



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 6, 1999

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
EVA CLAYTON COMMITTEE FOR CONGRESS

Attached please find a copy of the final audit report and related documents on Eva Clayton Committee for Congress which was approved by the Commission on November 23, 1999.

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

Attachment as stated

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

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REPORT OF THE AUDIT DIVISION
ON
EVA CLAYTON COMMITTEE FOR CONGRESS

Approved November 23, 1999



FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

22.07.025.3244

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

EVA CLAYTON COMMITTEE FOR CONGRESS

EXECUTIVE SUMMARY

Eva Clayton Committee for Congress (the Committee) registered with the Commission on December 26, 1991. On October 31, 1997, the Candidate filed a Statement of Candidacy designating the Committee as the principal campaign committee of Eva McPherson Clayton, Democratic candidate for the U.S. House of Representatives from the state of North Carolina, First District, for the 1998 election. The audit was conducted pursuant to 2 U.S.C. §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 on May 20, 1999 and later in the interim audit report. The relevant parts of the Committee's response to those findings are included in this audit report.

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

Receipt of Loan in Excess of the Limitation — 2 U.S.C. §441a(a)(1)(A), 11 CFR §100.7(a)(1). The Candidate obtained a \$20,000 loan from a bank; \$12,000 of the proceeds was in turn loaned to the Committee. The Candidate's spouse signed as an additional co-maker on the loan. Accordingly, when the \$12,000 loan was made to the Committee on December 24, 1997, the Candidate's spouse made a contribution in excess of the 2 U.S.C. §441a contribution limit by \$6,000 (a \$1,000 contribution was made by check on December 22, 1997). The Candidate's spouse was released from this obligation on June 21, 1999.

Itemization of Receipts From Individuals — 2 U.S.C. §434(b)(3)(A). Contributions deposited in May and June, 1998 were not itemized on the Committee's disclosure reports, as required. During this period the Treasurer had been ill. In response to the interim audit report, amended Schedules A were filed which corrected the public record.

2025 RELEASE UNDER E.O. 14176

Misstatement of Financial Activity — 2 U.S.C. §434(b)(1),(2) and (4).

Disclosure reports filed for the period January 1, 1997 through October 15, 1998 contained material misstatements. For 1997, reported receipts were overstated by \$10,020 while disbursements were understated by about \$12,800; cash at December 31, 1997 was overstated by some \$21,700. As to calendar 1998, reported receipts were overstated by about \$12,100 and disbursements were understated by \$1,688. As a result of errors on reports filed for calendar years 1997 and 1998, cash at December 31, 1998 was overstated by approximately \$35,500. The Committee filed amended reports which materially corrected these misstatements.

Filing of Disclosure Reports — 2 U.S.C. §434(a)(2).

Disclosure reports, covering activity from October 16, 1998 through December 31, 1998, were not filed until May 27, 1999, approximately one week after the close of audit fieldwork. Financial activity for this period consisted of \$56,423 in receipts and \$69,765 in disbursements. The Candidate informed the Audit staff at the entrance conference that the Treasurer became ill during the summer of 1998 and that they had a hard time catching up with the campaign's bookkeeping as a result of her absence. Shortly after the conclusion of audit fieldwork, the Committee filed a 1998 Post General report and a 1998 Year End report which materially completed the public record.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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**REPORT OF THE AUDIT DIVISION
ON THE
EVA CLAYTON COMMITTEE FOR CONGRESS**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the Eva Clayton Committee for Congress (the Committee), undertaken by the Audit Division of the Federal Election Commission (the 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, that 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 1, 1997 through December 31, 1998.¹ The Committee filed disclosure reports which covered activity from January 1, 1997 through October 15, 1998. During this period, the Committee reported a beginning cash balance of \$6,988; total receipts of \$698,753; total disbursements of \$644,160; and a closing cash balance of \$61,581.²

¹ Subsequent to the audit fieldwork, the Committee filed disclosure reports covering activity from October 16, 1998 through December 31, 1998 (see Finding II.D.).

² All figures in this report have been rounded to the nearest dollar.

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C. COMMITTEE ORGANIZATION

The Committee registered with the Federal Election Commission on December 26, 1991 and on October 31, 1997, the Candidate filed a Statement of Candidacy designating the Committee as the principal campaign committee for Eva McPherson Clayton, Democratic candidate for the U.S. House of Representatives from the state of North Carolina, First district, for the 1998 election. The Committee maintains its headquarters in Warrenton, North Carolina. The Treasurer of the Committee is Patsy T. Hargrove, who was also the Treasurer during the period covered by the audit.

To manage its financial activity, the Committee maintained three bank accounts. From these accounts, it made approximately 1,100 disbursements. The Committee's receipts were composed of approximately 1,820 contributions from individuals, totaling \$238,000; and, approximately 390 contributions from political committees, totaling \$397,000.

D. AUDIT SCOPE AND PROCEDURES

The audit included such tests as verification of total reported receipts and disbursements; the review of the required supporting documentation; and such other audit procedures as deemed necessary under the circumstances. Although the Committee satisfied the minimum recordkeeping requirements of 11 CFR §102.9 relating to its contribution records, the Audit staff was unable to perform the substantive testing normally undertaken when reviewing contributions from individuals because the computerized contributions file and the cash receipts journal provided by the Committee were incomplete.

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.B.);
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 (see Finding II.C.);
7. adequate recordkeeping for transactions;
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 that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF LOAN IN EXCESS OF THE LIMITATION

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

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term *contribution* includes loans (except for a loan made in accordance with 11 CFR 100.7(b)(11)) and that the term *loan* includes a guarantee, endorsement, and any other form of security. This section further states: a loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid; a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid; that the aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110; and, each endorser or guarantor of a loan shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement and in the absence of such written stipulation, the loan shall be considered a loan by each endorser or guarantor in the proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.³

³ Pursuant to 11 CFR §100.7(a)(1)(i)(D), 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 and 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. Similarly, when the loan is unsecured, the spouse will not be considered to have

On December 24, 1997, the Candidate signed a BB&T (Branch Banking & Trust Company) Promissory Note as the borrower of \$20,000 and then loaned \$12,000 to the Committee. The Committee filed a Schedule C (Loans) with its 1997 Year End report which listed a \$12,000 loan from BB&T, with the Candidate and her spouse as endorsers/guarantors.⁴ A Schedule C-1 (Loans and Lines of Credit from Lending Institutions) was also filed which listed the \$20,000 loan from BB&T and noted that the endorsers/guarantors disclosed on Schedule C were secondarily liable for the debt incurred. In response to a Request for Additional Information sent to the Committee from the Commission's Reports Analysis Division, the Committee filed an amendment to Schedules C and C-1 which stated that the Candidate borrowed \$20,000 from BB&T and then loaned \$12,000 to the Committee on that same date. A \$12,000 counter deposit on December 24, 1997 was noted on the Committee's bank statement. The \$20,000 loaned by BB&T was at a fixed rate of 12.50% and the principal plus accrued interest was due in full at maturity on March 23, 1998. The Candidate's spouse signed as an additional co-maker on the \$20,000 loan. In a letter from the Vice-President of the BB&T bank which made the loan, this note was described as "unsecured."

The Committee made a \$4,000 payment relative to this note on March 20, 1998 and the Candidate apparently made a \$2,000 payment on the same date. A modification to this Promissory Note was signed by the Candidate and her spouse on March 24, 1998. This modification extended the final due date for repayment of this note to March 24, 2000 and required 23 monthly payments of \$700 each, with one final payment of all remaining principal and interest on the due date. The adjusted balance for this modification was noted as \$14,618 (the \$20,000 originally loaned to the Candidate, less principal paid through March 24, 1998 of \$5,382).

According to a loan transaction history from BB&T, thirteen payments, in the amount of \$700 each, were made between April 1998 and May 1999. These payments were apparently made by the Candidate.

The Candidate provided a statement to the Audit staff which explained that this \$20,000 loan "... was not secured by a Deed of Trust and did not require a signature from my husband." She added that "[t]he Bank's tradition of having the husband to sign an unsecured loan is negative and disadvantageous toward women and married women. I can't imagine any man, including my husband, being required to sign

made a contribution if the bank relied upon the candidate's assets in making the loan. *See Explanation and Justification for 11 CFR §100.7(a)(1)(i)(D)*, 48 Fed. Reg. 19020 (April 27, 1983) ("a signatory spouse will not be considered a contributor if the value of the candidate's share of the property used as collateral or as the basis for the loan equals or exceeds the amount of the loan to be used for the candidate's campaign") (emphasis added).

⁴ The Committee had also secured a loan from BB&T in the amount of \$35,000 in 1996. Security for this loan was a second deed of trust on the personal residence of the Candidate and her spouse. The Audit staff determined that the Candidate's equity value in this property was sufficient.

for a loan of this amount with a [my] comparable salary and the clear ability to repay the loan.”

Subsequent to the exit conference, the Committee provided three letters from the Vice President of the bank which made the loan. These letters were addressed to the Candidate. The first letter stated that “[t]his unsecured note was made to you and co-signed by Mr. Clayton. This was done as a matter of tradition and was not actually required for Mr. Clayton to sign. You certainly needed no help to qualify for the loan. The loan was made to be used for your purposes and is being repaid by you.”

The second letter stated that the Candidate was the primary borrower but that the note was also signed by the Candidate’s spouse and

“[t]o clarify any misunderstanding, please consider that when extending unsecured credit it is important to the financial institution to consider not only income but also financial net worth. Net worth, in the case of married partners, is considered to be, for the most part, equity in jointly owned assets. If an institution had to look at liquidation of assets for repayment of debt, it would only be possible if both partners had signed the note. For this reason, it is preferred to have both partners in a marriage to sign unsecured debt, regardless of which is the primary borrower—It is preferred but not required and certainly, in your case, it is not necessary for Mr. Clayton to sign. Today [6/9/99], I am completing the necessary documentation to release Mr. Clayton from [sic] both notes.”

The second letter further stated that to the best of this bank official’s knowledge, all repayments made, to date, have been made by the Candidate or the Committee.

The third letter, dated July 13, 1999, stated the following: “[p]lease accept this correspondence as certification that Mr. Theaoseus T. Clayton [the Candidate’s spouse] has no financial obligation relating to the above stated loans. It is also intended to assure any interested parties, with whom you may share this information, that this is a true and accurate statement.” The loans referred to are the \$20,000 loan discussed in this finding and the \$35,000 loan noted in Footnote 3.

The Audit staff notes that on the original Promissory Note (dated December 24, 1997), the Candidate’s spouse signed as an additional co-maker and on the Note Modification Agreement (dated March 24, 1998), he signed as an additional borrower/guarantor. Since the Candidate loaned \$12,000 of the \$20,000 loan to the Committee on December 24, 1997, the Audit staff considers the Candidate’s spouse to have been obligated for 50% of the value of this loan and thus, to have made a \$6,000 contribution to the Committee, pursuant to 11 CFR §100.7(a)(1). On December 22,

1997, he also made a contribution by check to the Committee in the amount of \$1,000. Accordingly, when the \$12,000 loan was made to the Committee on December 24, 1997, the Candidate's spouse made a contribution in excess of the 2 U.S.C. §441a contribution limit by \$6,000 (\$7,000 - \$1,000). As noted above, the Candidate's spouse was released from his obligation relative to this loan per a letter dated July 13, 1999. A modification to the loan agreement or other document evidencing that the Candidate's spouse is no longer a guarantor was not provided with the July 13, 1999 letter.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the Candidate's spouse did not make a contribution to the Committee in excess of the 2 U.S.C. §441a limit in the amount of \$6,000, and provide any additional information or explanation relative to this matter. The Audit staff further recommended that the Committee provide a copy of the modification to the loan agreement or other document evidencing that the Candidate's spouse was no longer a guarantor relative to this loan and that any change in the terms of this loan should be reflected on Schedule C and C-1 of the Committee's Mid-Year 1999 report or an amendment thereto.

In its response to the interim audit report, the Committee provided a document from the Vice President of BB&T bank which released the Candidate's spouse as co-maker on the loan. This document included the signatures of the Candidate and her spouse dated June 21, 1999. In its response, the Committee stated that it appeared "...that this document was never submitted to the Audit Division."

The Committee also provided a letter from BB&T, dated October 28, 1999, which stated that the loan in question was made jointly by the Candidate and her spouse in the amount of \$20,000 and that this loan was paid off on August 9, 1999. It further stated that "[t]his loan has been satisfied in full and thus no modifications can be made to either term, conditions or obligations."

In addition, the Committee filed an amended Schedule C and C-1 relative to the 1999 Mid Year report, which covered the reporting period January 1, 1999 through June 30, 1999, that removed the Candidate's spouse as a guarantor for this loan.

No evidence, additional information or explanation was provided by the Committee refuting that the Candidate's spouse made a contribution to the Committee in excess of the 2 U.S.C. §441a limit in the amount of \$6,000 as a result of contributing \$1,000 to the Committee on December 22, 1997 and guaranteeing 50% of the \$12,000 loan from the Candidate to the Committee on December 24, 1997 [\$1,000 + \$6,000 - \$1,000 (2 U.S.C. §441a limit)]. As noted above, the Candidate's spouse was released from this obligation on June 21, 1999 and the obligation was paid off on August 9, 1999.

B. ITEMIZATION OF RECEIPTS FROM INDIVIDUALS

Section 434(b)(3)(A) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.

Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" to be, in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

The Committee did not itemize 62 contributions from individuals (\$23,951), deposited in May and June of 1998, on Schedules A (Itemized Receipts) of its 2nd Quarter 1998 report, as required. The Candidate informed the Audit staff at the entrance conference that the Treasurer became ill during the summer of 1998 and that they had a hard time catching up with the campaign's bookkeeping as a result of her absence.

At the exit conference, the Audit staff provided a schedule of these contributions to the Committee. Committee officials agreed to file the necessary Schedules A.

In the interim audit report, the Audit staff recommended that the Committee file amended Schedules A for the 2nd quarter 1998 report correcting these omissions. Amended Schedules A for the 2nd quarter 1998 report were filed which corrected the public record.

C. MISSTATEMENT OF FINANCIAL ACTIVITY

Sections 434(b)(1), (2), and (4) of Title 2 of the United States Code require a political committee to disclose the amount of cash on hand at the beginning of each reporting period and the total amount of all receipts and disbursements for each reporting period and the calendar year.

The Audit staff reconciled the Committee's reported financial activity to its bank activity for the period January 1, 1997 through October 15, 1998 and determined that material misstatements occurred. The Committee did not file disclosure reports covering the activity from October 16, 1998 through December 31, 1998 until after the audit fieldwork had concluded (see Finding II.D.).

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The Committee overstated its 1997 reported receipts by \$10,020 primarily due to the apparent over-reporting of its total unitemized contributions from individuals in the amount of \$12,422 and not reporting three contributions from political committees (PACs), totaling \$2,000. The Committee understated its 1997 reported disbursements by \$12,782, primarily due to not reporting three wire transfers to vendors, totaling \$13,729, and not adjusting for four voided checks, totaling \$1,000. The reported beginning cash on hand balance at January 1, 1997 was understated by \$1,097 and the reported ending cash on hand balance at December 31, 1997 was overstated by \$21,705 due to these misstatements.

The Committee overstated its 1998 reported receipts by \$12,130. This net overstatement was primarily due to the apparent over-reporting of its total unitemized contributions from individuals in the amount of \$15,391. The Committee understated its 1998 reported disbursements by \$1,688. The reported beginning cash on hand balance at January 1, 1998 was overstated by \$21,705 and ending cash on hand balance at December 31, 1998 was overstated by \$35,523 due to these misstatements.

At the exit conference, Committee officials agreed to file the necessary amended reports. Three weeks later, amended reports were filed which materially corrected these misstatements.

In the interim audit report, the Audit staff recommended no further action and stated that the Committee could provide any additional information or explanation if it wished to do so. No additional information was provided.

D. FILING OF DISCLOSURE REPORTS

Section 434(a)(2) of Title 2 of the United States Code provides, in part, that in a calendar year during which there is a regularly scheduled election for which a candidate is seeking election for the House of Representatives, the treasurer of the principal campaign committee of such candidate is required to file reports which include: a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and, a quarterly report, which shall be complete as of the last day of each quarter and that for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year.

Disclosure reports, covering activity from October 16, 1998 through December 31, 1998, were not filed until May 27, 1999, approximately one week after the close of audit fieldwork. Financial activity for this period consisted of \$56,423 in total receipts, \$69,765 in total disbursements, with beginning and ending cash balances of \$26,057 and \$12,715 respectively. The Candidate informed the Audit staff at the entrance conference that the Treasurer became ill during the summer of 1998 and that

they had a hard time catching up with the campaign's bookkeeping as a result of her absence.

At the exit conference, Committee officials agreed to file the necessary disclosure reports. A few days later, the Committee filed a 1998 Post General report and a 1998 Year End report which materially completed the public record.

In the interim audit report, the Audit staff recommended no further action and stated that the Committee could provide any additional information or explanation if it wished to do so. No additional information was provided.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 1, 1999

Ms. Patsy T. Hargrove, Treasurer
Eva Clayton Committee for Congress
307 W. Franklin Street
Warrenton, NC 27589

Dear Ms. Hargrove:

Attached please find the Report of the Audit Division on the Eva Clayton Committee for Congress. The Commission approved the report on November 23, 1999.

The Commission approved Final Audit Report will be placed on the public record on December 6, 1999. 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 James Miller or Marty Favin 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 "Robert J. Costa".

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

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