



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20542

AK007894

April 10, 1996

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
CITIZENS FOR JACK METCALF

Attached please find a copy of the final audit report and related documents on Citizens for Jack Metcalf which was approved by the Commission on March 12, 1996.

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

Attachment as stated

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

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**REPORT OF THE AUDIT DIVISION
ON**

Citizens for Jack Metcalf

Approved March 12, 1996



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

TABLE OF CONTENTS
CITIZENS FOR JACK METCALF

	Page
Executive Summary	1
Final Audit Report	3
Background	3
Findings	5
Legal Analysis	15
Transmittal to Committee	21
Chronology	23

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

FINAL AUDIT REPORT
ON
CITIZENS FOR JACK METCALF
EXECUTIVE SUMMARY

The Committee registered with the Clerk of the U.S. House of Representatives on January 6, 1994 as the principal campaign committee for Jack Metcalf, Republican candidate for the U.S. House of Representatives, Washington, 2nd District.

The audit was conducted pursuant to 2 U.S.C. Section 438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings of the audit were presented to the Committee at an exit conference held at the completion of fieldwork (6/20/95) and later in an interim audit report.

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

Apparent Excessive Contributions - 2 U.S.C. 441(a)(1)(A) and 431(8)(A)(i) and 11 CFR 110.10(b), 100.7(a)(1)(i)(A) and (D), 104.11(a), 116.1(e)(3), 116.3(a) and (c).

Apparent Excessive Contributions From Candidate's Spouse - The Committee received a \$13,000 credit union loan that appeared to have been obtained jointly by the Candidate and his wife. (A jointly owned automobile was used as collateral for the loan; moreover, the wife signed the loan application and also signed for the loan check.) Half of the loan (\$6,500) therefore resulted in an apparent excessive contribution from the wife, whose contributions were subject to a \$1,000 limit.

Extension of Credit by Vendor Resulting in an Apparent Excessive Contribution - Committee reports, as initially filed, did not disclose a \$10,000 debt owed to a vendor on Schedule D, as required. The Committee did not have any written documentation to support that the vendor had ever attempted to collect this debt. A vendor's failure to treat a debt in a commercially reasonable manner results in a contribution from the vendor to the Committee. In this case, the resulting \$10,000 contribution would have been excessive.

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APPROVED AND FORWARDED:
COMMISSIONER

The Committee responded by providing documentation that indicates that the transaction was commercially reasonable and therefore not a contribution from the vendor. The Committee also filed an amended Schedule D which corrected the public record.

Disclosure of Financial Activity, Loan Receipts and Repayments, Contributions from Political Committees - 2 U.S.C. 431(11) and 434(b)(1),(2),(3)(B) and (E), (4) and (5)(D) and 11 CFR 104.11(a). The Committee's reported totals for receipts and disbursements were understated by \$13,498 and \$4,232 respectively. Ending cash was also misstated as a result of the receipt and disbursement reporting errors above. Part of the receipts discrepancy was due to the Committee's failure to report \$5,000 in loans. Further, the Committee failed to itemize loan receipts of \$41,736 and loan repayments of \$6,775. Although the Committee disclosed all 12 loans on Schedule C of its reports, it only reported (on its Detailed Summary Pages) \$36,730 of the \$41,736. Lastly, political committee contributions totaling \$11,393 were not itemized.

In response to the interim audit report, the Committee filed amendments which materially corrected the public record.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

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REPORT OF THE AUDIT DIVISION
ON
CITIZENS FOR JACK METCALF

I. Background

A. Overview

This report is based on an audit of Citizens for Jack Metcalf (the Committee), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. Audit Coverage

The audit covered the period from January 11, 1994, the date of the Committee's first bank transaction, through December 31, 1994. The Committee reported a beginning cash balance of \$0; total receipts for the period of \$388,329, total disbursements for the period of \$390,231; and an ending cash balance of \$2,856.1^{1/}

C. Campaign Organization

The Committee registered with the Office of the Clerk of the U.S. House of Representatives on January 6, 1994, as the principal campaign committee for Jack Metcalf, Republican Candidate for the U.S. House of Representatives from the state of Washington, 2nd District. The Committee maintained its headquarters in Everett, Washington.

^{1/} The amounts do not foot due to mathematical errors. All figures in this report have been rounded to the nearest dollar.

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The audit indicated the Committee was financed primarily through contributions from individuals (\$237,632), contributions from Political Party Committees (\$125,086), and loans from the Candidate and/or spouse (\$41,736).

The Treasurer of the Committee during the period covered by the audit was Mr. Donald Watts, who remains its Treasurer.

D. Scope

The audit included such tests as verification of total reported receipts and expenditures; review of required supporting documentation, and analysis of the Committee debts and obligations and such other audit procedures as deemed necessary under the circumstances. However, although the contribution records provided by the Committee met the minimum recordkeeping requirements of 2 U.S.C. 432(c) and 11 CFR 102.9(a), records related to \$104,368 or 27% of the contributions received did not contain any documentation prepared outside of the Committee. Therefore, substantive testing of contributions was limited to approximately 73% of the financial activity.

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
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 (see Finding II.C.);
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 (see Finding II.B.);
6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records (see Finding I.D.);
7. adequate recordkeeping for campaign transactions; and,

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8. other audit procedures that were deemed necessary in the situation.

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

II. Audit Findings and Recommendations

A. Apparent Excessive Contributions

Section 441(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 431(8)(A)(i) of Title 2 of the United States Code states that the term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Section 110.10(b) of Title 11 of the Code of Federal Regulations states, in part, that a candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property shall be considered as personal funds of the candidate.

Section 100.7(a)(1)(i)(A) of Title 11 of the Code of Federal Regulations states, in relevant part, that a loan which exceeds the contribution limitations of 2 U.S.C. 441a shall be unlawful whether or not it is repaid.

Section 100.7(a)(1)(i)(D) of Title 11 of the Code of Federal Regulations states a candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign.

Section 116.3(a) of Title 11 of the Code of Federal Regulations states that a commercial vendor that is not a corporation may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

Section 116.3(c) of Title 11 of the Code of Federal Regulations states, in relevant part, that when determining whether credit was extended in the ordinary course of business, the Commission will consider whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

Section 116.1(e)(3) of Title 11 of the Code of Federal Regulations defines extension of credit as the failure of the political committee to make full payment to the creditor by a previously agreed to due date. In addition, Section 116.1(f) states that for the purpose of this part, creditor means any person or entity to whom a debt is owed.

Lastly, section 104.11(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished.

1. Apparent Excessive Contributions from Candidate's Spouse

The Committee received twelve loans in 1994 totaling \$41,736 from the Candidate and/or Candidate's spouse. Two of the loans, one for \$12,000 and the other for \$13,000, originated from the Teachers' Credit Union. The Candidate obtained the \$12,000 loan on August 4, 1994. He retained \$6,000 of the proceeds and considered it as a repayment for a \$6,000 loan he made to the Committee on July 28, 1994. The Candidate then loaned the remaining proceeds (\$6,000) to the Committee.

Preliminary documentation pertaining to the loan provided by the Committee during fieldwork consisted only of the Loan Transaction/Advance Voucher from the Teachers' Credit Union. This Loan Transaction/Advance Voucher indicated that the Candidate's spouse obtained the second loan for \$13,000 on August 10, 1994 from Teachers' Credit Union, using the couple's 1991 Chrysler Lebanon automobile as collateral for the loan. That voucher, signed by the Candidate's spouse^{2/}, indicated the purpose

^{2/} Although requested, the Committee did not provide a copy of the loan application.

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of the loan was for "campaign funds." Again the proceeds were disbursed directly to the Candidate. The Candidate retained \$2,330 as repayment for a loan of \$1,330 (actual amount loaned \$1,336) on July 25, 1994 and another loan of \$1,000 on August 4, 1994. The remaining \$10,670 in proceeds were loaned to the Committee.

At the exit conference the Audit staff advised the Committee representatives that the loan obtained from Teachers' Credit Union by the Candidate's spouse would be considered an excessive contribution. The Committee representatives related that the loan was actually obtained by the Candidate, but the Candidate's spouse signed for the funds at the Candidate's convenience. The Committee could not produce documentation from Teachers' Credit Union to substantiate their explanation prior to the completion of the audit fieldwork, but stated they would investigate further. Absent that documentation, the Audit staff determined the Candidate's spouse made loans to the Committee totaling \$13,000, of which \$12,000 were considered excessive contributions.

In the interim audit report, the Audit staff recommended the Committee provide evidence to demonstrate the contributions noted above were not excessive or repay the Teacher's Credit Union for the amount owing on the \$13,000 loan. Absent such a repayment, provide documentation from the credit union that demonstrated the loan had been restructured to exclude the candidate's spouse from being the maker and person responsible for repayment of the loan.

In response the Committee provided a copy of a loan application that encompassed both the \$12,000 and \$13,000 loan. With respect to the \$13,000 loan, the Committee provided a letter from the Teacher's Credit Union loan officer in which she stated that under State regulations the Candidate's spouse could not apply for a loan in her own name since she did not have her own account at the credit union. The Treasurer again stated "the only reason Norma [Candidate's spouse] signed on the Advance Voucher was that Jack [Candidate] was not able to make a trip to the credit union on that day." Lastly, the Committee demonstrated it has repaid the entire \$13,000 loan by providing a copy of the loan repayment transaction history and a letter from a Teacher's Credit Union loan officer, both of which documented the loan was repaid in full. The final payment was made on May 26, 1995.

As previously stated, both loans were listed on a single loan application. The Candidate signed the loan application on August 4, 1994. The Candidate's spouse signed the loan application on August 10, 1994. Even though both loans were listed on a single loan application and both signatures were included thereon, it remains our position that the Candidate was the sole maker of the \$12,000 loan. The loan application and the

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Loan Transaction/Advance Voucher were signed by the Candidate on August 4, 1994, the date the proceeds of the \$12,000 loan were disbursed.

As to the \$13,000 loan, it appears it was jointly obtained by the Candidate and his spouse. The Candidate's spouse signed the loan application and Loan Transaction/Advance Voucher on August 10, 1994. The loan proceeds were disbursed (August 10, 1994) payable to the Candidate and his spouse. As previously stated, the \$13,000 loan was secured by a vehicle jointly owned by the Candidate and his spouse. Washington is a community property state. Further, the Consumer Loan Agreement and Disclosures state "when you sign as a loan applicant, you agree, jointly and individually, to the following terms and conditions and all other loan documents related to this Account including any Loan Advance Voucher, Loan Proceeds Check, and Power of Attorney." Therefore, half the value of the \$13,000 loan represents a contribution by the Candidate's spouse for the period of time the loan was outstanding (August 10, 1994 through May 26, 1995).

As a result, it appears the Candidate's spouse made contributions in the form of loans to the Committee totaling 6,500 of which \$5,500 is in excess of the contribution limitation.

2. Extension of Credit by Vendor Resulting in an Apparent Excessive Contribution

On June 3, 1994, the Committee entered into a fundraising/consulting contract with a vendor, The Walling Group (unincorporated), which called for the Committee to make a total of \$9,000 in payments (5 at \$1,500 and 2 at \$750) between June 10, 1994 and November 1, 1994, plus a winning bonus of \$10,000, if the Candidate won, that became due and payable on November 15, 1994, for a maximum potential payment to the vendor of \$19,000.

The Audit staff reviewed an undated vendor recap of the payments owed by the Committee. The recap indicated the last two payments, totaling \$3,000, were waived by the vendor via a revised contract, however, the \$10,000 winning bonus was still due and payable. There was no evidence the vendor attempted to collect payment on any of the \$13,000 debt. The revised contract containing the vendor's payment waiver could not be located by the vendor or the Committee. The Committee did not report on Schedule D the \$3,000 or the \$10,000 as an amount owed to the vendor as of the close of audit fieldwork.

Absent production of the duly executed revised contract, it appears that the Committee still owes the vendor \$13,000, the vendor has not treated the debt in a commercially reasonable manner, and there was no evidence the extension of credit by the vendor conformed to the usual and normal practice in the commercial vendor's trade or industry. Unless the

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Committee and/or vendor provides documentation to the contrary, this unpaid \$13,000 extension of credit will be considered a contribution from the vendor.

In the interim audit report, the Audit staff recommended the Committee provide evidence that the vendor acted in a commercially reasonable manner and that the activity did not represent an excessive contribution. The evidence requested should include, but was not limited to: statements and invoices from the vendor detailing all billings and efforts to collect this amount; explanations to demonstrate that the extension of credit from this vendor was in the ordinary course of business; examples of other customers or clients of similar size and risk for which similar services have been provided and similar billing arrangements have been used; any other pertinent information concerning billing policies and cycles, advance payment policies, and other debt collection policies of the vendor. Absent such evidence, the Audit staff recommended the Committee reimburse the \$13,000 to the vendor and present evidence (copies of the front and back of the negotiated checks). If funds were not available, the required information was to be disclosed as a debt owed by the Committee on Schedule D.

In response to the interim audit report, the Committee provided a copy of a letter from the vendor, dated November 2, 1995, which stated that the vendor did not have any intention of making a contribution to the Committee. It also explained the total amount due was reduced (by \$3,000) because of other commitments and a reduced level of service. Further, the vendor stated that after his work with this Committee, a contract modification of a similar nature was necessary with a different committee, and provided details pertaining to that modification. Finally, the vendor stated "my billing practices consist of sending out an invoice followed up by personal phone calls."

The Committee acknowledged it still owed the vendor the \$10,000 winning bonus, and stated it had paid \$3,000 of the (\$10,000) bonus during 1995. The Treasurer further stated "I talked to Troy [Walling] about his efforts to collect the amounts owed to him. Since the first of the year [1995], he has talked to Chris Strow [campaign manager] on a monthly basis about payment. This has been done over the telephone." The Committee did not provide written documentation pertaining to those telephone calls. Finally, the Committee filed amended Schedules D that included the \$10,000 debt due to the vendor at the end of 1994.

The information provided in response to the interim audit report appears to indicate that the transactions described above were commercially reasonable; therefore no further action is warranted.

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B. Disclosure of Loan Receipts and Repayments

Sections 434(b)(3)(E) and (5)(D) of Title 2 of the United States Code state that each report shall disclose the identification of each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan; as well as, the name and address of each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment.

Section 431(11) of Title 2 of the United States Code states, in part, that the term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished.

The Audit staff's review of records made available indicated that the Candidate or Candidate's spouse made 12 loans to the Committee totaling \$41,736 ^{3/}. None of the loans were itemized on Schedule A. Although the Committee itemized all 12 loans on Schedule C of its reports, it only reported (on its Detailed Summary Pages) \$36,730 of the \$41,736 in loans received. The Committee did file, albeit untimely, Schedule C-1, as required.

The Audit staff's review also indicated the Committee did not itemize on Schedule B loan repayments of \$6,775, (i.e., \$6,000 repayment to the Candidate and \$775 repayment to Teacher's Credit Union). The repayment to Teacher's Credit Union was underreported in part because the Committee mistakenly reported only the interest portion of the loan repayment. Lastly, because of the errors noted above, the Committee did not disclose correctly the amount of loans owed on Schedule C.

At the exit conference the Audit staff advised the Committee representatives that the loan receipts and loan repayments were not properly reported on Schedules A, B and C. The Committee representatives stated amended reports would be filed.

In the interim audit report the Audit staff recommended the Committee file an amendment for calendar year 1994, to correct the reporting errors identified above.

3/ Refer to Finding II.A.1. of this report for additional details.

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In response to the interim audit report, the Committee filed amended Detailed Summary Pages, Schedules A, B and C, which corrected the reporting errors.

C. Itemization of Contributions from Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code states that each report, filed by a committee, shall disclose the identification of each political committee or other political committee that makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contributions.

The Audit staff's review of reports filed with the Commission by other committees, compared to the Committee's reported contributions, contributor check copies and other records made available, revealed the Committee received contributions from political party or other political committees, totaling \$11,393, that were not itemized.^{4/} It appeared the Committee did not itemize some contributions in this category because they did not exceed \$200. The Committee's in-kind contributions from political party or other political committees totaled \$1,780; however, the Committee only disclosed \$415 on Schedule A and \$1,096 on Schedule B.

Committee officials were provided with a schedule of contributions that were not itemized. Committee officials stated some of the contributions may not have been received until December 1994 or January 1995 and would not be reported until the Committee prepared its July 31 Mid-Year Report. The Committee officials stated, however, the contributions would be investigated and amended reports would be filed as needed.

In the interim audit report, the Audit staff recommended that the Committee file an amendment for calendar year 1994, to correct the itemization errors noted above.

In response to the interim audit report, the Committee filed amended Schedules A and B which materially corrected the public record.

D. Misstatement of Financial Activity

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in relevant part, that each report shall disclose the amount of cash on hand at the beginning of

^{4/} Since all contributions were reportedly made in 1994, with the exception of one \$5,000 contribution that Committee records indicated was not received until February 12, 1995, the Committee should have reported receiving these contributions in calendar year 1994.

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each reporting period, the total amount of all receipts, and the total amount of all disbursements for the period and calendar year.

The Audit staff's reconciliation of the Committee's reported activity to amounts reflected in its bank records from inception through December 31, 1994 revealed the misstatements detailed below. It was noted the Committee did not maintain records to document the derivation of reported amounts. Absent such records, the Audit staff was not able to explain all differences between amounts reported and amounts reflected in the Committee's bank records.

1. Receipts

The total amount of receipts reported for calendar year 1994 was \$388,329, which was understated by a net amount of \$13,498. The correct total was \$401,827. The misstatement resulted from not reporting a loan totaling \$5,000; not reporting interest income, in-kind receipts and miscellaneous errors totaling \$1,497; and a net reconciling adjustment of \$7,001.

2. Disbursements

The sum of the Committee's reported disbursements by period was \$390,231. The Audit staff's bank reconciliation determined the Committee should have reported \$394,462 in disbursements for 1994. This represents a net understatement of \$4,232.5/ The misstatement resulted from misreporting \$12,441 in disbursements (i.e., disbursements reported twice, disbursements reported but apparently not made, and voided checks not adjusted properly); not reporting \$18,743 in disbursements (i.e., disbursements made but not reported, including loan repayments, in-kind, and bank charges); and a net reconciling adjustment of \$2,070.

3. Ending Cash on Hand

The reported ending cash on hand, by period, at December 31, 1994 was -\$1,902. The correct reportable ending cash on hand was \$7,364. The misstatement was caused by the receipt and disbursement reporting errors detailed above.

At the exit conference, a schedule, explaining the cause of the misstatements, was provided to the Committee. Committee representatives stated they would file amended reports to correct the misstatements described above.

5/ The amounts do not foot due to rounding.

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In the interim audit report, the Audit staff recommended the Committee file an amendment for calendar year 1994, to correct the public record.

In response to the interim audit report, the Committee filed amendments for each reporting period in 1994, which materially corrected the reporting deficiencies.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1996

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman *KBC*
Associate General Counsel

Rhonda J. Vosdingh *RJV*
Assistant General Counsel

Matthew J. Tanielian *MT*
Law Clerk *by RJV*

SUBJECT: Proposed Final Audit Report on Citizens for Jack Metcalf (LRA #490)

The Office of General Counsel has reviewed the proposed Final Audit Report on Citizens for Jack Metcalf ("Committee") submitted to this Office on January 4, 1996.¹ The following memorandum summarizes our comments on the proposed report. We concur with the findings of the proposed report not discussed separately in the following memorandum. If you have any questions concerning our comments, please contact Matthew Tanielian.

¹ Since the proposed Final Audit Report does not include matters exempt from public disclosure under 11 C.F.R. § 2.4, we recommend the Commission's discussion of this document be conducted in open session

FOR THE COMMISSION: [Signature]
U.S. TODAY, TOMORROW,
DEBATE: KEEPING THE PUBLIC INFORMED

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**I. APPARENT EXCESSIVE CONTRIBUTIONS FROM CANDIDATE'S SPOUSE
(II.A.1.)**

A. \$12,000 Loan from Teachers Credit Union, August 4, 1994

The proposed Final Audit Report identifies a \$12,000 loan obtained from the Teacher's Credit Union on August 4, 1994.² The proposed report indicates that the loan application used for the \$12,000 loan was the same document used by the Candidate on August 10, 1994 to apply for the \$13,000 loan discussed below.

Under the Commission's regulations, the endorser or guarantor of a loan shall be deemed to have contributed the amount of the loan. 11 C.F.R. §§ 100.7(a)(1)(i)(C) and (b)(11).³ Candidates may make unlimited contributions from personal funds. 11 C.F.R. § 110.10(a). In this case, both the Candidate and his spouse's signatures appear on the loan application. However, only the Candidate signed the loan application on August 4, 1994, the date of the \$12,000 loan.⁴ Furthermore, only the Candidate signed the August 4, 1994 Loan Transaction/Advance Voucher ("Advance Voucher"), and no jointly owned assets appear to be used as collateral for the loan. Thus, the \$12,000 loan appears to have been obtained solely by the Candidate pursuant to 11 C.F.R. § 100.7(a)(1)(i)(C). This Office concurs with the proposed report's conclusion that the August 4, 1994 loan for \$12,000 was obtained and provided to the Committee solely by the Candidate.

B. \$13,000 Loan from Teachers Credit Union, August 10, 1994

The proposed Final Audit Report identifies a \$13,000 loan obtained from the Teacher's Credit Union on August 10, 1994.⁵ The proposed report indicates that on August 10, 1994, the Candidate's spouse signed the loan application and an Advance Voucher. The report further notes that the loan was secured by collateral jointly owned by the Candidate and his spouse. The proposed report states that the loan was jointly obtained by the Candidate and his spouse, concluding that "half the value of the \$13,000 loan represents a contribution by the Candidate's

² A portion of the funds from this loan were retained by the Candidate as repayment for loans he previously made to the Committee. This does not alter the amount being loaned to the campaign because those funds were in fact being used to pay Committee debts.

³ The exception to this rule occurs in the event of a signature of a spouse, where the provisions of 11 C.F.R. § 100.7(a)(1)(i)(D) apply. 11 C.F.R. § 100.7(e)(11)

⁴ The Candidate's spouse signed the loan application on August 10, 1994 for purposes of a second loan made after the August 4, 1994 loan.

⁵ See *supra* footnote 2

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Memorandum to Robert J. Costa
Proposed Final Audit Report on
Citizens for Jack Metcalf (LRA #490)
Page 3

spouse for the period the loan was outstanding." This Office concurs that the loan was jointly obtained.

The Committee states that the Candidate's spouse signed the Advance Voucher on the \$13,000 loan because the Candidate was unavailable at the time. The Committee further states that because of state regulations, the Candidate's spouse could not have applied for a loan in her own name from the Teacher's Credit Union. However, given that the spouse signed the loan application in addition to the Advance Voucher and that the loan was secured by jointly owned collateral, this Office believes that the apparent amount contributed by the spouse may be based on the Candidate's share of the jointly held collateral. See 11 C.F.R. §100.7(a)(1)(i)(D).

A Candidate is permitted to obtain loans on which his or her spouse's signature is required when jointly owned assets are used as collateral. 11 C.F.R. § 100.7(a)(1)(i)(D). Furthermore, funds from a loan signed by a candidate's spouse constitute personal funds up to the value of the candidate's share of the property used as collateral. *Id.*; see Advisory Opinion ("AO") 1991-10. Only funds in excess of the candidate's interest in the joint collateral are considered a contribution by the spouse. See 11 C.F.R. § 100.7(a)(1)(i)(D).

Because the loan agreement was signed by the Candidate's spouse and was secured by jointly owned collateral, an automobile, 11 C.F.R. § 100.7(a)(1)(i)(D) applies to the present case. According to the loan documents, the collateral was valued at \$13,000. As joint owner of the automobile with his spouse, the Candidate may consider half the equity in the automobile as personal funds. See 11 C.F.R. § 100.7(a)(1)(i)(D); AO 1991-10. Accordingly, \$6,500 of the collateral is held by the Candidate; thus, \$6,500 of the loan qualifies as the Candidate's personal funds. The remaining \$6,500 represents a contribution by the candidate's spouse. *Id.*

Thus, irrespective of the reasons the Candidate's spouse signed the Advance Voucher, this Office believes the Candidate's spouse contributed \$6,500 to the Committee. While our analysis reaches the same numerical result as the proposed Final Audit Report, the conclusion is based on the value of the collateral, rather than the value of the loan.

C. Loan from Candidate's Joint Bank Account

The proposed Final Audit Report identifies \$2,900 in loans to the Committee from the Candidate's joint checking account held with his spouse. The proposed report states that the loans from the Candidate's joint bank account "exceeded the Candidate's share (one half) of the account balance" resulting in a contribution by the candidate's spouse of \$468.

Funds in a candidate's joint bank account constitute personal funds of the candidate if they meet the following criteria. First, the candidate must have a legal right of access to or control over the funds under applicable state law. 11 C.F.R. § 110.10(b)(1). Second, the candidate must have either legal and rightful title or an equitable interest in the assets under

applicable state law. *Id.* Assets which meet both these criteria are considered a candidate's personal funds and are not subject to the limitations of 2 U.S.C. § 441a. 11 C.F.R. § 110.10(a). To the extent the funds are not personal funds under 11 C.F.R. § 110.10(b)(1), they are considered "jointly owned." 11 C.F.R. § 110.10(b)(3). A candidate may use jointly owned assets according to his or her share of the asset. *Id.* A candidate's share of a joint asset is determined by the instrument of conveyance or ownership. 11 C.F.R. § 110.10(b)(3). If no instrument exists, the value of one-half of the asset used is considered the candidate's personal funds. *Id.*

In the present case, the Candidate made five loans to the Committee totaling \$2,900 from a joint personal checking account maintained with his spouse. Only the Candidate signed each of the checks from the joint checking account. The candidate is a resident of the State of Washington, and the transactions took place in Washington. In the absence of an instrument of ownership defining the Candidate's right of access or control of the account, Washington state law provides that a joint checking account is held in a joint tenancy in which each person has an undivided interest in the whole. *Kalk v. Security Pacific Bank Washington NA*, 866 P.2d 1276, 1278 (Wash. Ct. App.), *reversed on other grounds*, 894 P.2d 559 (Wash. 1994). Each person whose name is on the account has the right to withdraw the entire holdings of the account. *See* Wash. Rev. Code Ann. §§ 30.22.090, 30.22.140 (West 1996). Thus, under Washington law, the Candidate had "legal right of access to or control over" and "an equitable interest" in all funds deposited in the joint bank account. *See* 11 C.F.R. § 110.10(b)(3).⁶ As such, all the funds in the Candidate's joint account constituted personal funds.

The proposed report applies 11 C.F.R. § 110.10(b)(3) to conclude that a portion of the loan from the Candidate's joint bank account was an excessive contribution from the Candidate's spouse. In previous cases, however, the Commission has generally considered funds in joint bank accounts to be personal funds under 11 C.F.R. § 110.10(b)(1) and, therefore, not subject to analysis under the one-half interest rule of section 110.10(b)(3). *See* MUR 3505; MUR 2292. Joint bank accounts are unique in the law and consequently are viewed differently from other jointly held property for purposes of personal funds analysis under the Commission's regulations. Thus, 11 C.F.R. § 110.10(b)(3) is not applicable to the facts presented in the proposed report.

The Office of General Counsel recommends the proposed Final Audit Report be revised to analyze the loans from the Candidate's joint bank account under 11 C.F.R. § 110.10(b)(1) and to conclude that the loan was made from the Candidate's personal funds. Accordingly, paragraph 1. at page 5 of the proposed report should be removed and the calculation of the

⁶ In contrast, a joint account that specifically requires signatures of both parties on transactions would not qualify as personal funds under this definition because the candidate would not have "legal right of access or control over" the funds. *See* AO 1991-10. Only 50% or the portion indicated by the instrument of conveyance or ownership, would constitute personal funds of the candidate. *See* 11 C.F.R. § 110.10(b)(3).

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apparent excessive contribution by the Candidate's spouse on page 6 of the proposed report should be reduced by \$468.

II. EXTENSION OF CREDIT BY A VENDOR RESULTING IN AN APPARENT EXCESSIVE CONTRIBUTION (II.A.2.)

The proposed Final Audit Report states that the extension of credit by one of the Committee's vendors, The Walling Group, appears to represent an excessive contribution of \$9,000. This finding is based on the conclusion that the vendor has not demonstrated that it acted in a commercially reasonable manner to collect this debt pursuant to 11 C.F.R. §§ 116.3(a) and (c). The proposed report also notes that the Committee's cash balance on December 31, 1994 was approximately \$7,300, a balance sufficient to have made a payment to reduce the amount owed to The Walling Group.

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This Office disagrees with the conclusion that The Walling Group appears to have made an excessive contribution to the Committee. Based upon the information available, this Office believes that The Walling Group acted in a commercially reasonable manner to collect the debt, a "winning bonus" of \$10,000. The Walling Group indicates that its usual billing practices consisted of sending an invoice and following up with personal calls and states that it did not intend to make any contribution to the Committee. The proposed report does not indicate that The Walling Group's billing practices were outside the usual course of business in the vendor's industry, that The Walling Group did not follow its usual practice, or that the Committee never received an invoice from The Walling Group. On the contrary, it appears that the vendor followed its normal course of business with respect to the debt owed by the Committee. For example, the Committee states that the campaign manager spoke with Mr. Troy Walling of the Walling Group on a monthly basis regarding the payment of the \$10,000. This Office further notes that the Committee is attempting to pay off the debt in question. According to the Committee's amended disclosure reports, the Committee owed The Walling Group \$11,727 as of January 1, 1995. Between January 1 and December 31, 1995, the Committee carried substantial debts to a number of vendors in addition to The Walling Group.⁷ During this period, the Committee made payments of \$5,227.50 on the debt to The Walling Group, which appears to be comparable to the payments made on its debts to other vendors. Finally, the debt in question, a "winning bonus," did not result from The Walling Group incurring any costs, and thus a more flexible payment schedule may have been reasonable. While this Office acknowledges that the Committee and The Walling Group did not provide all documents pertaining to the inquiry of whether an attempt to collect the debt was made in a commercially reasonable manner, we believe that the facts provide sufficient basis to reach such a conclusion. Therefore, this Office suggests the report be revised to indicate that no further action be taken with respect to this finding.

⁷ According to the Committee's amended disclosure reports, the Committee's debts and obligations were over \$80,000 as of December 31, 1994, including nearly \$44,000 owed to several other vendors and former employees and \$25,000 in loans from the candidate

**Memorandum to Robert J. Costa
Proposed Final Audit Report on
Citizens for Jack Metcalf (LRA #490)
Page 6**

In light of the other debts owed by the Committee, the proposed report's reference to the Committee's \$7,300 cash on hand and its inference that the amount could be used to partially pay the debt to The Walling Group is misleading. Based on the amount of debts owed by the Committee, the failure to pay The Walling Group should not be considered as a factor in determining whether the debt represents an excessive contribution. Therefore, the Office of General Counsel recommends the Final Audit Report be revised to omit reference to the Committee's cash on hand on December 31, 1994 and any implication that, in order to avoid an excessive contribution, the Committee should have paid part of its debt to The Walling Group despite its other debts.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK007834

April 2, 1996

Mr. Donald G. Watts, Treasurer
Citizens for Jack Metcalf
5705 Evergreen Way #202
Everett, WA 98203

Dear Mr. Watts:

Attached please find the Final Audit Report on Citizens for Jack Metcalf. The Commission approved the report on March 12, 1996.

The Commission approved final audit report will be placed on the public record on April 10, 1996. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155. Any questions you have related to the matters covered during the audit or in the report should be directed to Mary Moss or Tom Nurthen 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

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CHRONOLOGY

CITIZENS FOR JACK METCALF

Audit Fieldwork	6/12/95 - 6/20/95
Interim Audit Report to the Committee	8/24/95
Response Received to the Interim Audit Report	11/08/95
Final Audit Report Approved	3/12/96

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