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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MJ000236

September 9, 1991

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT
REPORT ON THE GEPHARDT COMMITTEE

Attached please find a copy of the Final Audit Report on The Gephardt Committee, which was approved by the Commission on August 29, 1991.

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

Attachment as stated

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON THE GEPHARDT COMMITTEE

I. Background

A. Overview

This report is based on an audit of The Gephardt Committee ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. §9038(a) which states that after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037.

In addition, 26 U.S.C. §9039(b) and 11 CFR §9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on May 24, 1988, as a joint fundraising representative. The participants in the fundraising activity were the Gephardt for President Committee, Inc. and the Gephardt in Congress Committee. The Committee maintains its headquarters in Washington, DC.

The Audit covered the period from the Committee's inception in May 1988 through March 31, 1990. The Committee reported an opening cash balance of \$-0-; total receipts of \$1,068,432.90; total disbursements of \$1,063,721.31; and a closing cash balance on March 31, 1990, of \$4,711.59.

This report is based on documents and workpapers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to the Commissioners and appropriate staff for review.

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B. Key Personnel

The Treasurer of the Committee during the period of the audit was Mr. Chris Petersen.

C. Scope

The audit included such tests as verification of total reported receipts and expenditures and individual transactions; review of required supporting documentation; review of contribution and expenditure limitations; analysis of debts and obligations; and other audit procedures as deemed necessary under the circumstances.

II. Audit Finding and Recommendation

A. Allocation/Distribution of Joint Fundraising Proceeds

Section 9034.8(c)(1) of Title 11 of the Code of Federal Regulations states, in part, that the participants in a joint fundraising activity shall enter into a written agreement. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity.

Section 9034.8(c)(8)(i)(A) of Title 11 of the Code of Federal Regulations states, in part, that after gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

Section 9034.8(c)(7)(i) of Title 11 of the Code of Federal Regulations states, in part, that the fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Each contribution received shall be allocated among the participants in accordance with the allocation formula, unless the circumstances described in paragraphs (c)(7)(ii), (iii) or (iv) of this section apply.

Section 9034.8(c)(7)(iv) of Title 11 of the Code of Federal Regulations states that earmarked contributions which exceed the contributor's limit to the designated participant under 11 CFR Part 110 may not be reallocated by the fundraising representative without the written permission of the contributor. A written instrument made payable to one of the participants shall be considered an earmarked contribution unless a written statement by the contributor indicates that it is intended for inclusion in the general proceeds of the fundraising activity.

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1. Distribution of Net Proceeds

The Committee held events, conducted mailings and phone solicitations. During the period June 13, 1988 through March 30, 1990, the Committee made 21 distributions of net proceeds to the Gephardt for President Committee ("the Presidential Committee") totaling \$360,000*/ and 14 distributions of net proceeds to the Gephardt in Congress Committee ("the Congressional Committee") totaling \$311,000**/. However, the Committee did not maintain documentation (workpapers, spreadsheets, etc.) to support its calculation of the above distributions.

Using deposit batch records, on which the Committee's allocation of each contributor check to either the Presidential Committee or the Congressional Committee was annotated, in conjunction with expense recap sheets for each event, mailing, and phone solicitation, the Audit staff determined that the Presidential Committee should have received \$356,863.49 and the Congressional Committee should have received \$318,392.37.

As a result, the Committee's distributions to the Presidential Committee were \$3,136.51 (\$360,000 - \$356,863.49) more than it was entitled under the joint fundraising agreement and its distributions to the Congressional Committee were \$7,392.37 (\$318,392.37 - \$311,000) short of their entitlement under said agreement.

2. Allocation of Gross Proceeds

The joint fundraising agreement states that the receipts of the joint fundraising activity conducted under this agreement will be allocated in full to the Presidential Committee until and unless each contributor's lawful limit on contributions to the Presidential Committee has been exhausted, whereupon the contribution or that portion in excess of the limit applicable to the Presidential Committee shall be allocated in full to the Congressional Committee. Further the agreement states that a contributor may designate his or her contribution to the fundraising committee according to a different allocation formula, such as, by requesting that a contribution be accepted only by or on behalf of the Congressional Committee.

Our analysis of gross proceeds received by the Committee indicated that in 15 instances contributions were not allocated in conformance with the fundraising agreement. The net

*/ Includes \$500 that was disbursed directly by the Committee on behalf of the Presidential Committee.

**/ Includes \$4,000 that was disbursed directly by the Committee on behalf of the Congressional Committee.

affect of the errors resulted in the Presidential Committee's allocation of gross proceeds being understated by \$4,175 and the Congressional Committee's allocation of gross proceeds being overstated by \$4,175.

To determine the effect on net proceeds, the Audit staff applied a percentage (.6254), which represented the ratio of gross receipts minus gross expenses divided by gross receipts, to the misallocated gross receipts (\$4,175).

As a result, the Presidential Committee's distribution of net proceeds was understated by \$2,611.04 ($\$4,175 \times .6254$) and the Congressional Committee's distribution of net proceeds was overstated by \$2,611.04.

3. Earmarked Contributions

The Committee allocated two contributions, totaling \$500, to the Congressional Committee since the two contributions, when aggregated with prior contributions by the contributors to the Presidential Committee, would have exceeded the limitations. However, each contributor earmarked their contribution to the Presidential Committee (i.e., checks made payable to Gephardt Campaign Debt Fund and Gephardt for President). Therefore, it is the Audit staff's opinion that the Committee is prohibited from reallocating the contributions to the Congressional Committee without the written consent of the contributors.

The Committee stated it will review our calculations and recalculate its allocation/distribution of proceeds to the participating committees as well.

In the interim audit report the Audit staff recommended that, within 30 days of service of this report, the Committee:

- with respect to section 1 above, provide documentation which demonstrated its distributions of \$360,000 to the Presidential Committee and \$311,000 to the Congressional Committee were correct, or obtain a refund of \$3,136.51 from the Presidential Committee and make a distribution of \$7,392.37 to the Congressional Committee and provide evidence of such refund/distribution.
- with respect to section 2 above, provide documentation which demonstrated that the 15 contributions, totaling \$4,175, were allocated correctly or accept the Audit staff's allocation of such contributions.
- with respect to section 3 above, provide written documentation from the contributors which supported the reallocation of the contributions or obtain a refund of the amount actually distributed \$312.70 ($\$500 \times .6254$) from the Congressional Committee and refund \$500 to the

contributors and provide copies of the cancelled refund checks.

On July 19, 1991, in its response to the interim audit report, the Committee stated that "after a review of the auditor's report and the Committee's records, the Committee has decided not to contest the auditor's findings."

Further, on August 1, 1991, the Committee provided documentation which demonstrated that it has received a refund of \$3,136.51 from the Presidential Committee, and that it has distributed \$7,392.37 to the Congressional Committee. According to Committee documentation the source of the funds distributed to the Congressional Committee (\$7,392.37) was composed of \$3,136.51 received from the Presidential Committee and \$4,255.86 in undistributed joint fundraising proceeds. In addition, the Committee has provided evidence that it has obtained a refund from the Congressional Committee in the amount of \$312.70 and has made the necessary refunds to the contributors, totaling \$500.

Recommendation

Based on the above, the Audit staff recommends no further action.

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CERTIFICATE OF SERVICE

This is to certify that on September 3, 1991, I caused to be served, by first class mail postage paid, a copy of the final audit report on The Gephardt Committee on the following individuals:


Mr. Chris Petersen, Treasurer
The Gephardt Committee
80 F Street, NW, 8th Floor
Washington, DC 20001

Ms. Jackie Forte'
The Gephardt Committee
80 F Street, NW, 8th Floor
Washington, DC 20001

Mr. Robert F. Bauer
The Gephardt Committee
80 F Street, NW, 8th Floor
Washington, DC 20001

9/3/91

date


signature of Audit staffmember

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93070190155



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK002849

May 22, 1992

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR *[Signature]*

FROM: ROBERT J. COSTA *[Signature]*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FINAL ADDENDUM TO THE FINAL AUDIT REPORT ON
THE GEPHARDT FOR PRESIDENT COMMITTEE, INC.

Attached for your consideration is the subject final addendum. Also attached is the legal analysis provided by the Office of General Counsel (portions expunged).

This matter is being circulated on a 72 hour tally vote basis. Should you have any questions, please contact Tom Nurthen or Rick Halter at 219-3720.

Attachments:

Final Addendum to the Final Audit Report on the Gephardt for President Committee, Inc.

Office of General Counsel's Legal Analysis Dated April 1, 1992 (portions expunged)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

AK002847

ADDENDUM TO THE
FINAL AUDIT REPORT OF THE AUDIT DIVISION
ON THE
GEPHARDT FOR PRESIDENT COMMITTEE, INC.

I. Background

A. Overview

On June 10, 1991, the Federal Election Commission ("the Commission") approved the final audit report on Gephardt for President Committee, Inc. ("the Committee"). That report was based on an audit conducted pursuant to 26 U.S.C. §9038(a) and included an initial determination regarding repayment to the United States Treasury. The audit covered the period from the Committee's inception, November 17, 1986, through May 31, 1988.

The final audit report, Finding III.C., addressed the Commission's initial determination that the Committee made payments totaling \$480,848.63 in excess of the Iowa state limitation. Further, the Commission determined that the \$126,383.37 was repayable to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2).

On May 21, 1992, the Commission approved the final repayment determination and Statement of Reasons and reduced the amount paid in excess of the Iowa state limitation to \$452,543.95 (\$480,848.63 - 28,304.68). Further, the amount repayable to the U.S. Treasury was reduced to \$118,943.94 (\$452,543.95 x .252834).

Follow-up fieldwork was conducted pursuant to 11 C.F.R. §9038.1(b)(3)* which states, that the Commission may conduct additional fieldwork after completion of the fieldwork conducted pursuant to paragraph (a)(1) and (2) of this section. The follow-up fieldwork covered the period June 1, 1988 through November 9, 1990.

* / Citations to 11 C.F.R. §§9031-39 and §§100-116 refer to the regulations in effect for the 1988 cycle, unless otherwise noted.

In addition, 11 C.F.R. §9038.1(e)(4) states that addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

This addendum is based upon documents and workpapers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in the addendum and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The Treasurer of the Committee during the period of this review was Mr. S. Lee Kling.

C. Scope

The fieldwork included an examination of the required supporting documentation for receipts and disbursements, analysis of Committee debts and obligations (including winding down costs), and such other procedures as deemed necessary under the circumstances to determine whether the Committee received any matching fund payments in excess of the amount to which it was entitled and whether any amount of any payment made from the matching payment account was used for any purpose other than to defray the qualified campaign expenses of the Committee.

II. Finding and Recommendation Related to Title 2 of the United States Code

Certain matters noted during course of this review have been referred to the Commission's Office of General Counsel.

III. Finding and Recommendation Related to Title 26 of the United States Code

Use of Funds for Non-Qualified Campaign Expenses

Section 9035(a) of Title 26 of the United States Code states, in part, that no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitations applicable under section 441a(b)(1)(A) of Title 2.

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses.

Section 9038.2(b)(2)(ii)(A) of Title 11 of the Code of Federal Regulations states that an example of a Commission repayment determination under paragraph (b)(2) of this section includes determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR 9035.

On June 10, 1991 the Commission made an initial determination that the pro-rata portion (\$126,383.37) of the amount paid in excess of the Iowa expenditure limitation (\$480,848.63 x .262834), as calculated by the Audit staff, was repayable to the United States Treasury.

Presented below is a matter not addressed in the interim audit report and consequently not considered as part of the Commission's initial repayment determination.

The Commission obtained information that the Committee received a list from the Iowa Democratic Party (IDP). The list contained the names of past Iowa caucus attendees. According to documents filed with the Commission, the Committee or someone on their behalf provided \$10,000*/ in cash or services to the IDP in payment for the list.

Neither the audit fieldwork nor a subsequent review of the Committee's computerized disbursement tape revealed a \$10,000 payment or combinations thereof to the IDP. If someone paid the \$10,000 or provided services to the IDP on behalf of the Committee, a contribution/expenditure should have been reported by the Committee as well as allocated to the Iowa spending limitation.

As a result, an additional \$10,000 is allocable to the Iowa expenditure limitation.

In the interim addendum to the final audit report, the Audit staff recommended that the Committee provide documentation as to the source of the \$10,000 payment to the Iowa Democratic Party (the individual(s) who paid the IDP, a copy of the check(s) or other instrument issued to the IDP, receipt from the IDP, etc.). The Committee may also wish to provide an explanation as to why the value of this transaction should not be allocated to the Iowa state spending limitation. Absent such a showing, the Audit staff will recommend that the Commission make an initial determination that \$2,628.34 (\$10,000 x .262834) be repaid to the United States Treasury.

*/ It appears \$10,000 was the amount paid by other 1988 presidential committees to the IDP for its list of caucus attendees.

In response, Counsel for the Committee states that

"The Committee has attempted to develop information about this mailing list. Its review is not complete, but if additional information becomes available it will, of course, provide it to the Commission. To date, the Committee has determined the following circumstances surrounding this mailing list: It appears that the Iowa Democratic Party offered its mailing list to a number of candidates in return for their agreement to help the Party with its fundraising efforts. Among the candidates offered the list on this basis was Congressman Gephardt. The Iowa Democratic Party apparently intended on one basis or the other to make the information contained in this list available to all candidates so long as they reciprocated with some measure of fundraising assistance to the Party. A review of relevant news reports for the period in question will find numerous suggestions that the Iowa Democratic Party sought to maximize its advantage in fundraising with a broader array of presidential candidates whose interest in the fortunes of the Party was heightened by the pending Democratic presidential caucuses.

Nonetheless, the Committee does not take this to be a complete account of the matter. At this point, a number of the employees who might have recollections of the matter are no longer with the Committee and attempts to contact them and interview them about the matter have been unavailing. Should the Commission chance upon any information which would be useful to the Committee in its review, it would be most helpful to have this information so the Committee can act upon it."

It is the opinion of the Audit staff that the Committee has not demonstrated that the value of the transaction should not be allocated to the Iowa state spending limitation, and has not provided any documentation as to the source of the \$10,000 payment to the Iowa Democratic Party. Therefore, the pro rata portion of the amount in excess of the Iowa state limit (\$2,628.34) is repayable to the United States Treasury.

Recommendation #1

On _____, the Commission made an initial determination that \$2,628.34 is repayable to the United States Treasury within 90 calendar days of service of this report in accordance with Section 9038.2(d) of Title 11 of the Code of Federal Regulations.

If the candidate does not dispute this determination within 30 days of service of this report, the initial determination will be considered final.

Repayment Amount: \$2,628.34



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

*Rec'd in Audit
4/2.92 m.f.*

April 1, 1992

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina *JS*
Staff Director

FROM: Lawrence M. Noble *LN*
General Counsel

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

Carmen R. Johnson *CRJ*
Assistant General Counsel

Lorenzo Holloway *LH*
Attorney

SUBJECT: Proposed Final Addendum Audit Report on Gephardt
for President Committee, Inc. (LRA #338/AR-92-4)

The proposed Final Addendum Audit Report on the Gephardt for President Committee, Inc. ("Presidential Committee") were submitted to the Office of General Counsel for legal review on January 14, 1992.^{1/} The Commission approved the Interim Addendum Audit Report on July 30, 1991. The Committee responded to the Interim Addendum Audit Report on October 9,

^{1/} On June 10, 1991, the Commission approved the Final Audit Report and made an initial determination that the Presidential Committee make a repayment of \$126,383.37 to the United States Treasury. Pursuant to 11 C.F.R. § 9038.2(c)(2), the Committee submitted a written response disputing the Commission's initial repayment determination on July 18, 1991. In addition, the Committee made an oral presentation before the Commission on November 6, 1991.

1991. The following memorandum contains our legal analysis of the finding and recommendations in the proposed Final Addendum Audit Report 2/

I. USE OF FUNDS FOR NONQUALIFIED CAMPAIGN EXPENSES -
ALLOCATION OF EXPENDITURES TO IOWA LIMITATION (III.;

The Iowa expenditure limitation, as calculated under 2 U.S.C. § 441a(b)(1)(A) for the 1988 presidential election cycle, was \$775,217.60. In the Final Audit Report, the Audit staff found that the Presidential Committee exceeded the Iowa expenditure limitation by \$480,843.63.³ The Audit staff obtained information indicating that the Presidential Committee acquired a mailing list containing the names of past Iowa Caucus attendees and that the list was purchased on behalf of the Presidential Committee by an unknown party.⁴ The Audit staff allocated the cost of the mailing list, \$10,000.00, to the Iowa expenditure limitation.⁵ The Presidential Committee did not report the expenditure nor did it allocate the expenditure to the Iowa limitation. The Interim Addendum Audit Report recommended that the Presidential Committee identify the person

2/ Parenthetical references are to the placement of findings in the proposed report. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

3/ The Committee's repayment ratio was .262843. Accordingly, the Commission made an initial determination that the Committee repay \$126,383.37 ($\$480,842.63 \times .262843$) to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii)(A).

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5/ The Audit Division valued the mailing list at \$10,000.00 because this is the amount all of the other presidential committees paid for the list.

or entity that paid the Party for the list on its behalf. In addition, the Presidential Committee was provided an opportunity to submit an explanation as to why the cost of the mailing list, \$10,000.00, should not be allocated to the Iowa expenditure limitation.

In its response to the Interim Addendum Audit Report, the Presidential Committee notes that it has limited information concerning the acquisition of the mailing list from the Iowa Democratic Party ("Party"). However, the Presidential Committee asserts that the information that it has indicates that the Party offered its mailing lists to a number of candidates in consideration for their promise to assist the party with its fundraising efforts. According to the Presidential Committee, Congressman Gephardt was offered the list on that basis. The Presidential Committee argues that the Party sought to increase its fundraising potential by using presidential candidates who were interested in the fortunes of the Party.

The Audit Division maintains its position that the cost of the mailing list is allocable to the Iowa expenditure limitation because the Committee failed to demonstrate that the cost should be allocated otherwise. Since the Final Audit Report found that the Presidential Committee exceeded the Iowa expenditure limitation, the Audit Division recommends that the Commission make an initial determination that the Committee repay an additional \$2,628.34 ($\$10,000.00 \times .262834$) to the United States Treasury.

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The Office of General Counsel agrees with the Audit staff that the cost of the mailing list is allocable to the Iowa expenditure limitation and, therefore, we concur with the Audit Division's recommendation that the Commission make an initial determination that the Presidential Committee repay \$2,628.34 to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii)(A). It should be noted that the period for notifying the candidate and the Presidential Committee of any repayments to the United States Treasury expired on July 20, 1991. See 26 U.S.C. § 9038(c). However, the Office of General

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Counsel does not believe that this should preclude the Commission from seeking an additional repayment based on a finding in the Final Addendum Audit Report. The Final Audit Report notified the Committee that the resolution of an additional matter could increase in the initial repayment determination. Furthermore, in the past the Commission has notified other presidential committees, after the repayment notification period expired, of additional repayments arising out of addenda audit reports. See Addendum to the Final Audit Report on The Cranston for President Committee, Inc, approved on October 27, 1987; Addendum to the Final Audit Report on The John Glenn for President Committee, Inc., approved on April 7, 1988.

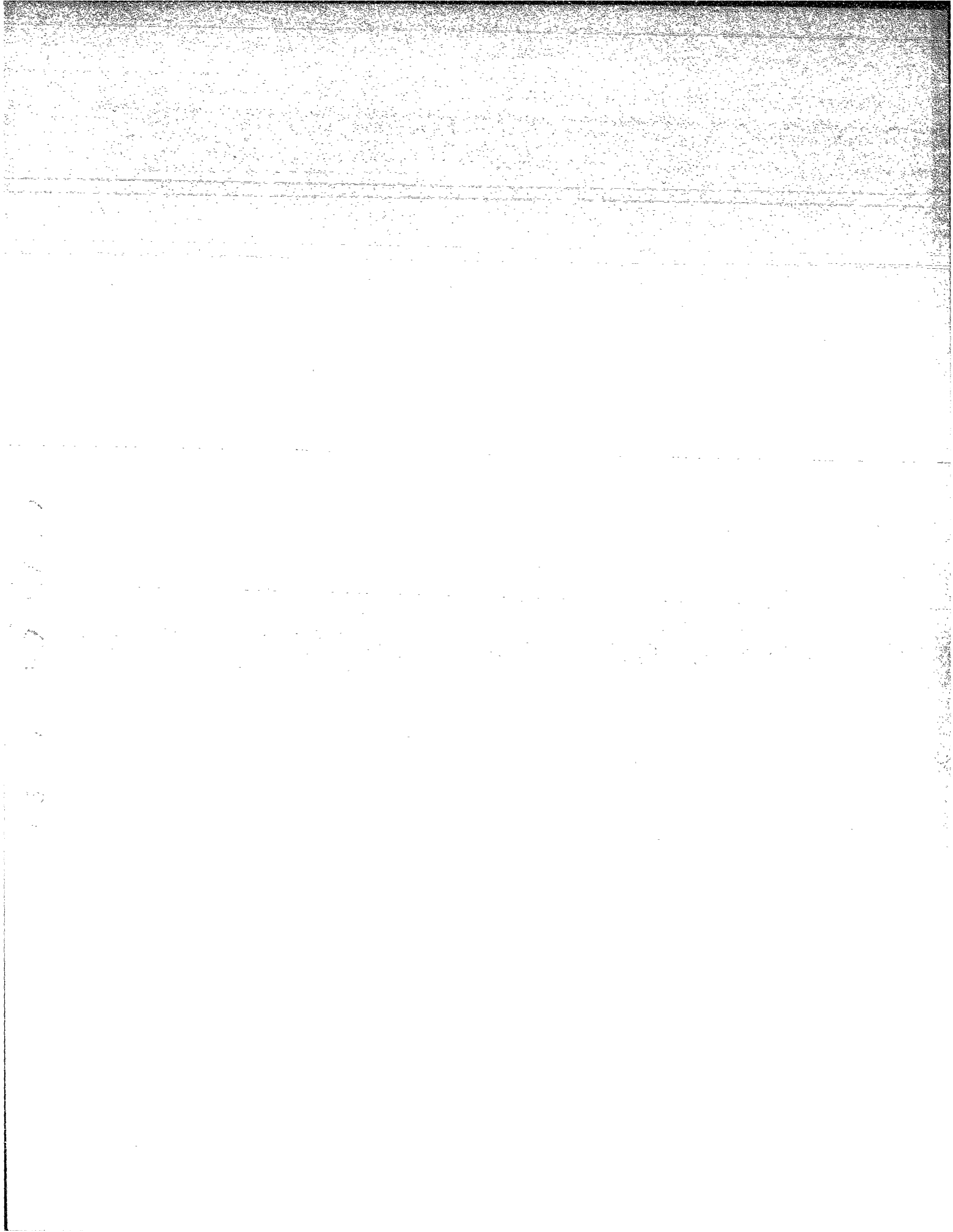
Expenditures incurred for the purpose of influencing the nomination of the candidate in a particular state must be allocated to that state. 11 C.F.R. § 106.2(a)(1). While there is no information indicating whether the mailing list was acquired for the purpose of influencing the voters of Iowa, logic suggests that a mailing list containing the names of past Iowa Caucus attendees would be acquired for this purpose. The Presidential Committee has the burden, if it disputes this allocation, to demonstrate that another allocation is more reasonable. Id.

II.

III. SUNSHINE RECOMMENDATION

The Commission's Sunshine Act procedures provide that the Office of General Counsel make Sunshine recommendations on documents submitted to this Office for review.

We believe that the proposed report should be considered in open session





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK002849

May 22, 1992

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR *JCS*

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

SUBJECT: FINAL ADDENDUM TO THE FINAL AUDIT REPORT ON
THE GEPHARDT FOR PRESIDENT COMMITTEE, INC.

Attached for your consideration is the subject final addendum. Also attached is the legal analysis provided by the Office of General Counsel (portions expunged).

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Office of General Counsel's Legal Analysis Dated April 1, 1992 (portions expunged)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

AK002847

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Follow-up fieldwork was conducted pursuant to 11 C.F.R. §9038.1(b)(3)* which states, that the Commission may conduct additional fieldwork after completion of the fieldwork conducted pursuant to paragraph (a)(1) and (2) of this section. The follow-up fieldwork covered the period June 1, 1988 through November 9, 1990.

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In addition, 11 C.F.R. §9038.1(e)(4) states that addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

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C. Scope

The fieldwork included an examination of the required supporting documentation for receipts and disbursements, analysis of Committee debts and obligations (including winding down costs), and such other procedures as deemed necessary under the circumstances to determine whether the Committee received any matching fund payments in excess of the amount to which it was entitled and whether any amount of any payment made from the matching payment account was used for any purpose other than to defray the qualified campaign expenses of the Committee.

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Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses.

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As a result, an additional \$10,000 is allocable to the Iowa expenditure limitation.

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*/ It appears \$10,000 was the amount paid by other 1988 presidential committees to the IDP for its list of caucus attendees.

In response, Counsel for the Committee states that

"The Committee has attempted to develop information about this mailing list. Its review is not complete, but if additional information becomes available it will, of course, provide it to the Commission. To date, the Committee has determined the following circumstances surrounding this mailing list: It appears that the Iowa Democratic Party offered its mailing list to a number of candidates in return for their agreement to help the Party with its fundraising efforts. Among the candidates offered the list on this basis was Congressman Gephardt. The Iowa Democratic Party apparently intended on one basis or the other to make the information contained in this list available to all candidates so long as they reciprocated with some measure of fundraising assistance to the Party. A review of relevant news reports for the period in question will find numerous suggestions that the Iowa Democratic Party sought to maximize its advantage in fundraising with a broader array of presidential candidates whose interest in the fortunes of the Party was heightened by the pending Democratic presidential caucuses.

Nonetheless, the Committee does not take this to be a complete account of the matter. At this point, a number of the employees who might have recollections of the matter are no longer with the Committee and attempts to contact them and interview them about the matter have been unavailing. Should the Commission chance upon any information which would be useful to the Committee in its review, it would be most helpful to have this information so the Committee can act upon it."

It is the opinion of the Audit staff that the Committee has not demonstrated that the value of the transaction should not be allocated to the Iowa state spending limitation, and has not provided any documentation as to the source of the \$10,000 payment to the Iowa Democratic Party. Therefore, the pro rata portion of the amount in excess of the Iowa state limit (\$2,628.34) is repayable to the United States Treasury.

Recommendation #1

On _____, the Commission made an initial determination that \$2,628.34 is repayable to the United States Treasury within 90 calendar days of service of this report in accordance with Section 9038.2(d) of Title 11 of the Code of Federal Regulations.

If the candidate does not dispute this determination within 30 days of service of this report, the initial determination will be considered final.

Repayment Amount: \$2,628.34



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

*Rec'd in Audit
+1/2.92 m.f.*

April 1, 1992

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina *JS*
Staff Director

FROM: Lawrence M. Noble *LN*
General Counsel

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

Carmen R. Johnson *CRJ*
Assistant General Counsel

Lorenzo Holloway *LH*
Attorney

SUBJECT: Proposed Final Addendum Audit Report on Gephardt
for President Committee, Inc. (LRA #338/AR-92-4)

The proposed Final Addendum Audit Report on the Gephardt for President Committee, Inc. ("Presidential Committee") were submitted to the Office of General Counsel for legal review on January 14, 1992.^{1/} The Commission approved the Interim Addendum Audit Report on July 30, 1991. The Committee responded to the Interim Addendum Audit Report on October 9,

^{1/} On June 10, 1991, the Commission approved the Final Audit Report and made an initial determination that the Presidential Committee make a repayment of \$126,383.37 to the United States Treasury. Pursuant to 11 C.F.R. § 9038.2(c)(2), the Committee submitted a written response disputing the Commission's initial repayment determination on July 18, 1991. In addition, the Committee made an oral presentation before the Commission on November 6, 1991.

1991. The following memorandum contains our legal analysis of the finding and recommendations in the proposed Final Addendum Audit Report 2/

I. USE OF FUNDS FOR NONQUALIFIED CAMPAIGN EXPENSES -
ALLOCATION OF EXPENDITURES TO IOWA LIMITATION (III.;

The Iowa expenditure limitation, as calculated under 2 U.S.C. § 441a(b)(1)(A) for the 1988 presidential election cycle, was \$775,217.60. In the Final Audit Report, the Audit staff found that the Presidential Committee exceeded the Iowa expenditure limitation by \$480,843.63.³ The Audit staff obtained information indicating that the Presidential Committee acquired a mailing list containing the names of past Iowa Caucus attendees and that the list was purchased on behalf of the Presidential Committee by an unknown party.⁴ The Audit staff allocated the cost of the mailing list, \$10,000.00, to the Iowa expenditure limitation.⁵ The Presidential Committee did not report the expenditure nor did it allocate the expenditure to the Iowa limitation. The Interim Addendum Audit Report recommended that the Presidential Committee identify the person

2/ Parenthetical references are to the placement of findings in the proposed report. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

3/ The Committee's repayment ratio was .262843. Accordingly, the Commission made an initial determination that the Committee repay \$126,383.37 ($\$480,842.63 \times .262843$) to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii)(A).

4/

5/ The Audit Division valued the mailing list at \$10,000.00 because this is the amount all of the other presidential committees paid for the list.

or entity that paid the Party for the list on its behalf. In addition, the Presidential Committee was provided an opportunity to submit an explanation as to why the cost of the mailing list, \$10,000.00, should not be allocated to the Iowa expenditure limitation.

In its response to the Interim Addendum Audit Report, the Presidential Committee notes that it has limited information concerning the acquisition of the mailing list from the Iowa Democratic Party ("Party"). However, the Presidential Committee asserts that the information that it has indicates that the Party offered its mailing lists to a number of candidates in consideration for their promise to assist the party with its fundraising efforts. According to the Presidential Committee, Congressman Gephardt was offered the list on that basis. The Presidential Committee argues that the Party sought to increase its fundraising potential by using presidential candidates who were interested in the fortunes of the Party.

The Audit Division maintains its position that the cost of the mailing list is allocable to the Iowa expenditure limitation because the Committee failed to demonstrate that the cost should be allocated otherwise. Since the Final Audit Report found that the Presidential Committee exceeded the Iowa expenditure limitation, the Audit Division recommends that the Commission make an initial determination that the Committee repay an additional \$2,628.34 ($\$10,000.00 \times .262834$) to the United States Treasury.

6/

The Office of General Counsel agrees with the Audit staff that the cost of the mailing list is allocable to the Iowa expenditure limitation and, therefore, we concur with the Audit Division's recommendation that the Commission make an initial determination that the Presidential Committee repay \$2,628.34 to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii)(A). It should be noted that the period for notifying the candidate and the Presidential Committee of any repayments to the United States Treasury expired on July 20, 1991. See 26 U.S.C. § 9038(c). However, the Office of General

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Counsel does not believe that this should preclude the Commission from seeking an additional repayment based on a finding in the Final Addendum Audit Report. The Final Audit Report notified the Committee that the resolution of an additional matter could increase in the initial repayment determination. Furthermore, in the past the Commission has notified other presidential committees, after the repayment notification period expired, of additional repayments arising out of addenda audit reports. See Addendum to the Final Audit Report on The Cranston for President Committee, Inc, approved on October 27, 1987; Addendum to the Final Audit Report on The John Glenn for President Committee, Inc., approved on April 7, 1988.

Expenditures incurred for the purpose of influencing the nomination of the candidate in a particular state must be allocated to that state. 11 C.F.R. § 106.2(a)(1). While there is no information indicating whether the mailing list was acquired for the purpose of influencing the voters of Iowa, logic suggests that a mailing list containing the names of past Iowa Caucus attendees would be acquired for this purpose. The Presidential Committee has the burden, if it disputes this allocation, to demonstrate that another allocation is more reasonable. Id.

II.

III. SUNSHINE RECOMMENDATION

The Commission's Sunshine Act procedures provide that the Office of General Counsel make Sunshine recommendations on documents submitted to this Office for review.

We believe that the proposed report should be considered in open session

