



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1997

**RECEIPT FROM THE
UNITED STATES TREASURY
FOR A
PAYMENT TO THE PRESIDENTIAL PRIMARY
MATCHING PAYMENT ACCOUNT**

Received on July 15, 1997, from the Federal Election Commission (by hand delivery) a check drawn on Franklin National Bank (#0002274) in the amount of \$369,642.00. The check represents a repayment from Phil Gramm for President, Inc. for Matching Funds received in excess of entitlement.

The repayment should be deposited in the Presidential Primary Matching Payment Account.

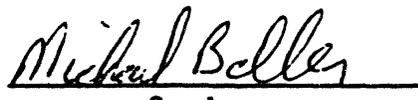
PHIL GRAMM FOR PRESIDENT, INC.

AMOUNT OF REPAYMENT: \$369,642.00

Presented By


for the
Federal Election Commission

Received By


for the
United States Treasury

1-9-97 11:11 AM 715 99

REPORT OF THE AUDIT DIVISION

ON

**Phil Gramm for President, Inc.
Phil Gramm for President
Compliance Committee, Inc.
and
Phil Gramm for President
Audit Fund**

Approved June 26, 1997



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999 E STREET, N.W.
WASHINGTON, D.C.**

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FEDERAL ELECTION COMMISSION
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**REPORT OF THE AUDIT DIVISION
ON
PHIL GRAMM FOR PRESIDENT, INC.
PHIL GRAMM FOR PRESIDENT COMPLIANCE COMMITTEE, INC. AND
PHIL GRAMM FOR PRESIDENT AUDIT FUND**

EXECUTIVE SUMMARY

Phil Gramm for President, Inc. (the Primary Committee) registered with the Federal Election Commission on November 14, 1994. In addition, the Phil Gramm for President Compliance Committee, Inc. (the Compliance Committee) registered with the Federal Election Commission on January 14, 1995 and on April 29, 1996 filed an amended Statement of Organization, changing its name to Phil Gramm for President Audit Fund (the Audit Fund).

The audit was conducted pursuant to 26 U.S.C. §9038(a), requiring the Commission to audit committees authorized by candidates who receive Federal Funds. The Candidate received \$7,356,221 in matching funds from the U.S. Treasury.

The findings of the audit were presented to the Committees at an exit conference held on December 5, 1996 and in the Exit Conference Memorandum. The Committee responses to those findings are contained in the audit report.

The following is an overview of the findings contained in the audit report.

FEDERAL FUNDS RECEIVED IN EXCESS OF ENTITLEMENT — 11 CFR §§9034.1(b) and 9038.2(b)(1). The Audit staff calculated that the candidate received matching funds in excess of entitlement totaling \$369,642. The excess resulted primarily from the Committee's overstatement of estimated winding down expenses on its Statement of Net Outstanding Campaign Obligations and from differences in the valuation of the Primary Committee's capital assets purchased after August 16, 1995. The Commission determined that this amount was repayable to the U.S. Treasury.

REFUNDED CONTRIBUTIONS — 11 CFR §9038.2(b)(1)(iii). The Primary Committee received contributions totaling \$12,960 from 25 individuals who requested refunds after the Candidate's date of ineligibility. The amount of matching funds associated with these contributions totaled \$4,700. The Commission determined that this amount was repayable to the U.S. Treasury. The Committee made this payment on February 19, 1997.



FEDERAL ELECTION COMMISSION
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**REPORT OF THE AUDIT DIVISION
ON
PHIL GRAMM FOR PRESIDENT, INC.
PHIL GRAMM FOR PRESIDENT COMPLIANCE COMMITTEE, INC.
PHIL GRAMM FOR PRESIDENT AUDIT FUND**

I. BACKGROUND

A. AUDIT AUTHORITY

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

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

B. AUDIT COVERAGE

The audit of the Primary Committee covered the period from its inception, November 9, 1994, through March 31, 1996. In addition, a review of transactions through February 23, 1997 was conducted to gather information used in the evaluation of the Primary Committee's financial position and remaining matching fund entitlement.

The Primary Committee reports for the audit period reflect an opening cash balance of \$-0-, total receipts of \$29,451,376, total disbursements of \$28,850,085 and a closing cash balance of \$601,291.¹

The audit of the Compliance Committee covered the period from the Committee's inception, January 13, 1995, through April 23, 1996, the date it became the Audit Fund. The Compliance Committee reports reflect an opening cash balance of \$-0-, total receipts of \$137,618, total disbursements of \$57,093, and a closing cash balance of \$80,525.

The Audit Fund reports reflect an opening cash balance of \$80,525², total receipts of \$1,482, total disbursements of \$-0-, and a closing cash balance of \$82,006 as of September 30, 1996.

C. CAMPAIGN ORGANIZATION

The Primary Committee, the Compliance Committee, and the Audit Fund maintained their headquarters in Washington, D.C. until February 3, 1997. On February 3, 1997, the committees' records were moved to Alexandria, Virginia. The Treasurer of all three committees is Mr. Keith A. Davis.

1. Primary Committee

The Primary Committee registered with the Federal Election Commission on November 14, 1994. To handle its financial activity, it utilized a total of twenty-two bank accounts at various times throughout the audit period. From these accounts the campaign made approximately 13,400 disbursements. The Primary Committee received 124,405 contributions from 76,203 persons. These contributions totaled \$16,206,745. The Primary Committee also received approximately 280 contributions from 250 political party and other political committees. These contributions totaled approximately \$424,000.

In addition to the above contributions, the Primary Committee received \$7,356,221 in matching funds from the United States Treasury. This amount represents 48% of the \$15,455,000 maximum entitlement. The candidate was determined eligible to receive matching funds on March 20, 1995. The Primary Committee made 13 matching fund requests totaling \$7,362,543. The Commission certified 99.91% of the requested amount. For matching fund purposes, the Commission determined that Senator Gramm's candidacy ended February 14, 1996. This determination was based on the date the candidate publicly announced he was withdrawing from the campaign. The

¹ All figures in this report have been rounded to the nearest dollar.

² This opening balance is the ending balance of the Compliance Committee.

Commission's regulations at 11 CFR §9033.5(a)(1) state, in part, that the candidate's ineligibility date shall be the day on which the candidate publicly announces that he or she is not actively conducting campaigns in more than one State. On May 15, 1996, the Primary Committee received its final matching fund payment to defray expenses incurred through February 14, 1996 and to help defray the cost of winding down the campaign.

2. Compliance Committee

The Compliance Committee registered with the Federal Election Commission on January 14, 1995. It maintained one bank account throughout the audit period. The Compliance Committee receipts total \$137,618, \$3,487 of that in interest. The Compliance Committee refunded a total of \$55,996 to contributors, \$54,996 of this after the Candidate's date of ineligibility. On April 29, 1996 an amended Statement of Organization was filed which changes the Compliance Committee's name to the Audit Fund.

3. Audit Fund

The Audit Fund used the same bank account as the Compliance Committee. As of January 31, 1997, the account still bears the name of Phil Gramm for President Compliance - Contributions. Through January 31, 1997, one disbursement was made from this account by the Audit Fund, a payment of \$10,015 to the U.S. Treasury for 14 stale-dated contribution refund checks. (See Finding IV.A.1.) As of January 31, 1997, the balance in the Audit Fund was \$83,159.

II. AUDIT SCOPE AND PROCEDURES

In addition to a review of the Primary Committee's expenditures to determine the qualified and non-qualified campaign expenses incurred by the campaign, the audit covered the following general categories as appropriate for each committee:

1. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
2. the receipt of contributions or loans in excess of the statutory limitations;
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 Campaign Obligations filed by the campaign to disclose its financial condition and establish continuing matching fund entitlement (Findings III. A.1. and 2.);
9. the campaign's compliance with spending limitations; and
10. other audit procedures that were deemed necessary under the circumstances. (Findings III.A.3. and IV.A.1.).

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

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

III. PHIL GRAMM FOR PRESIDENT, INC.

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

1. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 days of the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other things, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary wind down costs. Subsection (b) of this section states, in part, that the total outstanding campaign obligations shall not include any accounts payable for non-qualified campaign expenses. Subsection (c)(1) states, in part, that the fair market value of capital assets shall be considered to be the total original cost of such items when acquired less 40% to account for depreciation.

Senator Gramm's date of ineligibility was February 14, 1996. The Audit staff reviewed the Primary Committee's financial records and winding down cost estimates and, at the time of the Exit Conference Memorandum (ECM) determined that, on the Candidate's date of ineligibility, a deficit of \$2,713,354 existed. The major differences between the Audit staff's calculation of Net Outstanding Campaign Obligations and the Primary Committee's calculation involved approximately \$169,000 in voided checks included in the Primary Committee's post date of ineligibility disbursements for qualified campaign expenses and winding down expenses, and reductions totaling \$462,182 to estimated Winding Down costs. Also, the Primary Committee contests the valuation placed on Capital Assets by the Audit staff.³

In its response to the ECM, the Primary Committee does not question the \$169,000 adjustment for voided checks. However, it does address the other differences at length. The Primary Committee's arguments and the Audit staff's conclusions are presented below.

a. Valuation of Capital Assets

With respect to capital assets, the Primary Committee makes two arguments why the 40% depreciation rule should not apply to its assets and presents substantial evidence to demonstrate that the fair market value of its assets was considerably less than 60% of its cost.⁴ First, the Primary Committee argues that the Commission intended the "strict" depreciation rule at §9034.5(c)(1) to be limited to capital assets sold or shared between a candidate's primary and general election campaigns. It points to sections of the Explanation and Justification (E & J) for that regulation which, it argues, show that the provision was meant to be limited to those candidates who have both a primary and general election campaign. Since Senator Gramm did not participate in the Presidential general election, the provision does not apply to his campaign. The Primary Committee then reasons that since the regulation does not apply, it may show that a different depreciation allowance should be used to value its capital assets.

In reviewing the E & J for the revised §9034.5(c)(1), the Audit staff notes that it states "[t]he Commission is amending paragraph (c)(1) of this section to provide for a standard 40% depreciation of capital assets that are received by a primary campaign committee prior to the candidate's DOI and subsequently sold to the general campaign or to another entity." (Emphasis Added) This wording is clear. The

³ Although the Primary Committee disagreed with the use of the 40% depreciation rate, it did list its Capital Assets at 60% of original value on its NOCO statements filed with the Commission.

⁴ The Primary Committee also notes that the rigid application of the 40% depreciation rule to committees similarly situated to itself, could leave such committees with the choice of either taking huge losses on their capital assets or potentially accepting illegal corporate contributions if a buyer willing to pay 60% of cost could be found.

40% depreciation is meant to apply to all campaigns as is indicated by the plain wording of the regulation. The sections of the E & J that the Primary Committee references, explain the concerns that lead the Commission to revise the regulation, not the intended application of the revision.

Second, the Primary Committee points out that the majority of its assets were purchased before the effective date of the current 11 CFR §9034.5(c)(1) (August 16, 1995). It goes on to note that the version of §9034.5(c)(1) in effect at the time it purchased its assets allowed a candidate to show a higher depreciation percentage, thus it should not be forced to depreciate assets purchased before August 16, 1995 using a 40% rate. The Audit staff agrees. The material submitted by the Primary Committee showing how its assets were valued and liquidated, along with material gathered during the audit, was reviewed and, with minor exception, the Primary Committee's valuation is accepted. The majority of the approximately \$25,000 remaining difference is the result of the Primary Committee valuing assets purchased after August 16, 1995 under the previous version of §9034.5(c)(1) and the valuation of computer software.⁵ The Primary Committee does not value any computer software while the Audit staff valued it at approximately \$6,700. The software valuation is based on information available on used computer equipment. The Audit staff's revised capital asset valuation is \$147,779 compared to the Primary Committee valuation of \$115,247.

b. Estimated Winding Down Costs

The Primary Committee also disputes the Audit staff's estimates for winding down expenses presented in the ECM. The Primary Committee submitted revised estimates for total winding down expenses totaling \$733,244. The Audit staff's estimate in the ECM was \$271,062, resulting in a difference of \$462,182. The principle difference is in estimates for legal and accounting fees which the Primary Committee projected estimated through December 31, 1997 and the Audit staff projected through June 30, 1997 at a smaller monthly amount, and in the estimate for record storage fees for the years 1998 - 2000. The Primary Committee estimated \$72,000, the Audit staff allowed \$15,000.

In response to the ECM, the Primary Committee stated, "the Campaign must project its wind-down costs for all future phases of the repayment process, not just through 1997. And while it is true that the total costs the Campaign ends up incurring will depend in part on whether it is required to further challenge the Audit Division's repayment determination within the Commission or, if necessary, in the federal courts, there is no basis for the Audit Division substituting its judgment regarding these future costs for the considered judgment of the Campaign, which is based on the

⁵ The difference between the higher depreciation rate applied by the Primary Committee and the 40% rate mandated in the regulations and applied by the Audit Division totals approximately \$25,000.

experience of prior Campaigns. In the light of the foregoing, the Audit Division should revise upward the Gramm Campaign's future wind-down costs on its NOCO."

In comparing the winding down cost estimates used for the NOCO contained in the ECM to the actual costs incurred by the Primary Committee, it is noted that with the exception of the month of February 1997, the latest information available at this writing, the Audit staff estimates were materially correct, while the Primary Committee's estimates were overstated by approximately \$100,000. In February 1997, the month in which the Primary Committee filed its response to the ECM, the Audit staff's estimates were approximately \$25,000 less the actual expenses incurred. The NOCO shown below has been revised to reflect the actual expenses incurred.

According to information provided by the Primary Committee in November 1996, for the period January 1, 1997 through June 30, 1997, the Primary Committee has estimated total expenses of \$59,390 per month, while the Audit staff has estimated approximately \$25,000. Based on costs incurred to date, the Audit staff feels that this amount is sufficient to cover expenses during this period. Winding down estimates have been revised to include estimated expenses for the months of July and August 1997. Currently it is projected that the Audit report will be released to the public by that time. The Audit staff has used the Primary Committee's estimate of \$19,960 per month.

In reviewing the Committee's estimates for activity between September 30, 1997 and December 31, 1997 and beyond, it appears that the Primary Committee's estimates for professional fees and overhead assume protracted legal proceedings with respect to repayment.⁶ The Audit staff believes these expenses to be speculative. The findings in the audit report, especially given the revised Capital Asset valuation discussed above, should not require protracted administrative or legal proceedings. If the Primary Committee does find it necessary to challenge the repayment determination and our estimates prove insufficient, the Commission may reconsider this issue at that time.

The Committee had estimated a total of \$72,000 in storage fees for the campaign's records for a period of three years, (1998-2000). While the Audit staff does not dispute the need for retention of records, we feel that \$24,000 per year for storage is excessive. Based on our review of selected facilities in this area,⁷ the Audit staff believes a more reasonable figure to be \$15,000 for the three year period.

⁶ Since this report contains no non-repayment findings, there is no need to include any estimates for legal fees associated with any Matter Under Review that may have resulted from further Commission action on such matters.

⁷ The campaign's records are stored at Huckaby & Associates, which is located at 228 S. Washington St., Alexandria Virginia, the Primary Committee's estimates for storage are for this site.

Presented below is the revised Statement of Net Outstanding Campaign Obligations as determined by the Audit staff:

PHIL GRAMM FOR PRESIDENT, INC.
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
 As of February, 14, 1996
 As Determined at 2/23/97

ASSETS

| | |
|----------------------|--------------------|
| Cash in Bank | \$1,337,918 (a) |
| Accounts Receivable: | 260,470 |
| Capital Assets | 147,779 |
| Total Assets | \$1,746,167 |

OBLIGATIONS

| | |
|--|---------------------------|
| Accounts Payable for Qualified Campaign Expenses | \$2,121,647 (b) |
| Loan Payable | 1,888,064 |
| Amount Payable to U.S. Treasury: | |
| State-dated Checks | 33,006 |
| Winding Down Costs | |
| 2/15/96-2/23/97: Actual | 580,322 |
| 3/1/97 and later: Estimated | 154,839 (c) |
| Total Obligations | <u>\$4,777,878</u> |

NET OUTSTANDING CAMPAIGN OBLIGATIONS **(\$3,031,711)**

FOOTNOTES TO NOCO

- (a) The Primary Committee's Cash in Bank figure has been adjusted to reflect Pre Date of Ineligibility state-dated checks.
- (b) The Accounts Payable figure has been adjusted for non-qualified campaign expenditures paid after the 'candidate's date of ineligibility. No mention of non-qualified expenses is included in the memorandum because the majority were paid after all Federal funds had been expended. The remaining amounts were not material.
- (c) Some estimates were used in computing this amount: the Audit staff will review the Primary Committee's disclosure reports and records to compare the actual figures with the estimated figures and prepare adjustments as necessary.

2. Federal Funds Received in Excess of Entitlement

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of: (1) the amount of contributions submitted for matching; or (2) the remaining net outstanding campaign obligations.

Section 9038.2(b)(1)(i) and (iii) of Title 11 of the Code of Federal Regulations entitled Basis for Repayment - Payments in Excess of Candidate's Entitlement states in part, the Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, the following: payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding obligations as defined in 11 CFR §9034.5 and payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable.

a. Amounts Received In Excess of Entitlement Based on the Primary Committee's NOCO

As noted earlier, in the ECM the Audit staff calculated that the Primary Committee had a deficit of \$2,713,354 on February 14, 1996, the Candidate's date of ineligibility. To this deficit the Audit staff applied matching fund payments, contributions and other funds received after February 14, and determined that the Primary Committee had received matching fund payments over and above the amount necessary to liquidate all obligations for qualified campaign expenses and winding down costs. These matching fund payments totaled \$686,234. The ECM concluded that absent a showing that this calculation was not correct, the Audit staff would recommend that the Commission determine that an equal amount was payable to the U.S. Treasury.

Based on the revised NOCO calculation presented above, an updated calculation of matching funds received in excess of the Candidate's entitlement follows.

| | | |
|--|------------------|--------------------|
| Net Outstanding Campaign Obligations (Deficit) as of 2/14/96 | | (\$3,031,711) |
| Net Private Contributions Received 2/15/96 to 4/15/96 | 63,563 | |
| Matching Funds Received 2/15/96 to 4/15/96 | <u>3,265,304</u> | <u>\$3,328,867</u> |
| Matching Funds Received in Excess of Entitlement as of 4/15/96 | | \$ 297,156 |
| Matching Funds Received (5/1/96 + 5/15/96) (\$6,526, 5/1/96 + \$65,960, 5/15/96) | | <u>72,486</u> |
| Total Matching Funds Received in Excess of Entitlement | | <u>\$ 369,642</u> |

Recommendation #1

The Audit staff recommends that the Commission determine the Primary Committee is required to repay the U.S. Treasury \$369,642 pursuant to 11 CFR §9038.2(b)(1).

b. 100% vs. Ratio Repayment

The Primary Committee received matching funds that were certified by the Commission before the Candidate's date of ineligibility but paid after that date. This occurred because in 1996, the Presidential Primary Matching Payment Account faced a shortfall during the first few months of 1996. Due to this shortfall, as of the Candidate's date of ineligibility \$2,872,866 in matching funds had been certified by the Commission which the U.S. Treasury was unable to pay. The Primary Committee did not receive payment in full until April 15, 1996.

In the ECM the Audit staff calculated that the Primary Committee had received matching funds in excess of entitlement totaling \$686,234. Working backwards from the last matching fund request certified by the Commission, \$221,310 of the excess was certified before the Candidate's date of ineligibility. In response to the ECM, the Primary Committee argued that if the Commission refuses to capitalize and depreciate the Gramm Campaign's capital assets at their fair market value,

then this amount should be repaid at a rate of 33.73⁸ as opposed to the full repayment the Audit staff had requested. In support of its position the Primary Committee argues that the Commission's regulations and E & J do not require a 100% repayment, the Secretary of Treasury is required to take equitable considerations into account when distributing matching funds, that there is no evidence that Congress intended to impose a 100% repayment under these circumstances, that it would be inequitable to do so, and that the ratio repayment would be consistent with the policy behind the Act and not prohibited by the Commission's regulations.

The Primary Committee's argument is no longer relevant. As discussed above, changes to amounts of capital assets for NOCO purposes and other adjustments results in a recommended repayment of \$369,642 (vs. the \$686,234 in the ECM). Approximately \$465,000 in matching funds was certified and paid to the Primary Campaign after the Candidate's DOI (2/14/96). Notwithstanding the above, it is clear in the Commission's regulations, the associated E & J⁹, and long standing Commission policy that the Candidate may continue to receive matching fund payments only if on the date of payment there are remaining net outstanding campaign obligations. This condition applies regardless of the date of the underlying certification. To do otherwise would result in the payment of public funds to a campaign that had no qualified campaign expenses to which the funds could be applied.

c. Refunded Contributions

Subsequent to the Candidate's date of ineligibility, the Primary Committee received correspondence from certain contributors requesting a refund of their contributions. Twenty-five contributors requested a total of \$12,960 be refunded. The Primary Committee complied with the contributors' requests, however, 21 of the contributions had been matched. The amount of matching funds associated with these contributions was \$4,700. Subsequent to the conference held at the end of fieldwork, the Audit staff supplied a list of the contributions to Primary Committee representatives. They indicated that a repayment would be made.

In the ECM, the Audit staff recommended that the Primary Committee provide evidence that it had not received matching fund payments in excess of entitlement. Absent such evidence, the Audit staff stated that it would recommend the Commission determine that \$4,700 was repayable to the U.S. Treasury.

⁸ This percentage represents the repayment ratio calculated by the Primary Committee. (See 11 CFR §9038.3(c)(1).)

⁹ In particular see 11 CFR §§9034.1(b)(2), 9036.4(c)(2), 9034.5(f), and the associated discussions contained in the Commission's Explanation and Justification.

In response to the ECM the Primary Committee submitted a check for \$4,700.

Recommendation #2

The Audit staff recommends that the Commission determine that the Primary Committee is required to repay \$4,700 to the U.S. Treasury pursuant to 11 CFR §9038.2(b)(1)(iii). As noted above the amount has been repaid.

3. **Stale-dated Checks**

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

The Audit staff performed bank reconciliations through March 31, 1996. In addition, bank records were reviewed for the period April 1, 1996 through September 30, 1996 to determine total outstanding checks. From these reviews, the Audit staff identified 81 checks, totaling \$33,006 which had not been negotiated. Of these, 64 checks totaling \$29,230, were for contribution refunds.

At a conference held at the end of fieldwork, the Audit staff provided representatives of the Primary Committee with schedules of the stale-dated checks. The matter was discussed with the Primary Committee's representatives, who agreed that a payment to the U.S. Treasury would be necessary. In the ECM it was noted that absent a demonstration that the payments had been made or that no obligation existed, the Audit staff would recommend that the Commission determine that \$33,006 was payable to the U.S. Treasury.

In response to the ECM, the Primary Committee submitted a check in the amount of \$33,006.

Recommendation #3

The Audit staff recommends that the Commission determine that the Primary Committee is required to pay the U.S. Treasury \$33,006 pursuant to 11 CFR §9038.6. As noted the payment has been made.

IV. PHIL GRAMM FOR PRESIDENT COMPLIANCE COMMITTEE, INC.

A. AUDIT FINDING AND RECOMMENDATION - AMOUNTS DUE THE UNITED STATES TREASURY

1. 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 of its efforts to locate the payees, if such efforts are necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff reconciled the Compliance Committee's bank account through March 1996. In addition, a review was made of amounts redesignated to the Phil Gramm for President Audit Fund, and of amounts refunded to contributors. The refund checks were then traced to the Compliance Committee's bank statements to determine if the checks were still outstanding as of September 30, 1996. The Audit staff identified 14 stale-dated refund checks totaling \$10,015.

This matter was discussed with a Compliance Committee representative who agreed that a payment to the United States Treasury was due. In the ECM it was noted that absent a demonstration that the payments had been made or that no obligation existed, the Audit staff would recommend that the Commission determine that \$10,015 was payable to the U.S. Treasury.

In response to the ECM, the Compliance Committee submitted a check in the amount of \$10,015.

Recommendation #4

The Audit staff recommends that the Commission determine that the Compliance Committee is required to pay the U.S. Treasury \$10,015 pursuant to 11 CFR §9007.6. As noted the payment has been made.

V. PHIL GRAMM FOR PRESIDENT AUDIT FUND

The Audit staff did not detect any material non-compliance during the audit of the Audit Fund.¹⁰

¹⁰

After all refunds for contributions not redesignated to the Phil Gramm for President Audit Fund were made, an amended Statement of Organization was filed which changed the Phil Gramm for President Compliance Committee, Inc. to the Phil Gramm for President Audit Fund. The bank account remained the same.

FUND RESIDUAL MONIES

ual monies exist in the Audit Fund after payment of all fines and
 d pursuant to the Act, if any, the Audit Fund must take the

any residual monies to contributors on either a pro-rata basis or
 first-out basis;

ge any residual monies to the United States Treasury;

ute any residual monies to any organization described in Section
 of Title 26 of the United States Code; or

r any residual monies to any national, state, or local committee of
 tical party so long as such monies are not used in connection with
 eral election.

UE TO THE UNITED STATES TREASURY

is a recap of the amounts subject to the payment and repayment
 §9038(b) and 11 CFR §§9038.6 and 9007.6:

Y COMMITTEE:

Federal Funds Received in Excess of
 entitlement

| | |
|---|-----------|
| Matching Fund Payments in Excess of Candidate's Entitlement | \$369,642 |
|---|-----------|

| | |
|--------------------------------|----------|
| Refunded Contributions Matched | \$ 4,700 |
|--------------------------------|----------|

| | |
|---------------|-----------|
| Unpaid Checks | \$ 33,006 |
|---------------|-----------|

| | |
|--------------------|-------------------------|
| Y COMMITTEE | <u>\$407,348</u> |
|--------------------|-------------------------|

ANCE COMMITTEE

| | |
|---------------|------------------|
| Unpaid Checks | <u>\$ 10,015</u> |
|---------------|------------------|

TOTAL AMOUNT PAYABLE

\$ 417,363

Amount paid as of 2/18/97

\$ (47,721)

Amount Due

\$369,642

21-11-11 11:11:11

WILLIAMSON V. B. S. S.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 11, 1997

RECEIVED
FEDERAL ELECTION
COMMISSION
AUDIT DIVISION
JUN 11 9 29 AM '97

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble

General Counsel
Kim Bright-Coleman *L.M. to KBC*
Associate General Counsel

Rhonda J. Vosdinger
Assistant General Counsel

Delbert K. Rigsby *DKR*
Attorney

SUBJECT: Proposed Audit Report on Phil Gramm for President, Inc., Phil Gramm for President Compliance, Inc., and Phil Gramm for President Audit Fund (LRA #463)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Audit Report on the Phil Gramm for President, Inc. (the "Primary Committee"), the Phil Gramm for President Compliance, Inc., and the Phil Gramm for President Audit Fund submitted to this Office on April 14, 1997. The following memorandum summarizes our comments on the proposed Report. This Office concurs with findings in the proposed Audit Report that are not discussed

2025 RELEASE UNDER E.O. 14176

separately in the following memorandum.¹ If you have any questions concerning our comments, please contact Delbert K. Rigsby, the attorney assigned to this audit.

II. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS (III.A.1)

The proposed Report includes a statement of the Primary Committee's net outstanding campaign obligations ("NOCO") as of February 14, 1996, which was the candidate's date of ineligibility (the "DOI") for matching funds. The Primary Committee disagrees with the valuation of capital assets and the estimate for winding down costs contained in the NOCO statement. The proposed Report values the Primary Committee's capital assets at 60% of the purchase price by applying the 40% depreciation rule set forth in 11 C.F.R. § 9034.5(c)(1). The Primary Committee argues that the Commission's Explanation and Justification (the "E & J") for 11 C.F.R. § 9034.5(c)(1), contained in 60 Fed. Reg. 31868 (June 16, 1995), suggests that the Commission intended for this regulation to apply to committees that transferred capital assets from the primary campaign committee to the general campaign committee. Therefore, the Primary Committee argues that since the campaign did not participate in the general election, this regulation should not apply to them.

The proposed Report concludes that 11 C.F.R. § 9034.5(c)(1) provides for a 40% depreciation of assets that are received by a primary campaign committee prior to the candidate's DOI and subsequently sold to the general campaign or to another entity. The proposed Report concludes that the phrase "to another entity" means that the Commission did not intend to limit this regulation to Committees that participated in both the primary and general elections. This Office concurs with the proposed report's interpretation of 11 C.F.R. § 9034.5(c)(1). The plain language of the regulation and the E & J evidences the Commission's intent to create a universal standard for depreciation of capital assets and not limit the application of the rule to instances in which capital assets were transferred from the primary campaign committee to the general campaign committee. The language of 11 C.F.R. § 9034.5(c)(1) states that the fair market value of capital assets shall be considered to be the total original cost of such items when acquired less 40% to account for depreciation.

This Office concurs with the proposed report that the current version of 11 C.F.R. § 9034.5(c)(1)(August 16, 1995) should be applied to capital assets purchased after the effective date of the regulation and that capital assets purchased prior to August 16, 1995 should be subject to the previous regulation. See Memorandum from the Office of General Counsel to Audit Division on Proposed Report for Alexander for President, Inc., et al, May 28, 1997.

¹ Since this document concerns the audit of a publicly financed presidential candidate, this Office recommends that the Commission consider this document in open session. 11 C.F.R. § 9038.1(e). See also 11 C.F.R. § 2.4 (discussion is not exempt from disclosure under the Commission's Sunshine Regulations). Parenthetical references are to the placement of the findings in the proposed Report.

In regard to capital assets purchased prior to August 16, 1995, the proposed Report states that the Primary Committee's valuation of those assets are accepted with minor exception. An issue in this valuation is whether the Primary Committee provided documentation of any efforts to sell the telephone systems to buyers other than AT&T and Friends of Phil Gramm, Senator Gramm's Senate campaign committee. The contract with AT&T provided that AT&T would repurchase the AT&T Definity telephone system at 25% of the original cost. Additionally, the Primary Committee sold a smaller telephone system, the AT&T Merlin system, to Friends of Phil Gramm at 25% of the purchase price by relying upon AT&T's valuation of the Definity system for repurchase at 25% of the original cost. This Office believes that the repurchase price for the Definity telephone system, which was set forth in the contract between AT&T and the Primary Committee, does not necessarily equal the depreciated value of the telephone system. The fair market value could have been higher than AT&T's repurchase price if the Primary Committee had approached other buyers who may have offered a higher price.

Under the previous regulation 11 C.F.R. § 9034.5(c)(1), primary committees were required to provide documentation of the fair market value of a capital asset whenever they claimed a depreciation percentage higher than 40%. This Office is concerned that primary committees could attempt to sell assets at a price lower than the actual fair market value, which would result in their NOCO statements reflecting a larger deficit and enabling them to secure more public funds than they are entitled. Nevertheless, in this case, it appears that the Audit staff was reasonable in accepting the Primary Committee's valuation of the telephone systems, and this Office concurs with the proposed report. See Memorandum from Office of General Counsel to Audit Division on Proposed Report for Alexander for President, Inc., et al, May 28, 1997. This Office also recognizes that this particular concern will not arise in the future since 11 C.F.R. § 9034.5 (c)(1) now provides for a standard 40% depreciation of capital assets.

The proposed Report states that there is a difference of \$36,000 between the Audit staff's and the Primary Committee's valuation of capital assets purchased after August 16, 1995. The proposed Report should specify the reasons for this difference. For example, it should be noted whether the difference is based on the Primary Committee's argument that the 40% standard depreciation of capital assets as set forth in 11 C.F.R. §9034.5 should not apply to them since they did not participate in the general election.

III. FEDERAL FUNDS RECEIVED IN EXCESS OF ENTITLEMENT (III.A.3)

The proposed Report calculates the Primary Committee's repayment for funds received in excess of Senator Gramm's entitlement to be \$380,434. In early 1996, the Presidential Primary Matching Fund Account experienced a shortfall, which resulted in primary campaign committees receiving a pro rata share of the matching funds in accordance with the rules set forth in 11 C.F.R. § 9037.2(c). The Primary Committee disagrees with the calculation repayment for all matching funds received in excess of entitlement and argues that the late payment of matching

funds should be taken into account in determining the repayment amount. The Primary Committee argues that the matching funds due prior to the date of ineligibility should be repaid on a repayment ratio of approximately 33%, which is the repayment ratio used for non-qualified campaign expenses. See 11 C.F.R. § 9038.2(b)(2)(iii). Additionally, the Primary Committee argues that 11 C.F.R. § 9038.2 does not require a 100% repayment on such funds, that it would be inequitable for the Commission to require 100% of those funds to be repaid and that the Commission has the discretion to permit a lower repayment ratio on such funds. The proposed Report concludes that the Primary Committee's opposition to the 100% repayment of matching funds in excess of entitlement is no longer relevant since the Primary Committee stated it would not pursue this issue if the capital assets were adjusted at an amount closer to the fair market value. See *supra* Section II.

The Primary Committee argues that the Commission should make a proportional adjustment to its repayment obligation for receiving funds in excess of entitlement to account for its entitlement to public funds during the candidate's period of eligibility that were not paid during eligibility. Generally, a candidate eligible to receive public funds will be entitled to funds to the extent that the candidate has matchable contributions. 11 C.F.R. § 9034.1(a). However, matching funds that are certified may not be paid in full if there is a shortfall in the Presidential Primary Matching Fund Account. 11 C.F.R. § 9037.1. Therefore, after the date of ineligibility, if the candidate does not receive all matching funds due to a shortfall, the Commission may revise the amount previously certified for payment. 11 C.F.R. § 9036.4(c)(2).

This Office agrees that 100% of the funds that the Primary Committee received in excess of entitlement should be repaid to the United States Treasury. The Commission's regulations do not provide for a repayment ratio of less than 100% for funds received in excess of entitlement. 11 C.F.R. § 9038.2(b)(1). The candidate's repayment obligation for receiving funds in excess of entitlement is not adjusted on a proportional basis to account for funds that were not paid during the candidate's period of eligibility. Advisory Opinion 1996-4 confirms that despite a shortfall in the Presidential Matching Payment Account, after his or her date of ineligibility, a candidate is only entitled to the amount of matching funds necessary to satisfy his or her net outstanding campaign obligations. If the candidate has not received the entire amount of matching funds on the regular scheduled date because of a shortfall, he or she must submit a revised NOCO statement after the date of ineligibility. 11 C.F.R. § 9034.5(f)(3). Additionally, after the date of ineligibility, the amount of matching funds due to a candidate could be revised if the candidate has lower net outstanding campaign obligations than the amount of previously certified but unpaid matching funds. See 11 C.F.R. §§9036.4(c)(2) and 9034.5(f). The revised NOCO statements allow for any adjustments that may be necessary to account for the change in financial position due to the longer time periods between matching fund submission dates and payment dates. See Explanation and Justification of 11 C.F.R. § 9034.5(f), 55 Fed. Reg. 34131.

1950-1951



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 3, 1997

Mr. Keith Davis, Treasurer
Phil Gramm for President, Inc.
Phil Gramm for President Compliance Committee, Inc.
Phil Gramm for President Audit Fund
228 South Washington Street
Suite 200
Alexandria, VA 22314

Dear Mr. Davis:

Attached please find the Audit Report on Phil Gramm for President, Inc., Phil Gramm for President Compliance Committee, Inc., and Phil Gramm for President Audit Fund. The Commission approved this report on June 26, 1997. As noted on page 4 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR 9038.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$417,363 is required within 90 calendar days after service of this report (October 6, 1997). The audit report also notes that \$47,721 has been paid, leaving a balance of \$369,642.

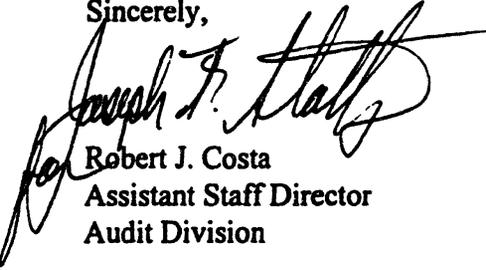
Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (August 5, 1997), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(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 30 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) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 30 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on July 10, 1997. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Joe Stoltz or Russ Bruner of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

1-11-97 10:00 AM



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 3, 1997

Senator Phil Gramm
c/o Mr. Keith Davis, Treasurer
Phil Gramm for President, Inc.
Phil Gramm for President Compliance Committee, Inc.
Phil Gramm for President Audit Fund
228 South Washington Street
Suite 200
Alexandria, VA 22314

Dear Senator Gramm:

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Sincerely,

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for Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

CHRONOLOGY

PHIL GRAMM FOR PRESIDENT, INC.
PHIL GRAMM FOR PRESIDENT COMPLIANCE COMMITTEE, INC.
AND
PHIL GRAMM FOR PRESIDENT AUDIT FUND

| | |
|--|-------------------|
| Audit Fieldwork | 5/20/96 — 9/25/96 |
| Exit Conference Memorandum to the Committee | 12/5/96 |
| Response Received to the Exit Conference Memorandum | 2/18/97 |
| Audit Report Approved | 6/26/97 |

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