercial Workers*, 484 U.S. 112, 123 (1987)) ("'[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute,' that is, whether the agency's construction is 'rational and consistent with the statute.'").

437f(b) & (c)), the "electioneering message" standard is an amalgam of these advisory opinions. Even at that, it is not the most natural, let alone the only reasonable, reading of those opinions. In fact, it is difficult to draw any clear meaning from a comparison or combination of AOs 1984-15 and 1985-14 (*see* "Substantive Difficulties," *infra*).

As a result, the regulated community most likely does not have *notice* as to how this standard will govern its conduct, and it certainly did not have an opportunity to *comment* on whether it should. Because of its procedural infirmities, the Commission may not employ the phrase "electioneering message" as expressing a general rule for determining whether communications are "for the purpose of influencing" a federal election.[9]

Substantive Difficulties With The "Electioneering Message" Standard

Apart from its procedural infirmities, the "electioneering message" standard suffers from serious problems of vagueness and overbreadth. As presented by the staff, a communication satisfies this standard if it includes statements which are "designed to urge the public to elect a certain candidate or party,[10] or which would tend to diminish support for one candidate and garner support for another candidate." *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 14 (citing AO 1984-15); Report on CGP, Agenda Document 98-87, 11/19/98 at 10 (citing AO 1984-15).[11]

---

[9] *Democratic Congressional Campaign Committee v. Federal Election Commission*, 645 F. Supp. 169 (D.D.C. 1986), *aff'd in part and rev'd in part*, 831 F.2d 1131 (D.C. Cir. 1987) (*DCCC*) and *Federal Election Commission v. Ted Haley Congressional Committee*, 852 F.2d 1111 (9th Cir. 1988) (*Haley*) do not affect this conclusion. In *DCCC*, the Commission dismissed a complaint, contrary to the recommendation of its General Counsel, without providing a statement of reasons for doing so when it appeared the complaint alleged activity that satisfied the "electioneering message" standard. 645 F. Supp. at 170-171. The Court, in an action brought pursuant to 2 U.S.C. § 437g(a)(8), was faced with the question of whether the Commission had acted "contrary to law" for appearing to disregard its "electioneering message" test without articulating any reason for doing so, *id.* at 171-174; the Court was not faced with the issue here: whether that test, itself, was validly established. In *Haley*, the Court noted that the Commission's interpretation of the FECA in its regulations and advisory opinions was entitled to due deference. 852 F.2d at 1115. But all the advisory opinions to which that Court referred interpreted a Commission regulation, *id.* at 1114-1115; they did not attempt to circumvent the FECA's clear requirement that for rules of conduct, the Commission *have* a regulation. *See also Federal Election Commission v. Legi-Tech*, 967 F. Supp. 523, 529-530 (D.D.C. 1997) (Commission advisory opinions interpreted regulation).

[10] The staff cites AO 1984-15 as authority for this phrase. This phrase, however, comes from 1985-14. *See id.* at 7 (citing *United States v. United Auto Workers*, 352 U.S. 567, 587 (1957)).

[11] There is substantial question as to whether the staff's analysis properly characterizes AO 1984-15. While that opinion uses the phrases "diminish support" and "garner support," *id.* at 5, it concludes that advertisements which clearly identify presidential candidates of one party and include exhortations to "vote" for another party "effectively advocate the defeat of a clearly identified candidate." *Id.* Whatever distinction there may be between "effectively" and "expressly" advocating, the facts presented in that advisory opinion bear similarities to the facts in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), and the Commission's conclusion in AO 1984-15 and the court's conclusion in *MCFL* can be read consistently. The staff suggests an extremely broad interpretation of AO 1984-15, citing the phrase "dimish [or] garner support." *See* Reports on DFP & CGP, *supra*. That opinion's facts, however, suggest a more narrow, and more natural, construction, similar to *MCFL*.

Such formulations, the Supreme Court has held, offend the First Amendment. In *Buckley v. Valeo*, 424 U.S. 1, 42-44 (1976), the High Court held as impermissibly vague the "relative to . . . advocating the election or defeat of [a clearly identified] candidate" standard in 18 U.S.C. § 608(e) (1970) of the original FECA. The "diminish support for one candidate" prong—like the "relative to" standard in the original FECA— is especially problematic because "the distinction between discussion of issues and candidates and *advocacy of election or defeat of candidates* may often dissolve in practical application." *Buckley*, 424 U.S. at 42 (emphasis added).[12]

The factual question of what a particular statement was *designed* to do also gives rise to vagueness problems. The fact that the term "electioneering" and the phrase "designed to urge the public to elect a certain candidate or party" were plucked out of context from a four-decade old Supreme Court opinion (*United States v. Auto Workers*, 352 U.S. 567 (1957) (*UAW*)) does not resolve the question.[13] First, it is clear that *UAW* was not enunciating a constitutionally-permissible standard for regulating speech, but describing a particular communication in the course of an opinion explicitly refusing to reach a ruling on the constitutionality of regulating the specific speech so described. *See id.* at 591 (internal citation omitted) ("Clearly in this case it is not absolutely necessary to a decision to canvass the constitutional issues."). Second, the speech at issue in *UAW* included specific endorsements of candidates. *Id.* at 584. Third, the *per curiam* opinion in *Buckley* cites the dissent in *UAW*, *see* 424 U.S. at 43 (citing *UAW*, 352 U.S. at 595-596 (Douglas, J., dissenting)), which had urged that the FECA's predecessor statute be declared unconstitutional as applied to the electioneering speech at issue in *UAW*.

The relationship, if any, of the *two* prongs of the "electioneering message" test underscores the test's vagueness. Read narrowly, "urge the public to elect a candidate," AO 1985-14 at 7, could be construed as equivalent to communications "that expressly

---

[12] The "relative to" standard, on its face, was thus unhelpful in distinguishing between these two types of speech. *Id.* As a result, to allow unfettered issue discussion while regulating candidate advocacy, the government, under this standard, had to attempt to divine the speaker's intent. *Id.* at 43. This, the Court noted, would not only be difficult, but dangerous.

> Whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning. Such a distinction offers no security for free discussion. In these conditions, it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.

Id. (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)). The second prong of the "electioneering message" test—given its "diminish [candidate] support" focus—requires the same difficult and dangerous subjective inquiry.

[13] Like a '57 Chevy, a dated Supreme Court opinion may be charming, but often requires substantial restoration to be of practical use.

advocate the election or defeat of a clearly identified candidate." *Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238, 249-250 (1986) (quoting *Buckley*, 424 U.S. at 80). In contrast, there is virtually nothing which could be said about a candidate for federal office which might not be interpreted as "diminish[ing] support for one candidate [or] garner[ing] support for another candidate." *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 14 (citing AO 1984-15); Report on CGP, Agenda Document 98-87, 11/19/98 at 10 (citing AO 1984-15).

The "electioneering message" test is also unconstitutionally overbroad for related reasons. As the *Buckley* Court observed,

> [c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.

424 U.S. at 42. Regulation of any statement which " diminishes [or garners] support for [a] candidate," AO 1984-15 at 5, would encompass, then, virtually any meaningful utterance identifying a candidate.

The vagueness and overbreadth problems of the "electioneering message" and "relative to" standards are thus two sides of the same counterfeit coin. They are vague because it is not clear when they encompass issue discussion and not candidate advocacy. They are overbroad because, given the nature of campaigning, they will inevitably encompass both. For the same substantive reasons that the Supreme Court held the "relative to" standard in the FECA to be unconstitutional, the Commission may not employ "the electioneering message" standard. Even in the context of coordinated, or presumably coordinated, communications in which the "electioneering message" test has generally been proposed (*see* 11 C.F.R. § 114.4(c)(5)(ii)(B)(2)(E) (regulation of voter guides)), the Commission may not ignore these constitutional requirements.

Conclusion

Given the procedural and substantive infirmities with the "electioneering message" standard, the Commission may not employ it in administering the FECA, the Presidential Primary Matching Payment Account Act, the Presidential Election Campaign Fund Act, or its own regulations.

Darryl R. Wold — Date
Vice Chairman

Lee Ann Elliott — Date
Commissioner

David M. Mason — Date
Commissioner

Karl J. Sandstrom — Date
Commissioner

Public Records

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 23, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Leslie Bright
Associate General Counsel

SUBJECT: President Clinton and the Clinton/Gore '96 Primary Committee, Inc.
(LRA #529)

Pursuant to the Commission's March 16, 2000 discussion and determination in connection with Agenda Document No. 00-31, attached for your information is a letter to Lyn Utrecht, counsel for the Clinton/Gore '96 Primary Committee, Inc. The letter summarizes the Commission's action with respect to the Future Tech disgorgement determination.

If you have questions about this letter, please contact Andre G. Pineda, the attorney assigned to this matter.

Attachment

Letter from Kim Leslie Bright to Lyn Utrecht

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lyn Utrecht, Esq.
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036

Re: Clinton/Gore '96 Primary Committee, Inc.
Disgorgement Payment (LRA #529)

Dear Ms. Utrecht:

On July 15, 1999, the Commission determined that President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must disgorge $25,000 to the United States Treasury for contributions that were identified as being part of a corporate contribution scheme involving Future Tech International ("Future Tech") and its corporate officers. By letter dated October 8, 1999, the Committee sent the Office of General Counsel a $25,000 check made payable to the United States Treasury. In addition to enclosing the disgorgement payment, the letter indicated that the Committee is "somewhat concerned about the Commission's authority to order the disgorgement, particularly in light of a lawsuit that has been related to a Commission disgorgement order to another 1996 presidential campaign." The Committee's letter also stated that "[w]e assume that the Commission would defend [it] should any legal action be brought against the Committee to seek return of these funds to the contributor."

Although the letter does not identify the lawsuit, it appears that it is referring to *Fireman v. United States*, 44 Fed. Cl. 528 (1999), a United States Court of Federal Claims decision which granted, in part, and denied, in part, a motion to dismiss that was filed by the Department of Justice ("DOJ"). The lawsuit, filed by Simon C. Fireman, was a claim against the United States for $69,000 pursuant to 28 U.S.C. § 1491 ("the Tucker Act"). The amount sought was equal to the amount of contributions Mr. Fireman and Aqua-Leisure Industries, Inc. made to the Dole for President Committee, Inc. and the Dole for President Compliance Committee, Inc. (collectively "the Dole Committees"), which were later disgorged to the United States Treasury by the Dole Committees. On November 1, 1999, the United States Court of Federal Claims dismissed Mr. Fireman's lawsuit.

On March 16, 2000, the Commission determined to retain the disgorgement with the United States Treasury. Please note that any Tucker Act claim filed in the United States Court

of Federal Claims by a donor for monies disgorged by the Committee would name the United States as a party. Accordingly, it appears that the Committee would not properly be named a party to such a claim.

My Office will keep you apprised of any developments regarding this matter, should any occur. If you have any questions, please contact Andre G. Pineda, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Kim Leslie Bright
Associate General Counsel

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble
Press Office Ron Harris

FROM: Mary W. Dove/Veneshe Ferebee-Vines
Commission Secretary

DATE: July 6, 1999

SUBJECT: Statement for the Record in Audits of
1996 Clinton/Gore and Dole/Kemp Campaigns

Attached is a copy of the Statement of Reasons regarding Audits of 1996 Clinton/Gore and Dole/Kemp Campaigns signed by Chairman Scott E. Thomas and Commissioner Danny Lee McDonald. This was received in the Commission Secretary's Office on July 6, 1999 at 11:42 a.m.

cc: V. Convery

Attachments

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Statement for the Record in Audits of 1996 Clinton/Gore and Dole/Kemp Campaigns

Chairman Scott E. Thomas
Commissioner Danny L. McDonald

Our colleagues, Commissioners Sandstrom, Wold, Elliott and Mason, recently joined in what must be seen as a very odd Statement of Reasons regarding the audits of the 1996 Clinton and Dole campaigns.[1] Little is written of the audits. Instead, the thrust of their statement is a tirade against an innocuous shorthand reference the Commission coined in Advisory Opinion 1985-14[2] to analyze whether party communications are subject to the statutory limits on support of particular candidates. The energy expended by our colleagues to savage the Commission's own advisory opinion process is surprising. The strangest aspect of the Sandstrom *et al.* Statement, though, is that it claims to abhor vagueness but, in the end, is itself very confusing.

We write this Statement to explain the state of the law in this area, and to clarify that the Sandstrom *et al.* Statement does **not** effect a 'sea change' when analyzing which party communications should be subjected to the statutory limits on coordinated expenditures. In particular, we wish to emphasize that 'express advocacy' is not required.

I.

The limits on coordinated expenditures by party committees on behalf of their candidates have been on the books for over 24 years. They were part of the Federal Election Campaign Act Amendments of 1974.[3] In addition to the

[1] Statement of Reasons of Vice Chairman Wold and Commissioners Elliott, Mason and Sandstrom issued June 24, 1999 (hereinafter "Sandstrom *et al.* Statement").
[2] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 5819.
[3] Pub. L. 93-443, 88 Stat. 1263, § 101.

$5,000 per election contribution limit available to all political committees,[4] parties have coordinated expenditure allowances permitting additional spending in connection with the general election campaigns of their candidates.[5]

The party coordinated expenditure limits serve an important role in preventing party donors from having an indirect way of effecting a 'quid pro quo' arrangement with candidates for federal office-- the link between money and official government action the statute is designed to prevent. If a party committee is able to undertake only a limited amount of coordinated expenditure activity on behalf of a particular candidate, donors or groups of donors will not be able to expect large-scale donations to the party to result in large-scale spending by the party on behalf of such candidate. For example, ten banking industry PACs who donate $15,000 each to a party's House campaign committee and who are close to a particular House committee chairman running for reelection would not be able to expect $150,000 in coordinated expenditures by the party on behalf such candidate because the coordinated expenditure limit would prevent it.

The direct payment of funds to a candidate's campaign has been treated as a "contribution"[6] subject to the contribution limit. A party's coordinated payment to a third party on behalf of a candidate has been treated as either an in-kind "contribution" or a coordinated "expenditure,"[7] at the option of the expending committee.[8] If treated as a coordinated expenditure, the party has to

---

[4] Currently codified at 2 U.S.C. § 441a(a)(2)(A).

[5] 11 C.F.R. § 110.7(a)(3), (b)(3). Codified at 2 U.S.C. § 441a(d), the coordinated expenditure allowance provides:

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

Subsections (2) and (3) set forth formulas that in the last presidential election permitted a national party committee to spend over $12 million on behalf of its presidential candidate, and that in the 1998 congressional elections permitted a national and state party committee **each** to spend $32,550 for a House candidate and **each** to spend amounts ranging from $65,100 in small states like Wyoming to over $1.5 million in California for a Senate candidate.

[6] 2 U.S.C. § 431(8).

[7] 2 U.S.C. § 431(9).

[8] FEC Campaign Guide for Party Committees (1996) at 16. The FEC for many years operated with a presumption that all party spending was coordinated with the parties' eventual nominees. 11 C.F.R. § 110.7(a)(5), (b)(4) (1996). The Supreme Court invalidated that presumption in Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996) (hereinafter "Colorado I"). As a result, only party spending that can be shown to meet the legal test of 'coordination' can be subjected to the limits at 2 U.S.C. § 441a(a)(2)(A) and (d). The legal test for coordination is set forth at 2 U.S.C. § § 431(17) and 441a(a)(7)(B) and at 11 C.F.R. § 109.1(b)(4) and (d)(1).

keep within the coordinated expenditure limit, but only the party need report the transaction.[9]

Because party committees are primarily in the business of electing candidates, the Commission has required virtually all party-building activity to be at least allocated so that indirect federal candidate support is not paid for with funds not permitted under federal law.[10] At the same time, recognizing party committees sometimes undertake generic party-building activities that may help their candidates only in a general way-- a way that should not result in a contribution to or coordinated expenditure on behalf of a particular candidate-- the Commission has tried to clarify when a party activity need not be subjected to a candidate-specific limitation. Thus, the Commission has specified at 11 C.F.R. § 106.1(c) that an expenditure for rent, personnel, overhead, general administrative costs, educational campaign seminars, training of campaign workers, or registration or get-out-the-vote drives need not be attributed to individual candidates unless the expenditure is "made on behalf of a clearly identified candidate, and the expenditure can be directly attributed to that candidate."

When identifying which party activities fall under the candidate-specific limits, though, the Commission must deal first and foremost with the underlying statutory terms. A "contribution" is a payment or gift of value made "for the purpose of influencing any election for Federal office."[11] A coordinated "expenditure" is a payment, advance or gift of anything of value made "for the purpose of influencing any election for Federal office" and "in connection with the general election campaign" of a candidate for Federal office.[12]

Over the years, the Commission has grappled with the difficult factual distinctions that make a party communication a generic party-building expenditure on the one hand, or an in-kind contribution or coordinated expenditure on the other. The best-known instances were Advisory Opinion 1984-15[13] and the aforementioned Advisory Opinion 1985-14. In each of those opinions, the Commission analyzed the facts according to the basic underlying statutory provisions cited above.

In Advisory Opinion 1985-14, the Commission developed a shorthand reference to the legal analysis to be used. Instead of repeating the statutory phrases, "for the purpose of influencing" and "in connection with," the Commission described the process as a search for whether the communication

---

[9] 11 C.F.R. § 104.3(a)(3)(iii).
[10] 11 C.F.R. § 106.5.
[11] 2 U.S.C. § 431(8).
[12] 2 U.S.C. §§ 431(9) and 441a(d).
[13] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 5766

contained an "electioneering message."[14] The Commission then cited a Supreme Court decision for further guidance as to what was meant by "electioneering message."[15] There, the Court simply described its view of the reach of the corporate and union prohibition at 2 U.S.C. § 441b: whether a communication is "designed to urge the public to elect a certain candidate or party."[16] This phrasing, of course, is virtually indistinguishable from the "for the purpose of influencing any election for Federal office" language at the heart of any "contribution" or "expenditure" inquiry. Thus, at most, the Commission in Advisory Opinion 1985-14 was paraphrasing the statutory language underlying any coordinated party expenditure analysis.

II.

Our colleagues grossly overstate the significance of the "electioneering message" phrase and then gyrate into an inappropriate constitutional hypothesis regarding the vagueness of that phrase and other phrases used in Advisory Opinions 1984-15 and 1985-14. Along the way, they grumble about perceived improper rulemaking through the advisory opinion process.

A.

Dealing with the last 'red herring' first, to our knowledge no commissioner has been confused about the legal effect of advisory opinions. While advisory opinions clearly have binding consequences, the statute is clear that general rules of law have to emanate from the statute or from regulations of the Commission.[17] Nonetheless, our colleagues seem convinced that the Commission's use in Advisory Opinions 1984-15 and 1985-14 of paraphrases and synonyms for the statutory test was, in fact, the creation of a new substantive rule of law.[18] The reality, of course, is that there are only so many words in the English language, and after citing the underlying statutory provisions, the Commission simply attempted to explain the legal test in other helpful ways.[19]

---

[14] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶5819 at 11,185.

[15] United States v. United Auto Workers, 352 U.S. 567 (1957) (hereinafter "UAW").

[16] Id. At 587.

[17] 2 U.S.C. §437f(b).

[18] At one point our colleagues call the phrases used a "test" and at other times they refer to them as an "amalgam." Sandstrom *et al.* Statement at 2 and 4.

[19] Lest our colleagues be struck down by a bolt of lightning for insinuating they would never stoop to helpful descriptions of the underlying statutory and regulatory provisions, they should concede that only recently in Advisory Opinion 1999-11, they engineered a description of the statute's reach that depended on whether there was "any campaign activity" at the event in question. See Memorandum from Commissioner Sandstrom, Agenda Doc. No. 99-61-A; Advisory Opinion 1999-11 (unpublished) at 3.

Thus, our colleagues have felled a demon they didn't need to imagine in the first place. The regulated community has had notice of the underlying statutory provisions at 2 U.S.C. §§ 431(8) and (9) and 441a(d) all along. Advisory Opinions 1984-15 and 1985-14 neither expanded nor diminished those underlying rules of law.

Interestingly, our colleagues do not purport to supersede Advisory Opinions 1985-14 and 1984-15, but rather disagree with the phrasing of the legal analysis therein. We take that to mean the Commission's conclusions regarding specific proposed ads in those opinions still serve as valid legal precedent in terms of the underlying statute. For example, a party committee that ran ads under materially indistinguishable circumstances could 'rely upon' the conclusions reached by a majority of commissioners in those opinions in determining whether the ads would be a coordinated expenditure or not.[20] This rightly diminishes the negative impact of our colleagues' statement and suggests only that the Commission cease using the pesky "electioneering message" phrase when explaining its interpretations under the statute.

We must address our colleagues' suggestion that an advisory opinion may not be used as a "sword of enforcement." Sandstrom *et al.* Statement at 3. Apparently, they disregard the statutory language quoted in the previous footnote. Someone who receives an advisory opinion that certain conduct would be illegal, as well as anyone in materially indistinguishable circumstances, surely may 'rely on' that legal conclusion to file a complaint against someone else engaging that conduct. Essentially, that is what happened when Democratic Party representatives received a response in Advisory Opinion 1985-14 that certain targeted communications attacking a likely opponent would be coordinated expenditures subject to limit. Other Democratic Party representatives then filed a complaint against the Colorado Republican Party regarding certain ads that attacked the likely Senate nominee, Tim Wirth. That enforcement case became the subject of the Supreme Court's decision in Colorado I, supra.

Our colleagues may have missed the fact that the 10th Circuit in that case upheld the FEC's use of Advisory Opinion 1985-14 (even its "electioneering message" phrase) to bolster its claim.[21] Although the Supreme Court vacated the 10th Circuit's opinion on other grounds, Colorado I, this is a strong indication advisory opinions can be used as a "sword."

---

[20] The statute provides that any advisory opinion rendered by the Commission "may be relied upon" by the person to whom the opinion is issued or by "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects . . . ." 2 U.S.C. § 437f(c)(1).

[21] FEC v. Colorado Republican Federal Campaign Committee, 59 F. 3d 1015 (10th Cir. 1995).

This proposition is supported by a 9th Circuit decision, a case our colleagues cite but misconstrue.[22] There, in a successful enforcement action against a committee that accepted excessive contributions, the FEC used its advisory opinion precedent as a "sword," and the court specifically sanctioned this approach.[23]

The courts have strongly indicated the Commission is bound to apply its advisory opinion precedent consistently.[24] We caution our colleagues not to get so agitated over the use of paraphrases and shorthand references in prior advisory opinions that they issue statements undermining the ability of the agency to enforce the law.

B.

Our colleagues go well beyond their role as commissioners by opining about the possible unconstitutional vagueness and overbreadth of the words "electioneering message."[25] First, as just explained, everyone should agree that "electioneering message" is not a rule of law and, hence, it is not the proper focus of any constitutional debate. Second, even if it were, Commissioners are not members of the judiciary entitled to render their own rules unconstitutional.[26] It is one thing to interpret the statute in an advisory opinion, or to interpret the

---

[22] FEC v. Ted Haley Congressional Committee, 852 F.2d 1111, 1115 (9th Cir. 1988) (hereinafter "Haley") ("interpretation of FECA by the FEC through its regulation and advisory opinions is entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute").

[23] We cannot fathom our colleagues' attempt to distinguish Haley. They appear to argue the court's reliance on advisory opinions is insignificant because there happened to be a relevant regulation to apply as well. Sandstrom *et al.* Statement at 4, n. 9. As our colleagues well know, the existence of a regulation is not essential to the legal value of an advisory opinion. The law, 2 U.S.C. § 437f(a), specifically contemplates advisory opinions applying the **statute** as well-- just as was the case in Advisory Opinions 1984-15 and 1985-14. As precedent, such opinions may be "relied upon" just as much as advisory opinions applying a regulation. 2 U.S.C. § 437f(c).

[24] See Common Cause v. FEC, 676 F. Supp. 286 (D.D.C. 1986) (certain FEC commissioners, including Commissioner Elliott, ordered to issue statement of reasons in dismissed enforcement case where advisory opinion precedent seemingly inconsistent); Common Cause v. FEC, Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 9263 (D.D.C. 1988) (related case noting, "The importance of respect for the Rule of Law . . . requires that courts be vigilant to ensure that in the process 'prior policies and standards are being deliberately changed, not casually ignored.'").

[25] *Sandstrom et al.* Statement at 4.

[26] Commissioners have an obligation to seek compliance with the statute passed by Congress. 2 U.S.C. § 437c(b)(1). The D.C. Circuit has stated, "[A]dministrative agencies . . . cannot resolve constitutional issues." American Coalition for Competitive Trade v. Clinton, 128 F.3d 761, 766 n. 6 (D.C. Cir. 1997). See also, Gilbert v. National Transportation Safety Board, 80 F.3d 364, 366-67 (9th Cir. 1996) ("challenges to the constitutionality of a statute or a regulation promulgated by an agency are beyond the power or the jurisdiction of an agency").

statute through a clarifying regulation.[27] It is altogether different to opine that a mere shorthand reference used to paraphrase the statute is unconstitutional.[28]

That said, we believe it important to note a fundamental flaw in our colleagues' 'judicial detour.' Their reliance on Supreme Court analysis of independent spending provisions is simply inapposite. In the area of **coordinated** expenditures, there is no basis for applying the "express advocacy" standard created in Buckley[29] and FEC v. Massachusetts Citizens for Life[30] where **independent** disbursements were at issue. Indeed, Buckley could not have been clearer that its "express advocacy" test did not apply to coordinated expenditures. When analyzing former 18 U.S.C. § 608(e), the independent expenditure limit struck down by the Court, the *per curiam* opinion noted:

> The parties defending § 608(e)(1) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of **paying directly for media advertisements or for other portions of the candidate's campaign activities**. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet **such controlled or coordinated expenditures are treated as contributions** rather than expenditures under the Act. [footnote omitted] Section

---

[27] The D.C. Circuit has noted that the advisory opinion process provides an opportunity "to reduce uncertainty or narrow the statute's reach" and that "the susceptibility of the [Federal Election Campaign Act] to challenge on the grounds of vagueness has consequently been reduced." Martin Tractor Co. v. FEC, 627 F.2d 375, 386 (D.C. Cir.), cert. denied, 449 U.S. 954 (1980).

[28] This would apply, as well, to our colleagues' constitutional analysis of other phrases used at one time or another by the Commission to explain the application of the underlying statutes, such as whether the communication would "tend to diminish support for one candidate and garner support for another candidate." Sandstrom *et al.* Statement at 4, n. 11, discussing Advisory Opinion 1984-15.

We are baffled by our colleagues' suggestion that the Supreme Court's phrase in UAW ("designed to urge the public to elect a certain candidate or party") is but "charming" and of little "practical use" because it dates back to the days of a '57 Chevy. Sandstrom *et al.* Statement at 5, n. 13. That might explain why the old case of Marbury v. Madison, 5 U.S. 137, 178 (1803) (It is for Article III judges to consider constitutional disputes and "say what the law is."), is of little value to them. More importantly, because the phrasing used in UAW is so close to the current language of the statute governing coordinated expenditures ("for the purpose of influencing any election for Federal office"), we hope our colleagues are not suggesting the latter is unconstitutionally vague. In Buckley v. Valeo, 424 U.S. 1(1976), the Court made crystal clear that it viewed the phrase "for the purpose of influencing" in the context of coordinated expenditures to be free of constitutional vagueness concerns ("We construed [the term 'contribution' which relies on a 'for the purpose of influencing' test] to include . . . expenditures placed in cooperation with or with the consent of a candidate. . . . So defined, 'contributions' have a sufficiently close relationship to the goals of the Act, for they are connected with a candidate or his campaign."). 424 U.S. at 78, referring back to n. 24 at 23.

[29] 424 U.S. at 42-44, 76-82.

[30] 479 U.S. 238, 249-50 (1986) (hereinafter "MCFL").

608(b)'s contribution ceilings . . . prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. **By contrast, § 608(e)(1) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign.**[31]

Similarly, in MCFL, the Court made clear that its "express advocacy" construction need only apply to the provision in 2 U.S.C. § 441b "that directly regulates independent spending."[32]

III.

We can only hope our colleagues' statement does not get misconstrued by the regulated community and the courts. We note with interest, for example, that one business day after our colleagues' statement was circulated at the Commission, counsel for the defendant in FEC v. Christian Coalition[33] filed a pleading suggesting its relevance to the issue in that case: whether a corporation made in-kind contributions or independent expenditures prohibited under 2 U.S.C. § 441b. In fact, no allegation in that case involves a claim that depends on the phrase "electioneering message."[34]

[31] 424 U.S. at 46,47. See also Buckley at 78-80 (defining coordinated expenditures as "contributions" and defining non-coordinated "expenditures" covered by former 2 U.S.C. § 434(e) to reach only communications containing 'express advocacy').

[32] 479 U.S. at 249.

[33] No. 96-1781 (D.D.C., filed 1996).

[34] Interestingly, the Commission passed a regulation in 1995 that implements 2 U.S.C. § 441b as it relates to certain voter guides. It uses the phrase "electioneering message." Specifically, for voter guides prepared with the candidates' cooperation and participation, the regulation specifies that such guides "shall not score or rate the candidates' responses in such way as to convey an electioneering message." 11 C.F.R. § 114.4(c)(5)(ii)(E). As it post-dates the activities at issue in FEC v. Christian Coalition, supra, it should not enter the debate there, but that has not stopped the defendant's counsel. For activities properly subject to this regulation, we can only ponder what our colleagues will say.

The confusion generated by our colleagues is regrettable. While the Commission's efforts to apply the in-kind contribution and coordinated expenditure provisions in the statute must focus, as always, on the words of the statute, surely a great deal of energy now will be expended on what to make of the banning of the innocuous "electioneering message" phrase. The answer is, "not much." Sadly, a lot of explaining will be required to get there.

7/2/99	[signature]
Date	Scott E. Thomas, Chairman
7/6/99	Danny L. McDonald
Date	Danny L. McDonald, Commissioner by FJD

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble
Press Officer Harris

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: June 25, 1999

SUBJECT: Statement of Reasons for the Audits of Clinton/Gore '96 and Dole/Kemp '96.

Attached is a copy of the Statement of Reasons in the Audits of Clinton/Gore '96 and Dole/Kemp '96 signed by Vice-Chairman Darryl R. Wold, Commissioner Lee Ann Elliott, Commissioner David M. Mason and Commissioner Karl J. Sandstrom. This was received in the Commission Secretary's Office on Thursday, June 24, 1999 at 3:47 p.m.

cc: V. Convery

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

STATEMENT OF REASONS of
VICE CHAIRMAN DARRYL R. WOLD and
COMMISSIONERS LEE ANN ELLIOTT,
DAVID M. MASON and,
KARL J. SANDSTROM
On The Audits Of
"DOLE FOR PRESIDENT COMMITTEE, INC." (PRIMARY),
"CLINTON/GORE '96 PRIMARY COMMITTEE, INC.,"
"DOLE/KEMP '96, INC." (GENERAL),
"DOLE/KEMP '96 COMPLIANCE COMMITTEE, INC." (GENERAL),
"CLINTON/GORE '96 GENERAL COMMITTEE, INC.," and
"CLINTON/GORE '96 GENERAL ELECTION
LEGAL AND COMPLIANCE FUND"

Pursuant to 26 U.S.C. §§ 9038(a) and 9007(a), the Federal Election Commission ("the Commission") audited the "Dole For President Committee, Inc.," the "Clinton/Gore '96 Primary Committee, Inc.," "Dole/Kemp '96, Inc.," the "Dole/Kemp '96 Compliance Committee, Inc.," the "Clinton/Gore '96 General Committee, Inc." and the "Clinton/Gore '96 General Election Legal And Compliance Fund." In doing so, our Audit Division and Office of General Counsel (collectively the "staff") analyzed media advertisements the Democratic and Republican National Committees (collectively "the parties") ran during 1995 and 1996. The purpose of this analysis was to determine whether the cost of these advertisements constituted in-kind contributions (coordinated expenditures) by the parties on behalf of their respective presidential candidates' committees (which, among other things, could have caused the presidential committees to exceed their primary or general election spending limits in violation of 2 U.S.C. § 441a(b)).

In analyzing these advertisements,[1] the staff examined their content for the presence of two factors to determine whether the advertisement were "for the purpose of influencing" an election for Federal office, as that phrase is used in 2 U.S.C. § 431 (8)(A) ("contribution") and (9)(A) ("expenditure"): Whether the advertisements referred to a "clearly identified candidate" and whether they contained an "electioneering message."[2]

---

[1] *See, e.g.*, "Report of the Audit Division on the Dole For President Committee, Inc. (Primary)" ("Report on DFP"), Agenda Document 98-87, 11/19/98 at 14 & 50; "Report of the Audit on Clinton/Gore '96 Primary Committee, Inc." ("Report on CGP"), Agenda Document 98-85, 11/19/98 at 10, 32-35 & 36-38.

[2] The staff cited Advisory Opinions ("AO")1984-15 and 1985-14 as the authority for using "electioneering message" as a test of the content of a communication. Only AO 1985-14 used that phrase, and it did so in erroneously concluding that the Commission had employed the "electioneering message" test in AO 1984-15, *see* AO 1985-15 at 7; in fact, those words never appear in AO 1984-15. *See* footnote eleven, *infra*, for a discussion of the problems with the staff's interpretation of these opinions.

Because the staff found that both factors were present,[3] the staff recommended that the Commission determine that the costs of the advertisements were in-kind contributions from the parties to their respective presidential campaign committees.[4] The staff also recommended that the Commission determine that the applicable spending limits were exceeded based in part on the cost of the advertisements, and that the Commission require a repayment of presidential matching funds. For various reasons, the Commissioners unanimously rejected the staff's repayment recommendations.

We write here to express our disagreement with the use of "electioneering message" as a test to determine whether communications are "for the purpose of influencing" elections and, therefore, constitute expenditures or contributions under the Federal Election Campaign Act ("FECA"). Specifically, we agree that: (1) The phrase "electioneering message" cannot serve as a substantive test to describe the content of communications that are "for the purpose of influencing" an election because it is derived only from advisory opinions and is not found either in the FECA or in regulations promulgated by the Commission in accordance with the rulemaking procedures specified in the FECA; and (2) The phrase "electioneering message" cannot be used as a shorthand expression of the Commission's interpretation of the statutory standard of "for the purpose of influencing" an election because the advisory opinions from which the phrase is drawn do not convey a clear and consistent application of the statutory standard, and the phrase, standing alone, is both too vague and too broad to have a sufficiently definite meaning. Therefore, we conclude that the phrase "electioneering message" should not be used to describe the content of communications which the Commission would determine to be "for the purpose of influencing" an election to Federal office.

Procedural Defects With Employing The "Electioneering Message" Standard

Congress included an express prohibition in the FECA against the Commission using advisory opinions to establish rules of conduct. Subpart (b) of 2 U.S.C. § 437f, the section governing the use of such opinions, provides that the Commission may employ rules of law that are not set forth in the FECA only if it complies with the procedures set forth in 2 U.S.C. § 438(d) in promulgating them.[5] By necessary implication, subpart (b) of § 437f prohibits the Commission from using advisory opinions as rules of law, for the

[3] *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 50; Report on CGP, Agenda Document 98-85, 11/19/98 at 38.

[4] *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 52; Report on CGP, Agenda Document 98-85, 11/19/98 at 43.

[5] *See id.* at § 437f(b) ("Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title."); *United States Defense Committee v. Federal Election Commission*, 861 F.2d 765, 771 (2nd Cir. 1988) (*USDC*) (citing 2 U.S.C. § 438(d)) ("A rule of law may initially be proposed by the Commission only as a rule or regulation pursuant to very elaborate procedures involving submission of the rule or regulation to the Congress.").

Commission does not follow the requirements of 2 U.S.C. § 438(d) in drafting such opinions; instead, it follows the requirements of § 437f.[6]

As a result, the Commission may not use advisory opinions as a substitute for rulemaking. Rulemaking is not simply the preferred method for filling in gaps in the FECA. It is the required method. 2 U.S.C. § 437f(b), note five, *supra*. Where the law is of uncertain application, advisory opinions cannot be used as a sword of enforcement. *See generally id.* The regulated community can, however, use advisory opinions as shields against Commission enforcement actions in appropriate circumstances. 2 U.S.C. § 437f(c).

> Advisory opinions are binding only in the sense that they may be relied on *affirmatively* by any person involved in the specific transaction or activity discussed in the opinion or in any materially indistinguishable transaction or activity. . . . On the other hand, to the extent that the advisory opinion *does not affirmatively approve* a proposed transaction or activity, it is binding on no one—not the Commission, the requesting party, *or third parties*.[7]

This reading of the FECA's rulemaking requirements, of course, does not prevent the Commission from enforcing the FECA in novel or unforeseen circumstances. It only requires that, absent controlling regulations or the authoritative interpretations of the courts, the Commission's enforcement standard be the natural dictate of the language of the statute itself.[8]

The threshold problem with the "electioneering message" standard, then, is that it is not a rule. It is only a shorthand phrase that purports to describe the Commission's reasoning in two advisory opinions. See note two, *supra*. The phrase is not defined in either of those opinions. In fact, it does not appear at all in one of them. Rather than being promulgated pursuant to the requirements of the FECA (*see* 2 U.S.C. §§ 438(d) and

---

[6] *See* 2 U.S.C. § 437f(b) (". . . No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provision of this section [i.e., § 437f].").

[7] *USDC*, 861 F.2d at 771 (emphasis added) (citing 2 U.S.C. §§ 438(d) and 437f (b)&(c)); *see also Weber v. Heaney*, 793 F. Supp. 1438, 1452 n. 9 (D. Minn 1992) (" . . . Commission advisory opinions are binding in the sense that they may be relied upon affirmatively by any person involved in the specific transaction or activity discussed in the opinion or in any materially indistinguishable transaction or opinion."), *aff'd*, 995 F.2d 872 (8th Cir. 1993); *Stockman v. Federal Election Commission*, 138 F.3d 144, 149 n. 9 (5th Cir. 1998) (same). Some argue that *Orloski v. Federal Election Commission*, 795 F.2d 156 (D.C. Cir. 1986), supports the contrary conclusion. Unlike *USDC*, however, *Orloski* did not address the FECA's clear prohibitions on using advisory opinions as rules of conduct. Instead, *Orloski* analyzed the advisory opinions implicated there for purposes of determining whether the Commission's interpretation of the FECA was reasonable and consistent and thus should be accorded deference. 795 F.2d at 164-167.

[8] *See Sullivan v. Everhart*, 494 U.S. 83, 89 (1990) (Scalia, J.) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) and *National Labor Relations Board v. Food and Commercial Workers*, 484 U.S. 112, 123 (1987)) ("'[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute,' that is, whether the agency's construction is 'rational and consistent with the statute.'").

437f(b) & (c)), the "electioneering message" standard is an amalgam of these advisory opinions. Even at that, it is not the most natural, let alone the only reasonable, reading of those opinions. In fact, it is difficult to draw any clear meaning from a comparison or combination of AOs 1984-15 and 1985-14 (*see* "Substantive Difficulties," *infra*).

As a result, the regulated community most likely does not have *notice* as to how this standard will govern its conduct, and it certainly did not have an opportunity to *comment* on whether it should. Because of its procedural infirmities, the Commission may not employ the phrase "electioneering message" as expressing a general rule for determining whether communications are "for the purpose of influencing" a federal election.[9]

Substantive Difficulties With The "Electioneering Message" Standard

Apart from its procedural infirmities, the "electioneering message" standard suffers from serious problems of vagueness and overbreadth. As presented by the staff, a communication satisfies this standard if it includes statements which are "designed to urge the public to elect a certain candidate or party,[10] or which would tend to diminish support for one candidate and garner support for another candidate." *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 14 (citing AO 1984-15); Report on CGP, Agenda Document 98-87, 11/19/98 at 10 (citing AO 1984-15).[11]

---

[9] *Democratic Congressional Campaign Committee v. Federal Election Commission*, 645 F. Supp. 169 (D.D.C. 1986), *aff'd in part and rev'd in part*, 831 F.2d 1131 (D.C. Cir. 1987) (*DCCC*) and *Federal Election Commission v. Ted Haley Congressional Committee*, 852 F.2d 1111 (9th Cir. 1988) (*Haley*) do not affect this conclusion. In *DCCC*, the Commission dismissed a complaint, contrary to the recommendation of its General Counsel, without providing a statement of reasons for doing so when it appeared the complaint alleged activity that satisfied the "electioneering message" standard. 645 F. Supp. at 170-171. The Court, in an action brought pursuant to 2 U.S.C. § 437g(a)(8), was faced with the question of whether the Commission had acted "contrary to law" for appearing to disregard its "electioneering message" test without articulating any reason for doing so, *id.* at 171-174; the Court was not faced with the issue here: whether that test, itself, was validly established. In *Haley*, the Court noted that the Commission's interpretation of the FECA in its regulations and advisory opinions was entitled to due deference. 852 F.2d at 1115. But all the advisory opinions to which that Court referred interpreted a Commission regulation, *id.* at 1114-1115; they did not attempt to circumvent the FECA's clear requirement that for rules of conduct, the Commission *have* a regulation. *See also Federal Election Commission v. Legi-Tech*, 967 F. Supp. 523, 529-530 (D.D.C. 1997) (Commission advisory opinions interpreted regulation).

[10] The staff cites AO 1984-15 as authority for this phrase. This phrase, however, comes from 1985-14. *See id.* at 7 (citing *United States v. United Auto Workers*, 352 U.S. 567, 587 (1957)).

[11] There is substantial question as to whether the staff's analysis properly characterizes AO 1984-15. While that opinion uses the phrases "diminish support" and "garner support," *id.* at 5, it concludes that advertisements which clearly identify presidential candidates of one party and include exhortations to "vote" for another party "effectively advocate the defeat of a clearly identified candidate." *Id.* Whatever distinction there may be between "effectively" and "expressly" advocating, the facts presented in that advisory opinion bear similarities to the facts in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), and the Commission's conclusion in AO 1984-15 and the court's conclusion in *MCFL* can be read consistently. The staff suggests an extremely broad interpretation of AO 1984-15, citing the phrase "dimish [or] garner support." *See* Reports on DFP & CGP, *supra*. That opinion's facts, however, suggest a more narrow, and more natural, construction, similar to *MCFL*.

Such formulations, the Supreme Court has held, offend the First Amendment. In *Buckley v. Valeo,* 424 U.S. 1, 42-44 (1976), the High Court held as impermissibly vague the "relative to . . . advocating the election or defeat of [a clearly identified] candidate" standard in 18 U.S.C. § 608(e) (1970) of the original FECA. The "diminish support for one candidate" prong—like the "relative to" standard in the original FECA— is especially problematic because "the distinction between discussion of issues and candidates and *advocacy of election or defeat of candidates* may often dissolve in practical application." *Buckley,* 424 U.S. at 42 (emphasis added).[12]

The factual question of what a particular statement was *designed* to do also gives rise to vagueness problems. The fact that the term "electioneering" and the phrase "designed to urge the public to elect a certain candidate or party" were plucked out of context from a four-decade old Supreme Court opinion (*United States v. Auto Workers,* 352 U.S. 567 (1957) (*UAW*)) does not resolve the question.[13] First, it is clear that *UAW* was not enunciating a constitutionally-permissible standard for regulating speech, but describing a particular communication in the course of an opinion explicitly refusing to reach a ruling on the constitutionality of regulating the specific speech so described. *See id.* at 591 (internal citation omitted) ("Clearly in this case it is not absolutely necessary to a decision to canvass the constitutional issues."). Second, the speech at issue in *UAW* included specific endorsements of candidates. *Id.* at 584. Third, the *per curiam* opinion in *Buckley* cites the dissent in *UAW*, *see* 424 U.S. at 43 (citing *UAW*, 352 U.S. at 595-596 (Douglas, J., dissenting)), which had urged that the FECA's predecessor statute be declared unconstitutional as applied to the electioneering speech at issue in *UAW.*

The relationship, if any, of the two prongs of the "electioneering message" test underscores the test's vagueness. Read narrowly, "urge the public to elect a candidate," AO 1985-14 at 7, could be construed as equivalent to communications "that expressly

---

[12] The "relative to" standard, on its face, was thus unhelpful in distinguishing between these two types of speech. *Id.* As a result, to allow unfettered issue discussion while regulating candidate advocacy, the government, under this standard, had to attempt to divine the speaker's intent. *Id.* at 43. This, the Court noted, would not only be difficult, but dangerous.

> Whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning. Such a distinction offers no security for free discussion. In these conditions, it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.

Id. (quoting *Thomas v. Collins,*.323 U.S. 516, 535 (1945)). The second prong of the "electioneering message" test—given its "diminish [candidate] support" focus—requires the same difficult and dangerous subjective inquiry.

[13] Like a '57 Chevy, a dated Supreme Court opinion may be charming, but often requires substantial restoration to be of practical use.

advocate the election or defeat of a clearly identified candidate." *Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238, 249-250 (1986) (quoting *Buckley*, 424 U.S. at 80). In contrast, there is virtually nothing which could be said about a candidate for federal office which might not be interpreted as "diminish[ing] support for one candidate [or] garner[ing] support for another candidate." *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 14 (citing AO 1984-15); Report on CGP, Agenda Document 98-87, 11/19/98 at 10 (citing AO 1984-15).

The "electioneering message" test is also unconstitutionally overbroad for related reasons. As the *Buckley* Court observed,

> [c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.

424 U.S. at 42. Regulation of any statement which " diminishes [or garners] support for [a] candidate," AO 1984-15 at 5, would encompass, then, virtually any meaningful utterance identifying a candidate.

The vagueness and overbreadth problems of the "electioneering message" and "relative to" standards are thus two sides of the same counterfeit coin. They are vague because it is not clear when they encompass issue discussion and not candidate advocacy. They are overbroad because, given the nature of campaigning, they will inevitably encompass both. For the same substantive reasons that the Supreme Court held the "relative to" standard in the FECA to be unconstitutional, the Commission may not employ "the electioneering message" standard. Even in the context of coordinated, or presumably coordinated, communications in which the "electioneering message" test has generally been proposed (*see* 11 C.F.R. § 114.4(c)(5)(ii)(B)(2)(E) (regulation of voter guides)), the Commission may not ignore these constitutional requirements.

Conclusion

Given the procedural and substantive infirmities with the "electioneering message" standard, the Commission may not employ it in administering the FECA, the Presidential Primary Matching Payment Account Act, the Presidential Election Campaign Fund Act, or its own regulations.

Darryl R. Wold — Date 6/24/99
Vice Chairman

Lee Ann Elliott — Date 6-24-99
Commissioner

David M. Mason — Date 6/24/99
Commissioner

Karl J. Sandstrom — Date 6/24/99
Commissioner

Public Records

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2000 MAR 27 P 4: 10

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 23, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Leslie Bright
Associate General Counsel

SUBJECT: President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (LRA #529)

Pursuant to the Commission's March 16, 2000 discussion and determination in connection with Agenda Document No. 00-31, attached for your information is a letter to Lyn Utrecht, counsel for the Clinton/Gore '96 Primary Committee, Inc. The letter summarizes the Commission's action with respect to the Future Tech disgorgement determination.

If you have questions about this letter, please contact Andre G. Pineda, the attorney assigned to this matter.

Attachment

Letter from Kim Leslie Bright to Lyn Utrecht

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lyn Utrecht, Esq.
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036

Re: Clinton/Gore '96 Primary Committee, Inc.
Disgorgement Payment (LRA #529)

Dear Ms. Utrecht:

On July 15, 1999, the Commission determined that President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must disgorge $25,000 to the United States Treasury for contributions that were identified as being part of a corporate contribution scheme involving Future Tech International ("Future Tech") and its corporate officers. By letter dated October 8, 1999, the Committee sent the Office of General Counsel a $25,000 check made payable to the United States Treasury. In addition to enclosing the disgorgement payment, the letter indicated that the Committee is "somewhat concerned about the Commission's authority to order the disgorgement, particularly in light of a lawsuit that has been related to a Commission disgorgement order to another 1996 presidential campaign." The Committee's letter also stated that "[w]e assume that the Commission would defend [it] should any legal action be brought against the Committee to seek return of these funds to the contributor."

Although the letter does not identify the lawsuit, it appears that it is referring to *Fireman v. United States*, 44 Fed. Cl. 528 (1999), a United States Court of Federal Claims decision which granted, in part, and denied, in part, a motion to dismiss that was filed by the Department of Justice ("DOJ"). The lawsuit, filed by Simon C. Fireman, was a claim against the United States for $69,000 pursuant to 28 U.S.C. § 1491 ("the Tucker Act"). The amount sought was equal to the amount of contributions Mr. Fireman and Aqua-Leisure Industries, Inc. made to the Dole for President Committee, Inc. and the Dole for President Compliance Committee, Inc. (collectively "the Dole Committees"), which were later disgorged to the United States Treasury by the Dole Committees. On November 1, 1999, the United States Court of Federal Claims dismissed Mr. Fireman's lawsuit.

On March 16, 2000, the Commission determined to retain the disgorgement with the United States Treasury. Please note that any Tucker Act claim filed in the United States Court

of Federal Claims by a donor for monies disgorged by the Committee would name the United States as a party. Accordingly, it appears that the Committee would not properly be named a party to such a claim.

My Office will keep you apprised of any developments regarding this matter, should any occur. If you have any questions, please contact Andre G. Pineda, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Kim Leslie Bright
Associate General Counsel

P.R.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 8 4 12 PM '99

September 7, 1999

TO: THE COMMISSION

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REPAYMENTS RECEIVED FROM CLINTON/GORE '96 PRIMARY COMMITTEE, INC. & CLINTON/GORE '96 GENERAL COMMITTEE, INC.

On August 12, 1999 the subject committees submitted their responses to the audit reports approved by the Commission. In the case of the Clinton/Gore 1996 primary campaign, a check in the amount of $11,180, payable to the United States Treasury, was included to satisfy the amount due the Treasury related to stale-dated checks.[1] The repayment ($114,450) related to non-qualified campaign expenses cited in the audit report was obviated by virtue of the primary campaign having made or received reimbursements to/from the general campaign as discussed in the audit report.

With respect to the Clinton/Gore 1996 general campaign a check in the amount of $3,241, payable to the United States Treasury, was included to satisfy the amount due the Treasury related to interest earned (less applicable taxes). The repayment ($12,427) related to non-qualified campaign expenses cited in the audit report was obviated by virtue of the general campaign having received a reimbursement from the primary campaign as discussed in the audit report.

Photocopies of the receipts indicating delivery of the repayment checks to the United States Treasury are attached. If you have any questions, please contact Ray Lisi or Tom Nurthen at 694-1200.

Attachments as stated
96cgprim/admin/repayments

[1] The amount ($12,230) cited in the audit report was adjusted to account for $1,050 in checks which cleared the bank, leaving $11,180 due the Treasury.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 31, 1999

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on August 31, 1999 from the Federal Election Commission (by hand delivery) a check drawn on Nations Bank, N. A. for $3,241.00. The check represents a payment for interest income on federal funds from the Clinton/Gore '96 General Committee, Inc.

The payment should be deposited into the General Fund of the U. S. Treasury.

Clinton/Gore '96 General Committee, Inc.

Amount of Payment: $3,241.00

Presented by:

for the
Federal Election Commission

Received by:

for the
United States Treasury

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 31, 1999

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on August 31, 1999 from the Federal Election Commission (by hand delivery) a check drawn on Nations Bank, N. A. for $11,180. The check represents a payment for stale dated checks from Clinton/Gore '96 Primary Committee, Inc.

The payment should be deposited into the General Fund of the U. S. Treasury.

Clinton/Gore '96 Primary Committee, Inc.

Amount of Payment: $11,180

Presented by:

for the
Federal Election Commission

Received by:

for the
United States Treasury

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 4, 1999

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

SUBJECT: President Clinton and the Clinton/Gore '96 Primary Committee, Inc.
(LRA #529)

Attached is the revised Notice of Repayment Determination and Disgorgement Determination circulated for informational purposes. On June 15, 1999, the Commission determined that President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must repay $10,948.25 to the United States Treasury for receiving funds in excess of entitlement. On the same date, the Commission also determined that the Committee must disgorge $25,000 for contributions that were associated with the Department of Justice Campaign Task Force Investigation of Future Tech International, Inc., et al.

At the July 15, 1999 meeting on this matter, the Commission approved a draft Notice of Repayment Determination with the condition that this Office add language setting forth the basis of the disgorgement determination. The attached Notice of Repayment Determination and Disgorgement Determination contains this additional language. Staff from this Office has been in contact with the offices of Commissioners Mason and Thomas regarding this language.

This Office will send the attached Notice of Repayment Determination and Disgorgement Determination to the Committee at the conclusion of the circulation period, unless we receive an objection. If you have any questions, please contact Andre G. Pineda, the attorney assigned to this matter, at 694-1650.

Attachment

Notice of Repayment Determination and Disgorgement Determination

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
President William J. Clinton	)	LRA #529
Clinton/Gore '96 Primary Committee, Inc.	)	
	)	

NOTICE OF REPAYMENT DETERMINATION AND DISGORGEMENT DETERMINATION

On July 15, 1999, the Federal Election Commission ("the Commission") determined that President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must repay $10,948.25 to the United States Treasury for receiving funds in excess of entitlement. 26 U.S.C. § 9038(b)(1). Specifically, the Commission determined that the Committee must repay payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable. 11 C.F.R. § 9038.2(b)(1)(iii). The Committee is ordered to pay $10,948.25 to the United States Treasury within 90 calendar days after service of this determination. 11 C.F.R. §§ 9038.2(c)(1) and (d)(1). This Notice of Repayment Determination sets forth the legal and factual basis for the repayment determination. 11 C.F.R. § 9038.2(c)(1).

On July 15, 1999, the Commission also determined that the Committee must disgorge $25,000 to the United States Treasury for 25 contributions that were associated with the Department of Justice ("DOJ") Campaign Finance Task Force ("Task Force") investigation of

Future Tech International, Inc., et al., and the subsequent criminal guilty pleas that were entered into as a result of that investigation[1]. See *infra*, pp. 3-6 and 8-10.

I. BACKGROUND

In 1995 and 1996, President Clinton was a candidate for the Democratic presidential nomination. On April 14, 1995, the Committee registered with the Commission. On October 31, 1995, the Commission determined that the Committee was eligible to receive public funds under the Presidential Primary Matching Payment Account Act ("the Matching Payment Act").[2] 26 U.S.C. §§ 9031-9042; *see also*, Memorandum to the Commission entitled *Notification of Date of Ineligibility - President William J. Clinton (LRA#485)*, dated August 29, 1996. The Committee received $13,412,198 in public funds pursuant to the Matching Payment Act.[3] *See* Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. (approved June 3, 1999) ("the audit report").

The DOJ created the Task Force to investigate alleged violations of the Federal Election Campaign Act of 1971, as amended ("the FECA"), by various individuals and entities that may have occurred during the 1995-1996 Presidential election cycle. The investigations resulted in

---

[1] The repayment procedures described at 11 C.F.R. §§ 9038.2(c) and 9038.5 do not apply to the disgorgement determination.

[2] Pursuant to the Matching Payment Act, the Committee was entitled to received public funds for campaign activity through August 28, 1996, the date that President Clinton garnered the Democratic presidential nomination. 26 U.S.C. §§ 9031-9042; *see also*, 11 C.F.R. §§ 9032.6 and 9033.5.

[3] The Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses, as provided for in the Matching Payment Act and the Commission's regulations. 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1. The findings of the audit and examination are contained in the Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. (approved June 3, 1999) ("the audit report"). The facts which are the basis for the additional repayment determination set forth in this Notice of Repayment Determination and Disgorgement Determination were not included in the audit report. *See* 11 C.F.R. § 9038.2(f).

criminal indictments against individuals and entities for their activity involving contributions to the Committee.

One of the Task Force investigations involved Future Tech International, Inc. ("Future Tech"); Mark Vision Computers, Inc. ("Mark Vision"); Mark Jimenez, the Chief Executive Officer ("CEO") of Future Tech; and Juan Ortiz, the Chief Financial Officer ("CFO") of Future Tech (collectively "the Future Tech investigation").[4] Another involved Johnny Chung.

One aspect of the Future Tech investigation involved 25 contributions to the Committee totaling $25,000.[5] Future Tech was a Miami, Florida based corporation whose primary business involved the distribution of computer components and related equipment in South America; it also distributed equipment manufactured by leading United States companies. Attachment B at 18 and Attachment C at 24. Mark Vision was a Florida corporation that assembled computer systems. Attachment B at 18 and Attachment C at 26. Mr. Jimenez was CEO of Future Tech; he also exerted "substantial control" over Mark Vision. Attachment B at 17-18 and Attachment C at 24 and 26.

Beginning "at least as early as September 1994, and continuing until in or about November of 1996," Future Tech, with the knowledge and consent of Mr. Jimenez, "devised and executed a scheme whereby corporate money belonging to [Future Tech] would be used to make

---

[4] On September 30, 1998, DOJ filed an indictment against Mr. Jimenez alleging violations of 2 U.S.C. § 441f and 18 U.S.C. §§ 2, 371, and 1001. Attachment A at 1. On April 15, 1999, DOJ filed another indictment against Mr. Jimenez alleging violations of 2 U.S.C. § 441f, 18 U.S.C. §§ 2, 371, 1001, and 1343 as well as 26 U.S.C. § 7201; the April 15th indictment purportedly incorporates the allegations contained in the September 30th indictment. Mr. Jimenez reportedly is residing in the Philippines, and the United States has reportedly requested that Mr. Jimenez be extradited to the United States.

[5] The Future Tech investigation involved contributions to the Committee as well as contributions to other political committees. *See* Attachments A-C. This Notice concerns only those contributions to the Committee that were identified by DOJ as part of the Future Tech investigation.

secret, disguised and illegal corporate campaign contributions to various federal candidates . . . and their political committees." Attachment C at 30. To execute this scheme, Mr. Jimenez identified candidates that Future Tech would support, then "solicited or instructed others to solicit campaign contributions from numerous conduits," including Future Tech and Mark Vision employees. *Id.* Future Tech agreed to reimburse these conduits for their contributions with either Future Tech or Mark Vision funds or with Mr. Jimenez' personal funds. *Id.* These reimbursements were disguised in Future Tech and Mark Vision books and records "by coding the reimbursements as employee wages, bonuses, adjustments to regular wages, or 'other.'"[6] *Id.* Later, at the direction of Mr. Jimenez, Future Tech reimbursed conduit contributors by cash. *Id.* at 31. The treasurer of Future Tech "exchanged checks from Jimenez' personal bank account for cash available at [Future Tech] and distributed that cash to conduit campaign contributors as reimbursement for their contributions . . . " *Id.*

Around July 1995, Mr. Jimenez pledged to raise $25,000 in connection with a Committee fundraising event that was held in Miami, Florida on September 19, 1995. *Id.* at 34. Around September 1995, Mr. Jimenez informed Mr. Ortiz, as well as Future Tech's President and Operations Vice-President, "that he needed $25,000 from 25 [Future Tech] employees in personal $1,000 checks." *Id.* Mr. Jimenez instructed "certain [Future Tech] employees to solicit the checks from employees in their departments and that they would be reimbursed." *Id.* Based on his past experience, Mr. Ortiz reimbursed the employees who gave checks through Future Tech and Mark Vision payroll systems. *Id.*

---

[6] This scheme included Future Tech and Mark Vision reimbursement to employees through payroll accounts. Attachment C at 30.

In September 1995, Mr. Jimenez arranged for 26 individuals to make contributions to the Committee and to have Future Tech and Mark Vision reimburse these individuals for their contributions. Between September 6, 1995 and September 8, 1995, Mr. Jimenez solicited Mr. Ortiz for a $1,000 personal check payable to the Committee and promised him reimbursement. Attachment B at 22-23 and Attachment C at 35. On or about September 6, 1995, Mr. Ortiz wrote a personal check for $1,000 to the Committee. Attachment B at 22. Between September 6, 1996 and September 8, 1995, Mr. Jimenez also "collected or caused to be collected 25 checks payable to the [Committee] in the amount of $1,000." Attachment C at 35.

Shortly after September 6, 1995, Mr. Ortiz was given a list of approximately 23 Future Tech or Mark Vision employees who were asked to make personal checks payable to the Committee. Attachment B at 23. Between September 6, 1995 and September 8, 1995, Mr. Ortiz instructed a Future Tech accounting department employee to contact Automated Data Processing ("ADP"), Future Tech's and Mark Visions' payroll processor, to arrange for corporate reimbursement to 15 non-executive and eight executive employees who had contributed $1,000 each to the Committee. *Id.*; *see also*, Attachment C at 35. Pursuant to this request, ADP "executed the requested reimbursements to 23 [Future Tech] and [Mark Vision] employees with payroll checks or credits in the net amount of approximately $1,000" on or about September 8, 1995.[7] *Id.* Once these transactions were completed, Mr. Jimenez "delivered or caused to be delivered 25 [$1,000] checks" on or about September 13, 1995 to the Committee. Attachment C at 36.

[7] These reimbursements were coded as "bonus" or "other" to "conceal the fact of reimbursements from auditors, lawyers and the [Internal Revenue Service]." Attachment C at 35-36.

Twenty-five checks submitted by the Committee for matching funds were associated with Future Tech and Mark Vision.[8] Attachment D. The Committee received $6,083.25 in matching funds for these contributions (25 x $243.33).[9] *Id.*

Another target of the Task Force investigation was Johnny Chung ("the Chung investigation"). One aspect of the Chung investigation involved 20 contributions to the Committee totaling $20,000.[10] Mr. Chung was the chief executive officer and majority shareholder of Automated Intelligent Systems, Inc. ("AISI"), a California corporation. Attachment E at 1. On September 21, 1995, Mr. Chung attended a Committee fundraising event in Century City, California with "approximately twenty guests;" the cost for attending the event was $1,000 a person. *Id.* at 7. To pay for the attendance of his guests at this event, Mr. Chung and others agreed on September 22, 1995 to an arrangement whereby Mr. Chung would contribute "at least $20,000 of his own money" to the Committee that he would disguise as contributions from other persons. *Id.* at 7-8. Mr. Chung instructed an AISI employee to recruit conduit contributors "by asking them to write individual checks [for $1,000 to the Committee], drawn on their own checking accounts." *Id.* at 8. Mr. Chung then directed that cash be

---

[8] The Audit Division queried the Committee's database and its related matching fund database; based on these queries, 25 individuals associated with Future Tech, and one individual associated with Mark Vision, were identified as each making a $1,000 contribution to the Committee. Attachment D at 1. In addition, the Audit Division identified one contributor who had the same address as another contributor who listed his employer as Future Tech, and another individual whose check to the Committee was returned for non-sufficient funds. *Id.* The Commission's repayment determination does not include any matching funds that may have been paid for the former contribution. Nor does it include the latter contribution, as it was not submitted for matching.

[9] The Committee submitted 25 checks for matching; thus, it sought $250 in matching funds for each submitted check. *See* 26 U.S.C. § 9034(a). The total amount of matching funds approved was $6,083.25 (25 x $250 x .9733). Attachment D at 3.

[10] Like the Future Tech investigation, the Chung investigation involved contributions to the Committee, as well as contributions to another political committee. *See* Attachment C at 6-12. Additionally, the Chung investigation involved tax evasion and bank fraud. *Id.* at 1-5. This Notice concerns only those contributions to the Committee that were identified by DOJ as part of the Chung investigation.

withdrawn from two of his personal bank accounts and delivered to him and an AISI employee at AISI's offices; he also directed an AISI employee to deliver $1,000 in cash to each of 20 conduit contributors to reimburse them for their contributions. *Id.* Mr. Chung also directed an AISI employee to deliver the 20 conduit checks to the Committee.[11] *Id.*

Twenty checks submitted by the Committee for matching funds were associated with Johnny Chung. Attachment F. The Committee received $4,865 in matching funds for these contributions (20 x $243.25).[12] *Id.*

II. ANALYSIS

A. LAW

Candidates who are eligible to receive public funding under 26 U.S.C. § 9033 may submit contributions that they receive from their contributors for matching of up to $250 for each individual contributors' contribution. 26 U.S.C. § 9034(a). However, certain types of contributions are not matchable. 11 C.F.R. § 9034.3. Contributions from a corporation or contributions made in the name of another cannot be matched with public funds. 11 C.F.R. §§ 9034.3(d) and (e); *see* 2 U.S.C. § 441b and 441f. If a contribution was matched and it is later determined to be non-matchable, the Commission may seek a repayment to the United States Treasury for the non-matchable payment. 26 U.S.C. § 9038(b)(1) and 11 C.F.R. § 9038.2(b)(1)(iii). A committee may be required to make an additional repayment to the United

---

[11] Additional details pertaining to the Chung contributions are contained in an Interim Report from the Committee on Government Reform and Oversight Campaign Finance Investigation and Related Matters, Chapter IV, Part C (*Johnny Chung: His Unusual Access to the White House and His Political Donations).* <http://www.house.gov/reform/reports/fundraising/4c_chung.html>.

[12] The Committee submitted 20 checks for matching; thus, it sought $250 in matching funds for each submitted check. *See* 26 U.S.C. § 9034(a). The total amount of matching funds approved was $4,865 (20 x $250 x .9730. Attachment F at 1.

States Treasury when there exist facts not used as the basis for any previous determination. 11 C.F.R. § 9038.2(f). Any additional repayment determination will be made in accordance with 11 C.F.R. § 9038.2. *Id.*

A guilty plea in a criminal matter "is the equivalent of admitting all material facts alleged in the charge." *United States v. Kelsey*, 15 Fed. 3rd 152, 153 (10th Cir. 1994). A knowing and voluntary plea constitutes an admission of all material facts alleged in an indictment and a waiver of all non-jurisdictional defects in the proceeding. *United States v. McFarlane*, 881 F. Supp. 562, 565-66 (M.D. Fla. 1995), *aff'd*, 140 F.3d 1042 (11th Cir. 1998). If a guilty plea is "voluntary (and entered with effective assistance of counsel), it is conclusive on all factual and legal issues other than a contention that the very initiation of the proceedings violated the Constitution." *Young v. United States*, 124 F.3d 795, 797 (7th Cir. 1997), *cert. denied*, 118 S.Ct. 2324 (1998).

B. DISCUSSION

1. The Future Tech Investigation

The information underlying Future Tech's and Mr. Ortiz's guilty plea is sufficient to conclude that the related contributions to the Committee were non-matchable. By signing the plea agreements and factual resumes, Future Tech and Mr. Ortiz have agreed that all of the facts surrounding the pleas are true. *See Kelsey*, 15 F.3d at 153. The plea agreements and factual resumes demonstrate that the source of the funds used for the contributions to the Committee were Future Tech monies and the contributions were made by the contributors at the direction of Future Tech officials. Therefore, the contributions should not have been matched. *See* 11 C.F.R. § 9034.3(d) and (e).

On January 5, 1999, Mr. Ortiz pled guilty to violating 2 U.S.C. § 441f for his involvement in the contributions at issue in the Future Tech investigation. Attachment B at 2-16.

The factual resume accompanying the plea agreement sets forth the basis for his guilty plea and includes specific reference to the reimbursement scheme outlined in the DOJ indictment against Mr. Jimenez. Attachment B at 17-28; *see also*, pp. 3-6, *supra.*

On December 17, 1998, Future Tech pled guilty to violating 26 U.S.C. § 7201 for filing false Federal Income Tax forms stemming, in part, from the Committee conduit contribution scheme. Attachment C at 4-23. The factual resume accompanying the plea agreement sets forth the basis for the guilty plea and includes specific reference to the reimbursement scheme. Attachment C at 34-37; *see also*, pp. 4-6, *supra.*

The guilty pleas entered into by Mr. Ortiz and Future Tech are "the equivalent of admitting all material facts alleged in the [indictment]." *United States v. Kelsey*, 15 Fed. 3rd 152, 153 (10th Cir. 1994) and *United States v. McFarlane*, 881 F. Supp. 562, *aff'd*, 140 F.3d 1042 (3rd Cir. 1998). The plea agreements were entered into voluntarily and there is no indication that Mr. Ortiz and Future Tech received ineffective assistance of counsel; accordingly, "[the plea agreements are] conclusive on all factual and legal issues." *Young v. United States*, 124 F.3d 795, 797 (7th Cir. 1997), *cert. denied*, 118 S.Ct. 2324 (1998).

The conduit contribution scheme described in the Ortiz and Future Tech plea agreements and factual resumes clearly indicate that the contributions to the Committee associated with the Future Tech investigation were in violation of the FECA. As a result, the Committee should not have received matching funds for these contributions and it should repay $6,083.25 to the United States Treasury.[13] 11 C.F.R. § 9034.3(e).

---

[13] The factual resumes for Mr. Ortiz and Future Tech collectively refer to 26 contributions. *See* pp. 4-6, *supra.* However, they also refer to a payroll reimbursement scheme involving 23 individuals. *Id.* The Commission's review of the Committee's matching fund submissions identifies 25 contributions that are associated with Future Tech and Mark Vision. Attachment D. The Commission's repayment determination is based on the number of contributions that were submitted for matching. *See* note 8, *supra.*

2. The Chung Investigation

The information underlying Mr. Chung's guilty plea is also sufficient to conclude that the related contributions to the Committee were non-matchable. By signing a plea agreement, Mr. Chung agreed that all of the facts surrounding the plea are true. *See Kelsey*, 15 F.3d at 153. Although Mr. Chung's plea agreement was filed under seal and has not been publicly released, his indictment demonstrates that the source of the funds used for the contributions to the Committee were his own and the contributions were made by the contributors at the direction of Mr. Chung. Therefore, the contributions should not have been matched. *See* 11 C.F.R. § 9034.3(d) and (e).

On March 16, 1998, Johnny Chung pled guilty to violating 2 U.S.C. §§ 441a, 441f and 437g(a), 18 U.S.C. §§ 371 and 1344 as well as 26 U.S.C. § 7201. *Chung Pleads Guilty* (last modified March 16, 1998) <http://www.cnn.com/ALLPOLITICS/ 1998/03/16/chung.pleads/ index.html>. Although Mr. Chung's plea agreement was filed under seal, his indictment sets forth the basis for his guilty plea and includes specific reference to the conduit contribution scheme. Attachment E at 6-9; *see also*, pp. 6-7, *supra.*

The guilty plea entered into by Mr. Chung is "the equivalent of admitting all material facts alleged in the [indictment]." *United States v. Kelsey*, 15 Fed. 3rd 152, 153 (10th Cir. 1994) and *United States v. McFarlane*, 881 F. Supp. 562, *aff'd*, 140 F.3d 1042 (3rd Cir. 1998). The plea agreement was entered into voluntarily and there is no evidence which indicates that Mr. Chung received ineffective assistance of counsel; accordingly, "[the plea agreement is] conclusive on all factual and legal issues." *Young v. United States*, 124 F.3d 795, 797 (7th Cir. 1997), *cert. denied*, 118 S.Ct. 2324 (1998).

The conduit contribution scheme described in the Chung indictment, as well as the Interim Report from the Committee on Government Reform and Oversight Campaign Finance Investigation and Related Matters, clearly indicate that the contributions to the Committee associated with the Chung investigation were in violation of the FECA. As a result, the Committee should not have received matching funds for these contributions and it should repay $4,865 to the United States Treasury. 11 C.F.R. § 9034.3(e).

III. DISGORGEMENT

A. LAW

Disgorgement is an equitable remedy which serves "to prevent defendants from profiting from their illegal conduct." *SEC v. Bilzerian*, 814 F. Supp. 116, 121 (D.D.C. 1993), *aff'd*, *SEC v. Bilzerian*, 29 F. 3d. 689 (D.C. Cir. 1994); *see also*, *SEC v. Tome*, 833 F. 2d 1086, 1096 (2nd Cir. 1987). Disgorgement also prohibits unjust enrichment and deprives the wrongdoer of ill-gotten gains. *SEC v. First Financial Corp.*, 890 F.2d 1215, 1231 (D.C.Cir. 1989); *SEC v. Commonwealth Chemical Securities, Inc.*, 574 F. 2d. 90, 95 (2nd Cir. 1978). Disgorgement does not constitute punishment. *SEC v. Bilzerian*, 29 F. 3d. 689, 696 (D.C. Cir. 1994).

Governmental agencies can order disgorgement as an appropriate remedy, even in the absence of a specific statutory provision, if an agency's enabling statute permits equitable relief.[14] *SEC v. Texas Gulf Sulphur Co.*, 446 F. 2d 1301, 1307 (2d Cir. 1971), *cert denied*, 404 U.S. 1005 (1971); *see also*, *CFTC v. Hunt*, 591 F.2d 1211, 1222 (7th Cir. 1979). Disgorgement

[14] Federal agencies whose enabling statutes do not specifically permit equitable relief can avail themselves of the disgorgement remedy based on "the traditional equity powers of a court." *CFTC v. Hunt*, 591 F.2d 1211, 1222 (7th Cir. 1979); *see also, SEC v. First Financial Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989).

of ill-gotten gains have been made payable to the United States Treasury. *See U.S. v. Bonanno Organized Crime Family*, 683 F. Supp. 1411 (E.D.N.Y. 1988), *aff'd*, 879 F.2d 20 (2d. Cir. 1989).

B. DISGORGEMENT DETERMINATION

The Commission has required political committees to disgorge excessive and prohibited contributions to the United States Treasury in a variety of circumstances.[15] For example, the Commission has required publicly-funded committees to disgorge monies to the United States Treasury for excessive or prohibited contributions in the 1992 and 1996 election cycles.[16] *See* Explanation and Justification for 11 C.F.R. § 9007.1, 60 Fed Reg. 31863 (June 16, 1995) (Disgorgement in the public financing context eliminates the need to monitor the refunds of excessive or prohibited contributions that have not been timely refunded, permits one payment to be made to United States Treasury, rather than refunding multiple contributions, and is a practical solution when a sample review has revealed excessive or prohibited contributions).

The Commission has also required the disgorgement of excessive and prohibited contributions in signed conciliation agreements with political committees.[17] Moreover, the

---

[15] In the mid-1970's, the President Ford Committee paid monies to the United States Treasury for apparent excessive contributions. *See* Memorandum to Robert J. Costa from Charles N. Steele entitled Response of the Mondale for President Committee, Inc. to the Interim Addendum to the Final Audit Report, p. 2. (undated). In the early 1980's, the Kennedy for President Committee disgorged to a charity an amount equal to the contributions that the Commission had identified as being legally suspect. *Id.* Finally, in 1987, the Mondale for President Committee, Inc. disgorged an amount equal to outstanding stale-dated checks to a tax exempt charitable organization based on a Commission determination. *See* Memorandum to Robert J. Costa from Lawrence M. Noble and Kim L. Bright-Coleman entitled Addendum to the Final Audit Report on the Mondale for President Committee, Inc. (LRA 203), p. 4, dated May 26, 1987.

[16] For the 1992 election cycle, the following committees made disgorgements to the United States Treasury: Buchanan for President, Americans for Harkin, Inc., Tsongas for President Committee, Inc. (disgorgement required, but never made), Bush-Quayle '92 Primary Committee, Inc. and Wilder for President Committee. For the 1996 election cycle, the Commission required Arlen Specter '96 to disgorge monies to the United States Treasury for excessive or prohibited contributions.

[17] *See* MURs 1704 (Mondale for President Committee, Inc., et al.), 2595 (Populist Party), 2992 (People for Joseph DioGuardi), 3309 (Dole for President), 3360 (Kemp for President), 3471 (Gantt for Senate Campaign Committee), 4194 (Mascara for Congress, et al.), 4427 (Elgin Builders, Inc., et al), and 4259 (Lautenberg

Commission has recommended disgorgement of improper contributions by non- presidential committees that have been selected for audit pursuant to 2 U.S.C. § 438(b).[18] Finally, the Commission has recommended disgorgement as an appropriate remedy in the advisory opinion process. [19]

The information obtained by the Task Force investigation regarding contributions to the Committee that were associated with Future Tech is sufficient to conclude that they were legally suspect. *See, supra,* p. 3-6 and 8-10. By signing the plea agreements and factual resumes, Future Tech and Mr. Ortiz have agreed that all of the facts surrounding the pleas are true. *See Kelsey,* 15 F.3d at 153. The plea agreement and factual resumes demonstrate that the source of funds used for the 25 contributions identified by the Audit Division were Future Tech monies, and that the contributions were made by donors at the direction of Future Tech officials. Accordingly, based on past Commission practice, the Committee is required to disgorge $25,000 to the United States Treasury, an amount equal to the 25 Future Tech related contributions. *See Bilzerian,* 814 F. Supp. at 121 and *First Financial Corp.*, 890 F.2d at 1231.

Committee, et al). In the 1980's, the Commission also obtained a disgorgement remedy for illegally solicited contributions in a consent order involving the National Right to Work Committee. *See* Memorandum to Robert J. Costa from Charles N. Steele entitled Response of the Mondale for President Committee, Inc. to the Interim Addendum to the Final Audit Report, p. 2. (undated).

The Commission has also sought disgorgement in the following matters, even though disgorgement was not included in signed conciliation agreements: MURs 2241 (Mondale for President Committee, Inc.), 2892 (Waihee, et al.), 4235 (Murkowski for U.S. Senate Committee, et al.), 3460 (Sports Shinko (Pukalani) Co., Ltd., et al.), and 4582 (Indian-American Leadership Investment Fund, et al.).

18 *See* Report of the Audit Division on the Republican Campaign Committee of New Mexico, p. 18 (approved July 30, 1996) and Report of the Audit Division on Kemp for Vice President, p. 8 (approved May 13, 1999).

19 *See* Advisory Opinion ("AO") 1991-39 (Friends of Senator D'Amato); AO 1995-19 (Indian-American Leadership Investment Fund) and AO 1996-5 (Jay Kim for Congress).

IV. CONCLUSION

For the foregoing reasons, the Commission has determined that President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. must repay $10,948.25 ($6,083.25 for the Future Tech-related contributions + $4,865 for the Chung-related contributions) to the United States Treasury for payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable. 11 C.F.R. § 9038.2(b)(1)(iii). Accordingly, President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. are ordered repay $10,948.25 to the United States Treasury. 11 C.F.R. §§ 9038.2(c)(1) and (d)(1).

The Commission has also determined that President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. must pay $25,000 to the United States Treasury for 25 contributions that were associated with the Department of Justice Campaign Task Force Investigation of Future Tech International, Inc., et al.

Attachments

A. Indictment of Mark B. Jimenez filed on September 30, 1998 in the United States District Court for the District of Columbia
B. Information, Plea Agreement, and Factual Resume of Juan M. Ortiz filed on December 17, 1998 in the United States District Court for the District of Columbia (with DOJ notations)
C. Information, Plea Agreement, and Factual Resume of Future Tech International, Inc. filed on December 17, 1998 in the United States District Court for the District of Columbia
D. Memorandum to the Office of General Counsel from the Audit Division dated December 29, 1998
E. Indictment of Johnny Chung filed on March 5, 1998 in the United States District Court for the Central District of California
F. Memorandum to the Office of General Counsel from the Audit Division dated June 16, 1999.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1999

MEMORANDUM

TO: The Commission

THROUGH James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

Delanie DeWitt Painter
Attorney

SUBJECT: Status of Repayment Determinations – Clinton/Gore'96 Primary Committee, Inc., Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund (LRA #485 and #508)

On June 3, 1999, the Commission approved the audit reports on the Clinton/Gore'96 Primary Committee, Inc. ("Primary Committee"), the Clinton/Gore '96 General Committee, Inc. ("General Committee") and the Clinton/Gore '96 General Election Legal and Accounting Compliance Fund ("GELAC") (collectively, the "Committees") containing the Commission's repayment determinations and payment determinations.[1] The audit reports recommended that most of the repayments would not be necessary if specific amounts of funds were transferred among the Committees. The Committees were notified of the determinations by letters dated

[1] The repayments and payments arising from the Commission's audits of the Committees are distinct from the Commission's repayment determination on July 15, 1999, which was based on the Primary Committee's receipt of matching funds in excess of its entitlement for illegal contributions related to a corporate contribution scheme involving Future Tech International and its corporate officers and a reimbursement scheme involving Johnny Chung. *See* 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii).

June 10, 1999. On August 12, 1999, the Committees filed a joint response and attached payment and repayment checks for stale-dated checks and interest income, as well of documentation of several transfers recommended in the audit reports, which obviated the remaining repayments.[2] Attachment 1. Because the checks and documentation submitted resolve all of the outstanding repayment and payment matters for the Committees, these repayment matters are now concluded.

The Committees' response states that the Committees are "providing this information in order to demonstrate that a lesser repayment is required in each of their respective cases." Attachment 1 at 1. On September 9, 1999, staff of this Office contacted the Committees' counsel to clarify whether the Committees dispute the repayment determinations and seek an administrative review pursuant to 11 C.F.R. §§ 9007.2(c)(2) and (3) and 9038.2(c)(2) and (3). The Committees' counsel stated that it was her understanding that the checks and documentation submitted by the Committees would resolve the repayment matters and there are no issues remaining in dispute; therefore an administrative review would not be necessary.

The Commission determined that the Primary Committee must repay $114,450 to the United States Treasury for non-qualified campaign expenses that were allocable to the general election pursuant to 11 C.F.R. § 9034.4(e), including $7,260 for catering services, $20,133 for equipment, $77,581 for salary and overhead and $9,476 for political consulting services. *See* 26 U.S.C. § 9038(b)(2); 11 C.F.R. § 9038.2(b)(2). However, the audit report stated that no repayment would be required if the Primary Committee received reimbursements in the amounts of: $22,984 from the General Committee for catering services; $63,736 from the General Committee for equipment; $192,288 from the General Committee and $53,319 from the GELAC for salary and overhead; and $30,000 from the General Committee for political consulting services. The audit report also contained a determination that the Primary Committee must pay $12,230 to the Treasury for unresolved stale-dated checks. *See* 11 C.F.R. § 9038.6.

In response, the Primary Committee provided documentation that it received $309,008 in wire transfer reimbursements from the General Committee and $53,319 in wire transfer reimbursements from the GELAC. Attachment 1 at 1, 5-11. Since the Primary Committee has provided sufficient documentation to demonstrate that the wire transfers have been made, the repayment determinations are obviated and no further action is required. With respect to the stale-dated checks, the Primary Committee provided documentation that $1,050 in additional stale-dated checks have cleared the bank. Attachment 1 at 1, 12-22. The Primary Committee adjusted the amount of stale-dated checks to $11,180 ($12,230 - $1,050) and submitted a check in the amount of $11,180 made payable to the United States Treasury. Attachment 1 at 3. The Primary Committee has provided adequate documentation that the stale-dated checks totaling $1,050 have cleared, and its payment of the remaining $11,180 to the United States Treasury resolves the issue.

---

[2] On September 7, 1999, the Audit Division circulated a memorandum with the repayment and payment checks to the Commission.

The Commission determined that the General Committee must repay $16,412 to the United States Treasury, including $12,427 for non-qualified campaign expenses related to travel costs allocable to the primary election, and $3,985 for interest earned on investment of public funds. *See* 26 U.S.C. § 9007(b)(4); 11 C.F.R. §§ 9007.2(b)(2); 9004.5. However, the audit report noted that if the General Committee provides evidence that it has been reimbursed by the Primary Committee for the travel expenses, the $12,427 repayment would not be necessary. Moreover, the audit report stated that the amount repayable for interest income would be $3,985 less applicable federal, state and local taxes due.

In response, the General Committee provided documentation that it received $12,427 in reimbursements from the Primary Committee by wire transfer. Attachment 2 at 2, 23-32. Because the General Committee has provided adequate documentation to demonstrate that the wire transfers have been made, the repayment determination is obviated and no further action is required. Moreover, the General Committee calculated the amount of interest income net of taxes at $3,241, and attached a worksheet, documentation and a repayment check for this amount. Attachment 1 at 2, 33-43. The General Committee's calculation of the amount of interest income net of taxes appears to be correct and is supported by adequate documentation. Therefore, the repayment of $3,241 to the United States Treasury resolves this issue.

Attachment

Letter from Lyn Utrecht and Eric Kleinfeld dated August 12, 1999 (with attachments)

RYAN, PHILLIPS, UTRECHT & MACKINNON*
ATTORNEYS AT LAW
*NONLAWYER PARTNER
1133 CONNECTICUT AVENUE, N.W.
SUITE 300
WASHINGTON, D.C. 20036
(202) 293-1177
FACSIMILE (202) 293-3411

August 12, 1999

Robert J. Costa
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Clinton/Gore '96 Primary Committee
Clinton/Gore '96 General Committee

Dear Mr. Costa:

This is the response of the Clinton/Gore '96 Primary Committee and the Clinton/Gore '96 General Committee (the "Committees") to the Final Audit Reports of the Audit Division. Pursuant to 11 C.F.R. §9038.2(c)(2), the Committees are hereby providing this information in order to demonstrate that a lesser repayment is required in each of their respective cases.

Clinton/Gore '96 Primary Committee

With respect to the Clinton/Gore '96 Primary Committee, the Commission made a determination that a repayment to the Secretary of the Treasury of $126,680 would be required, unless the Primary Committee received certain reimbursements. Accordingly, per the recommendation of the Audit Division, the Primary Committee has received $309,008 in reimbursements from the General Committee. In addition, the Primary Committee received $53,319 in reimbursements from the Clinton/Gore '96 General Election Legal and Accounting Compliance Fund (the "GELAC"). These reimbursements were made by wire transfer; and the appropriate documentation is attached hereto as Exhibit 1.

As a result of the reimbursements described above, the only remaining repayment issue in the Audit Report of the Primary Committee relates to stale-dated checks. Attached as Exhibit 2 is documentation demonstrating that an additional $1050 in stale-dated checks have cleared the bank. Consequently, the amount of the repayment due for stale-dated checks has been adjusted to $11,180 ($12,230 less $1050), and attached is a repayment to the U.S. Treasury in that amount.

ATTACHMENT 1
Page 1 of 42

Clinton/Gore '96 General Committee

With respect to the Clinton/Gore '96 General Committee, the Commission made a determination that a repayment to the Secretary of the Treasury of $16,412 would be required, unless the General Committee received certain reimbursements. Accordingly, per the recommendation of the Audit Division, the General Committee has received $12,427 in reimbursements from the Primary Committee. These reimbursements were made by wire transfer, and the appropriate documentation is attached hereto as Exhibit 3.

As a result of the reimbursements described above, the only remaining issue in the Audit Report of the General Committee relates to interest income. Attached as Exhibit 4 is a worksheet and other documentation demonstrating that the interest income net of taxes is $3,241. Attached is a repayment in this amount to the U.S. Treasury.

Conclusion

The Committees respectfully request that the Commission revise the repayment determinations contained in the Audit Reports to reflect the materials and information supplied herein.

Respectfully submitted,

Lyn Utrecht

Eric Kleinfeld

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.

15395

LCN 485/5

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.
PO BOX 18983
WASHINGTON D.C. 20036-8983

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

15395

DATE

AMOUNT

PAY TO THE ORDER OF

*******11,180 DOLLARS AND 00 CENTS

United States Treasury
C/O
Federal Election Commission
Washington DC 20463

TWO SIGNATURES REQUIRED IF OVER $2000.00

"015395" 1:0540012041: 193306756 2"

$11,180 -

ATTACHMENT 1
Page 3 of 43

22-07-0255/5

1622

CLINTON/GORE '96 GENERAL COMMITTEE, INC.
P.O. BOX 19584
WASHINGTON, DC 20036

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

DATE AMOUNT

PAY TO THE ORDER OF

TWO SIGNATURES REQUIRED IF OVER $2000.00

"016224" :054001204: 193306477211"

$3,741-

ATTACHMENT 1
Page 4 of 43

Exhibit 1

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 1

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION	SCREEN BALANCE
2101*060799	601.10		84110564496	Deposit	76,621.41
3052*060899	1,557.03		00008130608	ZBA TRANSFER	75,064.38
			2000000	00001933067559	
1101*060999	1,386.18	15347	83110876341	Check	73,678.20
2101*061499	31,819.19		83310863850	Deposit	105,497.39
3052*061899	1,363.36		00008130618	ZBA TRANSFE	104,134.03
			2000000	00001933067559	
3052*062199	1,159.99		00008130621	ZBA TRANSFE	102,974.04
			2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

BOSS TASK BOSS TRANSACTION HISTORY SEARCH 99/08/10 9:57:33

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 2

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062399	240.39	15348	83810621222	Check	102,733.65
1101*062399	13.25	15350	83310535425	Check	102,720.40
1101*063099	1,086.40	15351	84010663403	Check	101,634.00
1101*070299	8.25	15349	83710173995	Check	101,625.75
3052*070299	1,363.36		00008130702	ZBA TRANSFE	100,262.39
			2000000	00001933067559	
1101*070699	1,086.40	15355	84010566615	Check	99,175.99
3052*070699	1,159.99		00008130706	ZBA TRANSFER	98,016.00
			2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
LINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 3

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*	070999	217.00	15353	83210181836	Check	97,799.00
1101*	071299	31,601.46	15357	83210680543	Check	66,197.54
1101*	071399	5,842.36	15356	83710573076	Check	60,355.18
1101*	071399	39.75	15354	83710578871	Check	60,315.43
1101*	071599	432.32	15352	83210518599	Check	59,883.11
3052*	071699	1,363.36		00008130716	ZBA TRANSFER	58,519.75
				2000000	00001933067559	
3052*	072099	1,159.99		00008130720	ZBA TRANSFER	57,359.76
				2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)
LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 4

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*	072199	1,086.40	15358	84110285029	Check	56,273.36
1101*	073099	970.32	15360	83410052882	Check	55,303.04
1101*	073099	217.00	15361	83210095363	Check	55,086.04
1101*	073099	15.00	15362	83210117371	Check	55,071.04
1101*	073099	13.25	15363	83210117370	Check	55,057.79
1101*	080499	1,086.40	15359	83210046486	Check	53,971.39
3052*	080499	2,530.80		00008130804	ZBA TRANSFER	51,440.59
				2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

ATTACHMENT 1
Page 9 of 43

3003 THSA BOOS TRANSACTION HISTORY SEARCH 99/08/10 9:07:57
CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)
LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 5

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
4005*	080699	53,319.00		00094500806	ACCOUNT TRA	104,759.59
				9020021	0002902 NBKOS45	
9011*	080699	12,427.00		00094500806	FUNDS TRANSF	92,332.59
				4460178	NMD 5018446 NBKB1SP	
4005	080999	309,008.00		00094500809	ACCOUNT TRA	401,340.59
				9020002	0002902 NBKOS45	

*** NO MORE TRANSACTIONS ***

FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

B013 THSR ** BOSS-TRANSACTION HISTORY SEARCH ** 99/08/11 11.07.59
CONVERSATION 0 ENTITY: NAR

ACCOUNT: 000089455841 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON/GORE '96 GENERAL ELECTION DATE(S) 080699
LEGAL & ACCT COMPLIANCE FUND INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 94,624.62 TRAN CODE PAGE: 1

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
9011	080699	53,319.00		00094500806	ACCOUNT TRAN	94,624.62
				9020020	0002902 NBKOS45	
9011	080699	250,000.00		00094500806	ACCOUNT TRA	147,943.62
				9020022	0002902 NBKOS45	
4013	080699	299,490.83		00094060806	INVTRN 8919	397,943.62
				0001497	EFF DATE: 080699	
9011*072399		12,000.00		00094500723	ACCOUNT TRAN	98,452.79
				9020009	0002902 NBKOS45	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 081099
PF9=TR MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

ATTACHMENT 1
Page 11 of 43

Exhibit 2

CLINTON/GORE '96 PRIMARY COMMITTEE
REPAYMENT TO TREASURY FOR STALE-DATED CHECKS

Repayment required per final audit report	$12,230
Adjust for checks clearing after audit performed:	
Check #3094 Mrs. Harry Reasoner	1,000
Check #3101 Cantrell Properties, Inc.	25
Check #3157 Judith Spaers	25
Adjusted Repayment required	**$11,180**

Copies of checks are attached.

NationsBank

H

NationsBank, N.A.
Regional Center, VA2-125-04-01
P.O. Box 27025
Richmond, VA 23261-7025

Account Reference Information
Account Number: 0019 3306 7562
Tax ID Number: 52-1923232
W 05 0 C Enclosures 3
Statement Period
01/09/99 through 01/15/99

CLINTON GORE '96
PRIMARY CAMPAIGN COMMITTEE INC
PO BOX 2100
LITTLE ROCK AR 72203

Customer Service:
NationsBank, N.A.
P.O. Box 27025
Richmond, Virginia 23261-7025
1-800-289-1299

Full Analysis Business Checking

Account Summary Information

Statement Period	01/09/99 through 01/15/99	Statement Beginning Balance	81,355.48
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	4	Amount of Withdrawals/Debits	1,520.84
		Statement Ending Balance	80,334.64
Number of Enclosures	3	Average Ledger Balance	88,286.66
Number of Days in Cycle	18	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Paid	Bank Reference Number	Check Number	Amount	Date Paid	Bank Reference Number
15236	15.00	01/12	813003310865530	15312*	27.48	01/14	8130032108032
15237	75.00	01/12	813003310865531				

*Preceding check (or checks) is outstanding, is included in summary listing, or has been included in a previous statement.

Other Debits

Date Posted	Amount	Description	Bank Reference Number
01/15	1,403.36	ZBA Transfer To 00001933067559	081301152000000

Daily Ledger Balances

Date	Balance	Date	Balance
01/09	81,355.48	01/14	81,738.00
01/12	81,765.48	01/15	80,334.64

ATTACHMENT 1
Page 14 of 43

22.07.025.3587

CLINTON-GORE '96 PRIMARY COMMITTEE, INC.
PO BOX 18983
WASHINGTON D.C. 20036-8983

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

15236

06/30/98
DATE

260089331 012 0189 0117 12 26

AMOUNT

PAY TO THE ORDER OF

***********15 DOLLARS AND 00 CENTS

$*********15.00

James Loftus
325 Constitution Ave, NE
Washington DC 20002

TWO SIGNATURES REQUIRED IF OVER $2000.00

⑈015236⑈ ⑆054001204⑆ 1933067562⑈ ⑈0000001500⑈

01210000 1STMIX
260089331 0520-0027-8
260089331 01-12-99

056007387
01/12/99

3310865530

→2540755514←
JAN 11 1999
FOR DEPOSIT ONLY - WHITE HOUSE FCU
WASHINGTON, D.C.

15
43

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.
PO BOX 18983
WASHINGTON D.C. 20036-8983

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

15297

06/30/98
260089332 012 0189 0117 12 26
DATE

AMOUNT
**********75.00

PAY TO THE ORDER OF
**********75 DOLLARS AND 00 CENTS

James Loftus
325 Constitution Ave, NE
Washington DC 20002

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth A. Toone

Security features included. Details on back.

⑈015297⑈ ⑆054001204⑆ 193306756 2⑈ ⑈0000007500⑈

NationsBank

NationsBank, N.A.
MO1-800-17-09
P.O. Box 790251
St. Louis, MO 63179-0251

Account Reference Infor
Account Number: 0000 894-
Tax ID Number: 40-0000000
W 04 0 C Enclosures 1
Statement Period
12/18/98 through 12/24/98

CLINTON/GORE 96 PRIMARY COMMITTEE
PO BOX 2100
LITTLE ROCK AR 72203-2100

Customer Service:
NationsBank, N.A.
P.O. Box 798
Wichita, KS 67201
1-800-551-7050

Full Analysis Business Checking

Account Summary Information

Statement Period	12/18/98 through 12/24/98	Statement Beginning Balance	32,138.21
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	1	Amount of Withdrawals/Debits	[illegible]0
		Statement Ending Balance	32,
Number of Enclosures	1	Average Ledger Balance	32,134.29
Number of Days in Cycle	27	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Posted	Bank Reference
3101	25.00	12/24	813003720066391

Daily Ledger Balances

Date	Balance	Date	Balance
12/18	32,138.21	12/24	32,113.21

ATTACHMENT 1
Page 17 of 43

CLINTON/GORE '96 PRIMARY COMMITTEE, INC.
P.O. BOX 2100
LITTLE ROCK, AR 72203

BOATMEN'S
NATIONAL BANK OF ARKANSAS
LITTLE ROCK, ARKANSAS
81-7-820

3101

06/26/98
DATE

PAY ***********25 DOLLARS AND 00 CENTS

AMOUNT
$**********25.00

TO THE ORDER OF
Cantrell Properties, Inc.
320 N. Tennessee Ave.
Etowah TN 37331

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth G. Tanne

⑈003101⑈ ⑆082000073⑆ 008944⑈419⑈5⑈ ⑈0000002500⑈

08/11/1999 11:12 5013757777 CLINTON-GORE'96 PAGE 08

Cantrell Properties Inc.

12/24/98
12/22/98

NationsBank

NationsBank, N.A.
MO1-800-17-09
P.O. Box 790251
St. Louis, MO 63179-0251

Account Reference Infor
Account Number: 0000 8944
Tax ID Number: 40-0000000
W 04 0 C Enclosures 1 35
Statement Period 0000067
01/01/99 through 01/07/99

CLINTON/GORE 96 PRIMARY COMMITTEE
PO BOX 2100
LITTLE ROCK AR 72203-2100

Customer Service:
NationsBank, N.A.
P.O. Box 798
Wichita, KS 67201
1-800-551-7050

Full Analysis Business Checking

Account Summary Information

Statement Period	01/01/99 through 01/07/99	Statement Beginning Balance	32,113.21
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	1	Amount of Withdrawals/Debits	
		Statement Ending Balance	32,0
Number of Enclosures	1	Average Ledger Balance	32,105.85
Number of Days in Cycle	7	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Posted	Bank Reference
3157	25.00	01/06	813004420220180

Daily Ledger Balances

Date	Balance	Date	Balance
01/01	32,113.21	01/06	32,088.21

ATTACHMENT 1
Page 19 of 43

22.07.025.3592

0110-0001-5
060095053 0110-0001-5
060095053 01-06-99
082000138
01/06/99
FNBB 0110003904
2 MORRISSEY BLVD BOST MA
01041999/06/99 833828
5100505394

For deposit only
Judith T. Sapers

CLINTON/GORE '96 PRIMARY COMMITTEE, INC.
P.O. BOX 2100
LITTLE ROCK, AR 72203

BOATMEN'S
NATIONAL BANK OF ARKANSAS
LITTLE ROCK, ARKANSAS
81-7-820

3157

06/26/98
DATE

AMOUNT

PAY ***********25 DOLLARS AND 00 CENTS 060095053 10 6600 ***25.00

TO THE ORDER OF
Judith T. Sapers
26 Chesham Rd.
Brookline MA 02146

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth Towne

⑈003157⑈ ⑆082000073⑆ 0089441195⑈ ⑈0000002500⑈

Security features included. Details on back.

ATTACHMENT 1
Page 20 of 43

NationsBank

NationsBank, N.A.
MO1-800-17-09
P.O. Box 790251
St. Louis, MO 63179-0251

Account Reference Infor
Account Number: 0000 8944
Tax ID Number: 40-0000000
W 04 0 C Enclosures 2 35
Statement Period 0000070
11/13/98 through 11/19/98

CLINTON/GORE 96 PRIMARY COMMITTEE
PO BOX 2100
LITTLE ROCK AR 72203-2100

Customer Service:
NationsBank, N.A.
P.O. Box 798
Wichita, KS 67201
1-800-551-7050

Full Analysis Business Checking

Account Summary Information

Statement Period	11/13/98 through 11/19/98	Statement Beginning Balance	35,138.21
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	2	Amount of Withdrawals/Debits	3,00
		Statement Ending Balance	32,13
Number of Enclosures	2	Average Ledger Balance	35,032.73
Number of Days in Cycle	19	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Posted	Bank Reference	Check Number	Amount	Date Posted	Bank Reference
3094	1,000.00	11/19	813004220592448	3183*	2,000.00	11/18	813003110485968

preceding check (or checks) is outstanding, is included in summary listing, or has been included in a previous statement.

Daily Ledger Balances

Date	Balance	Date	Balance	Date	Balance
/13	35,138.21	11/18	33,138.21	11/19	32,138.21

ATTACHMENT 1
Page 21 of 43

Mrs. Harry M. Reasoner
(Mary Hodges Reasoner)

3094

CLINTON/GORE '96 PRIMARY COMMITTEE, INC.
P.O. BOX 2100
LITTLE ROCK, AR 72203

BOATMEN'S
NATIONAL BANK OF ARKANSAS
LITTLE ROCK, ARKANSAS
81-7-820

06/26/98
DATE

AMOUNT
$*******1,000.00

PAY
TO THE
ORDER
OF

********1,000 DOLLARS AND 00 CENTS

Mrs. Harry M. Reasoner
Vinson & Elkins, LLP
2800 1st City Twr 1001 Fannin
Houston TX 77002-6760

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth G. Toone

Security features included. Details on back.

"003094" :082000073: 008944419" 5" "0000100000"

ATTACHMENT 1
Page 22 of 43

Exhibit 3

BUUS INSR BUSS-TRANSACTION HISTORY SEARCH 99/08/10 9:37:40

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
"LINTON GORE 96 DATE(S)
ENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 1

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
2101*	060799	614.00		84110564499	Deposit	100,984.72
1101*	060999	15.16	16147	83110876342	Check	100,969.56
2011*	061499	23,000.00		00090410614	WIRE TYPE:F	123,969.56
				0025036	DATE:061499 TIME:1725	
1101*	061699	800.00	16159	83210146987	Check	123,169.56
1101*	061799	400.00	16166	83810518990	Check	122,769.56
1101*	062199	503.94	16162	83110882789	Check	122,265.62
1101*	062199	410.71	16168	83210878930	Check	121,854.91
1101*	062199	214.50	16165	83110882790	Check	121,640.41

*** ADDITIONAL TRANSACTIONS ***
*** FOR EXPANDED DESCRIPTIONS, PRESS PF2 *** FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 2

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062199	173.58	16176	83210863118	Check	121,466.83
1101*062199	105.90	16163	83110882788	Check	121,360.93
1101*062199	78.75	16164	83110882791	Check	121,282.18
1101*062299	7,748.14	16170	83110526869	Check	113,534.04
1101*062299	6,250.00	16169	83110526868	Check	107,284.04
1101*062299	600.00	16160	83210063769	Check	106,684.04
1101*062399	600.00	16167	83810764881	Check	106,084.04
1101*062499	509.36	16171	89030003192	Check	105,574.68
1101*062499	195.00	16148	83210548201	Check	105,379.68

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

7953.5207.22

B003 THSR BUSS-TRANSACTION ------
VERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 3

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062499	195.00	16149	83210548202	Check	105,184.68
1101*062499	106.13	16161	83210548229	Check	105,078.55
1101*062499	33.54	16154	83210520677	Check	105,045.01
1101*062599	4,236.21	16156	83110557928	Check	100,808.80
1101*062599	44.40	16151	83520739157	Check	100,764.40
1101*062599	12.57	16152	83520739490	Check	100,751.83
1101*062599	12.57	16153	83920688562	Check	100,739.26
1101*062899	262.70	16155	83210875684	Check	100,476.56
1101*062899	41.98	16150	84220599537	Check	100,434.58

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

22.07.025.3599

BUSS TRSK ** BUSS-TRANSACTION HISTORY SEARCH ** 99/08/10 9.57.51
CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 4

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062899	31.84	16158	83110774487	Check	100,402.74
1101*063099	53.00	16174	83410471856	Check	100,349.74
1101*063099	27.90	16173	83410471855	Check	100,321.84
1101*063099	13.15	16172	83410490497	Check	100,308.69
2011*070299	20,000.00		00090410702	WIRE TYPE:F	120,308.69
			0027021	DATE:070299 TIME:1729	
1101*070699	17.90	16186	84010566614	Check	120,290.79
1101*070899	90.00	16177	83210527972	Check	120,200.79
1101*070999	217.00	16182	83210181835	Check	119,983.79

*** ADDITIONAL TRANSACTIONS ***
*** FOR EXPANDED DESCRIPTIONS, PRESS PF2 *** FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

99353.0702 2

BUSS TASK ** BUSS-TRANSACTION HISTORY SEARCH ** 99/08/10 9.57.52
CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 5

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
2101*071299	31,601.46		83210680542	Deposit	151,585.25
1101*071299	12.51	16178	84120919072	Check	151,572.74
1101*071299	12.51	16179	84120919073	Check	151,560.23
1101*071399	17,568.93	16189	83710573077	Check	133,991.30
1101*071399	19.05	16188	83710490811	Check	133,972.25
1101*071499	509.65	16190	88130025625	Check	133,462.60
1101*071499	40.95	16193	83510010687	Check	133,421.65
1101*071499	22.42	16191	84110241756	Check	133,399.23
1101*071599	66.93	16181	83210517892	Check	133,332.30

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

00035025.07.22

28 43

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 6

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*071599	39.61	16180	83110169672	Check	133,292.69
1101*071699	65.70	16194	84310106829	Check	133,226.99
1101*071699	56.49	16187	83210114979	Check	133,170.50
1101*072099	228.00	16192	83920777400	Check	132,942.50
1101*072199	50.76	16195	83310832511	Check	132,891.74
1101*072299	106.13	16185	83210402939	Check	132,785.61
4005*072399	12,000.00		00094500723	ACCOUNT TRA	144,785.61
			9020010	0002902 NBKOS45.	
1101*072799	800.00	16199	83210264113	Check	143,985.61

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

BOU3 THSK

CONVERSATION 0 ENTITY: NDC

:OUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)

CLINTON GORE 96 DATE(S)

GENERAL COMMITTEE OPERATING AMT(S)

CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 7

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION	SCREEN BALANCE
1101	*072799	400.00	16196	83210759623	Check	143,585.61
1101	*072899	600.00	16184	83110045496	Check	142,985.61
1101	*072999	510.54	16204	83210608883	Check	142,475.07
1101	*072999	503.94	16200	83210608879	Check	141,971.13
1101	*072999	277.04	16210	83110366351	Check	141,694.09
1101	*072999	78.45	16203	83210608882	Check	141,615.64
1101	*072999	29.85	16201	83210608880	Check	141,585.79
1101	*072999	24.45	16202	83210608881	Check	141,561.34
1101	*073099	217.00	16198	83210095364	Check	141,344.34

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA

PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

BO03 THSR

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 8

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*080299	1,392.50	16197	83510472788	Check	139,951.84
1101*080299	185.16	16208	83210623990	Check	139,766.68
1101*080299	184.46	16209	83210623991	Check	139,582.22
1101*080299	14.47	16206	83210735480	Check	139,567.75
1101*080499	22.04	16212	83210046487	Check	139,545.71
1101*080499	87.41	16211	83310455848	Check	139,458.30
1101*080599	7,748.14	16207	83210097554	Check	131,710.16
4005*080699	250,000.00		00094500806	ACCOUNT TRA	381,710.16
			9020023	0002902 NBKOS45	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

BOOS INSR ENTITY: NBC
CONVERSATION 0

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 9

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
4005*	080699	12,427.00		00094500806	FUNDS TRANS	394,137.16
				4460179	FDES NMD 5018446	NBKB1SP
9011	080999	309,008.00		00094500809	ACCOUNT TRAN	85,129.16
				9020001	0002902	NBKOS45

*** NO MORE TRANSACTIONS ***

FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

22-07-025-3905

Exhibit 4

CLINTON/GORE '96 GENERAL COMMITTEE
PAYMENT DUE TO TREASURY FOR INTEREST INCOME NET OF TAXES PAID OR PAYABLE

Income Year	Interest Income	Federal Tax	State Tax	Net Due
1996	$ 28	$ 0	$ 0	$ 28
1997	663	97	4	562
1998	3,295	493	151	2,651
	$3,986	$ 590	$ 155	**$ 3,241**

Form **1120-POL**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for Certain Political Organizations

OMB No. 1545-0123

1996

For calendar year 1996 or other tax year beginning , 1996, and ending , 19

Note: If you are a section 501(c) organization or a separate segregated fund described in section 527(f)(3), check here ▶ ☐

Please print or type

Name of organization
CLINTON/GORE '96 GENERAL ELECTION COMMITTEE

Employer identification number
52-1988597

Number, street, and room or suite no. (If a P.O. box, see page 4 of instructions.)
P.O. BOX 19100

City or town, state, and ZIP code
WASHINGTON, D.C. 20036

Candidates for U.S. Congress Only
If this is a principal campaign committee, and it is the ONLY political committee, check here ☐
If this is a principal campaign committee, but is NOT the only political committee, check here and attach a copy of designation (See instructions on page 2.) ☐

Check if: (1) ☐ Final return (2) ☐ Change of address (3) ☐ Amended return

Income	1	Dividends (attach schedule)	1	
	2	Interest	2	28
	3	Gross rents	3	
	4	Gross royalties	4	
	5	Capital gain net income (attach Schedule D (Form 1120))	5	
	6	Net gain or (loss) from Form 4797, Part II, line 20 (attach Form 4797)	6	
	7	Other income and nonexempt function expenditures (see instructions)	7	
	8	**Total income.** Add lines 1 through 7	8	28
Deductions	9	Salaries and wages	9	
	10	Repairs and maintenance	10	
	11	Rents	11	
	12	Taxes and licenses	12	
	13	Interest	13	
	14	Depreciation (attach Form 4562)	14	
	15	Other deductions (attach schedule)	15	
	16	**Total deductions.** Add lines 9 through 15	16	
	17	Taxable income *before* specific deduction of $100 (see instructions). Section 501(c) organizations show:		
	a	Amount of net investment income ▶		
	b	Aggregate amount expended for an exempt function (attach schedule) ▶	17c	
	18	Specific deduction of $100 (not allowed for newsletter funds defined under section 527(g))	18	
Tax	19	**Taxable income.** Subtract line 18 from line 17c (If line 19 is zero or less, do not file Form 1120-POL.)	19	0
	20	Income tax (see instructions)	20	0
	21	Tax credits (Attach all applicable forms.) (see instructions)	21	0
	22	Total tax. Subtract line 21 from line 20	22	0
	23	Payments: a Tax deposited with Form 7004 — 23a		
		b Credit from regulated investment companies (attach Form 2439) — 23b		
		c Credit for Federal tax on fuels (attach Form 4136) — 23c		
		d Total. Add lines 23a through 23c	23d	
	24	**Tax due.** Subtract line 23d from line 22. See instructions on page 3 for depository method of payment	24	0
	25	**Overpayment.** Subtract line 22 from line 23d	25	0

Additional Information

1 At any time during the 1996 calendar year, did the organization have an interest in or a signature or other authority over a financial account (such as a bank account, securities account, or other financial account) in a foreign country? (See instructions.) ☐ Yes ☒ No
If "Yes," enter the name of the foreign country ▶

2 During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? ☐ Yes ☒ No
If "Yes," see page 4 for other forms the organization may have to file.

3 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ NONE

4 Date organization formed ▶ July, 1996

5a The books are in care of ▶ SHANNON TANNER b Enter name of candidate ▶ WILLIAM J. CLINTON

c The books are located at ▶ 410 W. 3RD LITTLE ROCK ARK. d Telephone No. ▶ 501-375-1290

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer Date ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶ Date Check if self-employed ▶ ☐ Preparer's social sec. 432-88-620

Firm's name (or yours, if self-employed) and address ▶ BAIRD, KURTZ & DOBSON P.O. BOX 3667, LITTLE ROCK AR

EIN ▶ 44-0160260 ZIP code ▶ 72203-3667

State of Arkansas
1996 CORPORATION INCOME TAX RETURN
AR1100CT

FOR OFFICE USE ONLY

Tax Year beginning 01/01, 19 96 and ending 12/31, 19 96

- [ ] Check if Final Arkansas Return
- [ ] Check if Filing as Financial Institution
- [ ] Check if Single Weighting Sales Factor

FEIN	52-1988597
FEDERAL BUSINESS CODE	8980
NAME	CLINTON/GORE '96 GENERAL ELECTION COMMITTEE
DATE OF INCORPORATION	July 1996
ADDRESS	P.O. BOX 19100
DATE BEGAN BUSINESS IN ARKANSAS	July 1996
CITY	WASHINGTON
STATE	DC
ZIP	20036
TELEPHONE NUMBER	

Type of Corporation: 5 [X] Domestic; 6 [ ] Foreign

FILING STATUS (Check Only One Box)
- 1 [X] CORPORATION OPERATING ONLY IN ARKANSAS
- 2 [ ] MULTI-STATE CORPORATION - APPORTIONMENT
- 3 [ ] MULTI-STATE CORPORATION - DIRECT ACCOUNTING (Prior written approval required for Direct Accounting)
- 4 [ ] CONSOLIDATED RETURN # OF CORP. ENTITIES IN AR

NOTE: Attach completed copy of Federal Return and sign Arkansas Return. (Refer to Important Reminders, page 2, items 2 and 3, Corporation Tax Booklet.)

Section	Line	Description	Line	ARKANSAS
INCOME	7.	Gross Sales: *(Less returns and allowances)*	7.	00
	8.	Less Cost of Goods Sold:	8.	00
	9.	Gross Profit: *(Line 7 less Line 8)*	9.	00
	10.	Dividends: *(See Instructions page 6)*	10.	00
	11.	Interest: *(U.S. Obligations - See Instructions page 6)*	11.	00
	12.	Other Interest: *(See Instructions page 6)*	12.	28.00
	13.	Gross Rents:	13.	00
	14.	Gross Royalties:	14.	00
	15.	Gains or Losses:	15.	00
	16.	Other Income:	16.	00
	17.	TOTAL INCOME: *(Add Lines 9 - 16)*	17	28.00
DEDUCTIONS	18.	Compensation of Officers:	18.	00
	19.	Other Salaries and Wages:	19.	00
	20.	Repairs:	20.	00
	21.	Bad Debts:	21.	00
	22.	Rent on Business Property:	22.	00
	23.	Taxes:	23.	00
	24.	Interest:	24.	00
	25.	Contributions:	25.	00
	26.	Depreciation:	26.	00
	27.	Depletion:	27.	00
	28.	Advertising:	28.	00
	29.	Pension Profit Sharing:	29.	00
	30.	Employee Benefit Programs:	30.	00
	31.	Other Deductions:	31.	00
	32.	TOTAL DEDUCTIONS: *(Add Lines 18 - 31)*	32	00
	33.	Taxable Income Before Net Operating Losses: *(Line 17 less Line 32)*	33.	28.00
	34.	Net Operating Losses: *(Adjust for Non-taxable Income - See Instructions, page 7C.)*	34	00
TAX COMPUTATION	35.	Net Taxable Income: *(Line 33 less Line 34 or Schedule A C4 page 2)*	35	28.00
	36.	Tax from Table: *(Instruction Booklet pages 15 and 16)*	36	NONE 00
	37.	Business & Incentive Credits: *(Attach all original certificates)*	37	00
	38.	Tax Liability: *(Line 36 less Line 37)*	38	NONE 00
	39.	Estimated Tax Paid: *(Including estimate carryforward from prior year)*	39	00
	40.	Payment With Extension Request: *(Voucher 5, AR1100ESCT)*	40	00
	41.	Overpayment: *(Line 39 plus Line 40 less Line 38, enter here)*	41	00
	42.	Amount Applied to 1997 Estimated Tax: 42 ____ 00		
	43.	Amount Applied To United States Olympic Committee Program: 43 ____ 00		
	44.	Amount To Be Refunded: *(Line 41 less Line 42 and 43)* REFUND	44	00
	45.	Tax Due *(Line 38 less Lines 39 and 40)*	45	NONE 00
	46.	Penalty For Underpayment of Estimated Tax: (Attach AR2220) List exception checked in Part 3. [ ]	46	00
	47.	Amount Due: *(Line 45 plus Line 46)* AMOUNT DUE	47.	NONE 00

6D0411 4.000

ATTACHMENT 7

Page 36 of 43

Form **1120-POL** — Department of the Treasury, Internal Revenue Service

U.S. Income Tax Return for Certain Political Organizations

1997

For calendar year 1997 or other tax year beginning , 1997, and ending , 19

Note: If you are a section 501(c) organization or a separate segregated fund described in section 527(f)(3), check here ▶ ☐

Please print or type

Name of organization: CLINTON GORE '96 GENERAL COMMITTEE, INC.

Employer identification number: 52-1988597

Number, street, and room or suite no. (If a P.O. box, see page 4 of instructions.): P.O. BOX 19100

Candidates for U.S. Congress Only
If this is a principal campaign committee, and it is the ONLY political committee, check here ☐
If this is a principal campaign committee, but it is NOT the only political committee, check here and attach a copy of designation (See instructions on page 2) ☐

City or town, state, and ZIP code: WASHINGTON, D.C. 20036

Check if: (1) ☐ Final return (2) ☐ Change of address (3) ☐ Amended return

Income	1	Dividends (attach schedule)	1	
	2	Interest	2	663
	3	Gross rents	3	
	4	Gross royalties	4	
	5	Capital gain net income (attach Schedule D (Form 1120))	5	
	6	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)	6	
	7	Other income and nonexempt function expenditures (see instructions)	7	
	8	Total income. Add lines 1 through 7	8	663
Deductions	9	Salaries and wages	9	
	10	Repairs and maintenance	10	
	11	Rents	11	
	12	Taxes and licenses	12	
	13	Interest	13	
	14	Depreciation (attach Form 4562)	14	
	15	Other deductions (attach schedule) STATEMENT ONE	15	285
	16	Total deductions. Add lines 9 through 15	16	285
	17	Taxable income before specific deduction of $100 (see instructions). Section 501(c) organizations show:		
	a	Amount of net investment income ▶		
	b	Aggregate amount expended for an exempt function (attach schedule) ▶	17c	378
	18	Specific deduction of $100 (not allowed for newsletter funds defined under section 527(g))	18	100
Tax	19	Taxable income. Subtract line 18 from line 17c (If line 19 is zero or less, do not file Form 1120-POL)	19	27
	20	Income tax (see instructions)	20	1
	21	Tax credits (Attach all applicable forms.) (see instructions)	21	
	22	Total tax. Subtract line 21 from line 20	22	97
	23	Payments: a Tax deposited with Form 7004 — 23a: 100		
		b Credit for tax paid on undistributed capital gains (attach Form 2439) — 23b:		
		c Credit for Federal tax on fuels (attach Form 4136) — 23c:		
		d Total. Add lines 23a through 23c	23d	100
	24	Tax due. Subtract line 23d from line 22. See instructions on page 3 for depository method of payment	24	
	25	Overpayment. Subtract line 22 from line 23d	25	3

Additional Information

1 At any time during the 1997 calendar year, did the organization have an interest in or a signature or other authority over a financial account (such as a bank account, securities account, or other financial account) in a foreign country? (See instructions.) ☐ Yes ☒ No
If "Yes," enter the name of the foreign country ▶

2 During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? ☐ Yes ☒ No
If "Yes," see page 4 for other forms the organization may have to file.

3 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ NONE

4 Date organization formed ▶ 8/22/96

5a The books are in care of ▶ SHANNON TANNER b Enter name of candidate ▶ WILLIAM J. CLINTON

c The books are located at ▶ 410 W. 3RD LITTLE ROCK AR 72201 d Telephone No. ▶ 501-375-1290

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer — Date — ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶ — Date — Check if self-employed ▶ ☐ — Preparer's social security no. 432-88-6201

Firm's name (or yours, if self-employed) and address ▶ BAIRD, KURTZ & DOBSON P.O. BOX 3667 LITTLE ROCK AR 72203 — FIN ▶ 71-0160260 — ZIP code ▶ 72203-3667

For Paperwork Reduction Act Notice, see instructions on page 4. Form **1120-POL** (1997)

GA

ATTACHMENT 1

Page 35 of 43

FORM 1120-POL, LINE 15 DETAIL

Line 15 - Other deductions

ACCOUNTING FEES	285.
Total	285.

ATTACHMENT 1
Page 38 of 43

State of Arkansas
1997 CORPORATION INCOME TAX RETURN
AR1100CT

FOR OFFICE USE ONLY

Tax Year beginning 01/01 , 19 97 and ending 12/31 , 19 97

- [ ] Check if Final Arkansas Return
- [ ] Check if Filing as Financial Institution
- [ ] Check if Single Weighting Sales Factor

FEIN: 52-1988597

FEDERAL BUSINESS CODE: 8980

NAME: CLINTON/GORE '96 GENERAL COMMITTEE, INC.

DATE OF INCORPORATION: 08/22/96

ADDRESS: P.O. BOX 19100

DATE BEGAN BUSINESS IN ARKANSAS: 08/22/96

CITY: WASHINGTON STATE: DC ZIP: 20036

TELEPHONE NUMBER:

Type of Corporation: 5 [X] Domestic 6 [ ] Foreign

FILING STATUS (Check Only One Box)
- 1 [X] CORPORATION OPERATING ONLY IN ARKANSAS
- 2 [ ] MULTI-STATE CORPORATION - APPORTIONMENT
- 3 [ ] MULTI-STATE CORPORATION - DIRECT ACCOUNTING (Prior written approval required for Direct Accounting)
- 4 [ ] CONSOLIDATED RETURN # OF CORP. ENTITIES IN AR

NOTE: Attach completed copy of Federal Return and sign Arkansas Return. *(See Instructions, Important Reminders, page 3, items 2 and 3)*

	Line	Description	Line	ARKANSAS
INCOME	7.	Gross Sales: *(Less returns and allowances)*	7.	.00
	8.	Less Cost of Goods Sold:	8.	.00
	9.	Gross Profit: *(Line 7 less Line 8)*	9.	.00
	10.	Dividends: *(See Instructions, page 6)*	10.	.00
	11.	Interest: *(U.S. Obligations - See Instructions, page 6)*	11.	.00
	12.	Other Interest: *(See Instructions, page 6)*	12.	663.00
	13.	Gross Rents:	13.	.00
	14.	Gross Royalties:	14.	.00
	15.	Gains or Losses:	15.	.00
	16.	Other Income:	16.	.00
	17.	TOTAL INCOME: *(Add Lines 9 - 16)*	17.	663.00
DEDUCTIONS	18.	Compensation of Officers:	18.	.00
	19.	Other Salaries and Wages:	19.	.00
	20.	Repairs:	20.	.00
	21.	Bad Debts:	21.	.00
	22.	Rent on Business Property:	22.	.00
	23.	Taxes:	23.	.00
	24.	Interest:	24.	.00
	25.	Contributions:	25.	.00
	26.	Depreciation:	26.	.00
	27.	Depletion:	27.	.00
	28.	Advertising:	28.	.00
	29.	Other Deductions: Stmt 1	29.	285.00
	30.	TOTAL DEDUCTIONS: *(Add Lines 18 - 29)*	30.	285.00
	31.	Taxable Income Before Net Operating Losses: *(Line 17 less Line 30)*	31.	378.00
	32.	Net Operating Losses: *(Adjust for Non-taxable Income - See Instructions, page 7C)*	32.	.00
TAX COMPUTATION	33.	Net Taxable Income: *(Line 31 less Line 32 or Schedule A C4 page 2)*	33.	378.00
	34.	Tax from Table: *(Instruction Booklet pages 15 and 16)*	34.	4.00
	35.	Business & Incentive Credits: *(Attach all original certificates)*	35.	.00
	36.	Tax Liability: *(Line 34 less Line 35)*	36.	4.00
	37.	Estimated Tax Paid: *(Including estimate carryforward from prior year)*	37.	.00
	38.	Payment With Extension Request: *(Voucher 5, AR1100ESCT)*	38.	.00
	39.	Overpayment: *(Line 37 plus Line 38 less Line 36, enter here)*	39.	.00
	40.	Amount Applied to 1998 Estimated Tax: 40. .00		
	41.	Amount Applied to:		
		United States Olympic Committee Program. 41A. .00		
		Arkansas Disaster Relief Program. 41B. .00		
	42.	Amount To Be Refunded: *(Line 39 less Line 40, 41A and 41B)*	42.	.00
	43.	Tax Due *(Line 36 less Lines 37 and 38)*	43.	4.00
	44.	Penalty For Underpayment of Estimated Tax (Attach AR2220) List exception checked in Part 3. [ ]	44.	.00
	45.	Amount Due: *(Line 43 plus Line 44)* AMOUNT DUE	45.	4.00

ATTACHMENT Page 39 of 43

Form **1120-POL**
Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for Certain Political Organizations

OMB No. 1545-0129

1998

For calendar year 1998 or other tax year beginning , 1998, and ending , 19

Note: If you are a section 501(c) organization or a separate segregated fund described in section 527(f)(3), check here ▶ ☐

Please print or type

Name of organization
CLINTON/GORE '96 GENERAL COMMITTEE, INC.

Employer identification number
52-1988597

Number, street, and room or suite no. (If a P.O. box, see page 3 of instructions.)
P.O. BOX 19100

Candidates for U.S. Congress Only
If this is a principal campaign committee, and it is the ONLY political committee, check here ☐
If this is a principal campaign committee, but is NOT the only political committee, check here and attach a copy of designation (See instructions on page 2.) ☐

City or town, state, and ZIP code
WASHINGTON, DC 20036

Check if: (1) ☐ Final return (2) ☐ Change of address (3) ☐ Amended return

Income	1 Dividends (attach schedule)	1	
	2 Interest	2	3,295
	3 Gross rents	3	
	4 Gross royalties	4	
	5 Capital gain net income (attach Schedule D (Form 1120))	5	
	6 Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)	6	
	7 Other income and nonexempt function expenditures (see instructions)	7	
	8 Total income. Add lines 1 through 7	8	3,295
Deductions	9 Salaries and wages	9	
	10 Repairs and maintenance	10	
	11 Rents	11	
	12 Taxes and licenses	12	
	13 Interest	13	
	14 Depreciation (attach Form 4562)	14	
	15 Other deductions (attach schedule) . . . SEE STATEMENT 1	15	1,786
	16 Total deductions. Add lines 9 through 15	16	1,786
	17 Taxable income before specific deduction of $100 (see instructions). Section 501(c) organizations show:		
	a Amount of net investment income ▶		
	b Aggregate amount expended for an exempt function (attach schedule) ▶	17c	1,509
	18 Specific deduction of $100 (not allowed for newsletter funds defined under section 527(g))	18	100
Tax	19 Taxable income. Subtract line 18 from line 17c (If line 19 is zero or less, do not file Form 1120-POL.)	19	1,409
	20 Income tax (see instructions)	20	493
	21 Tax credits (Attach all applicable forms.) (see instructions)	21	
	22 Total tax. Subtract line 21 from line 20	22	493
	23 Payments: a Tax deposited with Form 7004 — 23a: 200		
	b Credit for tax paid on undistributed capital gains (attach Form 2439) — 23b:		
	c Credit for Federal tax on fuels (attach Form 4136) — 23c:		
	d Total. Add lines 23a through 23c	23d	200
	24 Tax due. Subtract line 23d from line 22. See instructions on page 3 for depository method of payment	24	307
	25 Overpayment. Subtract line 22 from line 23d	25	

Additional Information

1 At any time during the 1998 calendar year, did the organization have an interest in or a signature or other authority over a financial account (such as a bank account, securities account, or other financial account) in a foreign country? (See instructions.) ☐ Yes ☒ No
If "Yes," enter the name of the foreign country ▶

2 During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? ☐ Yes ☒ No
If "Yes," the organization may have to file Form 3520.

3 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ NONE

4 Date organization formed ▶ 8/22/96

5a The books are in care of ▶ SHANNON TANNER b Enter name of candidate ▶ WILLIAM J. CLINTON

c The books are located at ▶ 110 W 3rd, LITTLE ROCK, AR d Telephone No. ▶ 501-375-1290

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ▶ Date ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ▶ ☐	Preparer's social security no. 432-88-6204
Firm's name (or yours, if self-employed) and address ▶ BAIRD, KURTZ & DOBSON, P.O. BOX 3667, LITTLE ROCK, AR 72203		EIN ▶ 44-0160260	ZIP code ▶ 72203-3667

CLINTON/GORE '96 GENERAL COMMITTEE, INC. 52-1988597

Form 1120, Page 1 Detail

Line 26 - Other deductions

ACCOUNTING FEES	1,786.
Total	1,786.

CLINTON/GORE '96 GENERAL COMMITTEE, INC. 52-1988597

Form 1120, Page 1 Detail

Original due date of return: 03/15/1999 Date return filed: 07/15/1999
Extended due date of return: 09/15/1999

Late filing penalty:			
Months filing late			
Late filing penalty rate		%	
Amount subject to penalty			
Amount of late filing penalty			
Late payment penalty:			
Months paying late	4.0		
Late payment penalty rate	2.0	%	
Amount subject to penalty	293.		
Amount of late payment penalty			6.
Amount of late payment interest (see detail below)			8.
Amount of additional penalty and/or interest			
Total penalties and/or interest			14.

Revised tax due including late penalties and/or interest:	
Total tax, Page 1, line 31	493.
Less: Payments, Page 1, line 32h	200.
Plus: Underpayment penalty, Form 2220	
Plus: Late payment and filing penalties and/or interest	14.
Less: Backup withholding	
Total tax to Page 1, line 34	307.

Detail of late payment interest

Amount subject to interest	From	To	Days	Rate	Interest
293.	03/15/1999	03/31/1999	16	8.00	1.
294.	03/31/1999	06/30/1999	91	8.00	6.
300.	06/30/1999	07/15/1999	15	8.00	1.
Total late payment interest					8.

ATTACHMENT 1
Page 42 of 43

D-20 1998
Corporation Franchise Tax Return

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF TAX AND REVENUE

DATE RECEIVED

Taxable year beginning 01/01/1998 and ending 12/31/1998

NAME OF CORPORATION: CLINTON/GORE '96 GENERAL COMMITTEE, INC.	D C BUSINESS TAX NUMBER: APPLIED FOR	
D.C. ADDRESS: P.O. BOX 19100, WASHINGTON, DC 20036	FEDERAL I.D. NUMBER: 52-1966697	
MAILING ADDRESS: P.O. BOX 19100, WASHINGTON, DC 20036	NUMBER OF BUSINESS LOCATIONS In the District: NONE Outside the District: 1	TYPE OF BUSINESS: POLITICAL ORG.

READ INSTRUCTIONS BEFORE PREPARING RETURN - (NON-BUSINESS ITEMS TO BE ALLOCATED)

ATTACH CHECK OR MONEY ORDER HERE

GROSS INCOME	1. GROSS RECEIPTS, LESS RETURNS AND ALLOWANCES		1
	2. COST OF GOODS SOLD (from Schedule A) AND/OR OPERATIONS (Attach statement)		2
	3. GROSS PROFIT FROM SALES AND/OR OPERATIONS - (Line 1 minus Line 2)		3
	4. DIVIDENDS (from Schedule C)		4
	5. INTEREST (Attach statement)	3,295.	5
	6. GROSS RENTAL INCOME		6
	7. ROYALTIES (Attach statement)		7
	8. (a) NET CAPITAL GAINS (Attach copy of completed Federal Schedule D)		8(a)
	(b) ORDINARY GAIN (LOSS) FROM PART II, FEDERAL FORM 4797 (Attach copy of completed Form 4797)		8(b)
	9. OTHER INCOME (Attach statement)		9
	10. TOTAL GROSS INCOME (Add Lines 3 through 9)	3,295.	10
DEDUCTIONS	11. COMPENSATION OF OFFICERS (from Schedule E)		11
	12. SALARIES AND WAGES		12
	13. REPAIRS		13
	14. BAD DEBTS (See Instructions)		14
	15. RENT		15
	16. TAXES (from Schedule I)		16
	17. INTEREST		17
	18. CONTRIBUTIONS (Attach statement)		18
	19. AMORTIZATION (Attach copy of completed Federal Form 4562)		19
	20. DEPRECIATION (Attach copy of completed Federal Form 4562)		20
	21. DEPLETION (Attach statement)		21
	22. ADVERTISING		22
	23. PENSION, PROFIT-SHARING PLANS		23
	24. OTHER DEDUCTIONS (Attach statement) See Statement 1	1,786.	24
	25. TOTAL DEDUCTIONS - Add Lines 11 through 24	1,786.	25
	26. NET INCOME (Line 10 minus Line 25)	1,509.	26
	27. NET OPERATING LOSS DEDUCTION		27
	28. NET INCOME AFTER NET OPERATING LOSS DEDUCTION (Line 26 minus Line 27)	1,509.	28
	29. (a) NON-BUSINESS INCOME (Attach statement)		29(a)
	(b) EXPENSE RELATED TO NON-BUSINESS INCOME (Attach statement)		29(b)
	(c) 29(a) minus 29(b) (Attach detailed statement)		29(c)
TAXABLE INCOME	30. NET INCOME SUBJECT TO APPORTIONMENT (Line 28 minus 29(c))	1,509.	30
	31. D.C. APPORTIONMENT FACTOR (from Line 5, Schedule K, If none, enter "zero").	1.000000	31
	32. NET INCOME FROM TRADE OR BUSINESS APPORTIONED TO THE DISTRICT (Line 30 multiplied by Line 31)	1,509.	32
	33. PORTION OF LINE 29(c) ATTRIBUTABLE TO D.C. (Attach statement)		33
	34. TOTAL DISTRICT TAXABLE INCOME - (Line 32 plus or minus Line 33)	1,509.	34
TAX	35. TAX (9.975% of Line 34). If less than $100, enter $100	151.	35
	36. (a) TAX PAID, IF ANY, WITH REQUEST FOR EXTENSION OF TIME TO FILE		36(a)
	(b) 1998 EST. TAX PAYMENTS		36(b)
	(c) ECONOMIC DEVELOPMENT ZONE INCENTIVES CREDIT (from Schedule D)		36(c)
	37. ADD LINES 36(a), 36(b), and 36(c) and ENTER TOTAL		37
	38. TAX DUE (Line 35 minus Line 37, if Line 35 is greater than Line 37)	151.	38
	39. PENALTY / INTEREST / TOTAL PENALTY AND INTEREST		39
	40. TOTAL DUE ADD LINES 38 AND 39 PAY IN FULL	151	40
	41. OVERPAYMENT (Line 37 minus Line 35 if Line 37 is greater than Line 35)		41
	42a. CREDIT TO 1999 ESTIMATED TAX / 42b. TO BE REFUNDED - Line 41 minus Line 42a		42b

Under penalties of law, including criminal penalties for false statements and tax preparer penalties under D.C. Code § 22-3614 and § 47-161, *et seq.*, I declare that I have examined this return and, to the best of my knowledge and belief, it is true, correct, and complete. If prepared by a person other than the taxpayer, this declaration is based on all information available to the preparer.

CORPORATE SEAL	SIGNATURE OF OFFICER	TITLE	DATE
	SIGNATURE OF PREPARER (if other than Taxpayer)	ADDRESS P. O. BOX 9867	DATE
	BAIRD, KURTZ & DOBSON	LITTLE ROCK, AR 72203-9867	

MAILING INSTRUCTIONS: Make check or money order payable to D.C. Treasurer. (Include D.C. business tax number, D-20 and tax year on your payment). Mail this return and payment to the D.C. Office of Tax and Revenue, Ben Franklin Station, P.O. Box 601, Washington, D.C. 20044-0601, on or before the 15th day of the third month following the close of the taxable year

AD1011 4-000