



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 2003

MEMORANDUM

TO: Ron M. Harris
Press Officer
Press Office

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

SUBJECT: Public Issuance of the Final Audit Report on Gore 2000, Inc.

Attached please find a copy of the final audit report and related documents on Gore 2000, Inc. that was approved by the Commission on December 23, 2002.

All parties involved have received informational copies of the report 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

REPORT OF THE AUDIT DIVISION
ON
GORE 2000, INC.

Approved December 23, 2002



FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.

TABLE OF CONTENTS

GORE 2000, INC.

	Page
Executive Summary	1
Final Audit Report	3
Background	3
Findings	5
Legal Analysis	15
Transmittal to Committee	23
Transmittal to Candidate	25
Chronology	27



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON
GORE 2000, INC.**

EXECUTIVE SUMMARY

Gore 2000, Inc. registered with the Federal Election Commission on January 11, 1999, as the principal campaign committee for then Vice President Al Gore (the Candidate), a candidate for the Democratic Party's nomination for the office of President of the United States.

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. Gore 2000, Inc. received \$15,456,084 in matching funds from the United States Treasury.

The findings of the audit were presented to Gore 2000, Inc. at the exit conference held on March 4, 2002, and in the preliminary audit report. Gore 2000, Inc. responses to the findings are contained in the audit report.

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

NOCO SURPLUS REPAYMENT – 11 CFR §9038.2(b)(4). The Statement of Net Outstanding Campaign Obligations shows Gore 2000, Inc. to be in a surplus position in the amount of \$546,765. Of that surplus amount, \$170,591 is repayable to the United States Treasury. As part of its response to the preliminary audit report, Gore 2000, Inc submitted a check for \$54,591 payable to the United States Treasury.

STALE-DATED CHECKS – 11 CFR §9038.6. of Title 11 of the Code of Federal Regulations. Gore 2000, Inc. has remaining, unresolved, stale-dated checks totaling \$2,485, which are payable to the United States Treasury.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

***REPORT OF THE AUDIT DIVISION
ON
GORE 2000, INC.***

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Gore 2000, Inc. (Gore 2000). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states, "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 Title 26 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 (FECA), as amended.

B. AUDIT COVERAGE

The audit covered the period from Gore 2000's first bank transaction on January 8, 1999, through December 31, 2000. During this period, Gore 2000 reported an opening cash balance of \$0, total receipts of \$53,871,927, total disbursements of \$50,378,013, and a closing cash balance of \$3,493,914. In addition, a limited review of Gore 2000's financial activity and disclosure reports for the period from January 1, 2001, through September 30, 2002, was conducted to determine its matching fund entitlement based on its financial position.

C. CAMPAIGN ORGANIZATION

Gore 2000 registered with the Federal Election Commission (the Commission) on January 11, 1999, as the principal campaign committee for then Vice President Al Gore (the Candidate), a candidate for the Democratic Party's nomination for the office of President of the United States.

Gore 2000 currently maintains its headquarters in Washington D.C. The Treasurer for Gore 2000 since inception has been Jose Villarreal, who continues to serve in that capacity.

During the audit period Gore 2000 maintained its depositories in Washington, D.C. To handle its financial activity, Gore 2000 utilized four bank accounts from which it made 24,531 disbursements. Further, Gore 2000 received contributions totaling about \$34,477,100, from 42,878 contributors. It also received \$6,000 in transfers from other authorized committees; \$3,917,035 in offsets to expenditures; and, \$15,708 in interest and other receipts.

In addition to the above, the Candidate was determined eligible to receive matching funds on September 30, 1999. Gore 2000 made 10 matching fund requests totaling \$15,561,886 and received \$15,456,084 from the United States Treasury (U.S. Treasury). This amount represents 92% of the \$16,890,000 maximum entitlement that any candidate could receive. For matching fund purposes, the Commission determined that then Vice President Gore's candidacy ended on August 16, 2000, the date on which he received the nomination. On August 1, 2000, Gore 2000 received its final matching fund payment to defray expenses and to help defray the cost of winding down the campaign.

D. AUDIT SCOPE AND PROCEDURES

In addition to a review of expenditures made by Gore 2000 to determine if they were qualified or non-qualified campaign expenses, 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;
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 debts and obligations;

6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records;
7. adequate recordkeeping for transactions;
8. the accuracy of the Statement of Net Outstanding Campaign Obligations (NOCO) filed to disclose its financial condition and to establish continuing matching fund entitlement (See Finding II.A.);
9. compliance with spending limitations; and,
10. other audit procedures that were deemed necessary in the situation (See Findings II.B. & II.C.) .

The Audit staff did not analyze issue ads paid for by the national or state party committees or review payments made to media vendors by the national or state party committees.

As part of the Commission's standard audit process, an inventory of Gore 2000's records was conducted prior to the audit fieldwork to determine if the records are materially complete and in an auditable state. The records were found to be materially complete and the audit fieldwork commenced.

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 the audit report in an enforcement action.

II. FINDINGS AND RECOMMENDATIONS – AMOUNTS DUE TO THE U.S. TREASURY

A. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which reflects the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility, plus estimated necessary winding down costs.

The Candidate's date of ineligibility (DOI) was August 16, 2000. The Audit staff reviewed Gore 2000's financial activity through September 30, 2002.

GORE 2000, INC.
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
 As of August 16, 2000
 As Determined at September 30, 2002

ASSETS

Cash in Bank	\$4,304,995	
Accounts Receivable	4,101,533 (a)	
Total Assets		\$8,406,528

OBLIGATIONS

Accounts Payable:		
For Qualified Campaign Expenditures through 9-30-02	\$3,926,559 (b)	
Due to Gore/Lieberman for Primary Expenses Paid	\$103,559	
Due to Gore/Lieberman for Portion of Winding Down	\$521,828 (c)	
Amount Payable to the U.S. Treasury for State-Dated		
Checks (See Finding III.C.)	2,485	
Winding Down Costs:		
Dec. 8, 2000 to September 30, 2002: Actual	2,358,697	
October 1, 2002 to December 31, 2003: Estimated	946,633 (d)	
Total Obligations		7,859,762
		\$546,766
		\$546,766

NET OUTSTANDING CAMPAIGN OBLIGATIONS - SURPLUS

FOOTNOTES TO NOCO

- (a) This amount represents \$2,746,420 in transfers received from Gore/Lieberman: vendor refunds, rebates and reimbursements of \$420,477, deposits not yet reimbursed by the vendors and reported by Gore 2000 as outstanding as of 9/30/02 of \$31,771, and, a receivable due from Gore/Lieberman and/or Gore/Lieberman General Election Legal and Accounting Compliance Fund for its share of winding down paid by Gore 2000 through 9/30/02 of \$902,865
- (b) This amount represents obligations incurred for goods and services and excessive contributions received on or prior to 8/16/00 (DOI) and paid/refunded thereafter. Not included in this figure is an \$88,000 disputed debt owed to Penn. Schoen & Berland disclosed on Gore 2000's July 15th Quarterly report for 2002. Once this matter is resolved and documentation is provided to the Audit staff for review, the NOCO will be appropriately adjusted.
- (c) This amount represents half of the winding down costs paid by Gore/Lieberman through 9/30/2002.
- (d) The wind down cost estimate is based on Gore 2000 spending patterns in the first nine months of 2002. Gore 2000 provided estimates that were higher than those of the Audit staff. The Audit staff found some of their estimates to be unsupported especially in view of the limited issues raised in this audit. The Audit staff will review Gore 2000's disclosure reports and records to compare actual figures with the estimates and prepare adjustments as warranted. Storage costs for records have been included through June 30, 2006.

B. NOCO SURPLUS REPAYMENT

Section 9038.2(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus.

Section 9038.3(c)(1) of Title 11 of the Code of Federal Regulations states, in part, that if on the last day of candidate eligibility the candidate's net outstanding campaign obligations reflect a surplus, the candidate shall within 30 days of the ineligibility date repay to the Secretary an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

The Audit staff's review of the Gore 2000 Statement of Net Outstanding Campaign Obligations and associated records during fieldwork indicated there were substantial surplus funds. This issue was discussed at the exit conference and Gore 2000 representatives expressed their intent to challenge the Audit staff's determination. Subsequent to the exit conference, Gore 2000 submitted documentation in support of its position that estimated winding down costs should be higher.

The NOCO presentation in the preliminary audit report included an attachment that detailed those categories where the Audit staff and Gore 2000 differed on wind down estimates; as well as those categories where there was either agreement or Gore 2000 did not contest the Audit staff's estimate in its response. That NOCO showed that Gore 2000 had a surplus in the amount of \$1,456,005 and that \$454,274 [$\$1,456,005 \times .3120$]¹ was repayable to the United States Treasury. The Audit staff recommended that Gore 2000 provide evidence that it was not in a surplus position.

In its response to the preliminary audit report, Gore 2000 provided a NOCO that showed a surplus of \$174,972, calculated a repayment of \$54,591, and was annotated to note variances from the NOCO developed by the Audit staff. In accordance with its own calculation, Gore 2000 submitted a check for \$54,591 as a repayment to the United States Treasury.

The response restated that the major difference between the two NOCOs involves treatment of wind down expenses and included documentation in support of the wind down expenses, as well as other transactions it was disputing. It should be noted that two significant issues, Gore 2000's speculation that estimated wind down cost would rise by 10% and its need for archiving costs of \$300,000, raised previously by Gore 2000, were not pursued in the response.

¹ This figure (.3120) represents Gore 2000's repayment ratio as calculated pursuant to 11 CFR §9038.3(c)(1).

Based on Gore 2000's response to the preliminary audit report, the report considered by the Commission on December 12, 2002, showed Gore 2000 to be in a surplus position in the amount of \$1,360,100. Of that surplus amount, \$424,351 was repayable to the United States Treasury.

The topics that account for the major differences between the Gore 2000 and the Audit surplus amount are discussed below; as well as the Commission's determinations with respect to these matters when considered on December 12, 2002.

1. Alternative to Audit Staff's 50-50 Wind Down Ratio

Gore 2000 disputes the Audit staff's allocation of wind down costs between the primary and general committees on a 50-50 basis². It believes wind down cost should be allocated 61% to Gore 2000 and 39% to Gore/Lieberman (the general committee) based on greater number of checks issued during its life and the greater number of issues related to the primary audit.

The Audit staff concluded that Gore 2000's winding down allocation method suffered from a number of flaws and in some parts was undocumented. As was done in the preliminary audit report, the Audit staff recommended that the winding down costs be allocated equally between the primary and general election campaigns. At its December 12, 2002 meeting, the Commission decided that, in the absence of the regulations mandating a specific ratio be used, the 61-39 ratio advanced by Gore 2000 would be accepted. The NOCO presented above has been revised accordingly.

2. Shortened Wind Down Period

After considering Gore 2000's response, the paucity of issues and the time necessary to complete the remaining audit process, the Audit staff had revised all wind down estimates (except storage) to conclude at June 30, 2003, rather than December 31, 2003 as projected in the preliminary audit report.

At its December 12, 2002 meeting, the Commission decided that, in anticipation of a continued challenge to the surplus repayment, as well as the possibility of other legal issues, Gore 2000 should be permitted wind down costs through December 31, 2003. The NOCO has been revised accordingly.

² The Commission's Financial Control and Compliance Manual For Presidential Primary Candidates Receiving Public Financing (April 2000) explains that when wind down is shared by the primary and general election campaigns, each must document its allocation of the shared expenses. Absent a documented claim, wind down is presumed to be attributable equally to the primary and general campaigns (pages 30-31).

3. Payments to Hayes Software & Consulting

Gore 2000 argues that all payments to Hayes Software and Consulting should be considered solely as a primary wind down expense and that the services provided (compliance assistance, technical support and management of its contributor database and records) are required until it has terminated.

As noted in the response, the Audit staff is familiar with Mr. Hayes' work and it relates to contributions and matching funds. Based on the response, the Audit staff agrees that payments totaling \$66,159 (\$55,159 by Gore 2000 & \$11,000 by the general committee) for services rendered from December 8, 2000 through December 31, 2001, are solely primary-related wind down expenses. Other payments (\$18,629) to Hayes Software & Consulting, for services rendered during the period August 17 through December 7, 2000, were correctly categorized as general election expenses.

Since no findings resulted from the Audit staff's review of contributions that had been completed by December 31, 2001, and, there were no reported contributions received during 2002, we fail to see the need for such services after December 31, 2001, or what they accomplish.³ As such payments made by Gore 2000, totaling \$20,000, and made by the general, totaling \$20,000, for services provided during 2002 are not considered wind down costs.

As a result, wind down expenses for Gore 2000 have been increased by \$27,580 (50% of \$55,159) to adjust for that portion previously attributed to the general. In addition, the amount due to the general, for wind down costs it paid, has been increased by \$5,500 (50% of \$11,000).

4. Payments to Allen Wegehof and Robert Ishikawa

Gore 2000 argues that payments to Allen Wegehof and Robert Ishikawa, both consultants providing technical support and compliance assistance related primarily to filing FEC reports and preparing audit related material, should be included as a wind down expense required until termination.

Based on the documentation provided, the Audit staff agreed and increased wind down expenses, a portion of which are attributable to the general committee.

5. Other Legal Fees

Gore 2000 argues that estimated legal expenses arising in jurisdictions outside of Washington, DC should be included as estimated wind down

³ See Report of the Audit Division on Clinton for President (1992) where a similar determination was made with respect to contribution database management during the wind down period.

expenses and provides one estimate of \$50,000 for such fees. As noted above, Gore 2000 has reduced its estimate for such services from \$250,000 to \$50,000. The documentation provided lacks any specifics about the litigation. The Audit staff's position remained unchanged and no estimate for such legal services had been included in our wind down estimates.

At its December 12, 2002 meeting, the Commission decided that, based on the documentation provided and the possibility of other legal issues arising, some amount should be permitted for such costs. The Commission determined that the \$50,000 estimate put forward by Gore 2000 was reasonable. The NOCO has been revised accordingly.

6. Insurance Costs

Gore 2000 disputed the exclusion of insurance costs for directors & officers liability, property & casualty, an umbrella policy, and professional liability for legal staff, for 2002 and 2003. It provides documentation showing that it anticipates such costs to be \$52,205.

Although the Audit staff reviewed the documentation and had concerns of duplicative coverage, we allowed \$48,288 in such costs for 2002, as well as an estimate for such insurance costs though the remaining wind down period ending on December 31, 2003, a portion of which are attributable to the general committee.

7. Expenses Excluded From or Incorrectly Classified as Wind Down

Gore 2000 argues that the Audit staff erroneously excluded costs totaling \$28,060 as wind down expenses; and, in addition, erroneously treated as wind down expenses \$27,262 in costs that should have been treated as accounts payable⁴.

The Audit staff examined the documentation submitted for the \$28,060 and adjusted our NOCO as follows. The Audit staff included \$21,048 as wind down; recognized \$5,000 as an accounts payable; and determined that \$2,012 was solely a general expense.

The Audit staff examined the documentation submitted for the \$27,595⁵ and adjusted our NOCO as follows. The Audit staff determined that \$21,070 was in fact accounts payable rather than wind down costs. The remaining expenses (\$6,524) were determined to be solely general in nature, rather than wind down related.

⁴ Treatment as accounts payable attributes 100% of the expenses to Gore 2000 reducing the surplus dollar for dollar. Treatment of the expenses as wind down causes them to be attributed 61% to Gore 2000 and 39% to the general committee, reducing the Gore 2000 surplus only by its 61% share.

⁵ Gore 2000 included a check at \$1,602; the correct amount was \$1,935.

As a result, wind down expenses were reduced by the entire \$27,595 and accounts payable increased by \$21,070.

8. Drafts Improperly Treated as Wind Down Expense

Gore 2000 argues that drafts clearing after August 16, 2000, which totaled \$39,926, should have been treated as accounts payable not as wind down expenses. The Audit staff agrees with Gore 2000 relative to drafts totaling \$11,965 and notes that they were treated as such in the preliminary audit report NOCO. In addition, based on the documentation submitted, the remaining drafts in question (\$27,961) were determined to be general election expenses. Therefore, no adjustment was required.

9. Offsets Erroneously Excluded

Gore 2000 argues that the Audit staff incorrectly omitted offsets of \$77,019 from its wind down calculation. Based on the documentation provided, the Audit staff has removed the amount from accounts receivable and has included the offsets as reductions to wind down expenses⁶.

This change also causes a reduction in the amount due from the general for its share of wind down costs, which has the effect of reducing Gore 2000's surplus.

10. Account Payable Omitted

Gore 2000's response notes the exclusion of an \$88,000 debt, disclosed on its 2002 July 15th Quarterly Report, as an accounts payable. The response states that even though it is disputing this debt, the Audit staff should not have simply disregarded it. Although a copy of relevant pages from the report were included as part of the response; no other documentation was provided.

The Audit staff did not simply disregard the matter, but continues to exclude the disputed debt from its NOCO until such time as the matter is resolved and documentation is provided to show an obligation exists. An appropriate footnote has been added to the NOCO presentation.

11. Persuasive Technologies

Gore 2000 argues that payments to Persuasive Technologies, which provides continuing computer maintenance services, should be included as a wind down expense. Based on the documentation provided, the Audit staff agreed and

⁶ As part of accounts receivable, this amount increases the surplus dollar for dollar. As a reduction to wind down expenses, the increase in the surplus attributable to these transactions is only 61% of the amount of the transactions. Wind down expenses, and any offsets to those expenses, have been attributed 61% to Gore 2000 and 39% to the general committee.

increased wind down expenses, a portion of which is attributable to the general committee.

12. Computer Services

The Audit staff had allowed estimated wind down costs for computer services of \$35,920. Payments for the rental of computer equipment appeared to end April of 2001. As a result, the Audit staff reduced wind down expenses by \$35,920, a portion of which is attributable to Gore 2000. The remainder of this amount is attributable to the general.

Finally, in an alternative argument to the specific transactions discussed above, Gore 2000 disagrees with the methodology used by the Audit staff to calculate the surplus repayment, arguing that it is inconsistent with other methodologies used in calculating matching fund repayments. Gore 2000 states, "...the question is whether and when matching funds have been exhausted, i.e., used up, it appears that the auditors have more than one way to calculate the outcome. This point may be best illustrated by the different treatment accorded to the Bill Bradley campaign from the auditors' proposal here." A description follows of the LIFO (last-in, first-out) process used to determine when matching funds are exhausted in the situation where the candidate had a deficit on the date of ineligibility, received matching fund payments after the date of ineligibility, and repayment is being sought for non-qualified campaign expenses paid after the date of ineligibility⁷. The response then states this method was not used to determine when its matching funds were used up and, having received its last matching fund payment of \$138,210 on August 1, 2000, spent that amount in a matter of days, well before the date of ineligibility (8-16-00). Gore 2000 concludes, "...that it used up its matching funds prior to the date of ineligibility and has no repayment whatsoever due."

Gore 2000 is confusing repayment matters. Section 9038(b)(3) of Title 26 of the United States Code is very specific concerning the calculation of a repayment amount when there are funds remaining in the candidate's accounts after all qualified campaign expenses have been paid. That is the calculation that the Audit staff performed in determining the amount to be repaid by Gore 2000. The Bradley campaign, however, had no unexpended funds. Instead it had net outstanding campaign obligations and was entitled to continue to receive matching fund payments after the date of ineligibility to help retire those obligations. The LIFO method described by Gore 2000 is only applied to determine when the last of the post date of ineligibility payments had been expended. After that point in time there could be no repayment for non-qualified campaign expenses since there were no federal funds in the campaign's accounts. Thus, rather than treating two similarly situated campaigns differently, the Audit staff applied the statutory and regulatory provisions that apply to each campaign in the different circumstances in which they found themselves.

Based on the Commission's deliberations of December 12, 2002, the Audit staff prepared the revised NOCO that appears above at page four.

⁷ See 11 CFR §9038.2(b)(2)(iii)(B).

It shows Gore 2000 to be in a surplus position in the amount of \$546,765. Of that surplus amount, \$170,591 [$\$546,765 \times .3120$]⁸ is repayable to the United States Treasury.

Recommendation # 1

The Audit staff recommends that the Commission determine that a pro-rata repayment of \$170,591 [$\$546,765 \times .3120$] is due the United States Treasury.

C. STALE-DATED CHECKS

Section 9038.6 of Title 11 of the Code of Federal Regulations state 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.

The Audit staff identified 17 stale-dated checks totaling \$7,210 issued by Gore 2000 from its Depository Account. These were all contribution refund checks.

The matter was discussed at the exit conference held subsequent to the close of fieldwork. Gore 2000 was provided with a detailed schedule of the stale-dated checks and was in agreement as to the checks and dollar amounts involved. Gore 2000 representatives stated that documentation would be provided as the checks cleared.

In the preliminary audit report, the Audit staff recommended that Gore 2000 either provide evidence that the checks are not outstanding, or, absent such evidence, make a payment of \$7,210 to the United States Treasury.

In its response to the preliminary audit report, Gore 2000 provided evidence that stale-dated checks, totaling \$4,725, had been negotiated. The response also states the Audit staff will be advised as additional checks are resolved. As such, absent evidence to the contrary, unresolved, stale-dated checks totaling \$2,485 [$\$7,210 - \$4,725$] are payable to the United States Treasury.

Recommendation #2

The Audit staff recommends that the Commission determine that a payment of \$2,485 is due the United States Treasury.

⁸ This figure (.3120) represents Gore 2000's repayment ratio as calculated pursuant to 11 CFR §9038.3(c)(1).

III. **SUMMARY OF AMOUNTS DUE TO THE UNITED STATES TREASURY**

Finding II.B.	NOCO Surplus Repayment	\$ 170,591
Finding II.C.	Stale-Dated Checks	<u>2,485</u>
	Total	\$ 173,076
	Less: Amount Paid	<u>(54,591)</u>
	Total Due United States Treasury	<u>\$ 118,485</u>



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

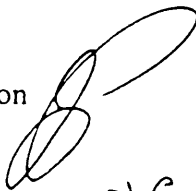
RECEIVED
FEDERAL ELECTION
COMMISSION
AUDIT DIVISION


2002 NOV 21 A 11:12


November 21, 2002


MEMORANDUM


TO: Joseph F. Stoltz
Assistant Staff Director
Audit Division

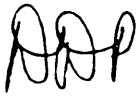
THROUGH: James A. Pehrkon 
Staff Director

Robert J. Costa 
Deputy Staff Director

FROM: Lawrence H. Norton 
General Counsel

Gregory R. Baker 
Acting Associate General Counsel

Peter G. Blumberg 
Acting Assistant General Counsel

Delanie DeWitt Painter 
Attorney

SUBJECT: Proposed Audit Report on Gore 2000, Inc. (LRA 568)

The Office of General Counsel has reviewed the proposed Audit Report on Gore 2000, Inc. (the "Committee") submitted to this Office on October 25, 2002. This memorandum summarizes our comments on the proposed report.¹ Generally, we concur with any findings not specifically addressed in these comments. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

I. NOCO SURPLUS REPAYMENT (II. B.)

The proposed report states that the Committee has a surplus of \$1,385,013 and recommends that the Commission determine that the Committee must repay \$432,124 to the United States Treasury. See 26 U.S.C. § 9038(b)(3); 11 C.F.R. § 9038.2(b)(4), 9038.3(c). The

¹ The Office of General Counsel recommends that the Commission consider this document in open session since the Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

Committee's response to the Preliminary Audit Report ("PAR") calculated a smaller surplus amount of \$174,972, and a repayment of \$54,591. The main difference between the Committee's Statement of Net Outstanding Campaign Obligations ("NOCO Statement") and the NOCO Statement prepared by the auditors is that the Committee includes a larger amount of winding down costs. Although some differences concerning the amounts of winding down costs in the PAR have been resolved in the proposed report, a large amount remains in dispute. A chart attached to the proposed report delineates the differences between the Committee's figures and the Audit staff's calculations for specific types of wind down expenses. Two major areas of disagreement between the Audit staff and the Committee, which affect all categories of expenses, are the length of the winding down period and the attribution of wind down costs between the primary and general election campaigns. The NOCO Statement in the proposed report indicates that estimated wind down costs have been updated with actual figures through June 30, 2002 and states that the Audit staff will continue to review Committee reports and records to adjust estimated figures with actual figures.

A. WIND DOWN PERIOD

This Office notes that the Audit staff has shortened the projected wind down period by six months. The proposed report includes estimated winding down costs only through June 30, 2003 rather than December 31, 2003, as projected in the PAR. The proposed report asserts that "the paucity of issues and the time necessary to complete the remaining audit process" justifies shortening the wind down period. It notes that the "only significant issue" is the amount of wind down costs and the Committee "is left with continuing the dispute only to demonstrate that additional wind down is necessary." The Audit staff's shortened wind down period decreases the estimated wind down costs by approximately \$310,000.

This Office disagrees with the shortened projected winding down period in the proposed report and recommends that estimated winding down costs be included through December 31, 2003, as projected in the PAR. We believe that allowing estimated winding down costs for the Committee through December 31, 2003 is reasonable. In previous audits, the Commission has limited estimated winding down costs, particularly for legal fees, where the candidate's estimate is speculative or uncertain and comparatively excessive. See Statement of Reasons, Patrick J. Buchanan and Buchanan for President, Inc. ("Buchanan 1992"), (approved August 1, 1995). The Commission found that Buchanan 1992's estimate of 1,500 hours of legal services after the completion of the repayment process, which its counsel admitted was uncertain, lacked a reasonable basis. *Id.* at 22-23. Buchanan 1992's projected wind down costs were also higher than any other 1992 campaign except the Clinton campaign, "a much larger campaign for an eventual party nominee." *Id.* at 23. Here, on the other hand, the Committee is a large campaign of a party nominee with substantial amounts of activity and the repayment process is not complete; thus, a longer wind down period is reasonable. The administrative review process in this matter might not be complete by June 30, 2003 and the Committee might incur reasonable wind down costs after that date in connection with the repayment or other matters.

The number of issues in an audit is not necessarily a barometer of the amount of time needed to wind down the campaign. One complex, contested issue may take much longer to resolve than several simpler or uncontested issues, particularly if the issue involves a substantial repayment like the recommended repayment of \$432,124 in the proposed report. Although the recommended repayment is entirely based on surplus funds, the Committee has made a number of factual and legal arguments contesting the calculation of particular expenses; thus, this one issue is made up of a number of smaller issues. The Committee has contested this issue throughout the audit and repayment process and may continue to dispute this issue by requesting administrative review of any Commission repayment determination.² See 11 C.F.R. § 9038.2(c)(2). Each of the steps in the administrative review process takes time, and there is no indication that the administrative review process will be faster for the Committee than for other campaigns that dispute repayments merely because the Committee would be disputing a surplus repayment.³ Thus, estimated winding down expenses should not be limited to June 30, 2003 because the administrative review process may continue after that date. Further, winding down expenses may be necessary for expenses unrelated to the audit and repayment process, such as litigation or other matters, which will be incurred after June 30, 2003.

Other facts in this matter also support estimating wind down expenses through December 31, 2003. Since the auditors estimated wind down expenses through December 31, 2003 in the PAR, the Committee has not had notice or the opportunity to contest the June 30, 2003 date used in the proposed report. It appears that the Committee has entered into contracts with various vendors, such as computer consultants, through December 2003, perhaps in anticipation that wind down activity will continue through that date.

Although this Office recommends estimating the Committee's winding down through December 31, 2003, we do not advocate allowing wind down to continue indefinitely. The regulations do not mandate a specific cut-off date for estimated winding down costs, but rather, provide that the NOCO Statement should include estimated winding down costs that will be

² The Commission's audit and repayment procedures, set forth at 11 C.F.R. § 9038.2(c), allow a candidate who disputes a repayment determination to request an administrative review of the repayment determination. 11 C.F.R. § 9038.2(c)(2). The procedures provide that within 60 days after the repayment determination, the candidate shall submit written legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. 11 C.F.R. § 9038.2(c). The candidate may also request an oral hearing. *Id.* The Commission will consider the written submission and oral hearing in deciding whether to revise the repayment determination. *Id.* A repayment determination following an administrative review must be accompanied by a written statement of reasons explaining the legal and factual reasons supporting the determination. *Id.*

³ The administrative review procedures are not different for candidates who dispute repayment determinations based upon a surplus than for those who dispute other kinds of repayments. The regulations at section 9038.3 provide that if a candidate has a surplus on the date of ineligibility, the candidate shall make a repayment within 30 days; however, this section also provides that the Commission may make a surplus repayment determination that requires repayment in accordance with section 9038.2. 11 C.F.R. § 9038.3(c). Section 9038.2(b)(4) lists as one basis of repayment that the Commission may determine that the candidate's net outstanding campaign obligations reflect a surplus. Thus, the repayment procedures in section 9038.2 apply to disputes over the amount of a surplus repayment.

incurred "from the time the statement is submitted until the expected termination of the committee's political activity." 11 C.F.R. § 9034.5(b)(2). Nevertheless, Commission precedent does not support a perpetual winding down process. The Commission rejected Buchanan 1992's argument that it should be allowed to wind down completely before the Commission sought a repayment. *See* Statement of Reasons at 26-27. The Commission stated that postponing the repayment determination until the end of wind down would lead to delay and create "potential abuse of the process because committees might assert they have not completed winding down activities in order to expend remaining funds rather than repaying funds." *Id.* at 27.

B. WIND DOWN RATIO

One significant area of dispute is the allocation of wind down costs between the Committee and Gore/Lieberman Inc. (the "General Committee"), (i.e. between the primary and general campaigns). The Committee allocates winding down costs 61% to the Committee and 39% to the General Committee. To arrive at this ratio, the Committee first applied a ratio of 56% primary and 44% general on most wind down expenses, based on the number of checks issued by each committee. Then it allocated personnel, legal and accounting expenses for the period between April 1, 2002 and September 30, 2002 as 80% primary and 20% general, contending that there were more issues in the primary audit than in the general audit and that the allocation was based "on the actual time and services provided by the personnel, lawyers and accountants." Committee Response (September 13, 2002) at 12. The total amounts calculated using the Committee's allocation percentages resulted in a ratio of 61% primary and 39% general. The Committee contends that the law does not require a specific allocation method, and notes that the allocation for the 1992 Clinton/Gore campaign was 57% primary and 43% general while the 1996 Clinton/Gore campaign allocation was 60% primary and 40% general. *Id.* The Committee also asserts that most of the work needed to prepare for the audits related to the primary campaign because the primary campaign has additional requirements related to contributions, allocation and additional spending limitations. *Id.* It also argues that its response to the PAR is more "lengthy and complex" than the General Committee's response, and that the primary campaign had additional costs related to moving offices. *Id.* The proposed report rejects the Committee's allocation method and instead evenly divides all wind down costs 50% to each committee. This Office disagrees and recommends that a larger percentage of winding down costs be allocated to the Committee than to the General Committee.

The Audit Division relies on the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Funding* ("Compliance Manual") (April 2000), which states that when a candidate's primary and general committees "share winding down (overhead, staff, etc.) each committee must allocate and document its allocation of the expenses of wind down as being attributable either to the primary or the general. If no allocation is claimed by the respective committees, it will be presumed that the winding down expenses should be allocated equally between the Committees." Compliance Manual at 31. The regulations, however, do not mandate a 50% allocation of wind down expenses between the primary and general campaigns. Moreover, the Committee has in fact "claimed" a different allocation method in its response to the PAR.

This Office acknowledges that the Committee's allocation method is imperfect. We agree with the Audit staff that the number of checks issued by each committee does not accurately reflect the allocation of wind down activity because the Committee was in existence for a longer period than the General Committee and the Committee paid most of the wind down costs for both committees. In addition, the Committee should have provided documentation of the activity of its personnel, lawyers and accountants between April 1, 2002 and September 30, 2002 to support its allocation of 80% of those expenses to the primary campaign.

Nevertheless, we believe that a larger percentage of wind down costs during the audit and repayment process are, and will continue to be, related to the primary election than to the general election. This conclusion is not based strictly on the number of issues in the audits but on the relative significance of those issues.⁴ A comparison of the proposed report on the Committee and the proposed report on the General Committee reveals that the total repayment amount for the General Committee is \$14,887 (of which \$11,625 has already been paid) a small fraction of the total repayment for the Committee of \$434,609 (of which \$54,591 has been paid). A larger primary allocation is justified by the time and services provided by the Committee's personnel, lawyers and accountants, who are apparently focusing their efforts on the substantial contested repayment issue in the audit of the Committee rather than on the undisputed issues in the General Committee audit. This focus on the primary repayment is evident in the length and detail of the Committee's response to the PAR, compared to the brief response to the General Committee PAR. Therefore, in the absence of documentation revealing the precise percentage of wind down expenses related to the primary and general elections or any basis in the documentation or regulations for a different allocation percentage, we recommend that the proposed report adopt the Committee's proposed 61% primary, 39% general allocation ratio because it would be more accurate than a 50% allocation.

C. PARTICULAR CATEGORIES OF EXPENSES

This Office has the following comments on particular categories of expenses, including insurance, other legal fees and payments to Hayes Software and Consulting.

We disagree with the exclusion of professional liability insurance costs for attorneys employed by the Committee. The Audit staff notes that the Committee does not currently employ any attorneys. However, the Committee explains that this expense is for the renewal of attorney malpractice insurance to continue to protect the Committee against claims based on actions by its attorneys "during the entire course of the campaign."⁵ Committee Response at 10.

⁴ As noted above, the calculation of the Committee's net outstanding campaign obligations and the surplus repayment can be considered a number of separate issues or a complex multi-part issue.

⁵ The Committee provided the insurance policy and correspondence from the insurance company to support its explanation. A letter from the insurance company concerning the policy renewal states that claims must be submitted to the insurance carrier during the policy period or within 60 days after the expiration of the policy. The enclosed policy states that it is limited to "claims that are first made against the employed lawyer and reported in writing during the policy period."

As this Office has previously commented with respect to the Quayle 2000, Inc. and Quayle 2000 Compliance Committee audit, the renewal of existing insurance coverage should be a permissible winding down expense. Insurance coverage is not inappropriate to winding down a campaign because potential liabilities continue as long as an entity continues to exist. As a matter of policy, committees should not be discouraged from renewing insurance to reduce potential liability.⁶ The renewal of the Committee's professional malpractice insurance appears to be a reasonable winding down expense even though it does not currently employ any attorneys because it appears that the policy would protect the Committee against new claims concerning actions by attorneys while they were employed by the Committee. In addition, the insurance would cover any attorneys the Committee might hire during the policy period.

In addition, we disagree with the exclusion of \$50,000 for other legal fees from the winding down costs. The Committee asserts that this expense is necessary for existing and potential litigation related to the campaign. Committee Response at 14. The Committee states that it is currently involved in several lawsuits, and provided documentation of one lawsuit filed in the United States District Court for the Southern District of New York by an individual against the Democratic National Committee, the candidate and his spouse. The documentation includes a letter from an attorney estimating legal fees of between \$50,000 and \$200,000 for the case depending on whether it goes to trial as well as a filed motion to dismiss the case for failure to state a claim and improper venue. Although the subject matter of this lawsuit is unclear, it appears to be related to the campaign since it involves the candidate and his party. Additional documentation of this and other litigation would be helpful. Based on the documentation provided by the Committee, this Office believes some amount should be permitted as winding down costs for other legal expenses.

Finally, we do not agree that expenses incurred for services provided by Hayes Software and Consulting ("Hayes") during the general election expenditure report period should be treated as primary winding down costs. Instead, we recommend that these and any other expenses incurred between the date of nomination and the end of the expenditure report period should be treated as general election expenses rather than primary winding down costs, even if they were in part related to the primary campaign, consistent with our comments on the Nader 2000 audit dated November 8, 2002. The Committee contends that payments to Hayes were primary-related because they involved compliance assistance, technical support and management of the contributor database for contributions and matching funds. In addition, the Audit staff informed us that Hayes had a separate contract with the Gore/Lieberman General Election Legal and Accounting Compliance Fund ("GELAC"). Nevertheless, this vendor's services may have had some general election component because the contributor database could have been useful to the general campaign as a source of information about its supporters and the services the vendor provided to the GELAC and the Committee may have overlapped.

⁶ Indeed, the Commission's regulations encourage publicly-financed committees to obtain insurance on equipment; section 9038.4(b)(8) includes "whether the committee sought or obtained insurance on the items" as a factor to consider in determining whether lost, misplaced or stolen equipment should be considered a non-qualified campaign expense.

D. CALCULATION OF SURPLUS REPAYMENT

Although the Committee calculated and paid a surplus repayment of \$54,591, it makes an alternative argument that it has no surplus because the auditor's calculation of the surplus is inconsistent with the methods used to calculate matching fund repayments in other audits. The Committee asserts that the auditors use two different methods to determine when a committee's public funds have been used up, and that the auditors should have used a last in first out ("LIFO") method to determine when the Committee had used up its matching funds as it does to determine repayments for non-qualified campaign expenses.

This Office concurs that the Audit Division has used the correct methodology to calculate the surplus repayment and that the Committee is incorrect. The law provides different methods to calculate repayments for candidates who are in a surplus position at the date of ineligibility, like the Committee, than to calculate non-qualified campaign expenses for committees who are in a deficit position. The different calculation methods are clearly delineated in the statute and regulations as well as the regulatory history. Title 26 section 9038(b)(3) provides that candidates may retain public funds to liquidate obligations for six months, but:

after all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

Similarly, the regulations at section 9038.3(c)(1) provide that if the candidate's net outstanding campaign obligations reflect a surplus on the date of ineligibility, the candidate shall repay the "amount of matching funds contained in the candidate's surplus" calculated as "an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts." Thus, the statute and regulations do not use a LIFO method to calculate the amount of matching funds actually in the candidate's accounts on a particular date for a surplus repayment. The auditor's calculation of the Committee's surplus repayment is in accordance with these provisions of the statute and regulations.

The regulations provide a different method of calculation for repayments for non-qualified campaign expenses, and consider when the candidate's accounts no longer contained matching funds. Section 9038.2(b)(2)(iii) provides that the amount of a repayment for non-qualified campaign expenses "shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits as of 90 days after the candidate's date of

⁷ The Committee specifically refers to the audit of Bill Bradley for President, Inc. That audit report notes in footnote (a) to the NOCO Statement that it does not address certain non-qualified campaign expenses because the majority of them were paid after all public funds in the committee's accounts had been spent.

ineligibility.” This section further provides that in seeking non-qualified campaign expense repayments from candidates who received matching funds after the date of ineligibility, the Commission will review expenditures “to determine at what point committee accounts no longer contain matching funds” by reviewing expenditures “from the date of the last matching fund payment to which the candidate was entitled, using the assumption that the last payment has been expended on a last-in, first-out basis.”⁸ 11 C.F.R. § 9038.2(b)(2)(iii)(B). Thus, the LIFO method only applies to repayments for non-qualified campaign expenses, not to surplus repayments.

⁸ In 1987, the Commission revised the procedure for determining when a candidate no longer has matching funds in his or her account, and stated that the Commission will not examine expenditures to determine if they are non-qualified after all matching funds in the candidate’s account are spent. Explanation and Justification, *Public Financing of Presidential Primary and General Election Candidates*, 52 Fed. Reg. 20864, 20873 (June 3, 1987). The Commission stated that its method “is to review the expenditures made after the committee has received its last matching fund payment, using the assumption that the federal funds are used on a 100% basis until they are spent.”



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 2003

Mr. Jose Villarreal, Treasurer
Gore 2000, Inc.
1705 DeSalle Street N.W., Suite #300
Washington, D.C. 20036

Dear Mr. Villarreal:

Attached please find the Report of the Audit Division on Gore 2000, Inc. The Commission approved the report on December 23, 2002. As noted on page 5, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9038.2(b)(4) and 9038.6, the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$118,485 is required within 90 calendar days after the service of this report (April 7, 2003).

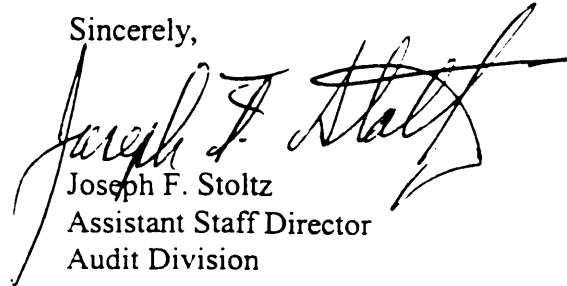
Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (March 7, 2003), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(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 Greg Baker 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 report will be placed on the public record on January 8, 2003. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220.

Any questions you have related to matters covered during the audit or in the report should be directed to Tesfai Asmamaw or Alex Boniewicz of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph F. Stoltz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph F. Stoltz
Assistant Staff Director
Audit Division

Attachment as stated

cc: Eric Kleinfeld



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 2003

The Honorable Albert J. Gore Jr.
c/o Mr. Eric Kleinfeld
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W., Suite #300
Washington, D.C. 20036

Dear Mr. Gore:

Attached please find the Report of the Audit Division on Gore 2000, Inc. The Commission approved the report on December 23, 2002. As noted on page 5, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9038.2(b)(4) and 9038.6, the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$118,485 is required within 90 calendar days after the service of this report (April 7, 2003).

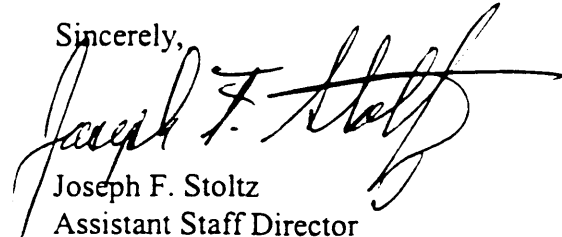
Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (March 7, 2003), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(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 Greg Baker 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 report will be placed on the public record on January 8, 2003. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220.

Any questions you have related to matters covered during the audit or in the report should be directed to Tesfai Asmamaw or Alex Boniewicz of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Joseph F. Stoltz
Assistant Staff Director
Audit Division

Attachment as stated

CHRONOLOGY

GORE 2000, INC.

Audit Fieldwork	03/07/2001 – 03/01/2002
Exit Conference	03/04/2002
Preliminary Audit Report to the Committee	06/27/2002
Response Received to the Preliminary Audit Report	09/13/2002
Final Audit Report Approved	12/23/2002