




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 11, 1996

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON THE
DEMOCRATIC STATE CENTRAL COMMITTEE OF CALIFORNIA - FEDERAL

Attached please find a copy of the final audit report and related documents on the Democratic State Central Committee of California - Federal which was approved by the Commission on August 29, 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

07070250702

9707025073

REPORT OF THE AUDIT DIVISION
ON THE
**Democratic State Central Committee
of
California - Federal**

Approved August 29, 1996



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

TABLE OF CONTENTS

**DEMOCRATIC STATE CENTRAL COMMITTEE
OF CALIFORNIA — FEDERAL**

	Page
Executive Summary	1
Final Audit Report	5
Background	5
Findings	7
Legal Analysis	47
Transmittal to Committee	53
Chronology	55

97070250704



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

**FINAL AUDIT REPORT
ON THE
DEMOCRATIC STATE CENTRAL COMMITTEE
OF CALIFORNIA - FEDERAL**

EXECUTIVE SUMMARY

The Democratic State Central Committee (of California) Federal Candidates Fund registered with the Comptroller General of the United States on September 16, 1975 and filed subsequent amended Statements of Organization to change its name. In December 1991, the Committee filed an amended Statement of Organization changing its name to the Democratic State Central Committee of California - Federal.

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 field work and later, in an interim audit report.

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

APPARENT PROHIBITED CONTRIBUTIONS — 2 U.S.C. Sections 441b(a) and 441b(b)(2); 11 CFR Sections 116.3(b) and (c) and 116.8(a). The Committee received a prohibited corporate contribution totaling approximately \$690,000. This contribution resulted from Gordon and Schwenkmeyer, Inc.'s (GSI) granting credits totaling \$290,000 and extending credit, which for the audit period, averaged in excess of \$400,000. The Committee disagreed saying that the extension of credit and the granting of credits had been done in the ordinary course of business

GSI REPORTING PROBLEMS — 2 U.S.C. Section 434(b)(4)(A); 11 CFR Sections 104.3(a)(2)(vii)(A) and (d) and 104.11 In addition to the prohibited contribution discussed above, a number of reporting errors were associated with GSI. These included inconsistent debt reporting, underreporting of debt by more than \$200,000, incomplete and incorrect reporting of offsets received from GSI, and a failure to report receipts of \$34,920 and disbursements of \$36,075 related to the Canvass Program. On October 27, 1995, the Committee, filed amended reports which materially corrected these reporting deficiencies.

9707025075

FAILURE TO ALLOCATE GENERIC VOTER REGISTRATION/GOTV EXPENSES —

11 CFR Sections 106.5(d)(1)(i) and (g)(1)(i). The Committee was required to allocate disbursements for voter registration, voter identification and get-out-the-vote on a 50% basis between its federal and non-federal accounts. During the audit period the Committee made disbursements totaling \$1,102,261 solely from its non-federal accounts in support of such activity. The Committee, in its October 26, 1995 response to the interim audit report, refused to acknowledge that disbursements totaling \$895,000 were allocable. The Committee, however, agreed that the balance of \$207,261 was allocable and reported half of this amount, \$103,630, as a debt to its non-federal account on amended reports. There remains \$447,500 (\$895,000 - 2) which the Committee's federal account still owes the non-federal account.

PROHIBITED CORPORATE CONTRIBUTION — 2 U.S.C. Sections 441b(a) and

(b)(2); 11 CFR Sections 100.7(a)(1)(iii) and (4) and 116.3(b). The Committee received a prohibited corporate contribution of \$42,183 in the form of advances from a corporation solely owned by the Party Chair. The Committee disputed this response to the interim audit report stating that these advances had been made in River West's normal course of business.

EXCESSIVE CONTRIBUTIONS RESULTING FROM STAFF ADVANCES — 2 U.S.C.

Section 441a(a)(1)(C) and 11 CFR Section 116.5(b). Philip Anglides, through his partnership interest in King Air and his subsequent membership in the association King Air II, and by money personally advanced on behalf of the Committee, was untimely reimbursed for some expenses and apparently not reimbursed for others. The largest amount outstanding was \$47,426.¹ In its response to the interim audit report, the Committee insisted that no excessive contribution occurred despite being unable to demonstrate that Mr. Anglides had been timely or completely reimbursed.

NON-FEDERAL FUNDS DEPOSITED INTO FEDERAL ACCOUNTS — 11 CFR Sections

102.5(a)(1)(i), 102.6(a)(1)(ii), 106.5(a)(2)(iv) and 106.5(g)(1)(i) and (2)(B). In a number of instances, non-federal funds were deposited into the federal account. These included expenses counted twice in the calculation of amounts due from the non-federal account for shared expenses (\$47,185), and offsets to shared expenses (\$57,298). The Committee acknowledged these amounts and in amended reports disclosed a debt owed to the non-federal account. In addition, the Committee made a wire transfer to the San Francisco Democratic County Central Committee (SFDDCC) in the amount of \$70,000 on October 30, 1992 from its non-federal account. On October 31, 1992, the Committee deposited to its federal account a check dated October 29, 1992 for \$58,000 received from the SFDDCC. Documentation revealed that the Committee's non-federal transfer was deposited to the same SFDDCC account from which the \$58,000 check had been written.

¹ Portions of invoiced amounts from King Air were not reimbursed by the Committee. It is presumed they were paid by Mr. Anglides who therefore has an outstanding excessive contribution of \$24,184.

97070250706

The Committee in its response to the interim audit report, asserting the permissibility of unlimited transfers between party committees, disagreed with the finding, but failed to establish that funds received from the S^r DCCC were federally permissible. As a result, the Committee owes its non-federal account \$58,000. Finally, the Committee was cited for an impermissible transfer of \$15,000 in non-federal funds to the Committee's federal account, effected by a non-federal contribution made by the Committee at the request of two U.S. Representatives and the deposit to the Committee's federal account of payments made from the representatives' authorized committees. On August 22, 1996, the Commission decided to take no further action with respect to this matter.

REPORTING AND ITEMIZATION OF H-3 TRANSFERS — 11 CFR Section 104.10(b)(3). The Committee failed to itemize two transfers from the non-federal account for shared expenses made in 1991 totaling \$26,563 and five transfers made in 1992 totaling \$509,072. One H-3 transfer made in 1992 for \$49,767 was not included in the Committee's reported totals. The Committee corrected these deficiencies in amended reports filed October 27, 1995.

9 / 0 / 0 2 5 0 7 5 7

970 / 0250758



**REPORT OF THE AUDIT DIVISION
ON
DEMOCRATIC STATE CENTRAL COMMITTEE
OF CALIFORNIA - FEDERAL**

I. BACKGROUND

A. OVERVIEW

This report is based on an audit of the Democratic State Central Committee of California-Federal (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, 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.

The audit covered the period from January 1, 1991 through December 31, 1992. The Committee reported a beginning cash balance at January 1, 1991 of \$2,104; total receipts for the period of \$12,667,581; total disbursements for the period of \$12,632,630; and an ending cash balance on December 31, 1992 of \$35,874.¹ The Committee used sixteen bank accounts for its federal activity during this period.

¹ All figures in this report have been rounded to the nearest dollar. The amounts do not foot due to a discrepancy of \$1.181 between the reported ending cash balance at September 30, 1992 and the beginning cash balance at October 1, 1992.

97070250709

B. CAMPAIGN ORGANIZATION

The Democratic State Central Committee (of California) Federal Candidates Fund registered with the Comptroller General of the United States on September 16, 1975 and filed subsequent amended Statements of Organization to change its name. In December 1991, the Committee filed an amended Statement of Organization changing its name to the Democratic State Central Committee of California - Federal. The Committee maintains its headquarters in Sacramento, California.

C. KEY PERSONNEL

The Treasurer of the Committee at the beginning of the audit period was Ms. Laurie Talcott. She was succeeded on December 19, 1991 by Mr. Martin H. Eber who served through the end of the audit period. On July 8, 1994, Gary Paul became Treasurer of the Committee. The Committee Chairman at the beginning of the audit period was Edmund G. Brown, Jr. On April 1, 1991, Mr. Philip Angelides succeeded Mr. Brown and continued as chairman through the audit period.

D. AUDIT SCOPE AND PROCEDURES

The audit covered the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.D.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Findings II.A.2. and II.C.);
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 Findings II.A.3.b. and II.A.3.c.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.A.3.c.);
5. review of expenditures made on behalf of federal candidates;
6. proper disclosure of campaign debts and obligations (see Finding II.A.3.a.);
7. accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
8. adequate recordkeeping for campaign transactions.

9707025070

9. proper disclosure of the allocation of costs associated with administrative expenses and activities conducted jointly on behalf of federal and non-federal elections and candidates (see Findings II.B., II.E., and II.F.); and.
10. other audit procedures that were deemed necessary in the situation (see Findings II.B. and II.E.)

Although the Committee appears to have met the minimum requirements of 11 CFR §102.9, the scope of our testing regarding contributions received from individuals was limited. The Committee maintained detailed records for only those individual contributions greater than fifty dollars. In addition, as discussed at II.A., contribution records for receipts raised and deposited by Gordon and Schwenkmeyer, Inc. were limited to bank statements and a computer tape which contained information such as name, address, date and amount of each contribution.

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

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. TRANSACTIONS WITH GORDON AND SCHWENKMEYER, INC.

1. Background

Gordon and Schwenkmeyer, Inc. ("GSI") is a fundraising and telemarketing firm located in El Segundo, California. Its two principals, Mr. Michael Gordon and Ms. Kris Schwenkmeyer, are a former Executive and Political Director, respectively, for the Committee. They left the Committee in 1985 and incorporated their telemarketing firm. The Audit staff reviewed a contract between GSI and the Committee covering the period between August 1, 1987 and July 31, 1989.

For the audit period GSI operated under a 1989 contract with the Committee. This contract specified some of the services GSI was to provide the Committee and the compensation rates to be paid to GSI. GSI works from phone lists and solicits contributions for the Committee. There are two compensation rates, one for the solicitation of previous donors and a lower rate for the solicitation of prospective donors. As outlined in the earlier contract, GSI would open a custodial checking account into which all donations received through the telephone solicitation program would be deposited. GSI was to serve as custodian of such account(s). GSI opened and maintained a total of four such custodial accounts for federal telemarketing programs conducted during the audit period.

970 / P 250761

At the beginning of 1991, GSI operated three distinct telemarketing programs for the Committee. The programs were identified as RUM, RM2 and RM3. A program consisted of a file of contributors to whom GSI periodically appealed for contributions to the Committee. These solicitations generally occurred three times a year, in the winter, spring and fall. According to program summaries which GSI provided to the Committee, RUM, RM2 and RM3 returned a net profit for 1991 and 1992.² The contributions received from each of these programs (RUM, RM2 and RM3) were deposited into a single custodial account hereafter referred to as the first custodial account. When GSI initiated prospecting program RM4 in 1991, it opened an additional custodial account to be used exclusively as a depository for that program. In 1992 GSI opened two more custodial accounts to be used exclusively as depositories for prospecting programs RM5 and RM6. GSI accounted for each program separately and did not use profits from one program to pay the operating shortfall of another. The funds GSI forwarded to the Committee came only from the first custodial account.

The Committee, in an effort to comply with 11 CFR §102.9(a), requested and expected GSI to forward all contributions greater than \$50 directly to the Committee for deposit.³ The Committee then entered these contributions into its contributor database with the required information. It appears that the Committee did not receive all of the contributions greater than fifty dollars in either 1991 or 1992.⁴ After April 7, 1992, in lieu of the actual contributor checks, the Committee relied on printouts provided by GSI to document contributions fifty dollars and greater which were received by GSI and deposited to the custodial accounts. The purpose of the printouts was to provide the Committee with the relevant information which it could then enter into its contribution database.

GSI deposited contributions (other than those sent to the Committee) into the custodial account corresponding to the program which generated the contribution. Funds from the custodial accounts would then be transferred to GSI's corporate account. In most instances, this occurred shortly after the contributions were deposited. On occasion, GSI would transfer funds to the custodial account from its corporate account to insure a sufficient balance was available for payment to the Committee and to itself for billings to the Committee. Of the \$436,500 transferred back to the custodial accounts during the audit

² RM3, though still classified as a prospecting account in 1991, was profitable and was apparently designated a proven program in the first solicitation in 1992 as evidenced by the increase in the hourly rate charged from the prospecting rate to the proven rate

³ The Committee also expected that GSI would forward for deposit into non-federal accounts any corporate or union contribution which are permitted under state law

⁴ The Committee deposited GSI receipts of \$96,962 for 1991 and \$39,180 for 1992

period, all but \$550 was transferred to the first custodial account.⁵ In the Pre Primary and Year End 1992 report periods, the transfers to the custodial accounts from GSI's corporate account enabled GSI to send funds to the Committee in excess of total contributions raised by more than \$83,850 and \$27,800 respectively.

Prospecting programs played a central role in the creation of a \$678,150 debt to GSI reported at December 31, 1990. Prospecting is the process by which GSI expands the contributor base for its customer by creating established fundraising lists from new untried lists. GSI contends that prospecting is made necessary due to the shrinkage that normally occurs to established lists and the expanding needs of the Committee. At the outset, prospecting program files are larger than established program files and these programs are comparatively expensive to operate because the number of contributions received is low while the number of calls made is high. As these program files are used in successive solicitation rounds and non-contributing individuals are eliminated, the number of contributions per call increases to the point where the program becomes profitable. A large debt to GSI resulted because no up front funding or other payment was provided by the Committee.⁶

The contract outlines how Committee debt to GSI is to be resolved. Should debt remain outstanding and the contract expire or be terminated, GSI retains the right to solicit funds in the name of the Committee until the debt, including the costs to GSI of recovering the debt, is satisfied. GSI has stated that because of this provision of the contract, "debt" in the ordinary sense, "does not exist between GSI and the Committee.

For work performed in 1990 and 1991, GSI granted substantial credits to the Committee. These credits were billing reductions applied to specific invoices. The credits for 1990 services were received by the Committee in January and March 1991 and the credits for 1991 services were granted in December 1991 and January 1992. These credits exceeded the Committee's total debt reduction to GSI for the audit period.

The credits for 1990 services totaled \$157,111. The credits for 1991 services and granted in 1991 totaled \$109,045. GSI, in response to an Audit staff request, stated that the Committee's outstanding debt at January 1, 1991, net of subsequent credits

⁵ This procedure was not outlined in the contract

⁶ In Advisory Opinion 1991-18 requested by the New York Democratic Party which was about to engage GSI to provide telemarketing services, the Commission concluded that for any prospecting to be performed by GSI on behalf of the New York Committee, GSI would have to be reimbursed in an amount equal their normal expenses and expected profit prior to beginning such a program in order that GSI not make a corporate contribution.

was \$507,260.⁷ The debt, excluding the credits from GSI, at January 1, 1991 was \$664,371 (\$507,260 + \$157,111). GSI billed the Committee \$1,477,533 and retained \$1,359,005 for services in 1991. Thus, the debt at year end would have increased by \$118,528 (\$1,477,533 - \$1,359,005) to \$782,899 (\$664,371 + \$118,528) had the credits not been received. However, as a result of the credits, the debt at December 31, 1991 was \$516,743 (\$782,899 - \$157,111 - \$109,045). GSI raised \$1,961,432 for the Committee in 1991 and during this period GSI forwarded \$600,043 to it.

The credits for 1991 services and granted in 1992 totaled \$24,532. GSI billed the Committee \$681,617 and retained \$746,900 for services in 1992. This difference \$65,283 (\$746,900 - \$681,617) plus the credit \$24,532 reduced the debt from \$516,743 to \$426,928 at December 31, 1992. During 1992, GSI raised a total of \$1,480,900 for the Committee and during this period forwarded \$733,162 to it.

Thus, the Committee received approximately 1.3 million from GSI during the audit period while the debt was reduced by \$237,442. This decrease is less than the \$290,688 in credits received from GSI. Other than funds retained by GSI, the Committee made no payments to GSI during the audit period related to the federal programs mentioned.

In May of 1991, GSI began a canvass program for the Committee in the San Francisco Bay Area. The canvass program operated separately from other GSI telemarketing programs. In November 1991, the canvass program was taken over by The Membership Campaign which continued to run the program through January 1992. The canvass program involved contacting voters door to door and soliciting contributions for the Committee. It raised \$84,269 between May 1991 and January 1992. The financial activity of the canvass program is not included in the totals for the telemarketing operations noted above. The Committee reported activity from the canvass program only through August 15, 1991. The Audit staff was presented with a copy of an unexecuted draft contract for the canvass program. Of particular note is that all funds raised were to be distributed ten percent to the Committee and the balance to GSI. Our review indicated that moneys were disbursed at approximately that ratio.

A final item of note occurred in 1992. The RM3 file, a profitable program, was converted mid-year from a federal to a non-federal program. The Committee then from its non-federal accounts paid \$100,000 in advance for each of two solicitations. Upon conversion, the program ceased to be profitable in part due to an increase in the hourly rate charged by GSI and in part due to an unusually large number of hours dedicated to the solicitations. The Committee provided no reason for the conversion or the increase in the hourly rate charged or the advance payments made to GSI. In a response received after field work had been completed, GSI explained the conversion was made at the

97970250704

⁷ This amount materially agrees with the number developed by the Audit staff. Therefore, the Audit staff used this figure in determining the subsequent amounts.

Committee's request as were the rate increase and the two payments of \$100,000. GSI also stated that there was no written agreement for this change.

2. Apparent Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any election to federal office and that it is unlawful for any political committee knowingly to accept or receive any contribution prohibited by this section.

Section 441b(b)(2) of Title 2 of the United States Code states, in part, that the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any political party in connection with any election to any of the offices referred to in this section.

Section 116.3(b) of Title 11 of the Code of Federal Regulations states, in part, that a corporation in its capacity as a commercial vendor may extend credit to a political committee or another person on behalf of a political committee provided that the credit is extended in the ordinary course of the corporation'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 part, that in determining whether credit was extended in the ordinary course of business, the Commission will consider whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; whether the commercial vendor received prompt payment in full if it previously extended credit to the same political committee; and whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

Section 116.8(a) of the Title 11 of the Code of Federal Regulations states, in part, that a creditor may forgive the outstanding balance of a debt owed by an ongoing committee if the creditor and the ongoing committee have satisfied the requirements of 11 CFR §116.3 regarding extensions of credit by commercial vendors, the debt has been outstanding for at least twenty-four months and the following conditions have been met. The creditor has exercised reasonable diligence in attempting to locate the ongoing committee and has been unable to do so; or the ongoing committee does not have sufficient cash on hand to pay the creditor and has receipts of less than \$1000 during the previous twenty-four months and has disbursements of less than \$1000 during the previous twenty-four months and owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay this particular debt.

970 / 0250765

The Committee received credits from GSI totaling \$290,688. Of these credits, \$266,156 were received by the Committee in 1991 and \$24,532 in 1992. There was no provision in the contract between GSI and the Committee which outlined the circumstances under which credits might be granted. The Committee failed to report the receipt of any credits from GSI in 1991 or 1992 (see Finding II.A.2.b.).

GSI, responding to an Audit staff request concerning the granting of credits, made this response through its attorney:

"...CDP (the Committee) was dissatisfied with the programs' performance. CDP was an important client for GSI because it generated large business volume; the more business volume, the more profitable billable hours for GSI. Moreover, loss of CDP as a client could have hurt GSI's business reputation, driving away other clients. Thus, GSI made a business decision to share the burden of poorer-than-expected performance by reducing the amount GSI would retain relative to proceeds it would turn over to CDP. GSI has similarly made adjustments to bills for its non-political clients for business reasons."

GSI claimed to have granted credits to non-political clients in a manner comparable to which it granted credits to the Committee; referenced a program for a charity as an example of a nonpolitical client to whom it made such adjustments (i.e., granted credits); and provided a spreadsheet which disclosed its transactions with the charity over an eighteen month period (November 1992 through April 1994) including credits. The only similarity between the programs conducted for the Committee and the charity appears to have been that credits were granted to both. However, GSI returned and advanced more money to the Committee than the charity. The credits received by the Committee, expressed as percent of the total billed for 1991, equaled 9.04% while the credits received by the charity equaled 2.33% of the total billed for the eighteen months. Out of \$1,961,432 raised in 1991 for the Committee and \$972,722 raised for the charity in the eighteen month period, the Committee received 30.62% of the total raised and the charity 3.11%. Lastly, the Committee's outstanding debt to GSI at the end of 1991 was \$516,743 while the charity's at the end of the eighteen month period was \$43,880. Further, GSI did not clearly establish that these clients were of similar size or that a similar risk existed that the debt would not be paid. Given the disparity of the outstanding debts it allowed each client, it appeared GSI perceived the risk to be unequal. GSI also granted credits to the charity nine months after the last credit was granted to the Committee which does not establish the granting of credits by GSI as a prior practice. Based on the data provided, the Audit staff believes that GSI, by granting relatively small credits to the charity, did not establish as a usual and normal business practice the granting of large credits to the Committee.

In addition to the credits, the Committee owed a large debt to GSI for the entire audit period. Records indicated that prospecting programs from 1989 and 1990 were responsible for generating the debt. As already discussed in the background

section and to be discussed at Finding II.E.2.a., between 1991 and 1992, the debt to GSI was reduced by \$237,442 which is less than the total of the credits received by the Committee. Had credits totaling \$290,688 not been granted, the debt between January 1, 1991, and December 31, 1992, would have increased by \$53,246.

The Audit staff reviewed available correspondence between the Committee and GSI. GSI seemed to have a willingness to provide the Committee with financing and to maintain a cash flow to the Committee. The correspondence did not indicate that GSI was as concerned with the recovery of the debt. Financing was discussed in a memo from GSI dated January 3, 1988:

"As we did last year, our company will be willing to finance the shortfall that will initially be created from the voter file solicitation. We will maintain the newly created donors in a separate file and upon resolicitation we will raise the capital to offset the initial loss."

GSI stated its intention to maintain a regular cash flow to the Committee in a memo dated October 16, 1990:

"Lastly, our plan is to continue providing the Party \$22,000 a week from the "Federal Account"..."

In addition, a copy of a handwritten note was found in the GSI file which stated:

"In telephone call - Dec 6, 1991 before I left for vacation, I confirmed w/ Mike Gordon that CDP would continue to receive \$22,000/wk pymt/advance through EGB's 8 term."

A January 23, 1992 memo outlined the amount and timing of regular payments to the Committee.

"...Checks will be distributed beginning Friday March 20th in the amount of \$12,000 every week.

Please be aware there may be occasional deviation from this distribution schedule because of the cash flow of returns."

8 EGB is Edmund G. Brown, Jr., formerly the Committee Chairman

9 / 0 / 0 2 5 0 7 7

The Audit staff concluded that the emphasis as demonstrated by various memoranda between GSI and the Committee was a guaranteed flow of funds to the Committee irrespective of whether the debt was paid.

The absence of any communication from GSI requesting or demanding that the Committee make substantial payments to reduce the outstanding debt; and GSI's apparent failure to pursue the debt repayment as evidenced by the large debt which remained outstanding, while proceeds of the fundraising continued to flow to the Committee, led the Audit staff to conclude that credit was not extended in the ordinary course of business. As such, the extension of credit averaging \$400,000 throughout the audit period and the granting of credits totaling \$290,688 appeared to constitute prohibited corporate contributions made by GSI and received by the Committee.

At the exit conference, the debt to GSI and the credits were discussed and a previous request for more information was again presented to the Committee. After the exit conference, the Committee forwarded material which had been provided to them by GSI in response to a request of the Audit staff. These facts have been incorporated into the above analysis.

In the interim audit report, the Audit staff recommended that the Committee obtain from GSI and provide to the Audit staff additional documentation or any other comments to demonstrate that the credits extended and the large outstanding debt maintained were in the normal course of GSI's business. The information provided was to include examples of other customers or clients of similar size and risk for which similar services had been provided and similar billing arrangements had been used. Also, information concerning GSI's billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles was to be included.

The Committee responded to the Interim Audit Report by stating that the apparent prohibited contributions

"...reflect a commercially reasonable telemarketing arrangement. This arrangement benefited both sides, and the amounts 'credited' to the Committee were not contributions within the meaning of the Federal Election Campaign Act ("the Act")

"During the audit period, GSI solicited contributions on behalf of the Committee. GSI applied a standard marketing technique. GSI got the right to solicit potential donors using the Committee's name and in return the Committee received amounts raised above a certain level. GSI retained the right to continue soliciting from the lists, even after the contract termination or expiration, until GSI recouped its fees. In fact, this was GSI's only remedy for collection of fees owed to it by the Committee. Moreover, GSI and the Committee retained joint ownership of the new and developing lists.

979 / 025078

"GSI contacted both proven donors and potential new donors. In contacting potential new donors, the contribution rate is naturally low, and the fees GSI charged to the Committee did not cover the monetary donations received. To make the new donor lists profitable, GSI re-solicited the potential donors who had become proven donors.

"In order to continue the working relationship, GSI did not demand all of the fees it incurred up front. To do so would make the program's cash flow appear unattractive to the Committee, possibly prompting the Committee to terminate the relationship. Instead, GSI decided to share in the poorer-than-expected returns of the early solicitations in order to reap profits later.

"This arrangement should not be considered a 'contribution' or 'credit' extension at all. GSI expects full payment from future solicitations. In summary, the arrangement between GSI and the Committee was commercially reasonable."

The Committee's claim that "the fees GSI charged to the Committee did not cover the monetary donations received" is not clear. In the opinion of the Audit staff, the Committee likely meant that monetary donations received from the prospecting program did not cover the fees charged by GSI. This would be consistent with the facts known to the Audit staff.

The Audit staff disagrees with the Committee's assertion that the "apparent prohibited contributions" reflect a commercially reasonable telemarketing arrangement. At no time has either GSI or the Committee provided documentation outlining a relationship between GSI and another client of similar size and risk which demonstrates that credits and debt of a similar magnitude were extended in the normal course of business. Simply asserting that GSI is applying a standard market technique does not establish it as fact, particularly in light of Advisory Opinion 1991-18.

The Committee makes several claims in its response regarding GSI that are at odds with the facts. According to the 1989 contract between GSI and the Committee, the ownership of the contributor lists is not joint, but solely the property of the Committee. The Committee received only funds from programs which had paid off their prospecting debt rather than "an amount above a certain level" as claimed by the Committee. The prospecting programs returned no funds to the Committee until the debt incurred in establishing the program had been paid in full.

The Audit staff disagrees with the Committee's contention that the amounts credited were not contributions within the meaning of the Act. 2 U.S.C. §441b(b)(2) defines a contribution to include any gift of money or services. Without

establishing that the credits were extended in the ordinary course of business,⁹ it appears that the credits were a gift since the credits represented fees and expenses which the Committee did not have to pay and under the Act represents a contribution.

In spite of the fact that the Audit staff agrees that GSI intends that the expenses incurred in relation to work done for the Committee will be paid by the Committee, it does not follow that this arrangement does not constitute an extension of credit. Such an eventuality was not approved by the Commission in Advisory Opinion 1991-18 which addressed this issue between GSI and another state party committee. In that opinion, the Commission considered a Current Donor Program and intended that long periods be avoided in which large sums were owed to GSI. The Commission explicitly required that amounts owed not be outstanding for more than a short defined period of time. In the case of the Prospecting Program, the Commission wrote that "Because of the speculative nature of the program as distinguished from the Current Donor Program, and the consequent possibilities of shortfall, the Commission cannot give its approval to the Prospecting Program in the absence of a record by GSI or similar companies of the implementation of a program of similar structure and size in the ordinary course of business. In the absence of such a record, the Committee may remedy this problem by making a substantial payment in advance of the program (or the remainder of the program) adequate to cover the expenses of GSI's operations for the program and to ensure against nonpayment of commissions. Alternatively, the Committee and GSI may alter the program to provide for short, defined periods in which full payment is made by the period's end to GSI for the commissions earned." Also noted in the Advisory Opinion was that any amount outstanding and owed to GSI would be required to be reported as a debt or obligation when the short defined period occurred within two reporting periods. Clearly, the Committee did not follow the guidelines outlined in Advisory Opinion 1991-18, and in our opinion, a prohibited contribution results based on the extension of credit.

In addition, the Committee has not complied with the recommendations contained in the interim audit report. No information regarding GSI's billing policies for similar clients and work, advance payment policies, debt collection policies, or billing cycles, as requested in the interim audit report, was provided. The Audit staff believes that the Committee in its response has not established that either the granting of credits or the extension of credit in the magnitude outlined is in the normal course of business. Consequently, the extension of credit averaging \$400,000 throughout the audit period and the granting of credits totaling \$290,688 appear to constitute prohibited corporate contributions made by GSI and received by the Committee.

⁹ There is no mention of credits or later fee adjustments in the contract between GSI and the Committee

977 / 025070

3. Apparent Reporting Problems

Section 434(b)(4)(A) of Title 2 of the United States Code states, in part, that reports filed under this section shall disclose for the reporting period and the calendar year, the total amount of all expenditures made to meet committee operating expenses.

Section 104.3(a)(2)(vii)(A) of Title 11 of the Code of Federal Regulations states, in part, that each report filed under 11 CFR 104.1 shall disclose the total offsets to operating expenditures (such as rebates and refunds).

Section 104.3(d) of Title 11 of the Code of Federal Regulations regarding the reporting of debts and obligations states, in part, that each report filed under 11 CFR 104.1 shall on Schedule D disclose the amount and nature of outstanding debts owed by the reporting committee.

Section 104.11 of Title 11 of the Code of Federal Regulations states, in part, that debts owed by a political committee which remain outstanding shall be continuously reported until extinguished. These debts shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt was incurred or extinguished.

a. Reporting of Debt

The Committee did not report debt to GSI consistently between 1990 and 1991. At December 31, 1990 the Committee reported an outstanding debt owed to GSI of \$678,149 and with no explanation disclosed a beginning outstanding debt on January 1, 1991 of \$225,155, a difference of \$452,994. As previously noted, early in 1991, GSI twice granted credits totaling \$157,111 to the Committee for 1990 services. In December 1991, GSI granted credits for services rendered in 1991 totaling \$109,045. These credits were not reported (see finding II.A.2.b.). The Committee reported debt owed to GSI at June 30, 1991 of \$480,614 and at December 31, 1991 of \$284,931.¹⁰

The Audit staff calculated the outstanding debt at the beginning of 1991 to be \$664,371. Over the course of 1991, the debt to GSI averaged

¹⁰ The Committee was informed by GSI in a memo dated January 24, 1992 that their outstanding debt at December 31, 1991 had been reduced to \$284,931. In a February 25, 1992 memo from the Committee to GSI, both parties apparently agreed that the debt at December 31, 1991 was actually \$500,373.

approximately \$500,000. The debt at December 31, 1991 was \$516,743.¹¹ At year end 1991, the Committee under reported debt to GSI by \$231.812 (\$516,743 - \$284,931).

The Committee reported a debt owed to GSI at January 1, 1992 of \$284,931. This amount was consistent with the prior period report and, as in that period, incorrect by \$231.811. In 1992, GSI granted credits totaling \$24,532 for services rendered in 1991 which the Committee also failed to report (see finding II.A.2.b.). The Committee reported a debt owed to GSI at December 31, 1992 in the amount of \$200,593.

As noted above, the Audit staff calculated the outstanding debt at January 1, 1992 to be \$516,743. During 1992, the Committee reduced its overall debt to GSI as a result of GSI retaining amounts in excess of billings of \$65,283 (\$746,900 - \$681,617) and the credit of \$24,532 for 1991 services received in January 1992. Thus the outstanding debt at December 31, 1992 was \$426,928.¹² The Committee again under reported its debt to GSI, this time by \$226,335 (\$426,928 - \$200,593).

As a result of the errors noted above the Committee's reported debt to GSI was incorrectly reported throughout the audit period.

At the exit conference the Audit staff provided the Committee with schedules which summarized the GSI debt. The Committee made no comment.

In the interim audit report, the Audit staff recommended that the Committee file amended Summary Pages and Schedules D to correct the debt reported for each of the reporting periods.

11	Debt beginning of the year 1991	\$664,371
	add GSI Billings	\$1,477,533
	less amounts retained by GSI	(\$1,359,005)
	less GSI credits	<u>(\$109,045)</u>
	Debt at year end 1991	\$516,743
12	Debt beginning of the year 1992	\$516,743
	and GSI Billings	\$681,617
	less amounts retained by GSI	(\$746,900)
	less GSI Credits	<u>(\$24,532)</u>
	Debt at year end 1992	\$426,928

In response to the interim audit report, the Committee, on October 27, 1995, filed amended Summary Pages and Schedules D which materially corrected the debt reporting deficiencies.¹³

b. Reporting of Offsets

As outlined in the background discussion of GSI, funds maintained by GSI were transferred between the Committee's custodial accounts and GSI's corporate account. The Committee correctly reported both the contributions deposited into the custodial accounts and the transfers to GSI's corporate account. However, the return transfers from GSI's corporate account to the custodial accounts were not correctly reported in either 1991 or 1992.

In 1991 GSI transferred \$115,150 into the Committee's custodial account from its corporate account. The Committee reported \$99,700 of this amount as unitemized contributions. Thus, the Committee failed to report \$15,450 (\$115,150 - \$99,700) of the transfers as refunds from GSI. In addition, the \$99,700 which was reported as unitemized contributions should have been reported and itemized as refunds received from GSI.

For 1992, GSI transferred \$321,350 back to the Committee's custodial accounts of which \$293,117 was reported on Detailed Summary Page line 11.a.ii. as unitemized individual contributions. The Committee failed to report \$28,233 (\$321,350 - \$293,117) of the transfers and failed to itemize the \$293,117 correctly as refunds received from GSI.

At the exit conference, the incorrect reporting of the offsets from GSI was discussed. The Committee was told that its reports would have to be amended to correct the reporting inaccuracies for GSI. The Committee had no comment.

In the interim audit report, the Audit staff recommended that the Committee file amended Summary Pages, Detailed Summary Pages and Schedules A to correct the reporting of receipts for 1991 and 1992.

In response to the interim audit report, the Committee, on October 27, 1995, filed amended Summary Pages, Detailed Summary Pages and Schedules A which materially corrected the receipt reporting deficiencies

¹³

In the Committee's amended reports, an additional \$833 in the initial outstanding debt to GSI is acknowledged at January 1, 1991. With this difference, the debt reported owed to GSI during the audit period generally conforms to the Audit staff calculations. A combination of the initial difference, an unexplained \$90 difference in amount billed during the Post General period and the inclusion of a \$4,961 invoice for 1992 services which was received in 1993 resulted in an increase in the ending debt reported at December 31, 1992 of \$5,704.

9707025073

c. Canvass Program Reporting

A review of the Canvass Program revealed that the Committee reported the financial activity of the Canvass Program through August 15, 1991. The Committee reported receipts of \$47,480 and disbursements of \$40,700.

The Audit staff calculated that \$34,920 in deposits and \$36,075 in disbursements for the period August 16 through December 31, 1991 were not reported on the Committee's Year End 1991 disclosure report.

At the exit conference, the matter of the Canvass Program was discussed. The Committee had previously been provided a description of the amounts omitted from the disclosure reports. The Committee made no comment.

In the interim audit report, the Audit staff recommended that the Committee file amended Summary Page, Detailed Summary Page, and Schedules A and B for the Year End 1991 report to correct the public record.

In response to the interim audit report, the Committee, on October 27, 1995, filed an amended Summary Page, Detailed Summary Page and Schedules A and B for Year End 1991 which materially corrected the receipt and disbursement reporting deficiencies for the GSI Canvass Program.

B. ALLOCATION OF GENERIC VOTER REGISTRATION/GOTV EXPENSES

Section 106.5(d)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that all state party committees shall allocate their administrative expenses and costs of generic voter drives according to the ballot composition method. Under this method, expenses shall be allocated based on the ratio of federal offices expected on the ballot to total federal and non-federal offices expected on the ballot in the next general election to be held in the committee's state.

Section 106.5(g)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that a committee that has established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) shall pay the entire amount of an allocable expense of joint federal and non-federal (allocable) activities from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

970 / 02507 / 4

During the 1991 and 1992 election cycle, the ballot composition ratio for the Committee was 50%.¹⁴ Any generic voter registration or get-out-the-vote program conducted by or supported by the Committee could have been allocated with the non-federal accounts paying no more than 50%. In addition, these payments were required to have been made from the federal accounts and reimbursed by the non-federal accounts.

A review of the Committee's accounts revealed that disbursements totaling \$1,125,688 appeared to have been made in support of activities such as voter identification, voter registration, and get-out-the-vote drives and were wholly paid from the non-federal accounts.

Included in the above amount are contributions totaling \$895,000 to three non-federal committees. Of this amount, \$709,000 was given to "No on Proposition 165," \$110,000 was given to the "Committee to Protect the Political Rights of Minorities" and \$76,000 was given to "L.A. Vote." A review of the state disclosure reports filed by these Committees indicate that the funds provided by the Committee's non-federal accounts were spent for voter registration and get-out-the-vote (GOTV) activities.

The Committee also had a new voter bounty program through which Committee accounting records indicated that the Committee paid \$151,336 to local party and candidate committees. Under this program, the Committee would pay a bounty of a dollar per new registered voter. The program operated in both 1991 and 1992.

Finally, the balance, \$79,352, was paid to various individuals, vendors and local committees for activities which were variously described on Committee documentation as GOTV, local voter survey or voter registration.

The Audit staff concluded that the Committee was making payments to these committees, individuals and vendors in support of voter registration programs and at least half of the amount should have been paid with federal funds. All of the disbursements on behalf of the programs described above were made from the Committee's non-federal account. The Committee should have paid at least \$562,844 (\$1,123,688 X 50%) from its federal accounts.

¹⁴ In Advisory Opinion 1991-27 requested by the Committee, the Commission determined that, based on Article II, section 6(b) of California's Constitution, the Committee could not include a point for local candidates in its ballot composition calculation. This would result in an allocation ratio of 57% federal and 43% non-federal. The Advisory Opinion further noted that if an injunction was obtained to bar enforcement of Article II, section 6(b), the Committee would become entitled to the point for local candidates retroactive to January 1, 1991. On August 4, 1994, in the case of the California Democratic Party v. Lungren, the United States District Court for the Northern District of California granted an injunction enjoining the State of California from enforcing Article II, section 6(b). As a result, the Audit Division has included a point for local candidates in its ballot composition calculation.

At the exit conference, the Committee was provided a schedule of the voter identification, voter registration, get-out-the-vote activity and the bounty program. The schedule included a breakdown of the federal and non-federal shares. The Committee responded that the bounty program for voters registered was voluntary and not a voter registration program.

In the interim audit report, the Audit staff recommended that the Committee provide documentation, other than documents previously provided to the Commission, to demonstrate that the purposes of the programs were not generic voter identification, voter registration, or get-out-the-vote activity and did not require allocation between federal and non-federal accounts. This documentation was to include evidence from the other committees and organizations demonstrating that these funds were not used for voter registration. Absent such documentation, it was recommended that the federal accounts reimburse the non-federal accounts \$562,844.

The Committee's response to the interim audit report stated that it "substantially disagrees with this finding and the recommended reimbursement from the federal accounts" and it discussed the various payments as follows:

"No on Proposition 165: The Report finds that the Committee paid \$709,000 from its nonfederal account to a California ballot measure committee formed to oppose Proposition 165. The No on 165 Committee used the \$709,000 to conduct a nonpartisan voter registration drive. According to the Federal Election Campaign Act and Federal Election Commission regulations, such nonpartisan efforts need not come from allocated federal funds.

"In the context of voter registration drives, a nonpartisan activity means that no effort is or has been made to determine the party or candidate preference of the individuals before encouraging them to register to vote or to vote." (11 C.F.R. 100.8(b)(3).) A corporation or labor union may donate funds for nonpartisan voter registration drives directly to nonprofit organizations which are exempt from taxation under 26 U.S.C. § 501(c)(4) and which do not support, endorse, or oppose candidates or political parties. (11 C.F.R. 114.4(c)(2).)

"Here, the No on 165 Committee conducted a nonpartisan voter registration drive. Also, the No on 165 Committee qualifies as an organization that does not support, oppose or endorse candidates or political parties. Therefore, the No on 165 Committee's voter registration funds may come directly from nonfederal sources, including those of the Committee.

"Committee to Protect the Political Rights of Minorities: The Report also concludes that payments of \$110,000 made to the Committee to Protect the Political Rights of Minorities ("Minorities Committee") were for voter registration regulated by the Commission. This is simply not the case.

"The Minorities Committee is connected to the Black American Public Affairs Committee (BAPAC), a nonprofit 501(c)(3) organization. The Minorities Committee conducted a nonpartisan voter registration program on behalf of BAPAC.

"Similar to the No on 165 registration committee, the Minorities Committee used this Committee's funds to conduct strictly nonpartisan voter registration drives. Once again, this activity is not regulated by the Commission and it may be funded from nonfederal sources."

The Committee assumed that because corporations and labor unions are permitted under 11 CFR 114.4(c)(2) to directly fund nonpartisan voter registration drives conducted by nonprofit, tax exempt organizations, it follows that non-federal funds from any source may be used to fund such voter drives. The Committee concludes it is therefore entitled to fund such voter registration programs qualifying under 11 CFR 114.4(c)(2) from non-federal accounts.

The Audit staff disagrees with the Committee's interpretation. Neither the Act nor the Regulations discuss nonpartisan voter registration in the context of political parties. Further, it is presumed that any voter registration funded by a political committee is necessarily partisan. Funding of nonpartisan voter registration conducted by nonprofit, tax exempt entities is, therefore, not addressed.

The Committee acknowledges that it made contributions to No on 165 and the Committee to Protect the Political Rights of Minorities in support of voter registration. Whether or not No on 165 or the Committee to Protect the Political Rights of Minorities are legitimately nonprofit, tax exempt organizations and whether or not the voter registration they conducted was nonpartisan are not relevant in this case because they do not affect the character of voter registration funded by a party committee. Thus, any voter registration funded by the Committee must, according to 11 CFR §106.5(d)(1)(i), be allocated according to the ballot composition method.

Accordingly, the Audit staff still believes that the Committee should have paid \$409,500 $[(\$709,000 - \$110,000) \times 50\%]$ from its federal account.

Next, the Committee addressed the funds paid to LA Vote:

"LA Vote: The Report concludes that \$76,000 paid to this local organization in Los Angeles should have been allocated. The Committee maintains that the LA Vote committee was primarily formed to support local candidates for office within the County of Los Angeles. The purpose of the contribution by the Committee to LA Vote was to assist LA Vote with its GOTV effort on behalf of Yvonne Braithwaite Burke who was the Los

Angeles County Democratic Central Committee's endorsed candidate for the Los Angeles County Board of Supervisors."

The Committee did not support their contention with any documentation.

Despite the fact that focus of the GOTV may have been a local candidate, the ballot for the election also included candidates for federal office and thus any GOTV effort would benefit both federal and non-federal candidates. The regulations state that GOTV funded by state party committees must be allocated between federal and non-federal accounts using the ballot composition method. Accordingly, the Audit staff maintains that the funds sent to LA Vote from the Committee should have been allocated and that the Committee should have paid \$38,000 (\$76,000 x 50%) from its federal account.

The Committee provided documentation which indicated that GOTV expenditures totaling \$23,427 was spent on special elections for state offices. There were no federal candidates running simultaneously in these contests and after reviewing the documentation the Committee provided, the Audit staff accepted this GOTV activity as nonallocable because no federal election was affected.

The Committee agreed with the audit staff concerning the remaining items and disclosed a debt of \$103,630 owed by its federal accounts to the non-federal accounts.

The Audit staff concludes that the Committee owes a total of \$551,130 (\$409,500+ \$38,000 + \$103,630) from its federal accounts to its non-federal accounts.

C. APPARENT PROHIBITED CONTRIBUTION

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any election to federal office and that it is unlawful for any political committee knowingly to accept or receive any contribution from a source prohibited by this section.

Section 441b(b)(2) of Title 2 of the United States Code states, in part, that the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any political party in connection with any election to any of the offices referred to in this section.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that for the purposes of 11 CFR 100.7(a)(1), the term anything of value includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the provision of any goods or services without charge or at a charge which is less than the usual an normal charge for such goods or services is a contribution. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind

9 7 0 / 0 2 5 0 7 / 8

contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.

Section 100.7(a)(4) of Title 11 of the Code of Federal Regulations states, in part, that the extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person'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(b) of Title 11 of the Code of Federal Regulations states, in part, that a corporation in its capacity as a commercial vendor may extend credit to a political committee or another person on behalf of a political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

The Audit staff identified an entity which appeared to have made prohibited contributions to the Committee. This is in addition to prohibited contributions of GSI which were discussed at Finding II.A.1.

During our review of the Committee's expense reimbursements to Committee staff, we noted reimbursements to a corporation, River West Development, Inc. (River West). River West is a real estate development company owned by Mr. Philip Angelides, the Committee Chairman for most of the audit period. The Committee also rented office space for its Sacramento headquarters from River West.

Expenses were incurred by Mr. Angelides on behalf of the Committee using both a River West corporate credit card and his personal credit card. The charges made on Mr. Angelides' personal credit card included in this finding are those which were reimbursed first by River West which was then reimbursed by the Committee. Individual reimbursed amounts were outstanding for periods ranging from three to three hundred seventy-three days and on average for seventy-one days. These reimbursed expenses, both those incurred on Mr. Angelides personal credit card and those incurred on a River West corporate credit card, were primarily for Mr. Angelides' Committee related travel, subsistence and telephone charges. Ultimately, the Committee reimbursed River West and Mr. Angelides \$42,183 (see Attachment 1) for these charges.

By accepting the corporate advances, the Committee accepted a corporate contribution of \$42,183. Not included in this amount were reimbursements to River West for salaries of two River West employees who also performed work for the Committee and rent payments for office space.

A schedule of the advances made by River West on behalf of the Committee was presented at the exit conference. The Committee made no comment.

9707025079

The Audit staff recommended in the interim audit report that the Committee demonstrate that no corporate contribution was made to or received by the Committee. The information was to include, but not limited to, credit card statements, billings to the Committee and any other documentation to demonstrate that these advances were not made by River West and accordingly, no corporate contribution occurred. In addition, the Audit staff requested that the Committee provide documentation from River West which disclosed the type of River West's incorporation (e.g. C-Corp, S-Corp, etc.).

In its response to the interim audit report, the Committee stated that it contested the finding and maintained that:

"River West acted as any commercial vendor and extended credit to the Committee in the ordinary course of business. As established by the attached statement of Jeri Timmons, then corporate Secretary of River West, the corporation was in the business of providing consultant and project management services. Those services routinely involved advancing costs for travel and entertainment, delivery and telephone charges using River West's and/or Mr. Angelides' established accounts.

"These costs were then billed by River West to the clients of the corporation. River West treated the Committee not differently from other clients as reflected in Ms. Timmons' statement."

In Ms. Timmons' statement, she explains that River West is a "C" (regular) corporation and solely owned by Mr. Angelides. She states "'River West Developments' business consists of serving as a consulting and project management firm. Its clients are primarily partnerships, corporations, unincorporated associates and individuals owning real estate in the Sacramento metropolitan area." She describes the services River West performs for its clients as follows:

"The consulting and project management services provided by River West to the landowners include:

- ° coordinating the services of professionals such as land use advocates, land planners, architects, engineers, and construction firms.
- ° delegating River West staff to manage and coordinate particular projects
- ° providing full accounting services to the owning entity...

"The methods of purchasing services and materials are:

- ° purchasing directly on behalf of the land-owning entity, using accounts established by or funds belonging to the entity

- ° purchasing on behalf of the entity using accounts established by River West Developments, which are paid for using River West Developments funds, and subsequently billed to the entity using River West Developments' computerized accounts receivable system.

"In general, the indirect project costs such as aerial surveys, blueprints, photography, deliveries, and travel and entertainment were consistently billed to River West Developments' established accounts."

Ms. Timmons' statement establishes that River West performs a broad range of services on behalf of their clients. These services are rendered (by Ms. Timmons' description) because the client who owns "real estate in the Sacramento metropolitan area" has engaged River West to consult and manage its real estate's development. River West may provide a wide range of ancillary services, but they are always provided in conjunction with the prime focus of River West's business which is real estate development and management. The services provided to the Committee by River West were not related to real estate development or management, but rather to the conduct of the Committee's activities as a Political Party. As a result, the services provided by River West were not in the ordinary course of its business and the extension of credit for these services constitutes a corporate contribution.

Based on the above and Mr. Angelides' relationship to the Committee, the Audit staff concludes that the Committee received prohibited contributions of \$42,183 from River West in the form of advances.

D. EXCESSIVE CONTRIBUTION RESULTING FROM STAFF ADVANCES

Section 441a(a)(1)(C) of Title 2 of the United States Code states that no person shall make contributions to any political committee in any calendar year which, in the aggregate, exceed \$5,000.

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of a political committee is a contribution unless the payment is exempted from the definition of a contribution under 11 CFR 100.7(b)(8).

Entities variously identified as King Air, King Air Associates, King Air II and King Air Associates II provided air transportation on thirty-nine occasions between March 1991 and October 1992 for the Committee, and in particular, for Mr. Angelides. From the available documentation, the Audit staff calculated that eighty-seven separate flights were made. The Committee paid only coach fare for its passengers and it appears that the Committee paid for none of these flights in advance. Between August 1991 and December 1992, the Committee made reimbursements related to King Air totaling \$35,988.

Documents found with the invoices from King Air indicated that a connection with River West may have existed. In response to an Audit staff inquiry, the Committee acknowledged that Mr. Angelides was a "partner in King Air" but were not more specific about the actual nature of the relationship. The Committee did say that Mr. Angelides used King Air when he traveled on business matters for River West.

Our research indicated that no entity named King Air, King Air Associates, or King Air II was ever incorporated in California. Based on the Committee's assertion and the lack of any record of incorporation, the Audit staff believed King Air to be a partnership. If River West was a partner in King Air, the Committee would have received a prohibited contribution from River West. If Mr. Angelides was a partner in King Air, the Committee would have received an excessive contribution from Mr. Angelides. In either case, the pro rata share of the usual and normal charge for the flights would have been the basis for calculating any contribution amount.¹⁵ In addition, none of the reimbursements were made within thirty days of incurrence. Thus, if Mr. Angelides was the partner, the entire pro rata share of the usual and normal charge would be a contribution pursuant to 11 CFR §116.5.

Complete flight records were not made available to allow the Audit staff to determine the Committee's pro rata share of the usual and normal charge. As noted above, the Committee reimbursed coach fare instead of its pro rata share of usual and normal charge. Therefore, if the pro rata share of the usual and normal charge exceeds the coach fare paid by the Committee, an unreimbursed amount would still be outstanding.

A schedule of the King Air travel reimbursements on which the Audit staff outlined this potential problem was presented to the Committee at the exit conference. The Committee responded that it was Mr. Angelides and not River West who was the partner in King Air, but no documentation was provided in support of this assertion.

In the interim audit report, the Audit staff recommended the Committee provide documentation demonstrating the nature of King Air's organization and if a partnership provide documents such as a Partnership Agreement to demonstrate whether River West or Mr. Angelides personally is the "Partner" in King Air. The Audit staff further recommended that the Committee provide documentation to demonstrate that it did not receive either a corporate or excessive contribution. This documentation was to include, but not limited to, the total cost for each leg of the flights, the equivalent charter cost of each leg of the flights, the passengers on each leg, the reason for each passenger's travel, and the total reimbursed by the Committee for each flight. In addition, the Audit staff requested the Committee obtain from King Air, Mr. Angelides or River West and provide to the Audit staff documentation which explained who paid the unreimbursed

¹⁵ Usual and normal charge for the flights would be the charter rate for the flight using a similar aircraft

9 / 0 / 0 2 5 0 7 3 2

portion of each flight. Finally, the Audit staff recommended that the Committee provide documentation showing whether King Air routinely provided air transportation and services to entities other than the partners and the Committee and, if so, the normal billing practices for those services.

The Committee responded to the interim audit report as follows:

"Notwithstanding the multitude of names involving the terms "King Air" there were in fact only two entities involved in this situation. The first entity in existence during the audit period until March 18, 1992 was King Air Associates. This was the name under which a group of owners held an undivided interest in an airplane (King Air F-90 N17TS). Although a written partnership agreement was never executed, partnership tax returns were filed by King Air Associates.

"Phil Angelides held an individual interest of 6.25% in King Air Associates, as evidenced by the enclosed copies of IRS forms K-1 tax returns filed by King Air Associates for calendar years 1991 and 1992.

"On March 18, 1992, King Air Associates sold the airplane to an out of state entity unrelated to any of the owners. Several of the prior owners of the plane decided to enter into a group charter arrangement with a private charter corporation known as Continental Sabre Corporation. The pilot who previously flew for King Air Associates, David Bell, also flew for Continental.

"As a matter of convenience Arlen Opper, the prior managing partner of King Air Associates, agreed to remain as the 'central billing agent' for those prior owners who wished to use the services of Continental. This central billing agent was referred to as King Air II or King Air Associates II. This "entity" served no purpose other than to act as a clearinghouse for the billings generated through the use of Continental's plane.

"The group billing arrangement consisted of Continental's billing quarterly assessments of estimated flight hours at \$13,575 per quarter, billed to the three most frequent users of its services. Continental would send bills to King Air II as flights occurred. Continental's invoices deducted fuel charges, since the pilot purchased fuel personally. The pilot would include the fuel charges in his 'pilot services' charges. Mr. Opper would send bills to the users of the plane, charging them 100% of the pilot services and for the flight time in excess of the hours prepaid by the quarterly allotment."

Based on the available information, it appears that the flights on King Air Associates (the partnership), and King Air II (the arrangement with Continental Sabre Corporation), were provided on behalf of the Committee through Mr. Angelides. While the specifics as to purpose and passengers for each flight remains vague due to the

incomplete records, the invoices indicate that the flights began after Mr. Angelides became Party Chair and that he traveled by King Air on party business.

Given the above, the Audit staff performed an analysis to determine if Mr. Angelides, by advancing funds on behalf of the Committee, made an excessive contribution to the Committee. Other advances made by Mr. Angelides not related to the flights on King Air were included to determine a total excessive contribution pursuant to 11 CFR §116.5. The other advances considered in the review were those made personally by Mr. Angelides and were primarily for travel and subsistence costs incurred in the course of pursuing official Committee business.¹⁶

The Committee, unable to locate the flight logs, did not provide the detailed information the Audit staff requested in the interim audit report. That information was needed to determine the pro rata share of the usual and normal cost of each flight. The cost of the flights to the Committee was, therefore, necessarily based on the invoiced flight costs.¹⁷ Thus, the Audit staff does not know the actual cost of many of the flights, the number of passengers, the pro rata share of cost related to the Committee or the equivalent charter costs.

Our analysis indicated that Mr. Angelides made excessive contributions to the Committee during 1992 (see Attachment 2). The excessive portions of his contributions range from \$501 to \$47,426. Included in these totals are the amounts invoiced for each flight, not necessarily the amounts paid by the Committee. As a result, \$30,184 remains unpaid. Although the Committee did not provide documentation to demonstrate who paid the unreimbursed portions, the Audit staff presumes they were paid by Mr. Angelides since King Air, the partnership, no longer existed. This results in an excessive contribution of \$24,184 (\$30,184 less the \$5,000 contribution and \$1,000 travel allowances) which is still outstanding.

¹⁶ The amounts included in this review were distinct from advances made by Mr. Angelides' company River West discussed at Finding II C

¹⁷ This approach is consistent with that taken by the Committee in a spreadsheet of reimbursements to King Air II which they provided with their response. The spreadsheet lists a net unpaid balance owed to King Air II which was derived by summing the differences of the invoice amounts less the respective amounts billed and paid. The invoice amounts for each flight may still not reflect all of the flight cost. Partnerships such as King Air Associates are usually formed to share the considerable expenses of airplane ownership. An April 24, 1992 King Air summary of charges to the Committee was found among the Committee records. Included on this summary was an annual maintenance charge of \$7,587 dated 1/28/92. On the summary, this amount was carried to a column to indicate that the charge was paid or by whom. Further, the cost of operating the aircraft may not be equal to the "usual and normal charge" for the flights. The usual and normal charge would be the equivalent charter rate for the flights. That amount would include, among other things, a profit for the charter company.

9797025074

E. NON-FEDERAL FUNDS DEPOSITED INTO FEDERAL ACCOUNTS

Section 102.5(a)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that political committees which finance political activity in connection with both federal and non-federal elections shall establish a separate federal account. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account.

Section 102.6(a)(1)(ii) of Title 11 of the Code of Federal Regulations states, in part, that transfers of funds may be made without limit on amount between a State party committee and any subordinate party committee whether or not they are political committees under 11 CFR §100.5 and whether or not such committees are affiliated.

Section 106.5(a)(2)(iv) of Title 11 of the Code of Federal Regulations states, in part, that political committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity: Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

Sections 106.5(g)(1)(i) and (2)(B) of Title 11 of the Code of Federal Regulations state, in part, that political committees that have established separate federal and non-federal accounts shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense and that the timing of the transfer of funds from its non-federal account may not be more than ten days in advance nor more than sixty days after the payments for which they are designated are made.

Committees which have federal and non-federal accounts, may pay certain expenses on an allocated basis. These disbursements must be made from either a federal account or an allocation account which is considered a federal account. To reimburse for the non-federal portion of the expenses, the committee is permitted to transfer funds from its non-federal account to one of its federal accounts. These transfers are reported and itemized on Receipt Schedule H-3 and hence are referred to as H-3 transfers.

As discussed below, in addition to the permissible reimbursements, the Audit staff identified \$177,483 in non-federal funds which the Committee incorrectly deposited into its Federal accounts.

1. Apparent Duplication of H-3 Transfer Amounts

Each H-3 transfer made by the Committee was supported by a detailed schedule of allocable payments for a specific period. For each disbursement,

these schedules indicated the non-federal allocation rate and the non-federal allocable amount.

In the process of reviewing the H-3 transfer support schedules, the Audit staff found three instances where duplication occurred. In each instance, some of the allocable payments found on one schedule were also found on another. Because of the duplications, the Committee transferred \$47,185 more than was allowable.

At the exit conference, the apparent duplications were explained to the Committee and a schedule outlining the duplications was presented. The Committee stated that it was not aware that any duplication had occurred.

In the interim audit report, the Audit staff recommended that the Committee provide documentation such as canceled checks and invoices showing that the funds deposited were not the result of duplicate reimbursements or demonstrate that the funds were transferred back to a non-federal account.

The Committee responded to the interim audit report as follows:

"The Committee has checked its records and does not contest this finding. The Committee has amended its 1992 year end disclosure statement to reflect a debt to its nonfederal committee of \$47,185. As soon as funds are available the Committee will pay this debt."

The Audit staff reviewed the amended report and determined this debt was included in the total reported owed to the non-federal account.

2. Offsets to Allocable Expenditures

In the opinion of the Audit staff, when a refund or rebate of an allocated expense is received, the amount received should be credited between federal and non-federal accounts on a pro rata basis equal to the allocation ratio used to make the original disbursement. The Audit staff determined that the Committee deposited amounts totaling \$57,298 into its federal accounts which represented the non-federal share of offsets.

a. Insurance

The Committee paid premiums of \$8,639 in 1991 and \$24,042 in 1992 for a master liability insurance policy which covered it and the local party committees. The payments were made at an allocated rate of 50%/50% in 1991 and 57% federal -43% non-federal in 1992.¹⁸ The Committee received \$5,810 in 1991 and \$17,867

¹⁸ Two premium payments were paid with federal funds only. This reduced the non-federal allocation from 50% to 43%.

9707025076

in 1992 from local party committees as a reimbursement for the insurance premiums. These reimbursements were deposited to the Committee's federal account. As a result, \$2,905 ($\$5,810 \times .50$) of the 1991 and \$7,677 ($\$17,867 \times .4297$) of the 1992 reimbursements are non-federal funds. Thus, in total, \$10,582 in non-federal funds were deposited in the Committee's federal accounts.

b. San Francisco Subleases

In 1989, the Committee signed an office lease which ran through April 14, 1992 for its headquarters office space in San Francisco. The rent payments were allocated 50% federal and 50% non-federal. A change in the Party leadership occurred in March of 1991 and the headquarters was moved from San Francisco to Sacramento.

To partially offset the rent due for the San Francisco office, the Committee sub-let the space to four tenants. Initially, the rent offsets were deposited into the Committee's non-federal accounts. Beginning in August, 1991, and continuing through March, 1992, the offsets were deposited in the Committee's federal accounts. The rent offsets should have been credited on a pro rata basis to the Committee's federal and non-federal accounts.

Rent offsets totaling \$64,265 were received by the Committee. Of these funds, \$19,105 was deposited in the Committee's non-federal accounts and \$45,160 was deposited into its federal accounts. As a result \$13,027 [$(\$64,265 \times 50\%) - \$19,105$] in non-federal funds were deposited into the federal accounts.

c. From selected vendors

The Audit staff reviewed offsets received from selected vendors to determine if moneys due the non-federal accounts were deposited in federal accounts.

In determining that the non-federal portion of the refunds from selected vendors were deposited in the federal accounts, the H-3 transfer documentation and H-4 schedules were examined to determine what the allocation ratios were for the initial payment. The Committee deposited the entire amount of the offsets in its federal accounts although a portion of the moneys constituted non-federal funds.

The allocation ratios used to make the original disbursement to each vendor were noted. Using those ratios, the Audit staff calculated that \$33,689 of the refunds and rebates represented non-federal funds.

No adjustments were made to subsequent H-3 transfers from the non-federal accounts for any of the items noted above.

At the exit conference, the Audit staff provided the Committee separate schedules of the non-federal insurance, rent and selected vendor offsets which had been deposited into its federal accounts. The Committee did not agree that it should be required to allocate offsets in the same ratio as the original payment.

In the interim audit report, the Audit staff recommended that the Committee provide documentation showing that the funds deposited were federal funds or document that the non-federal share of the offsets have been transferred to non-federal accounts.

The Committee responded to the interim audit report by stating:

"The Committee has amended its 1992 year end report to reflect this balance as a debt to the Committee's nonfederal account. As soon as funds are available the Committee will pay this debt."

The Audit staff reviewed the amended report and determined this debt was also included in the total reported owed to the non-federal account.

3. San Francisco Democratic County Central Committee

The Committee reported an offset of \$58,000 from the San Francisco Democratic County Central Committee (SFDCCC) on October 31, 1992. The check was dated October 29, 1992 and was deposited by the Committee on October 31, 1992. A review of the Committee's federal accounts revealed no disbursement to the SFDCCC in 1992. A review of the Committee's non-federal accounts identified a wire transfer to the SFDCCC in the amount of \$70,000 on October 30, 1992. Although the SFDCCC had registered as a federal committee, it filed no reports in 1992.

Committee representatives, who had earlier suggested that the \$58,000 may have been the return of moneys the SFDCCC had diverted from a Committee fundraising program, were no longer certain that their earlier explanation was correct. The auditors requested and the Committee representatives agreed to try to obtain additional documentation from the San Francisco Democratic Party. At the exit conference, the Audit staff indicated that the \$58,000 should not have been reported as an offset and questioned whether the funds received were federally permissible.

Materials obtained by the Committee and provided to the Audit staff after the exit conference included the SFDCCC's bank statements. The documentation indicated that the \$58,000 check was drawn on the same bank account to which the \$70,000 was transferred from the Committee's non-federal account.

In the Audit Staff's opinion, all information provided had indicated that the SFDCCC used a single account and, based on the deposit into that account of

funds known to be non-federal, could not be a federal account. Conversely, any funds paid from this account could not be federally permissible. Therefore, the \$58,000 disbursed from this account and received by the Committee were not federally permissible and should not have been deposited to the Committee's federal account.

The offset from the SFDFCC was discussed with the Committee at the exit conference. The Committee commented, referring to the transfer out of \$70,000 and the transfer to the Committee of \$58,000, "there was a connection, but it was not conclusive."

In the interim audit report, the Audit staff recommended that the Committee provide documentation which was to show the reason for the \$70,000 transfer and how the amount had been calculated, and the reason for the \$58,000 offset and how that amount had been calculated. Further, the documentation was to demonstrate that the funds deposited were federal funds and legitimately deposited into the Committee's federal accounts. Finally, documentation from the SFDFCC was to be provided which demonstrated whether it was a political committee as defined at 11 CFR §100.5(c). Absent such showing, evidence was to be provided that \$58,000 had been transferred to the non-federal accounts.

In its response to the interim audit report, the Committee stated:

"A review of the records previously provided to the Audit Division reveals that the San Francisco Democratic Central Committee had \$58,000 cash on hand at the time it made the transfer to the Committee (the Committee's contribution of \$70,000 to the Central Committee was not the source of the Central Committee's transfer). The records further demonstrate that the Central Committee's account balance had at least \$58,000 in federally permissible funds at the time of the transfer.

"Under Commission regulation §110.3(c)(1) such transfers are permissible and not subject to limitation. Moreover, the Commission's Campaign Guide for Political Committees makes clear that transfers from local party organizations, even those unregistered with the Commission, are not subject to limitations so long as the funds are federally permissible (see page 17 of the Guide). The funds transferred were federally permissible and under Commission regulations may be made without limitation.

"The Committee does concede that it misreported this transaction as an offset instead of a transfer from an affiliated committee. The Committee has amended its disclosure statement to correct this."

The Audit staff acknowledges that, provided the source of the funds transferred is permissible under the Act, 11 CFR § 102.6(a)(1)(ii) and 11 CFR §110.3(c)(1) allows unlimited transfers of funds between committees of the same political party whether

or not they are political committees. However, it is noted that in making a transfer in excess of \$1,000, an unregistered party committee becomes a political committee and is required to register with the Commission and file disclosure reports, including a report showing the source of its cash on hand. Also, SFDCCC would be required to maintain either a single account and deposit only funds permissible under the Act, or maintain separate federal and non-federal accounts. The SFDCCC filed a statement of organization with the Federal Election Commission in 1992, but filed no disclosure reports. Records reviewed thus far indicate that SFDCCC maintained only one account into which it deposited both federally permissible and impermissible funds.

In order for the transfer to comply with the Act, the SFDCCC's cash on hand would be required to contain federally permissible funds sufficient to make the transfer. This determination is made by considering the transferred funds to be comprised of the funds most recently received by SFDCCC. If either the date of the Committee's deposit of the SFDCCC's check (October 31, 1992) or the date that the check cleared SFDCCC's account (November 4, 1992) is used as the starting point for the analysis, it is clear that the major source of the \$58,000 transfer to the Committee was the October 30, 1992, \$70,000 wire transfer from the Committee's non-federal account.

If the date of the SFDCCC's check is used (October 29, 1992), the documentation provided is not adequate to allow a complete analysis of the permissibility of the October 29, 1992 cash on hand.¹⁹ However, using the complete versions of the last two SFDCCC state disclosure reports for 1992 along with SFDCCC's bank statements, the following can be determined. The deposits totaling \$65,316 made between October 14 and October 27 comprised the funds from which the \$58,000 was drawn. Because the deposit preceding the October 14 deposits occurred on October 8, the SFDCCC's reported receipts between October 9 and October 27 were analyzed. During this period the Committee reported receiving \$17,551 in what appear to be permissible funds, \$2,450 in funds from unregistered organizations, \$20,901 in impermissible funds²⁰ and \$24,414 in unitemized receipts. Even allowing for the permissibility of the unitemized and funds from unregistered organizations, the deposits made between October 15 and October 27 contained no more than \$44,415 in permissible funds. Consequently, the \$58,000 transfer included impermissible funds.

Regardless of the arguments presented concerning the permissibility of transfers between committees of the same political party, these regulations may not be used to effect a transfer from the Committee's non-federal account to its federal account by

¹⁹ The bank records provided consist of the October and November 1992 bank statements for SFDCCC's account and selected pages from SFDCCC's reports filed with the state of California. The Audit staff acquired complete copies of the SFDCCC's reports for the last two reporting period for 1992

²⁰ According to SFDCCC's reports, this includes \$6,250 in corporate funds and \$14,651 from the Committee's non-federal account

9707025070

an "exchange of funds" with the SFDCCC. Since the Committee has elected not to provide the requested information concerning the reason for the transfers and how the transfer amounts were determined, the Audit staff concludes that they constitute a prohibited transfer from the Committee's non-federal account to its federal account by routing the funds through the SFDCCC.

4. No on Proposition 164

In the review of receipts from political committees, checks of \$10,000 on October 30, 1992 and \$5,000 on October 27, 1992 from the Nancy Pelosi for Congress Committee and the Bob Matsui for Congress Committee respectively were noted.²¹ In the subsequent review of disbursements from the non-federal accounts, the stub of a voided check for \$15,000, dated October 30, 1992 and made payable to "No on 164" was noted. The notation on this particular check stub was as follows:

700 900 by the request of Nancy Pelosi \$10,000
700 900 by the request of Robert Matsui \$ 5,000

The next check was also written on October 30, 1992 and made out to "No On 164" in the amount of \$20,000. The source of \$15,000 contributed appears to be the Pelosi and Matsui Committees. No information concerning the source of the remaining \$5,000 was found in Committee records.

"No on 164" was an organization which opposed Proposition 164, a statewide initiative which would impose term limits on California office holders including U.S. Senators and Representatives.

While the Committee was not required to use federally permissible funds for the contribution to "No On 164," the Committee appeared to have made the contribution from its non-federal account at the request of the Pelosi and Matsui Committees and was reimbursed for this contribution. The Committee deposited the checks from the Pelosi and Matsui Committees into its federal account.

Consequently, the Audit staff believes that these transactions resulted in the Committee exchanging \$15,000 in non-federal funds for \$15,000 in federal funds.

At the exit conference the Committee acknowledged the source of the \$15,000 transfer. The Committee disagreed that they should have paid the \$15,000 from the federal funds or that they should now be required to repay the non-federal account \$15,000.

²¹ The Nancy Pelosi for Congress Committee and the Matsui for Congress Committee reported these amounts as contributions to the DSCCC-F

97070250701

In the interim audit report, the Audit staff recommended that the Committee provide documentation which demonstrated why the transaction should not be viewed as moving non-federal funds to the federal account or transfer \$15,000 to the non-federal accounts.

In its response to the interim audit report, the Committee stated:

"The Interim Audit Report further objects to a contribution made by the Committee to a state ballot measure committee, "NO on 164." The contribution was in the amount of \$15,000. The Report suggests that the source of \$15,000 of the contribution were funds from Congressman Matsui and Congresswoman Pelosi.

"The Committee does not agree with this conclusion. The Matsui and Pelosi funds were not used to make this contribution to the No on 164 committee. The funds received from Matsui and Pelosi were deposited into the Committee's federal account. The contribution to the No on 164 committee was made from the Committee's nonfederal account. No transfer from the federal accounts to the nonfederal accounts of the Committee occurred, and thus there was no "reimbursement" as the Report concludes.

"The true source of the contributions to the No on 164 committee was the Committee's nonfederal account. Matsui and Pelosi were not the source. Furthermore, as the Report concedes the Committee was under no obligation to make its No on 164 contribution from its federal accounts.

"The Report's conclusions are simply wrong. The Report cites no authority for its findings nor does the Report cite what statute or regulation the Committee allegedly violated."

The Audit staff and the Committee agree that the amount in question totaled \$15,000; that the contribution to No on 164 was made from the non-federal account; and that the Committee could make a contribution to "No on 164" from its non-federal account. However as noted above, the indirect source of the \$15,000 was the campaign committees of Congressman Matsui and Congresswoman Pelosi and those funds were deposited into the Committee's federal account.

The Audit staff, despite the Committee's assertion to the contrary, cites 11 CFR §106.5(g)(1)(i) which prohibits a committee from making any transfer of funds from its non-federal accounts to its federal accounts for any purpose other than to

pay allocable expenses.²² The Audit staff concluded that the transaction involving the deposit of the Matsui and Pelosi contributions to the Committee's federal account and the subsequent contribution to "No on 164" made from the Committee's non-federal account was indirectly a transfer of funds from its non-federal to its federal account and thus required a \$15,000 transfer to the non-federal account.

On August 22, 1996, the Commission decided to take no further action on this matter. Therefore, no transfer from the federal account to the non-federal account is required.

F. REPORTING AND ITEMIZATION OF H-3 TRANSFERS

Section 104.10(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that a political committee that pays allocable expenses shall report each transfer of funds from its non-federal account to its federal account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program or exempt activity.

As explained at finding II.E.1., this Committee made periodic transfers (referred to as H-3 transfers) from its non-federal account to its federal accounts to pay the non-federal portion of allocable expenses. For 1991, the Committee made forty-four such transfers totaling \$695,058. For 1992, the Committee made eighty transfers which totaled \$3,963,785.

During our review of the Committee's H-3 transfer records, we noted that two transfers made in 1991 totaling \$26,563 and five transfers made in 1992 totaling \$509,072 were not itemized as required. Additionally, an H-3 transfer in the amount of \$49,767 made on November 20, 1992 was not reported as required.

At the exit conference, a schedule of these H-3 transfers was presented to the Committee. The Committee indicated that it was not aware that it had failed to report or itemize any H-3 transfers.

In the interim audit report, the Audit staff recommended that the Committee file amended Summary and Detailed Summary Pages for the Post General 1992 reporting

²² Had the Committee deposited the funds received from Congressman Matsui and Congresswomen Pelosi to the non-federal account and then proceeded to make the same contribution to the "No on 164" no issue regarding the contribution would have been made.

9707025073

period and amended Receipt Schedules H-3 for report periods Year End 1991, October Quarterly 1992 and Post General 1992 to correct the public record.

In its response to the interim audit report, the Committee, on October 27, 1995, filed the requested amended disclosure reports.

**G. RECAP OF AMOUNTS RECOMMENDED FOR TRANSFER TO THE
NON-FEDERAL ACCOUNT**

<u>Finding</u>	<u>Amount</u>
II.B. Allocation of Generic Voter Registration/GOTV Expenses	\$551,130
II.E.1. Apparent Duplication of H-3 Transfer Amounts	\$ 47,185
II.E.2. Offsets to Allocable Expenditures	
a. Insurance	\$ 10,582
b. San Francisco Subleases	\$ 13,027
c. From Selected Vendors	\$ 33,689
II.E.3. San Francisco Democratic County Central Committee	<u>\$ 58,000</u>
 TOTAL:	 <u>\$713,613</u> ²³

23

The Committee in its response to the interim audit report acknowledged \$103,630 of the amount from finding II B., and all of the amounts from findings II.E.1. and II.E.2. (less a credit of \$7,460) as a debt owed from its federal account to its non-federal accounts. This debt reported in its amended (1/5/96) 1992 Year End report totaled \$200,653. On December 19, 1995, the Committee stated its intention to reclassify 1993 transfers made from its federal to non-federal accounts as payments on this debt when it amends its 1993 disclosure reports. Provided that the funds transferred were federally permissible and that the transfers were made without reservation, the Audit staff finds no reason to object to the proposed reclassification

970 / 0250724

Democratic State Central Committee of California - Federal

Schedule of Apparent Prohibited Contributions

Reimbursements of Advances from River West made
on behalf of the DSCCC-F and its Chairman

Reimbursement Paid by Committee to:	Check #	Check Total	Check Date	Amount Deemed Prohibited
River West Development Corp.	5357	8,753.89	06/18/92	6,130.71
River West Development Corp.	50455	3,737.78	07/02/92	2,065.54
River West Development Corp.	1575	2,314.80	07/30/92	2,291.80
River West Development Corp.	50919	4,418.38	09/30/92	3,229.78
River West Development Corp.	50917	606.00	10/07/92	606.00
River West Development Corp.	30305	8,909.32	10/20/92	7,367.99
River West Development Corp.	2538	10,999.09	12/04/92	6,716.37
River West Development Corp.	2562	9,017.45	12/15/92	4,114.01
Phil Angelides **	61652	5,334.64	08/02/91	4,380.94
Phil Angelides **	61663	3,608.52	08/05/91	1,863.00
Phil Angelides **	5410	3,364.14	07/02/92	(209.00) *
Phil Angelides **	1822	11,376.49	09/07/92	1,021.31
Phil Angelides **	50665	1,662.79	09/07/92	336.52
Phil Angelides **	51279	6,840.42	12/28/92	2,268.38
Total:				42,183.35 =====

* This offset was paid by check 5410 and 61663.

** Payments to Phil Angelides for reimbursements of his expenses
which were originally paid for him by River West.

97070250705

Democratic State Central Committee of California - Federal
Phil Angelides - 116 5 Analysis for 1992

Payee	Vch #	Incur Date	Calc Date	Incur Amt	Exp Cd	Ctb Date	Days Outstdg	Balance Outstanding	Dates Excessive	Amount* Excessive
Philip Angelides	10	04/10/91	04/10/91	1,227 94	4	04/10/91	379	1,227 94		
Philip Angelides	10	04/13/91	04/13/91	846 86	4	04/13/91	376	2,074 80		
Philip Angelides	10	04/20/91	04/20/91	2,053 59	4	04/20/91	432	4 128 39		
Philip Angelides	10	06/27/91	06/27/91	1,234 82	4	06/27/91	364	5 363 21		
Philip Angelides	10	06/29/91	06/29/91	1,137 83	4	06/29/91	369	6 501 04	06/29/91	501 04
Philip Angelides	22	08/02/91	08/02/91	305 77	4	08/02/91	335	6 806 81	08/02/91	806 81
Philip Angelides	5	05/27/91	06/27/91	176 53	6	08/26/91	311	6 983 34	08/26/91	983 34
Philip Angelides	5	05/29/91	06/27/91	190 00	6	08/26/91	311	7,173 34	08/26/91	1173 34
Philip Angelides	5	06/04/91	06/27/91	0 45	6	08/26/91	311	7,173 79	08/26/91	1173 79
Philip Angelides	5	06/04/91	06/27/91	155 60	6	08/26/91	311	7,329 39	08/26/91	1329 39
Philip Angelides	5	08/05/91	08/05/91	11 50	5	09/04/91	302	7,340 89	09/04/91	1340 89
Philip Angelides	5	08/07/91	08/07/91	8 00	5	09/06/91	300	7,348 89	09/06/91	1348 89
Philip Angelides	21	09/15/91	09/15/91	929 44	4	09/15/91	319	8,278 33	09/15/91	2278 33
Philip Angelides	21	10/27/91	10/27/91	1,151 75	4	10/27/91	277	9 430 08	10/27/91	3430 08
Philip Angelides	21	11/17/91	11/17/91	1,149 00	4	11/17/91	256	10 579 08	11/17/91	4579 08
Philip Angelides	5	08/29/91	09/27/91	117 14	6	11/26/91	247	10,696 22	11/26/91	4696 22
Philip Angelides	5	09/05/91	09/27/91	79 00	6	11/26/91	247	10,775 22	11/26/91	4775 22
Philip Angelides	5	09/05/91	09/27/91	59 00	6	11/26/91	247	10,834 22	11/26/91	4834 22
Philip Angelides	5	09/13/91	09/27/91	63 04	6	11/26/91	247	10 897 26	11/26/91	4897 26
Philip Angelides	54	12/03/91	12/03/91	1,067 31	4	12/03/91	240	11,964 57	12/03/91	5964 57
Philip Angelides	22	12/13/91	12/13/91	1,376 08	4	12/13/91	230	13,340 65	12/13/91	7340 65
Philip Angelides	22	01/08/92	01/08/92	398 33	4	01/08/92	204	13,738 98	01/08/92	7738 98
Philip Angelides	22	01/12/92	01/12/92	2,349 67	4	01/12/92	239	16,088 65	01/12/92	10088 65
Philip Angelides	22	01/15/92	01/15/92	671 00	4	01/15/92	236	16,759 65	01/15/92	10759 65
Philip Angelides	22	01/16/92	01/16/92	727 50	4	01/16/92	235	17,487 15	01/16/92	11487 15
Philip Angelides	22	01/18/92	01/18/92	934 50	4	01/18/92	233	18,421 65	01/18/92	12421 65
Philip Angelides	22	01/20/92	01/20/92	1,823 21	4	01/20/92	231	20,244 86	01/20/92	14244 86
Philip Angelides	4	01/29/92	01/29/92	8 24	4	01/29/92	222	20,253 10	01/29/92	14253 10
Philip Angelides	4	01/29/92	01/29/92	22 66	4	01/29/92	222	20,275 76	01/29/92	14275 76
Philip Angelides	4	01/29/92	01/29/92	6 18	4	01/29/92	222	20,281 94	01/29/92	14281 94
Philip Angelides	22	02/01/92	02/01/92	1 406 00	4	02/01/92	219	21 687 94	02/01/92	15687 94
Philip Angelides	4	02/04/92	02/04/92	22 66	4	02/04/92	216	21 710 60	02/04/92	15710 60
Philip Angelides	4	02/04/92	02/04/92	14 42	4	02/04/92	216	21 725 02	02/04/92	15725 02
Philip Angelides	4	02/04/92	02/04/92	6 18	4	02/04/92	216	21 731 20	02/04/92	15731 20
Philip Angelides	4	02/04/92	02/04/92	4 12	4	02/04/92	216	21 735 32	02/04/92	15735 32
Philip Angelides	4	02/04/92	02/04/92	6 18	4	02/04/92	216	21 741 50	02/04/92	15741 50
Philip Angelides	4	02/06/92	02/06/92	4 12	4	02/06/92	214	21 745 62	02/06/92	15745 62
Philip Angelides	4	02/06/92	02/06/92	4 12	4	02/06/92	214	21 749 74	02/06/92	15749 74
Philip Angelides	4	02/06/92	02/06/92	18 54	4	02/06/92	214	21 768 28	02/06/92	15768 28
Philip Angelides	4	02/06/92	02/06/92	6 18	4	02/06/92	214	21 774 46	02/06/92	15774 46
Philip Angelides	4	02/06/92	02/06/92	6 18	4	02/06/92	214	21 780 64	02/06/92	15780 64
Philip Angelides	4	02/06/92	02/06/92	35 02	4	02/06/92	214	21 815 66	02/06/92	15815 66
Philip Angelides	4	02/06/92	02/06/92	10 30	4	02/06/92	214	21 825 96	02/06/92	15825 96
Philip Angelides	4	02/06/92	02/06/92	20 60	4	02/06/92	214	21 846 56	02/06/92	15846 56
Philip Angelides	4	02/06/92	02/06/92	10 30	4	02/06/92	214	21 856 86	02/06/92	15856 86
Philip Angelides	4	02/13/92	02/13/92	8 24	4	02/13/92	207	21 865 10	02/13/92	15865 10
Philip Angelides	4	02/13/92	02/13/92	32 96	4	02/13/92	207	21 898 06	02/13/92	15898 06
Philip Angelides	4	02/13/92	02/13/92	12 36	4	02/13/92	207	21 910 42	02/13/92	15910 42
Philip Angelides	4	02/13/92	02/13/92	4 12	4	02/13/92	207	21 914 54	02/13/92	15914 54
Philip Angelides	4	02/13/92	02/13/92	18 54	4	02/13/92	207	21 933 08	02/13/92	15933 08
Philip Angelides	4	02/24/92	02/24/92	184 96	4	02/24/92	196	22 118 04	02/24/92	16118 04

Democratic State Central Committee of California - Federal
Phil Angelides - 116 5 Analysis for 1992

11650702

Payee	Vch #	Incur Date	Calc Date	Incur Amt	Exp Cd	Ctb Date	Days Outstdg	Balance Outstanding	Dates Excessive	Amount* Excessive
Philip Angelides	76	03/10/92	03/10/92	1 063 07	4	03/10/92	181	23 181 11	03/10/92	17181 11
Philip Angelides	1	03/13/92	03/13/92	6 18	4	03/13/92	178	23 187 29	03/13/92	17187 29
Philip Angelides	1	03/13/92	03/13/92	6 18	4	03/13/92	178	23 193 47	03/13/92	17193 47
Philip Angelides	1	03/13/92	03/13/92	6 18	4	03/13/92	178	23 199 65	03/13/92	17199 65
King Air	89	03/26/92	03/26/92	2 206 20	4	03/26/92	165	25 405 85	03/26/92	19405 85
Philip Angelides	4	12/27/91	01/29/92	54 33	6	03/29/92	162	25 460 18	03/29/92	19460 18
Philip Angelides	4	01/10/92	01/29/92	65 00	6	03/29/92	162	25 525 18	03/29/92	19525 18
Philip Angelides	4	01/12/92	01/29/92	136 39	6	03/29/92	162	25 661 57	03/29/92	19661 57
Philip Angelides	4	01/15/92	01/29/92	348 84	6	03/29/92	162	26 010 41	03/29/92	20010 41
Philip Angelides	4	01/16/92	01/29/92	58 44	6	03/29/92	162	26 068 85	03/29/92	20068 85
Philip Angelides	4	01/18/92	01/29/92	105 58	6	03/29/92	162	26 174 43	03/29/92	20174 43
Philip Angelides	4	01/19/92	01/29/92	166 43	6	03/29/92	162	26 340 86	03/29/92	20340 86
Philip Angelides	4	04/01/92	04/01/92	72 10	4	04/01/92	159	26 412 96	04/01/92	20412 96
Philip Angelides	4	04/01/92	04/01/92	12 36	4	04/01/92	159	26 425 32	04/01/92	20425 32
Philip Angelides	4	04/01/92	04/01/92	10 30	4	04/01/92	159	26 435 62	04/01/92	20435 62
Philip Angelides	4	04/01/92	04/01/92	16 48	4	04/01/92	159	26 452 10	04/01/92	20452 10
King Air	76	04/02/92	04/02/92	2 532 04	4	04/02/92	158	28 984 14	04/02/92	22984 14
Philip Angelides	65	04/02/92	04/02/92	158 68	4	04/02/92	158	29 142 82	04/02/92	23142 82
Philip Angelides	4	04/08/92	04/08/92	30 90	4	04/08/92	152	29 173 72	04/08/92	23173 72
Philip Angelides	4	04/08/92	04/08/92	8 24	4	04/08/92	152	29 181 36	04/08/92	23181 36
Philip Angelides	4	04/08/92	04/08/92	4 12	4	04/08/92	152	29 186 08	04/08/92	23186 08
Philip Angelides	4	04/08/92	04/08/92	6 18	4	04/08/92	152	29 192 26	04/08/92	23192 26
Philip Angelides	4	04/08/92	04/08/92	4 12	4	04/08/92	152	29 196 38	04/08/92	23196 38
Philip Angelides	4	04/08/92	04/08/92	41 20	4	04/08/92	152	29 237 58	04/08/92	23237 58
Philip Angelides	4	04/08/92	04/08/92	6 18	4	04/08/92	152	29 243 76	04/08/92	23243 76
Philip Angelides	4	04/08/92	04/08/92	8 24	4	04/08/92	152	29 252 00	04/08/92	23252 00
Philip Angelides	4	04/08/92	04/08/92	16 48	4	04/08/92	152	29 268 48	04/08/92	23268 48
Philip Angelides	4	04/08/92	04/08/92	4 12	4	04/08/92	152	29 272 60	04/08/92	23272 60
Philip Angelides	4	04/08/92	04/08/92	6 18	4	04/08/92	152	29 278 78	04/08/92	23278 78
Philip Angelides	4	04/08/92	04/08/92	18 54	4	04/08/92	152	29 297 32	04/08/92	23297 32
Philip Angelides	4	04/08/92	04/08/92	20 60	4	04/08/92	152	29 317 92	04/08/92	23317 92
Philip Angelides	4	04/08/92	04/08/92	18 54	4	04/08/92	152	29 336 46	04/08/92	23336 46
Philip Angelides	4	04/08/92	04/08/92	4 12	4	04/08/92	152	29 340 58	04/08/92	23340 58
Philip Angelides	4	04/08/92	04/08/92	6 18	4	04/08/92	152	29 346 76	04/08/92	23346 76
King Air	76	04/10/92	04/10/92	2 212 71	4	04/10/92	150	31 559 47	04/10/92	25559 47
Philip Angelides	4	01/25/92	02/11/92	154 14	6	04/11/92	149	31 713 61	04/11/92	25713 61
Philip Angelides	4	01/25/92	02/11/92	200 00	6	04/11/92	149	31 913 61	04/11/92	25913 61
Philip Angelides	4	01/25/92	02/11/92	30 00	6	04/11/92	149	31 943 61	04/11/92	25943 61
Philip Angelides	4	02/04/92	02/20/92	164 90	6	04/20/92	140	32 108 51	04/20/92	26108 51
Philip Angelides	4	02/04/92	02/20/92	2008 00	6	04/20/92	140	34 116 51	04/20/92	28116 51
Philip Angelides	4	02/06/92	02/20/92	162 00	6	04/20/92	140	34 278 51	04/20/92	28278 51
Philip Angelides	4	02/11/92	02/20/92	160 60	6	04/20/92	140	34 439 11	04/20/92	28439 11
Philip Angelides	4	02/13/92	02/20/92	194 59	6	04/20/92	140	34 633 70	04/20/92	28633 70
Philip Angelides	21	04/23/92	04/23/92	-2616 75	1	04/23/92		32 016 95	04/23/92	26016 95
Philip Angelides	4	02/17/92	02/26/92	34 48	6	04/26/92	134	32 051 43	04/26/92	26051 43
Philip Angelides	4	02/19/92	02/26/92	68 96	6	04/26/92	134	32 120 39	04/26/92	26120 39
King Air	76	04/30/92	04/30/92	2 395 06	4	04/30/92	236	34 515 45	04/30/92	28515 45
King Air	57	04/30/92	04/30/92	132 58	4	04/30/92	236	34 648 03	04/30/92	28648 03
Philip Angelides	4	02/16/92	03/12/92	51 57	6	05/11/92	225	34 699 60	05/11/92	28699 60
Philip Angelides	4	02/19/92	03/12/92	300 00	6	05/11/92	225	34 999 60	05/11/92	28999 60
Philip Angelides	4	02/21/92	03/12/92	52 31	6	05/11/92	225	35 051 91	05/11/92	29051 91

Democratic State Central Committee of California - Federal
Phil Angelides - 116 5 Analysis for 1992

Payee	Vch #	Incur Date	Calc Date	Incur Amt	Exp Cd	Ctb Date	Days Outstdg	Balance Outstanding	Dates Excessive	Amount* Excessive
Philip Angelides	4	02/26/92	03/12/92	136 98	6	05/11/92	225	35 188 89	05/11/92	29188 89
Philip Angelides	4	03/06/92	03/12/92	100 43	6	05/11/92	225	35 289 32	05/11/92	29289 32
Philip Angelides	4	03/07/92	03/12/92	100 00	6	05/11/92	225	35 389 32	05/11/92	29389 32
King Air	57	05/14/92	05/14/92	1,286 20	4	05/14/92	222	36,675 52	05/14/92	30675 52
Philip Angelides	54	05/20/92	05/20/92	-1067 31	1	05/20/92		35,608 21	05/20/92	29608 21
Philip Angelides	1	03/19/92	03/27/92	215 34	6	05/26/92	210	35 823 55	05/26/92	29823 55
Philip Angelides	1	03/21/92	03/27/92	101 25	6	05/26/92	210	35 924 80	05/26/92	29924 80
Philip Angelides	1	03/21/92	03/27/92	60 01	6	05/26/92	210	35,984 81	05/26/92	29984 81
Philip Angelides	1	03/22/92	03/27/92	23 00	6	05/26/92	210	36,007 81	05/26/92	30007 81
Philip Angelides	4	05/01/92	05/01/92	49 00	5	05/31/92	205	36,056 81	05/31/92	30056 81
King Air	57	06/03/92	06/03/92	3,206 80	4	06/03/92	202	39,263 61	06/03/92	33263 61
Philip Angelides	4	03/11/92	04/11/92	59 40	6	06/10/92	195	39,323 01	06/10/92	33323 01
Philip Angelides	4	04/06/92	04/11/92	8 93	6	06/10/92	195	39,331 94	06/10/92	33331 94
Philip Angelides	4	04/07/92	04/11/92	49 60	6	06/10/92	195	39,381 54	06/10/92	33381 54
Philip Angelides	4	04/09/92	04/11/92	964 01	6	06/10/92	195	40,345 55	06/10/92	34345 55
King Air	57	06/16/92	06/16/92	3,677 29	4	06/16/92	195	44,022 84	06/16/92	38022 84
King Air	32	06/24/92	06/24/92	33 52	4	06/24/92	187	44,056 36	06/24/92	38056 36
King Air	57	06/24/92	06/24/92	2,029 92	4	06/24/92	190	46,086 28	06/24/92	40086 28
King Air	32	06/24/92	06/24/92	12 10	4	06/24/92	190	46,098 38	06/24/92	40098 38
King Air	32	06/24/92	06/24/92	83 17	4	06/24/92	190	46,181 55	06/24/92	40181 55
King Air	89	06/25/92	06/25/92	-2,206 20	1	06/25/92		43,975 35	06/25/92	37975 35
Philip Angelides	4	04/01/92	04/28/92	143 03	6	06/27/92	187	44,118 38	06/27/92	38118 38
Philip Angelides	4	04/02/92	04/28/92	45 64	6	06/27/92	187	44,164 02	06/27/92	38164 02
Philip Angelides	4	04/05/92	04/28/92	111 38	6	06/27/92	187	44,275 40	06/27/92	38275 40
Philip Angelides	10	07/02/92	07/02/92	-2,113 00	1	07/02/92		42,162 40	07/02/92	36162 40
Philip Angelides	5	07/02/92	07/02/92	-1,170 61	1	07/02/92		40,991 79	07/02/92	34991 79
Philip Angelides	3	04/10/92	05/11/92	718 50	6	07/10/92	174	41,710 29	07/10/92	35710 29
Philip Angelides	3	04/14/92	05/11/92	203 33	6	07/10/92	174	41,913 62	07/10/92	35913 62
Philip Angelides	3	04/19/92	05/11/92	245 75	6	07/10/92	174	42,159 37	07/10/92	36159 37
King Air	76	07/30/92	07/30/92	-8,202 88	1	07/30/92		33,956 49	07/30/92	27956 49
King Air	32	08/08/92	08/08/92	3,225 45	4	08/08/92	145	37,181 94	08/08/92	31181 94
Philip Angelides	1	05/11/92	06/10/92	665 30	6	08/09/92	144	37,847 24	08/09/92	31847 24
Philip Angelides	1	05/16/92	06/10/92	39 02	6	08/09/92	144	37,886 26	08/09/92	31886 26
Philip Angelides	1	05/16/92	06/10/92	840 00	6	08/09/92	144	38,726 26	08/09/92	32726 26
Philip Angelides	1	05/17/92	06/10/92	568 91	6	08/09/92	144	39,295 17	08/09/92	33295 17
Philip Angelides	1	05/18/92	06/10/92	323 25	6	08/09/92	144	39,618 42	08/09/92	33618 42
Philip Angelides	1	05/20/92	06/10/92	500 93	6	08/09/92	144	40,119 35	08/09/92	34119 35
Philip Angelides	1	05/27/92	06/10/92	234 18	6	08/09/92	144	40,353 53	08/09/92	34353 53
King Air	32	08/16/92	08/16/92	562 00	4	08/16/92	137	40,915 53	08/16/92	34915 53
King Air	32	08/23/92	08/23/92	6,692 79	4	08/23/92	130	47,608 32	08/23/92	41608 32
Philip Angelides	1	06/01/92	06/25/92	36 82	6	08/24/92	129	47,645 14	08/24/92	41645 14
Philip Angelides	1	05/29/92	06/29/92	281 04	6	08/28/92	125	47,926 18	08/28/92	41926 18
King Air	32	09/02/92	09/02/92	609 45	4	09/02/92	120	48,535 63	09/02/92	42535 63
King Air	32	09/05/92	09/05/92	4,889 97	4	09/05/92	117	53,425 60	09/05/92	47425 60
Philip Angelides	22	09/07/92	09/07/92	-3,533 77	1	09/07/92		49,891 83	09/07/92	43891 83
King Air	57	09/07/92	09/07/92	-7,664 81	1	09/07/92		42,227 02	09/07/92	36227 02
Philip Angelides	65	09/07/92	09/07/92	-158 68	1	09/07/92		42,068 34	09/07/92	36068 34
Philip Angelides	4	09/07/92	09/07/92	-7,553 32	1	09/07/92		34,515 02	09/07/92	27515 02
Philip Angelides	3	09/07/92	09/07/92	-1,326 26	1	09/07/92		33,188 76	09/07/92	26188 76
King Air	32	09/11/92	09/11/92	938 42	4	09/11/92	111	34,127 18	09/11/92	28127 18
King Air		09/12/92	09/12/92	2,990 00	4	09/12/92	110	37,117 18	09/12/92	31117 18

Democratic State Central Committee of California - Federal
Phil Angelides - 116.5 Analysis for 1992

Payee	Vch #	Incur Date	Calc Date	Incur Amt	Exp Cd	Ctb Date	Days Outstdg	Balance Outstanding	Dates Excessive	Amount* Excessive
King Air	32	09/14/92	09/14/92	738.00	4	09/14/92	108	37,855.18	09/14/92	31855.18
King Air	32	09/16/92	09/16/92	2,488.35	4	09/16/92	106	40,343.53	09/16/92	34343.53
King Air	32	10/05/92	10/05/92	1,956.75	4	10/05/92	87	42,300.28	10/05/92	36300.28
King Air	32	12/22/92	12/22/92	-8208.25	1	12/22/92		34,092.03	12/22/92	28092.03
Philip Angelides	1	12/28/92	12/28/92	-3907.59	1	12/28/92		30,184.44	12/28/92	24184.44

Legend

Expense Codes

- 1 Date of reimbursement.
- 4 Reimbursement required on date of incurrence
- 5 Reimbursement required within thirty days of calculation date.
- 6 Reimbursement required within sixty days of calculation date.
- ☒ Indicates amounts owed and outstanding at 12/31/92
- Excessive Amount equals outstanding balance less \$5,000 contribution amount and a \$1,000 allowance for travel and subsistence

9707025079

AD-13 (3)

RECEIVED
FEDERAL ELECTION
COMMISSION
AUDIT DIVISION

APR 22 11 43 AM '96



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

April 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. Vosdinger *RJ*
Assistant General Counsel

Jane J. Whang *JW*
Attorney

SUBJECT: Proposed Final Audit Report on the Democratic State Central Committee of California Federal (LRA #470)

0707125030

The Office of General Counsel has reviewed the proposed Final Audit Report on the Democratic State Central Committee of California Federal (the "Committee") submitted to this Office on March 8, 1996.¹ We concur with Findings II.A. and II.E.1, which are not discussed separately in this memorandum. If you have any questions concerning our comments, please contact Jane Whang, the attorney assigned to this audit

I. ALLOCATION OF GENERIC VOTER REGISTRATION (II.B.)

This Office agrees that the Committee's expenditure of funds through L.A. Vote's voter drive should have been allocated between its federal and non-federal accounts, even if the

¹ This Office has prepared a separate memorandum on confidential issues pertaining to the proposed Report. We recommend that the Commission's discussion of this document be conducted in open session. See 11 C.F.R. § 24. Parenthetical references are to the placement of the findings in the proposed Report. Throughout our comments "Act" or "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455

Center for the Commission's 20th Anniversary
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

contribution was used solely to assist GOTV local efforts. Because the election at issue involved federal candidates, the Committee's local GOTV expenses should have been allocated between federal and non-federal accounts, and pursuant to the ballot composition method provided in 11 C.F.R. § 106.5. See generally AO 1978-50 (party committee's local GOTV expenses must be allocated between federal and non-federal accounts).

II. APPARENT PROHIBITED CONTRIBUTIONS (II.C.)

The proposed Report states that River West Development, Inc. ("River West") made apparent prohibited contributions of \$42,183 in the form of reimbursed advances to the Committee. Most or all of the in-kind contributions appear to have been for the Committee's generic or administrative purposes. Thus, 50% of the in-kind corporate contributions for administrative purposes would have impermissibly benefited the Committee's federal account. See 11 C.F.R. §§ 100.7 and 106.5(g)(1); AO 1992-33 (receipt of corporate in-kind contributions for national party committee fundraiser required transfers of federal funds to non-federal account). Because the proposed Report does not specifically calculate the amount of prohibited in-kind contributions to the federal account, this Office recommends that it do so.

The proposed Report notes that the Committee reimbursed River West for a portion of the salaries of two River West employees who performed administrative work for both River West and the Committee.² Because the reimbursements occurred on the day of the employees' payroll, the auditors did not include the payments as in-kind contributions by River West. However, corporate employees rendering services to federal candidates must be paid in advance of services. See AO 1984-24 ("initial disbursement of corporate treasury monies is a loan, advance, or something of value" to a candidate, regardless of later reimbursement). AO 1984-37 (no prohibited contribution resulted if PAC paid in advance the usual and normal charge of consulting services of its employees)³ Therefore, this Office believes that the Committee may have received an in-kind corporate contribution from River West, to the extent that the employees were not paid by the Committee in advance for services that benefited federal activity.

III. KING AIR AND MR. ANGELIDES' STAFF ADVANCES (II.D.)

Philip Angelides, the Committee chairman, made staff advances to the Committee for other individuals' campaign-related subsistence and Committee expenses. He also paid for some of the 87 flights taken by the Committee between March 1991 and October 1992 on an entity variously identified as King Air, King Air Associates, or King Air II ("King Air"). The Committee did not pay for any of the flights in advance, and reimbursed King Air or

The auditors noted that all payments to River West were allocated between federal and non-federal accounts

In a recent rulemaking, the Commission decided that officials or employees of a corporation may direct subordinates to carry out fundraising for a committee. See Explanation and Justification for 11 C.F.R. § 114.2(D)(2)(K)(A) 60 Fed Reg 64264 (December 14, 1995). The Commission's new regulations require that corporations receive advance payment from the committee for the fair market value of their employees' services in fundraising. See id.

Mr. Angelides a total of \$35,988 in coach fare for the flights.⁴ Because it appeared that either Mr. Angelides or River West might be a partner of King Air, the Interim Audit Report recommended that the Committee provide information as to the owners of King Air and whether there were corporate partners. Further, the Interim Audit Report recommended that the Committee provide information that would show that King Air provided these flights within the ordinary course of its business. It also requested information concerning flight logs and the various destinations flown.

The Committee failed to provide all the information requested by the Interim Audit Report, including the identities of all the owners of King Air and flight logs or the actual flights taken. It responded that King Air Associates was the name under which a group of owners who held undivided interests in the King Air airplane filed tax returns, but that a partnership was never formed. Mr. Angelides had an interest of 6.25% in King Air, and Arlen Opper was the managing partner.

The Committee also explained that, on March 18, 1992, the owners sold the King Air airplane to another entity.⁵ Because three former owners of King Air continued to require use of a plane, after March 18, 1992, they paid a \$13,575 quarterly billing fee for planes provided by a private charter corporation called Continental Sabre Corporation ("Continental"), a commercial vendor.⁶ The former owners were billed by the entity known as King Air II or King Air Associates II, and Mr. Opper acted as the "central billing agent" for Continental. After March 18, 1992, the Committee also used Continental's planes and was billed by King Air II. However, the Committee did not explain whether it also paid a quarterly fee for this arrangement or whether one of the former owners of King Air was responsible for the Committee's use of the planes. The audit workpapers show that the Committee paid King Air II directly for the use of Continental's planes, with the exception of one flight that was initially paid for by Mr. Angelides on September 7, 1992.

This Office disagrees with the proposed Report's analysis of the flights on King Air.⁷ Because the Committee was not forthcoming with information concerning the King Air flights, it is unclear which individuals or entities made excessive or prohibited in-kind contributions to the Committee.⁸ Mr. Angelides made staff advances to the Committee when he paid for some of the Committee's flights on King Air and King Air II, for which he was reimbursed. See 11 C.F.R.

⁴ Of this amount, Mr. Angelides received \$6,021 from the Committee for the flights

⁵ The Committee did not identify the entity to whom the airplane was sold

⁶ In March 1993, Continental sold its aircraft charter operation to Aerosmith Aviation

⁷ This Office also recommends that the chart of the flight payments be attached to the proposed Report in order to clarify the facts

⁸ The actual amount of the contributions to the Committee's federal account varies, depending upon whether the flights were flown solely for federal activity or for the benefit of both federal and non-federal candidates. See 11 C.F.R. §§ 100.7 and 106.5

§§ 100.7(b) and 116.5. However, without further information, it cannot be concluded that Mr. Angelides provided staff advances for all of the flights, including ones that the Committee paid for directly.

The flights that the Committee paid for directly appear to have been in-kind contributions by Mr. Angelides and the other owners of the King Air airplane. See 11 C.F.R. § 100.7(a). Until March 18, 1992, King Air was comprised of a group of individuals who owned an airplane that they used for their own personal needs. These owners were not in the business of providing air service, but provided the Committee flights without advance payment. Thus, it appears that this group of owners, including Mr. Angelides, may have also made in-kind contributions to the Committee for the flights paid for and taken by the Committee before March 18, 1992. See 11 C.F.R. § 100.7(a).

After March 18, 1992, King Air II acted as the billing agent for the flights provided by Continental Corporation to the prior owners of King Air and the Committee. Continental was a commercial vendor that had a billing arrangement with the prior owners of King Air. See 11 C.F.R. § 116.3. However, the Committee did not have such a billing arrangement with Continental, did not pay for the flights in advance, and did not appear to have paid Continental the usual and normal rates.¹⁰ Thus, based upon the available information, it appears that the Committee may have received an in-kind prohibited corporate contribution from Continental for services that were provided outside of the ordinary course of business. See 11 C.F.R. §§ 100.7(a)(1) and 116.3.

IV. NON-FEDERAL FUNDS INTO FEDERAL ACCOUNTS (II.E.)

A. Offsets to Allocable Expenditures (II.E.2.)

The proposed Report notes that "[i]n the opinion of the Audit staff, when a refund or rebate of an allocated expense is received, the amount received should be credited between federal and non-federal accounts on a pro rata basis equal to the allocation ratio of the original disbursement." Report at 30. This Office recommends that the proposed Report cite 11 C.F.R. § 106.5 and AO 1995-22 for authority that refunds of allocated disbursements should be deposited into federal and non-federal accounts according to the allocation ratio and should not be commingled. See AO 1995-22 (partial reimbursements of allocable disbursements may be reported as negative disbursements and deposited between federal and non-federal accounts).

⁹ Because Mr. Angelides owned 6.25% of the King Air plane, he would have been responsible for 6.25% of the remaining flights provided by the owners. However, if there is evidence that Mr. Angelides guaranteed or ensured payment of the Committee's flights, then he would have advanced the full amount of the flights.

¹⁰ According to the auditors, the coach fare that was paid would not be the usual and normal fare for a charter airplane service.

B. San Francisco Democratic County Central Committee (II.E.3.)

This Office concurs with the proposed Report's conclusion in the section concerning the funds from the San Francisco Democratic County Central Committee, but recommends that the sentence "the Audit staff concludes that they constitute a prohibited transfer" be revised to: "It appears that the \$58,000 constitutes a prohibited contribution"

C. No on Proposition 164 (II.E.4.)

The Interim Audit Report requested information that would demonstrate that the Committee had not attempted to transfer \$15,000 of non-federal funds to its federal account by retaining \$15,000 from Representatives Pelosi and Matsui in its federal accounts and using \$20,000 of its non-federal funds to make the contribution to "No on 164." The Committee responded that "the Matsui and Pelosi funds were not used to make this contribution to No on 164. . . [and] the Report cites no authority for its findings nor . . . what statute or regulation the Committee allegedly violated." Report at 37. The proposed Report concludes that the transaction involved an impermissible transfer of non-federal funds to its federal account, because the Committee "may not do indirectly what it is prohibited from doing directly." *Id*

This Office believes that the evidence for the proposed Report's conclusion may be insufficient. There is no evidence to indicate that the Representatives intended for the contributions to be made to No on 164, besides the stub of the Committee's voided check. Therefore, the Committee appears to have permissibly spent \$15,000 in non-federal funds for non-federal activity.¹¹

V. RECLASSIFICATION OF TRANSFERS AS PAYMENT ON DEBT (FN. 23)

The Committee has now acknowledged, and accordingly amended its 1992 year-end reports to reflect a total of \$200,653 in debt owed from its federal to non-federal account. Report at 39, fn.23. In 1993, for an unspecified reason, the Committee reported "transfers" of funds from its federal to non-federal accounts. The Committee would like to retroactively reclassify the "transfers" as "payments" of the 1992 debt owed from federal to non-federal accounts. This Office agrees with the Audit Division that the Act does not appear to prohibit this proposed transaction, presuming the transferred funds were federally permissible. However, if the Committee transferred out of the federal account corporate contributions or funds that were initially intended for the non-federal account, then these transfers may not later be characterized as payment of the 1992 debt.

¹¹ The "No on 164" organization was formed to defeat a state initiative that would impose term limits on California office holders, including U.S. Senators and Representatives. The initiative, if passed, was intended to affect federal candidates. However, the United States Supreme Court held recently that states may not impose qualifications, including term restrictions, upon federal congressional candidates. See *U.S. Term Limits Inc. v. Thornton*, 115 S. Ct. 1842 (1995). Based upon *Thornton*, the funds contributed to "No on 164" did not require allocation of funds pursuant to 11 C.F.R. § 106.5



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 5, 1996

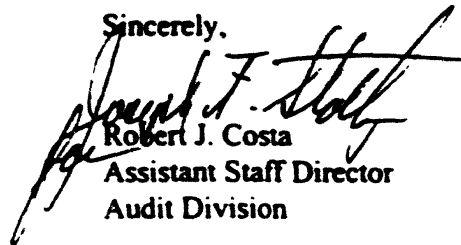
Mr. Gary Paul, Treasurer
Democratic State Central Committee of California - Federal
1401 Ocean Avenue, #200
Santa Monica, CA 90401

Dear Mr. Paul:

Attached please find the Final Audit Report on the Democratic State Central Committee California - Federal. The Commission approved the report on August 29, 1996.

The Commission approved final audit report will be placed on the public record on September 11, 1996. Should you have an questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155. Any questions related to the matters covered during the audit or in the report should be directed to Marty Kuest or Joe Swearingen of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,


Robert J. Costa
Assistant Staff Director
Audit Division

CC: Lance Olson

9 / 0 / 2 5 0 3 5

CHRONOLOGY

**DEMOCRATIC STATE CENTRAL COMMITTEE
OF CALIFORNIA — FEDERAL**

Audit Fieldwork	8/8/94 - 10/21/94
Interim Audit Report to the Committee	8/9/95
Response Received to the Interim Audit Report	10/26/95
Final Audit Report Approved	8/29/96

9707025086

9707125087

