



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

December 17, 1991

MEMORANDUM

TO: FRED S. EILAND
PRESS OFFICER

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON DUKAKIS FOR
PRESIDENT COMMITTEE, INC.1/

Attached please find a copy of the Final Audit Report on the Dukakis for President Committee, Inc. which was approved by the Commission on December 9, 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

1/ This report replaces the report included in Agenda Document #91-99 considered by the Committee at its October 10, 1991 meeting. The legal analysis performed by the Commission's Office of General Counsel may be found at Exhibit A, Agenda Document #91-99.



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

MJ000549

December 5, 1991

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

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

SUBJECT: FINAL AUDIT REPORT - DUKAKIS
FOR PRESIDENT COMMITTEE, INC.

307-12035

Please find attached the revised final audit report for the Dukakis for President Committee, Inc. Pursuant to the Commission's determination on October 10, 1991, revisions have been made with respect to Finding III.C. Statement of Net Outstanding Campaign Obligations and Repayment of Surplus Funds. The amount now considered as cash in bank (joint escrow account) is \$636,052.05 (\$894,627.90 less 258,575.85). This reduction represents contributions considered to be redesignated by the contributors to GELAC within 60 days of the date of the contributor's check. The discussion at page 29 provides a breakdown of the \$258,575.85, which flows through to the NOCO statement on page 30, and the repayment calculation on page 31.

As was noted at the Commission's meeting of October 10, 1991, as a result of the Commission's actions, some of the amounts discussed required verification and refinement. Further, as you are aware it was the understanding of both the Committee and the Audit staff that redesignation letters associated with these contributions were not dated to allow a determination whether the redesignation was accomplished within 60 days. The review necessary to verify the amounts contained in the attached report involved the examination of approximately 3,200 contribution records^{1/} representing contributions totalling \$894,627.90.

^{1/} Each contribution record consists, on average, of four separate documents. 1 - letter to contributor requesting redesignation/refund. 2 - copy of the contributor check. 3 - copy of solicitation. 4 - copy of authorized redesignation letter.

Memorandum to the Commissioners
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Among these records, 440 redesignation letters were located that were either date stamped by the Committee as to its date of receipt or dated by the contributors.

Further, in order to ensure that all dated redesignation letters were considered, the Audit staff reviewed an additional 1,300 contribution records relevant to contributions dated post 7/20/88 deposited into the joint escrow account.

Although the Committee's statement that "it was not the practice of the Committee to date stamp correspondence when received" was substantially correct as well as the Audit staff's understanding, the Audit staff has adjusted the amounts in the attached report to give the Committee "credit" for the small percentage of redesignation letters that contained a date of receipt by the Committee, or a date entered by the contributor indicating that the redesignation occurred within 60 days.

This matter is being circulated for a 48 hour tally vote. If you have any questions please call Tom Nurthen or Rick Halter at 219-3720.

Attachment:

Revised Final Audit Report on the
Dukakis for President Committee, Inc.



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

BS002652

REPORT OF THE AUDIT DIVISION
ON THE
DUKAKIS FOR PRESIDENT COMMITTEE, INC.

I. Background

A. Overview

This report is based on an audit of the Dukakis for President Committee, Inc. ("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 C.F.R. § 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, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities.

The Committee registered with the Federal Election Commission on April 6, 1987. The Committee maintains its headquarters in Boston, Massachusetts.

The audit covered the period March 25, 1987 through November 30, 1988. In addition, certain other financial activity relating to the Committee's Statement of Net Outstanding Campaign Obligations was reviewed through June, 1991.

The Committee reported an opening cash balance of \$-0-, total receipts of \$31,557,820.38, total disbursements of \$30,826,187.15 and a closing cash balance of \$731,833.23 as of November 30, 1988.*/ Under 11 C.F.R. §-9038.1(b)(3) and (e)(4) additional audit work may be conducted and addenda to this report issued as necessary.

*/ Due to math errors made by the Committee, the totals do not foot.

This report is based upon documents and work papers 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 Commissioners and appropriate staff for review.

B. Key Personnel

The Treasurer of the Committee during the period covered by the audit was Mr. Robert A. Farmer.

C. Scope

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

II. Audit Findings and Recommendations Related to Title 2 of the United States Code

A. Media Commission

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 primary election held to select candidates for president or for any candidate, political committee or other person knowingly to accept or receive any contributions prohibited by this section.

The Committee entered into a contract with Daniel B. Payne a.k.a. Payne and Company ("Payne") which covered, among other services, media placement. The contract provided for specific payments during a three phase period. The contract did not delineate commissions for media placement except during the second phase which provided for a fee of 5 percent of media placement but no less than \$50,000. Payne subcontracted the buys to Yellin Media, Inc. ("Yellin") which billed the Committee directly for television and radio time buys at the same amount Yellin was billed by the individual television and radio stations. The television and radio station invoices contained a gross amount less a 15 percent commission to arrive at the net amount billed Yellin. The Audit staff could not find any Committee payments to Yellin which represented commissions for media placement, however, the Committee paid \$4,306,399 to Yellin relative to the cost of broadcast time for television and radio ads. In addition, \$408,800 in fees were paid to Payne for its services.

The Committee provided the Audit staff with a statement signed by Yellin which stated that Yellin received a set sum of money for services during the early primaries up to the Super

Tuesday primaries. Yellin did not disclose the amount received, however, the statement goes on to say that although it is impossible to retroactively determine the percentage of the amount that was intended as compensation for the Iowa and New Hampshire primaries, that 2 percent of the media purchased within those states would be accurate.*/ Yellin justifies the 2 percent fee by comparing it with the fees it charged to the 1986 Dukakis gubernatorial campaign, the 1988 Dukakis/Bentsen general election campaign, and the Democratic National Committee for the 1988 general election.

During the course of reviewing media commissions billed to committees during past presidential campaigns, the Audit staff has noted various percentages charged by media firms which are based, in most cases, upon the level of work involved. For example, less work is involved by the media buyer in placing network buys as opposed to spot buys made at local TV and radio stations. A review of the media buys made by the media buyer shows that almost all of the buys made by Yellin except for a small amount of cable television were at local radio and TV stations. Therefore, it appears that substantial resources were expended by Yellin in order to place and track the Committee's television and radio buys. As noted above, during one phase of the contract the fee was at least 5 percent. It is the opinion of the Audit staff that a 2 percent commission is unreasonably low and that the Committee and Yellin have not provided justification as to its reasonableness.

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

1. obtain from Yellin the total amount received as fees for media placement;
2. provide justification to include copies of contracts with named 1988 clients, invoices, and a breakdown of spot vs. network buys; that the amount paid to Yellin is reasonable; and that a prohibited contribution has not been received.

In response to the interim audit report, the Committee provided a detailed description of the services provided by Payne with a letter from Yellin explaining the relationship with Payne.

The Committee explained that Payne was responsible for "...all facets of media services including creative concepts, copy, design, supervision of production, media planning and placement, campaign strategy as it related to media and some

*/ Yellin in its statement referred specifically to Iowa and New Hampshire, since the respective media commissions would be allocable to those states and increase total allocable expenditures.

copywriting services for direct mail." Accordingly, for these services Payne was paid in three phases; \$250,000 covering from April, 1987 through February, 1988; 5 percent of media placements but no less than \$50,000 from the end of February through Super Tuesday, March 8, 1988; and for the period post Super Tuesday, the Committee believed that the parties agreed to continue the compensation specified in the second phase (5% of media placements but no less than \$50,000) even though it was not confirmed in writing. In addition, Payne was compensated for other reimbursable expenses, i.e., air fare, lodging, etc. According to the Committee, Payne was paid \$501,300 for its services and \$105,314.54 in reimbursable expenses.

In a letter dated June 14, 1990 to Committee Counsel, Yellin states that she worked as a consultant to Payne with responsibility for placing media buys. For her services, she was paid \$5,000 per month by Payne during the period April, 1987 through June, 1988. Just prior to Super Tuesday (March 8, 1988), Yellin subcontracted media buys to Konjolka and Company who agreed to place buys for 2 percent of the placements. According to Yellin, she paid \$75,709.75 to Konjolka and Company and that cost was billed to Payne.

Finally, the Committee provided access to the records maintained by its media buyers. The review of these records disclosed that the Committee paid \$150,709.75 (\$75,000 to Yellin and \$75,709.75 to Konjolka and Company) in fees for net placements totaling \$4,292,629.62. The fees paid represent 3.5 percent of the buys placed.

Based on the review of the media firms' records and commissions paid by other presidential candidate committees deemed reasonable by the Commission, the commissions paid to the media firm appear reasonable and therefore no prohibited contribution resulted.

Recommendation #1

The Audit staff recommends no further action on this matter.

B. Disclosure of Contributions Received from Political Committees

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

Section 104.3(a)(4)(ii) of Title 11 of the Code of Federal Regulations states, in part, that each report shall disclose the total amount of receipts for the reporting period and for the calendar year and the aggregate year-to-date total for

each contributor (including political committees and committees which do not qualify as political committees under the Act).

A review of Committee reports and related records, indicated that four contributions, totaling \$2,600, apparently received from political committees were not itemized on the Committee's disclosure reports. In the case of three contributions, totaling \$2,500, it does not appear that the value of these contributions was included in reported totals.

During the exit conference, Committee officials were provided with a schedule that identified the four contributions mentioned above. Committee officials responded that they inadvertently reported the contributions as if received from individuals but would file amended reports.

In the interim audit report, the Audit staff recommended that the Committee file amended Schedules A-P to correct the itemization problem noted above.

On April 18, 1990 and July 14, 1990, the Committee filed amended disclosure reports correctly itemizing three of the contributions, totaling \$1,600, as political committee contributions. The remaining \$1,000 contribution was originally reported on April 26, 1988, by the political committee which made the contribution; however, according to a Committee official, the contribution was never received and therefore not reported.

On August 25, 1989, the political committee wrote a new \$1,000 check which was forwarded to the candidate's General Election Legal and Accounting Compliance Fund.

Recommendation #2

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

C. Other Matters

Certain matters noted during the course of the audit have been referred to the Office of General Counsel.

III. Audit Findings and Recommendations Related to Title 26 of the United States Code

A. Calculation of Repayment Ratio

Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made, it

shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9038.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amounts of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

The formula and appropriate calculation with respect to the Committee's receipt activity is as follows:

Total Matching Funds Certified through
the Date of Ineligibility - 7/20/88

Numerator plus Private Contributions Received
through 7/20/88

\$8,725,387.98

= .296590

\$29,418,987.63

Thus, the repayment ratio for non-qualified campaign expenses is 29.6590 percent.

**B. Use of Funds for Non-Qualified Campaign Expenses -
Allocation of Expenditures to States**

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 limitation applicable under Section 441a(b)(1)(A) of Title 2 of the United States Code.

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 C.F.R. §9035. Under 11 C.F.R. §9033.11(a), each candidate has the burden of proving that

disbursements made by the candidate or his authorized committee are qualified campaign expenses.

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provide that no candidate for the office of President of the United States who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000, as adjusted by the change in the Consumer Price Index.

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of the President with respect to a particular State shall be allocated to that State.

1. Introduction

The Committee reported on FEC Form 3P that through November 30, 1988, expenditures totaling \$756,595.01 were allocable to Iowa and \$438,667.46 to New Hampshire. These totals were net of an amendment filed on March 15, 1988, reducing expenditures allocable to Iowa by \$90,890.70 and an amendment filed on April 18, 1988, reducing the expenditures allocable to Iowa by \$67,743.59 and New Hampshire by \$64,596.55.*/ The Audit staff reviewed all of the Committee's work papers related to the original allocations as well as work papers related to the amendments filed. This review revealed a number of areas where the Audit staff disagrees with the Committee's method of allocation and/or computations. Detailed below are the differences between the Committee's totals and the Audit staff's totals.

2. Media

Section 100.8(b)(21) of Title 11 of the Code of Federal Regulations states, in part, that the term "expenditure" does not include costs incurred by a candidate or his or her authorized committee(s) in connection with the solicitation of contributions if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate. The fundraising expenditures need not be allocated on a State by State

*/ It should be noted that prior to filing the amendments, the Committee reported itself over the Iowa and New Hampshire state limitations by \$140,011.70 and \$44,384.82 respectively.

basis, except where the fundraising activity is aimed at a particular state and takes place within 28 days prior to a primary election.

Section 110.8(c)(2) of Title 11 of the Code of Federal Regulations states that expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that State's primary election, convention, or caucus shall be presumed to be attributable to the expenditure limitation for that State.

In its original filings, the Committee attributed 50 percent of the allocable amounts paid to TV and radio stations (see Section 3 for a discussion of media commissions) for time buys to exempt fundraising; however, the full allocable amounts relative to time buys run within 28 days of the Iowa caucus and New Hampshire primary were attributed to the respective States.*

On April 18, 1988, the Committee filed amendments to its monthly reports covering January and February 1988. The amendments reduced the amounts related to media allocable to Iowa by \$67,743.59 and New Hampshire by \$61,502.87. The reductions were the result of the Committee applying 50 percent of the amounts paid to TV and radio stations for media ads run within 28 days of the Iowa caucus and New Hampshire primary to exempt fundraising.

The Committee provided the Audit staff with a memorandum explaining the adjustments to the media allocation contained in the April 18, 1988 amendments. The memorandum states that the Committee continued to raise money in both Iowa and New Hampshire during the last month of the campaign (30 days prior to the dates of the Iowa caucus (2/8/88) and New Hampshire primary (2/16/88)) and that they believe these contributions were a direct result of the paid advertising and therefore the advertising in the last 28 days of the elections was just as much fundraising advertising as those ads placed prior to the 28 days.

The Audit staff does not disagree with the Committee's contentions that the ads represented fundraising expenditures; however, the Committee appears to be completely ignoring 11 C.F.R. 100.8(b)(21), which clearly requires that fundraising activities targeted at a particular State and occurring within 28 days of a State's primary are chargeable to that State's expenditure limitation.

*/ In Advisory Opinion 1988-6, the Commission permitted a committee to allocate 50 percent of the cost of media ads to fundraising, if the ad contained a solicitation for contributions and if it were broadcast more than 28 days prior to the date of the primary election.

As noted, Advisory Opinion 1988-6 permitted a committee to attribute to fundraising 50 percent of the costs of media ads allocable to a particular State because the ads contained a solicitation for funds. The Committee states in their memorandum that "all of our advertisements in both Iowa and New Hampshire solicited contributions up until the day of the elections." In order to verify that a solicitation was included on all advertisements, the Audit staff viewed all television commercials run by the Committee. The review revealed that one commercial did not contain any solicitation for contributions; a second commercial ended with the statement "to help call 1-800-USA-MIKE"; and the Committee was unable to provide a copy of a third commercial. These three commercials were only run within 28 days of an election.

The Committee was unable to provide the Audit staff with copies of its New Hampshire radio advertisements which were needed in order to confirm that a solicitation was contained in the radio advertisements; however, all New Hampshire radio advertisements (\$20,172.00) occurred within 28 days of the New Hampshire primary. Thus, the Committee has been unable to demonstrate that media within 28 days of the primary election contained solicitations. Further, had that demonstration been made, the provisions of 11 C.F.R. §100.8(b)(21) would prevent a fundraising exemption for these media expenses.

In the interim audit report, the Audit staff concluded that the Committee had not provided sufficient justification to support the reductions noted above. The Audit staff therefore increased the expenditures allocable to Iowa by \$67,743.59 and New Hampshire by \$61,502.87.

In response to the interim audit report, the Committee restates the Audit staff's position regarding 11 C.F.R. §100.8(b)(21) and explains that subsection (iii) of 11 C.F.R. §100.8(b)(21) directs the reader to 11 C.F.R. §110.8(c), which states "Expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that State's primary election, convention or caucus shall be presumed to be attributable to the expenditure limit for that State, 11 C.F.R. §100.8(b)(21) (relating to the 20 percent fundraising exemption) notwithstanding." (Emphasis in original.) The Committee argues that there is no basis in the Act for any limitation on fundraising expenditures occurring within 28 days of an election. The response goes on to state that "...the validity of the FEC's '28 day rule' rests on a dubious foundation. In the FECA, 2 U.S.C. §431(9)(B)(vi), it is specifically provided that the term 'expenditure' does not include "any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of the candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to

such candidate under §441a(b), but all such costs shall be reported in accordance with §434(b)."

The Committee argues that the statutory language does not contain a presumption that fundraising expenditures incurred within 28 days of a primary election do not qualify for the fundraising exemption. The Committee states that the FEC is overstepping its rulemaking process by limiting the exemption to only fundraising costs incurred outside the 28 days by creating a regulatory presumption. The Committee feels that it has met the presumption with respect to the advertisements which carried the fundraising solicitation. The Committee provided printouts of fundraising activity which show that over 20 percent (\$6,566) of the funds raised in Iowa and approximately 9 percent (\$10,125) of the funds raised in New Hampshire were raised after the 28 day period began.

As noted above, the Audit staff disagrees with the Committee's argument that the expenditures, although fundraising in nature, are not allocable to the States' expenditure limitations. In past Commission action regarding challenges to the "28 day rule", there has not been any precedent established for a committee rebutting the presumption that expenditures made within 28 days of a primary should be allocated to a state.*/
Finally, as noted above the Committee has failed to establish the fundraising component of the expenses at issue.

As a result, the Audit staff has not adjusted the expenditures allocated in the interim audit report (Iowa \$67,743.59; New Hampshire \$61,502.87).

3. Media Commission

Section 106.2(b)(2)(i)(B) of Title 11 of the Code of Federal Regulations states that except for expenditures exempted under 11 C.F.R. 106.2(c), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry market data.

The Audit staff reviewed all payments to the Committee's media firm and media buyers relating to services provided, media placement, and commissions. The review revealed that the Committee did not allocate any media commission to the state expenditure limits. Based on information provided by the Committee and the media buyers at the close of fieldwork it was determined that at a minimum a 2 percent commission was paid for

*/ The "28 day rule" as found at 11 C.F.R. §110.8(c)(2) was promulgated on April 13, 1977.

media placed in Iowa and New Hampshire. The amount of the actual commission paid to the media buyers was not verified, since the Committee had not provided complete information on total media buys made by one of the media buyers. Once this information was received and reviewed, any change to the commission amount relative to Iowa and New Hampshire would be computed.

Using a 2 percent commission, the Audit staff computed an additional \$3,705.08 allocable to Iowa and \$1,929.82 allocable to New Hampshire. On July 14, 1990, the Committee filed an amended report disclosing the above amounts as allocable to Iowa and New Hampshire.

Subsequently, the media firm made available all records relative to media time buys, including those records not available for review during the audit. The Audit staff determined that the Committee paid \$150,709.75 in fees/commissions for media time buys. This amount represents 3.5 percent of the total net media placed ($\$150,709.75 + \$4,292,629.62$).

Based on the above, the amounts allocable to Iowa and New Hampshire have been revised. A 3.5 percent commission has been applied to all allocable media buys for Iowa and New Hampshire. This percentage replaces the estimated 2 percent noted in the interim audit report. As a result, a total of \$6,483.89 is allocable to Iowa and \$3,377.18 to New Hampshire for media commissions.

4. Adjustments to Media Buyer's Allocations

The Committee's media buyer provided the Committee with the amounts of television buys allocable to each State using percentages reported in "Arbitron Ratings Television 1986-87 Universe Estimate Summary" (Arbitron). The majority of radio buys were allocated 100 percent to the State in which the radio station was located.

The Audit staff reviewed the allocations prepared by the media buyer and determined that in some instances the Arbitron percentages for New Hampshire used by the media buyer were outdated and in other instances, the percentages were revised by the media buyer for both television and radio. The Audit staff recalculated the allocations using the updated Arbitron data and determined that media allocable to New Hampshire should be reduced by \$33,517.46. Committee officials were provided with the Audit staff's adjustments.

In addition to the above matters, the Audit staff noted other miscellaneous errors which require an increase in the media allocations to Iowa of \$3,364.18. The adjustments were discussed with Committee officials who agreed with the calculations.

In response to the interim audit report, the Committee filed an amended report on July 14, 1990 which reflected the adjustments noted above.

5. Fundraising

The Committee reduced the amounts allocable to the Iowa and New Hampshire expenditure limitations by an amount equal to 50 percent of the costs of events held in these States.*/ The Committee provided the Audit staff with memoranda which stated that funds were solicited at the events. A sample of literature which the Committee states was distributed at many Iowa events was also provided to the Audit staff. The literature did have a request for funds on the back page.

The Committee also provided a sworn affidavit from Governor Dukakis' Executive Assistant in which he states that he attended in excess of 90 percent of the Governor's public appearances in Iowa and that the Iowa literature was handed out at most events. The Committee provided the Audit staff with a written statement which describes the Committee's fundraising efforts in New Hampshire. According to the statement, the Committee emphasized grassroots fundraising and that collections were taken at all events.

In requesting that 50 percent of the costs of the events in question be allocated to fundraising, the Committee appears to be relying on the Commission's decision in Advisory Opinion 1988-6, which dealt specifically with television advertisements. As permissible under the Regulations, the Committee has allocated to fundraising the costs of events which were strictly fundraising in nature (11 C.F.R. §100.8(b)(21)) and also 10 percent of overhead and payroll in the State (11 C.F.R. §106.2(c)(5)). In the interim audit report, the Audit staff stated that no justification could be found in the Regulations for allowing an additional 50 percent allocation to fundraising as proposed by the Committee. As a result, the Audit staff increased the amount allocable to Iowa by \$36,344.32 and to New Hampshire by \$3,093.68.

In response to the interim audit report, the Committee argues that the Audit staff's position is legally insupportable. The Committee states that 2 U.S.C. §431(9)(B)(vi) broadly excludes from the national spending limit "any costs incurred by ...[a presidential candidate who accepts matching funds] in connection with the solicitation of contributions..." The Committee attempts to further support its argument by

*/ The costs related to other events which were initially viewed as strictly fundraising in nature were excluded from allocation by the Committee in accordance with 11 C.F.R. §100.8(b)(21).

referring to 11 C.F.R. §100.8(b)(2)(i) and (ii), along with Advisory Opinion 1988-6 and the 1984 John Glenn for President Audit Report. The above referenced materials provided the committees a basis for allocating a portion of disbursements to the fundraising limit.

In order to accept the Committee's position in this matter, the Commission would have to agree that across the board, all events attended by the Candidate were fundraising in nature. The Audit staff does not agree with the Committee that it has shown in this case that a substantial fundraising purpose has been shown for the expenditures in question. The affidavit, stating that the distribution of a piece of campaign literature containing a request for funds was distributed at most events is not sufficient to demonstrate that the events in question were in fact of a substantial fundraising nature. Further, the affidavit states that the literature piece entitled "Iowans Rate Mike Dukakis" was a standard piece typical of the literature distributed at Iowa Dukakis events. It should be noted that the above piece of literature was the only sample submitted for Iowa events. This piece of literature appears to be a copy of a newspaper article which requests funds. However, it is not event specific and appears to be dated February 8, 1988 (the day of the Iowa caucus). The distribution of campaign material containing a solicitation at an event, rally or other gathering does not convert the occasion into a fundraising event. Naturally, the cost of the campaign material would be 100% fundraising and would have been so treated.

Finally, it is obvious that the Committee continues to disregard the "28 day rule" (see III.B.2. - Media). Should the Committee demonstrate that the 50 percent fundraising exemption is permissible, such exemption would only apply to the cost of events held outside the 28 day periods. Therefore, the amounts allocated to the Iowa (\$36,344.32) and New Hampshire (\$3,093.68) expenditure limitations remain unchanged.

6. Iowa Expenses Allocated to National Headquarters

Section 106.2(b)(2)(vi) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State.

In February and August 1987, the Committee conducted two polls in Iowa at a cost of \$14,000 and \$6,000. The first poll was paid for in two installments of \$7,000 each. The first payment was allocated to Massachusetts and the second payment was allocated to Iowa. The second poll was paid from an invoice which indicated it was an Iowa poll and the payment was allocated in full to Iowa.

In its March 15, 1988 amendment, the Committee reduced its allocations to Iowa for the second quarter report by \$7,032.00 and the third quarter report by \$3,421.50. According to workpapers maintained by the Committee, the reductions represented 50 percent of the cost of the two Iowa polls conducted in the spring and summer of 1987. In a memorandum explaining the amendment, the Committee states that the polls assisted the Iowa campaign effort in developing strategies for the Iowa caucus and were used as the basis for the campaign's national strategy. For this reason, the Committee amended its reports to allocate 50 percent of the cost of the two polls to the national campaign.

Committee officials could not provide the Audit staff with copies of the questions asked during the polls; however, they do not dispute the fact that the polls were conducted in Iowa.

The interim audit report stated that it was the opinion of the Audit staff that the Committee did not provide sufficient justification for allocating 50 percent of the costs of the polls to the national campaign. Therefore, the Audit staff increased the amount allocable to the Iowa expenditure limit by \$17,453.50 [$\$14,032.00^*/ + \$3,421.50$].

In response to the interim audit report, the Committee stated that copies of the two polls have not been located; however, "...from the memories of those involved we believe they would demonstrate the national scope of the questions asked." The Committee further restates that the data obtained from the polls was used to plan national strategy. However, the Commission's regulations on polling are very clear. If the poll was conducted within a state, the cost is allocable to that state.

It is the opinion of the Audit staff that the Committee has not provided any additional justification to warrant reducing the amounts allocable to Iowa. Therefore, the amount allocated to Iowa (\$17,453.50) remains unchanged.

7. Allocation of State Offices' Overhead to National Campaign

Section 106.2(b)(2)(iv)(A) of Title 11 of the Code of Federal Regulations states, in part, that except for expenditures exempted under 11 C.F.R. 106.2(c), overhead expenditures of committee offices located in a particular State shall be allocated to that State. For purposes of this section, overhead expenditures include, but are not limited to.

* / Since only \$7,000 of the \$14,000 cost of the first poll was allocated to Iowa, it is necessary to increase the Iowa allocation by \$14,032 (\$7,000 not allocated and the \$7,032 reduction from the March 15, 1988 amendment).

rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

a. Iowa Office Overhead

The Committee amended its reports on March 15, 1988, to allocate 50 percent of the overhead costs (\$14,837.82) of its Iowa office to the national campaign. The Committee based the reallocation on the fact that the Iowa office served as "an extension of the Boston office for reasons of geographical convenience." In a memorandum explaining the reallocation, the Committee states that a substantial amount of the Iowa office staff's time was spent working with and answering inquiries not directly related to the Iowa caucus. The Governor's national field staff and scheduling staff also spent a great deal of time in Iowa, however, they often were involved with responsibilities for other States.

In the interim audit report, the Audit staff stated that no justification in the regulations existed for exempting the overhead costs of the Iowa office to the national campaign. To accept the Committee's position would in effect create a new "national campaign" exemption not contemplated in the Act or Regulations. As a result, the Audit staff increased the amount allocable to the Iowa expenditure limitation by \$14,837.82.

In response to the interim audit report, the Committee restates its position that it was necessary to equip the Iowa office similarly to the national headquarters, since the candidate spent an extended period of time there. The Committee did not provide any additional information to justify the allocation, therefore, the amount allocable to the Iowa expenditure limitation (\$14,837.82) remains unchanged.

b. Iowa Press Staff - Payroll

In addition to the overhead costs mentioned above, the Committee also reallocated 50 percent of the payroll costs of the Iowa press staff to the national campaign (\$40,398.41). In a memorandum explaining the reallocation the Committee states that "the Iowa press staff spent a great deal of their time overall working with non-Iowa based press. The Iowa campaign was extensively covered by press from all over the country. This coverage was not intended to, and did not, influence the results of the Iowa Caucus." The Committee also provided an affidavit signed by the Committee's Iowa Press Secretary in which she states "Whenever Governor Dukakis visited Iowa he was followed by a large number of non Iowa press and the press office staff would spend a great deal of their time working with the non-Iowa based press."

The Commission dealt with the issue of exempting a portion of Committee staff salaries from allocation to the state expenditure limits for staff members who worked with the

national press during the 1980 Kennedy for President Committee audit. In that matter, the Commission agreed with the Audit staff that since the salaries were for staff services in the states and do not relate directly to the national headquarters that there was no basis for exempting the salaries from the state expenditure limitations. As a result, the Audit staff increased the amount allocable to the Iowa expenditure limitation by \$40,398.41.

In response to the interim audit report, the Committee restated its position on the matter, but did not provide the Audit staff with any additional information for its allocation. Therefore, the Audit staff's allocation to the Iowa expenditure limitation (\$40,398.41) remains unchanged.

c. FAX Machine

The Committee also reallocated the cost of the fax machine maintained in the Iowa state office to the national office (\$1,921.92). According to a memorandum prepared by the Committee, the fax machine was used solely as a means of interstate communication with the national headquarters. To support the argument, Committee officials supplied the Audit staff with a November 1987 and January 1988 telephone bill for the fax machine which shows that the majority of the use was for interstate communication.

It is the opinion of the Audit staff that costs associated with a fax machine be allocated in the same manner as State office telephone costs. Under 11 C.F.R. 106.2(b)(2)(iv)(A), telephone service base charges are considered overhead costs and allocable to the State limits while charges for interstate calls are not allocable (11 C.F.R. 106.2(b)(2)(v)). The \$1,921.92 in payments the Committee is attempting to reallocate are equipment costs and do not include the telephone company charges for the transmission of the correspondence. As a result, the Audit staff has allocated \$1,921.92 to the Iowa expenditure limitation.

In response to the interim audit report, the Committee restated their position that the fax machine costs should not be counted toward the Iowa limit, however, the Committee did not provide any additional information. Therefore, it remains the opinion of the Audit staff that the \$1,921.92 in costs associated with the Iowa fax machine be allocated to the Iowa expenditure limitation.

8. Payroll

Section 106.2(c)(5) of Title 11 of the Code of Federal Regulations states that an amount equal to 10 percent of campaign workers' salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost and as an exempt fundraising expenditure.

The Committee classified costs associated with reimbursements for campaign housing and individual travel subsidies in Iowa as payroll costs. These costs were combined with actual payroll, payroll taxes, and health insurance costs to establish a broad category of "payroll" costs. The Committee then excluded 10 percent of these total "payroll" costs from allocation to the Iowa expenditure limitation as both fundraising and compliance costs. These additional "payroll" classifications resulted in a reduction to the Iowa expenditure limitation by exempting \$2,043.18 in fundraising costs and \$2,485.25 in compliance costs.

The Committee did not have any written employment contracts which indicated that expense reimbursements would be considered salary nor could they confirm whether the employees on whose behalf the payments were made were instructed to report the payments as income. As a result, the Audit staff allocated an additional \$4,528.43 (\$2,043.18 + 2,485.25) to the Iowa expenditure limitation.

In response to the interim audit report, the Committee states it had no written employment contracts with its senior or junior staff. The Committee explains that the payment of travel expenses was considered a supplement to individuals' salaries, and for that reason, the Committee viewed the payment of expense reimbursements as salary.

It is the opinion of the Audit staff that the Committee has no justification for categorizing the costs noted above as payroll costs. Therefore, the Audit staff's allocation to the Iowa expenditure limitation (\$4,528.43) remains unchanged.

9. Travel, Subsistence, and Salary

Sections 106.2(b)(2)(ii) and (iii) of Title 11 of the Code of Federal Regulations state, in part, that salaries and travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to the State in proportion to the amount of time spent in each State during a payroll period.

A review of hotel bills and expense reimbursements revealed various instances where individuals spent five or more consecutive days in Iowa or New Hampshire; however, the associated salary and subsistence costs were not allocated to the respective State (\$50,914.58 - Iowa; \$18,662.70 - New Hampshire). In addition, in some instances hotel charges were noted on credit card bills, however, documentation on the length of stay by the individual(s) was not available (\$18,587.10 - Iowa; \$6,614.47 - New Hampshire). The auditors also noted that 34 cars were leased from rental agencies located in Illinois and Nebraska. Generally, the term of the lease was late January to mid February and the associated expenses were not allocated to the Iowa

expenditure limitation (\$18,828.49).*/ Committee officials were provided with a list of the expenditures at the exit conference. Based on the activity noted above, the Audit staff identified \$88,330.17 (\$50,914.58 + \$18,587.10 + \$18,828.49) in expenses in Iowa and \$25,277.17 (\$18,662.70 + \$6,614.47) in New Hampshire and have increased the amount allocable to each state.

In response to the interim audit report, the Committee allocated \$64,226.52 to Iowa and \$22,443.40 to New Hampshire. However, the Committee disagreed with the Audit staff's allocation of \$24,103.65 (\$88,330.17 - 64,226.52) to Iowa and \$2,833.77 (\$25,277.17 - 22,443.40) to New Hampshire.

Regarding the expenditures which the Committee states were properly allocated (i.e., not requiring allocation to Iowa or New Hampshire) in instances involving seven individuals (\$2,731.14), the Committee explained that they had been working under a "previous interpretation" of the 5 day rule. Prior to September, 1987, the Committee interpreted the rule as allowing an allocation to interstate travel as long as the individual spent less than 120 hours in a particular state and subsequently left the state for at least 24 hours. The Committee proposes that any expenditures allocated under the "previous interpretation" be accepted as properly allocated. For the majority of the remaining amount, the Committee obtained affidavits stating that the individuals rented cars and hotel rooms in their own names but did not use them, and other individuals stated that they could not recall remaining in a state for more than four consecutive days. The Committee did not support the statements in the affidavits with sufficient documentation or any other contemporaneous evidence. In the case of a number of individuals who the Committee stated accompanied the candidate on an Iowa trip, the Committee, in response to the interim audit report, provided the Candidate's itinerary. A flight manifest prepared by the travel agency handling Committee travel arrangements for the period in question was reviewed by the Audit staff during fieldwork; however, neither the itinerary nor the flight manifest contains the names of the individuals involved.

It is the opinion of the Audit staff that the Committee's response and information submitted along with the response do not provide sufficient evidence to exempt the expenditures from the states' spending limits. Further, with respect to statements that people other than those indicated in the records used cars or hotel accommodations, nothing is provided to support this assertion. Absent such support, the Audit staff must rely on the information documented in Committee records. The Audit staff does not believe that a misinterpretation of the 5 day rule justified the Committee exempting allocable expenditures from the spending limits.

*/ The dates of the Illinois and Nebraska primary elections were 3/15/88 and 5/10/88, respectively.

Based on a review of the Committee's response, the Audit staff's original allocations remain unchanged (\$88,330.17 Iowa; \$25,277.17 New Hampshire).

10. Democratic Party List

The Committee purchased an Iowa supporter list from the Iowa state party for \$10,000. At the time of purchase, the Committee allocated \$3,000 to fundraising and \$7,000 to the Iowa spending limitation. In a March 15, 1988 amendment, the Committee allocated an additional \$2,000 to fundraising and reduced the Iowa expenditure limitation by \$2,000. In a memorandum explaining the March 15, 1988 amendment, the Committee states that when the list was purchased, it was estimated that it would be used 30 percent for fundraising. However, at this point a 50-50 split is more accurate.

Based on the above, the Audit staff has allocated an additional \$5,000 to the Iowa expenditure limitation.

In response to the interim audit report, the Committee provided an affidavit from the Director of Direct Mail Fundraising in which he states, "the Committee used this list for, among other things, fundraising letters directed to Iowa Democrats." (Emphasis not in original.) He further states that the list was well maintained and that the value of the list for fundraising purposes was approximately \$55 per 1,000 names or \$4,950 (90,000 names).

It is the opinion of the Audit staff that the statements and estimate of the value of the list provided by the Director of Direct Mail Fundraising do not provide support for allocating 50 percent of the cost of the list to fundraising, since no evidence has been provided that the list was used substantially for fundraising.*/

Since the Committee has not provided any justification for allocating a portion of the list to fundraising, the Audit staff's allocation to the Iowa expenditure limitation (\$5,000) remains unchanged.

However, on September 26, 1991, the Commission determined that the cost of the list was an exempt fundraising expense and does not require allocation to Iowa. Consistent with

*/ According to the Committee's data base, 919 contributions, totaling \$44,777.25, were recorded as received from individuals whose address is listed in Iowa. Of this amount, 295 contributions, totaling \$7,849.50, are recorded with a source code (DM...) apparently denoting the contributions were received in response to a direct mail effort.

that determination, the Audit staff has adjusted the amount allocable to the Iowa limitation.

11. Phone Bank Services

During the campaign, the Committee entered into an agreement with the American Federation of State, County and Municipal Employees (AFSCME) for phone bank services and related space. Based on correspondence from AFSCME, the Committee allocated \$9,244.55 to Iowa and \$7,152.50 to New Hampshire for these services. The Audit staff reviewed the available records maintained at AFSCME headquarters regarding the phone banks and leases and identified additional allocations to Iowa and New Hampshire.

AFSCME provided space and phone bank services in 10 cities in Iowa and 10 cities in New Hampshire. Complete phone bills were not available regarding charges during the period covered by the leases, and, in one instance, a lease was not available for a phone bank location. The Commission issued subpoenas to the Iowa and New Hampshire phone companies to produce the missing phone bills. A review of the bills and other related documents received as a result of the subpoenas disclosed that an additional \$15,561.88*/ is allocable to Iowa and an additional \$17,852.34 is allocable to New Hampshire. The value of these allocations is viewed as an in-kind contribution. The Iowa telephone company was unable to provide information on the phone location for which a lease was not available.

12. Miscellaneous

In addition to the matters noted above, the Audit staff identified various errors in the Committee's computations relating to the Iowa and New Hampshire allocations. These errors included refunds charged back to the Iowa limitation when the original expenditure was not allocated to Iowa, and various

*/ An additional amount may be allocable relative to leased premises in Iowa, Nebraska, Minnesota, Illinois and Vermont for which documentation has yet to be provided. Further, interstate phone calls made from phone banks located in Nebraska, Minnesota, Illinois and Vermont to Iowa and New Hampshire were noted during our review. Approximately \$17,600 in interstate charges for calls to Iowa and approximately \$5,500 to New Hampshire are not considered allocable based on the Commission's determination in the Dole for President final audit report (i.e., the calls made from a given phone bank were not made exclusively to a single state). Approximately \$2,900 in calls or about 11% of the toll charges were made to states other than Iowa and New Hampshire.

calculation errors. These errors resulted in an underallocation of expenditures to Iowa totaling \$7,655.21 and to New Hampshire totaling \$3,581.97.

In response to the interim audit report, on July 14, 1990, the Committee filed an amended disclosure report increasing the expenditures subject to the Iowa limitation by \$7,655.21 and the New Hampshire limitation by \$3,581.97.

7697-190400

Summary of Expenditures Allocable
to Iowa and New Hampshire

	<u>Iowa</u>	<u>New Hampshire</u>
Reported Totals as amended at 3/15/88 and 4/18/88	\$ 751,595.01*/	\$ 438,667.46
Media Adjustments:		
Cost of Media Buys within 28 days of Primary Charged to Fundraising (III.B.2.)	67,743.59	61,502.87
Media Commission (III.B.3.)	6,483.89	3,377.18
Adjustments to Media Buyer's Allocations (III.B.4.)	-0-	(33,517.46)
Miscellaneous Media Adjustments (III.B.4.)	3,364.18	-0-
Fundraising Adjustments:		
50% of Event Costs Allocated to Fundraising (III.B.5.)	36,344.32	3,093.68
Expenses Allocated to Headquarters:		
Polling (III.B.6.)	17,453.50	-0-
Overhead (III.B.7.a.)	14,837.82	-0-
Payroll (III.B.7.b.)	40,398.41	-0-
Fax Machine (III.B.7.c.)	1,921.92	-0-
Payroll:		
Allocation to Fundraising and Compliance for Expenses included as - Payroll (III.B.8.)		
Fundraising	2,043.18	-0-
Compliance	2,485.25	-0-
Travel, Subsistence and Salary:		
Not Allocated (III.B.9.)	88,330.17	25,277.17
Phone Bank Services (III.B.11.)	15,561.88	17,852.34
Miscellaneous (III.B.12.)	<u>7,655.21</u>	<u>3,581.97</u>
Total Expenditures Subject to Limit	\$1,056,218.33	\$519,835.21
State Spending Limitation	<u>(775,217.60)</u>	<u>(461,000.00)</u>
Amount in Excess of State Limitation	<u>\$ 281,000.73</u>	<u>\$ 58,835.21</u>

*/The Audit staff adjusted this reported total by (\$5,000), see section III.B.10.

Shown below is the calculation of the amount repayable to the United States Treasury as a result of the expenditures in excess of the Iowa and New Hampshire state limitations.

	<u>Iowa</u>	<u>New Hampshire</u>
Amount in Excess of the Limitation	\$ 281,000.73	\$ 58,835.21
Less Accounts Payable at 7/20/88	<u>3,947.98</u>	<u>442.92</u>
Amounts Paid in Excess of Limitation	277,052.75	58,392.29
Repayment Ratio from Finding III.A.	<u>.296590</u>	<u>.296590</u>
Repayment Amount	<u>\$ 82,171.08</u>	<u>\$ 17,318.57</u>

Recommendation #3

On October 10, 1991, the Commission made an initial determination that the pro rata portion, \$99,489.65 (\$82,171.08 + 17,318.57), of the amount paid in excess of the Iowa and New Hampshire expenditure limitations, as calculated by the Audit staff, is repayable to the United States Treasury in accordance with Section 9038.2(b)(2) 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: \$99,489.65

C. Statement of Net Outstanding Campaign Obligations and Repayment of Surplus Funds

Section 9034.5(a) of Title 11 of the Code of Federal Regulations states, in part, that within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations (NOCO).

The NOCO statement shall contain, in addition to other items, cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching).

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

Section 9038(b)(3) of Title 26 of the United States Code states that amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

On August 5, 1988, the candidate submitted a NOCO statement which indicated that the Committee was in a deficit position at July 20, 1988, Governor Dukakis' date of ineligibility. During audit fieldwork conducted in 1989, the Audit staff reviewed the components of the NOCO statement and reached agreement with Committee officials on all of the components except the cash on hand total as discussed below.

Joint Escrow Account

Section 110.1(b)(2)(ii) of Title 11 of the Code of Federal Regulations states that in the case of a contribution not designated in writing by the contributor for a particular election, the contribution shall be considered made with respect to the next election after the contribution is made.

The Committee opened a checking account entitled "joint escrow account" on June 10, 1988. A review of the joint escrow account revealed that \$896,627.90 of the \$1,447,750.42 deposited into the account represented contributions dated on or before July 20, 1988.*/ It is the opinion of the Audit staff that these contributions represent contributions to Governor Dukakis' primary campaign and should be included in the cash on hand total at July 20, 1988, which would result in the campaign being in a surplus position on that date.

*/ Of the \$896,627.90, checks representing approximately 61 percent, or \$551,241.35, were dated prior to June 1, 1988.

The Committee disagreed with the Audit staff's position and provided a letter outlining their position. In the letter the Committee contends that it halted its primary election fundraising efforts in June 1988, because it was likely to raise more than it could legally spend and it was evident that after the California primary (June 7, 1988), Governor Dukakis was assured of the Democratic Party presidential nomination. The letter further states that "[s]ince both of these facts were generally known, the Committee believed that there was a strong likelihood that subsequent contributions received were, in fact, intended by the contributors to be designated for the benefit of Mike Dukakis' general election campaign, or the Dukakis General Election Legal and Compliance (GELAC) Fund."*/ The letter continues that "[t]he Committee believes that it has, without the guidance of Regulations, acted prudently and reasonably to confirm what it reasonably believed to be the intentions of the post primary election donors whose contributions could 'influence' only the general election." The Committee refers to MUR 2154 and states that the inferred intent of the contributors was ultimately confirmed in writing.

Regarding the Committee's statement that it halted its primary fundraising in June of 1988, the evidence appears to refute that contention. During the period June 10, 1988 through July 20, 1988, approximately 1.1 million was received by the Committee and deposited to the joint escrow account. Of this amount, only \$27,735.00 could be associated with a solicitation to the GELAC.**/ The Committee's argument that it acted prudently without guidance of regulations is also without merit. The regulations are clear in this instance and relate specifically to the issue at hand. Under 11 C.F.R. §110.1(b)(2)(ii), a contribution received by the Committee which is not designated in writing for a particular election shall be considered made with respect to the next election; in this case, the nomination of Governor Dukakis at the Democratic National Convention, which marks the end of the primary election.

Regarding the reference to MUR 2154, in that case, the question was whether excessive primary contributions were redesignated to a committee's general election compliance fund within a reasonable amount of time. The regulations at 11 C.F.R. §110.1(b)(3), which were not in effect at the time MUR 2154 was

*/ The apparent inference drawn by the Committee relative to the contributions at issue is, in the opinion of the Audit staff, without merit.

**/ In calculating the total representing primary contributions, the Audit staff did not include checks made payable to the GELAC, checks accompanied by a GELAC solicitation, or contributions which would have been excessive during the primary.

opened, offer specific guidance for redesignating excessive contributions to another election. In the case at hand, we are not dealing with excessive contributions but rather contributions received which were within the individual's \$1,000 contribution limitation. Therefore, the facts in MUR 2154 are not analogous to the present situation.

It should also be noted that in May 1988, a member of the Committee's legal staff contacted a Commission Audit staff member to inquire whether the operation of the joint escrow account was acceptable. The Committee was notified that it was the position of the Audit Division that the contributions represented contributions to the primary campaign and would be considered a part of the surplus at the date of ineligibility.

Based on the facts noted above, it is apparent that upon becoming aware that the Committee would most likely have a surplus at the date of ineligibility, the Committee attempted to eliminate the surplus by virtue of transmittals via the joint escrow account to the GELAC. The Audit staff has included as cash on hand on the date of ineligibility all contributions dated on or before July 20, 1988, which were deposited into the joint escrow account, except those designated for the GELAC.

The Commissioners discussed the activity related to the joint escrow account and resultant repayment implications in a meeting on January 23, 1990. The following is a quote of a statement made by one of the Commissioners prior to the Commission reaching its decision on the recommendation contained in the interim audit report.

"The Commission's regulations do not address this issue. The regulations do sanction the redesignation of excessive contributions to the legal and accounting compliance fund (11 C.F.R. §9003.3(a)(1)(iii)) and the redesignation of contributions made after the beginning of the general election expenditure report period but designated for the primary ('post-primary designated contributions') (id.). The latter provision is somewhat analogous to the situation at hand because it permits the redesignation of otherwise permissible primary contributions. On its face, the regulation would seem to allow the redesignation of post-primary designated contributions even if the primary would have a debt afterward. However, it would be inconsistent with the Commission's congressional mandate to allow a committee to, in essence, create debt that would lead to entitlement for post ineligibility matching funds. In other words, a committee should not be able to claim a net debt, and hence entitlement to post ineligibility matching funds, if it dissipated its permissible primary contributions to do so. Taken to its extreme, a committee could redesignate all of its unmatched

contributions (The redesignation of matched contributions would result in other problems, such as loss of entitlement.) and unnecessarily create a huge deficit with a resulting claim for matching funds."

"The current language of §9003.3(a)(1)(iii) pertaining to redesignation of post-primary designated contributions, effective April 8, 1987, evolved from a somewhat similar provision in the previous version of 11 C.F.R. §9003.3. However, the prior version made clear that such redesignations were permissible only if the primary committee retained sufficient funds to pay its remaining debts."

"Contributions which are made after the beginning of the expenditure report period but which are designated for the primary election may be deposited in the legal and accounting compliance fund: Provided, that the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign...[11 C.F.R. §9003.3(a)(1)(iii) (effective July 11, 1983).]"

"Though the current language did not retain this protective phrasing, there appears to have been no intent to alter the prior approach. See 52 Fed. Reg. 20865, 20866 (June 3, 1987). Indeed, as noted, it would be contrary to public policy to allow the creation of debt and the consequent entitlement to post ineligibility matching funds. Accordingly, the Committee should be permitted to redesignate and transfer-out to the GELAC only so much of the contributions as would not leave the Committee in a net debt position (\$686,282.26 worth). The remaining amount in question, \$210,345.64 (\$896,627.90 - \$686,282.26), cannot be redesignated and transferred-out, must be repaid by GELAC, and must therefore be included in Committee's cash on hand figure."

"Because the Committee did not keep records sufficient to enable the auditors to determine whether the redesignations in question took place within 60 days as the regulations at 11 C.F.R. §110.1(b)(5) would require, and because the 60 day time period has been incorporated for other redesignation situations under §9003.3(a)(1)(iii), the Committee still has the burden of demonstrating that the contributions it wishes to treat as redesignated were processed within the 60 day time frame. For now, the Commission should treat the full \$896,627.90 as primary contributions and hence as part of the cash on hand totals."

The Commission further determined that redesignations of contributions would be considered timely

received if it can be demonstrated that a written redesignation was received no later than 60 days from the date on the contributor's check. The date on the contributor's check is used because it was not possible to determine the date of receipt or the date of deposit into the joint escrow account based on our review of the records made available.

Absent such evidence, the contributions in question will remain as part of cash on hand for NOCO purposes.

As noted on the NOCO statement contained in the interim audit report, the Committee was in a surplus position on Governor Dukakis' date of ineligibility. Application of the repayment ratio contained at 11 C.F.R. §9038.3(c)(1) to the then calculated surplus equated to a repayment figure of \$204,288.50. It was also noted that any adjustments to the NOCO statement due to a change in winding down costs, etc., may result in a change in this figure. In addition, after receipt of the Committee's response concerning other issues in the report, a revised NOCO statement, including a change in the surplus repayment, if warranted, would be included in the final audit report.

The interim audit report recommended that within 60 calendar days of service the Committee should provide evidence that the contribution checks dated prior to July 21, 1988, included in Audit's cash-on-hand for NOCO purposes, were redesignated to the GELAC within 60 days of receipt. The Committee was to consider the date on the contribution check as the receipt date and provide the Audit staff with evidence as to the date of receipt of the contributor's redesignation.

In response to the interim audit report, the Committee stated that it was not the practice of the Committee to date stamp correspondence when received. An affidavit of the former Compliance Fund Director explains that contributions were not transferred from the joint escrow account until a contributor form redesignating the contributions was received. It should be noted that in a few instances, the Audit staff identified contributions transferred from the joint escrow account to the Compliance Fund without a letter authorizing the redesignation.

It is the opinion of the Audit staff that the Committee's response does not contain sufficient competent evidential matter to establish the date of receipt of the contributor's redesignation. The Audit staff cannot accept, as evidence of the date of receipt of a redesignation letter, the statement of one individual that transfers were not made until a redesignation letter was received.

The Committee also argues that the time period in which action must be taken on the contributions is more appropriately 80 days rather than the 60 days allowed in the interim report. The Committee cites 11 C.F.R. §§102.8(a) and 103.3(a), which provide 10 days for persons receiving

contributions to forward them to the treasurer and a second 10 day period from the date of the treasurer's receipt to deposit of the contributions. The Committee proposes to add this 20 day period onto the 60 day period provided in the interim audit report. The Committee also continues to argue that the contributions were properly redesignated, however, if the Commission accepts the 80 day time period, the Committee will accept the Commission's determination in this matter. In other words, if the Commission accepts as valid the removal of \$318,047.22*/ from the cash balance at the candidate's date of ineligibility, which in turn reduces the surplus repayment by \$94,329.62 based on information currently available, the Committee will recede from further argument on this issue.

During its consideration of this matter on October 10, 1991, the Commission determined that the Committee demonstrated that \$210,362.85 in contributions were transferred to GELAC within 60 days from the date on the contributors' checks (see Interim Response, Appendix 11). In addition, our review identified 30,798 in contributions that were supported by dated redesignation letters, such redesignations occurring within 60 days of the date of the contributor's check. Finally, our review also identified \$17,415 in contributions which, based on the Commission's determination, are not includable as cash in bank on the NOCO statement.

As a result of the Commission's October 10, 1991 determination, contributions totaling \$258,575.85 (\$210,362.85 + 30,798 + 17,415) have been excluded from cash in bank (joint escrow account) on the NOCO statement. The Committee's NOCO statement, as amended by the Audit staff, appears below.

*/ The Committee did provide copies of two checks, totalling \$2,000, that contained a notation indicating that the contributions were intended for the Compliance Fund. The Audit staff has adjusted the NOCO statement accordingly.

Dukakis for President Committee, Inc.
 NOCO Statement as of 7/20/88a/
 Audit Analysis

Assets

Cash in Bank		
Other Accounts	\$1,236,937.92	
Joint Escrow Account	636,052.05	b/
Accounts Receivable	884,948.45	
Capital Assets	<u>51,000.00</u>	
Total Assets		\$2,808,938.42

Obligations

Accounts Payable for Qualified Campaign Expenses	2,117,937.22	c/
Refunds of Contributions Due	18,685.00	
Amount Due U.S. Treasury for Stale Dated Checks	17,610.00	d/
Winding Down Costs 3/1/89 - 6/30/91	484,910.55	
Estimated Winding Down Costs 7/1/91 - 12/31/91	<u>49,650.00</u>	e/
Total Obligations		<u>2,688,792.77</u>
Surplus		<u>\$ 120,145.65</u>

- a/ Figures represent a review of actual activity through 2/28/89 and reported activity from 3/1/89 through 6/30/91.
- b/ Includes contributions deposited into joint escrow account dated on or before 7/20/88 net of excessive contributions refunded. The amount (\$896,627.90) cited in the interim report has been reduced by \$2,000 based on the Committee's response and by \$258,575.85 based on the Commission's 10/10/91 determination (see page 29).
- c/ Does not include \$4,390.90 in payments made post 7/20/88 in excess of state limits.
- d/ This amount represents refunds of excessive contributions made after the candidate's date of ineligibility that were not cashed by the contributors or reissued by the Committee (see Finding III.E.2.).
- e/ This estimate was provided by the Committee on November 21, 1991. Reports and records, as necessary, will be reviewed to compare actual costs to estimated.

Recommendation #4

On _____, the Commission made an initial determination that the pro rata portion, \$35,634 (\$120,145.65 x .296590), of the surplus, as calculated by the Audit staff, is repayable to the United States Treasury in accordance with Section 9038.2(b)(4) 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: \$35,634.00

D. Matching Funds Received in Excess of Entitlement

Section 9038(b)(1) of Title 26 of the United States Code states that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payment to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

Section 9038.2(b)(1)(i) of Title 11 of the Code of Federal Regulations states that the Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Included are payments made to the candidate after the candidate's date of ineligibility, where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 C.F.R. §9034.5.

Section 9034.1(b) of Title 11 the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year, provided that on the date of payment there are remaining net outstanding campaign obligations.

As noted in Finding III.C., based on the Audit staff's adjusted NOCO statement, the Committee was in a surplus cash position at the candidate's date of ineligibility (July 20, 1988). On August 10, 1988, the Commission certified \$314,640.35 in additional matching funds. Since the Committee was in a surplus position at the date of ineligibility, this payment was in excess of the candidate's entitlement.

In a letter dated June 12, 1989 the Committee contends that they are entitled to the matching fund payment since the

submission was made on July 16, 1988.* / The letter goes on to say "that the intent of the FECA cannot be to deprive candidates of matching funds for contributions both received by the Committee and properly documented to the FEC before the candidate's date of ineligibility."

It is the opinion of the Audit staff that the controlling date in this instance is not the date of receipt of the submission but rather the submission payment date as noted in 11 C.F.R. §9038.2(b)(1)(i). Regarding the processing of the submission, the Audit staff followed all procedures set forth in the Commission's Guideline for Presentation in Good Order; procedures which the Committee was well aware of and which the candidate agreed to comply with under 11 C.F.R. §9033.1(b)(8).

As an alternative, the Committee argues that the submission should be looked upon as a Letter Request which amends its prior Letter Request of July 11, 1988. The Commission's Guideline for Presentation in Good Order outlines the specific requirements for Letter Requests which may be submitted in lieu of regular submissions (see Guideline, Chapter IV), and the Committee's submission did not meet these requirements.

In summary, since the Committee had enough funds at the date of ineligibility (7/20/88) to settle all of its debts and winding down expenses, the candidate had no entitlement to further matching funds on the date of payment, August 10, 1988 (see Finding III.C.).

In the interim audit report, the Audit staff recommended that within 30 calendar days of service of the report, the Committee demonstrate that it had not received matching funds in excess of its entitlement. Absent such a showing, the Audit staff will recommend that the Commission make an initial determination that the Committee was not entitled to \$314,640.35 in matching funds received on August 10, 1988 pursuant to 11 C.F.R. §9038.2(b)(1)(i), and that the Committee repay \$314,640.35 to the United States Treasury pursuant to 26 U.S.C. §9038(b)(1).

In response to the interim audit report, the Committee stated that the submission was received by the Commission on July 16, 1988, which was prior to the candidate's date of ineligibility, and that the Audit staff is wrong to deprive the candidate matching funds for eligible contributions. The Committee argues that if the submission had been accepted on Monday, July 18, 1988, it would have been "routinely approved" by the Commissioners, the necessary papers delivered to Treasury by

* / Although a member of the Commission's staff took possession of the submission on Saturday, July 16, 1988, it was not considered received until July 25, 1988 which was the Committee's next scheduled submission date pursuant to the Commission Guideline for Presentation in Good Order.

July 20, 1988, and Treasury would immediately wire the money to the Committee's account.

The Audit staff disagrees with the hypothetical scenario posed by the Committee. Had the submission been actually received and accepted for processing on Monday, July 18, 1988, Commission procedures for the processing of matching fund payments would have resulted in the certification papers being forwarded to Treasury on Thursday, July 21, 1988, one day after the candidate's date of ineligibility. The actual scenario would have been: Submission received Monday, July 18, 1988; Certification documents circulated to Commissioners for tally vote by 4:00 P.M., Tuesday, July 19, 1988; Commissioners' vote sheets due in Commission Secretary's office by 4:00 P.M., Wednesday, July 20, 1988; Certification for payment hand delivered by the Audit Division to the United States Treasury between 10:00 A.M. and 12:00 P.M., Thursday, July 21, 1988.

The Committee further argues that even if the Commission were to agree with the Audit staff regarding the submission, the Committee was allowed to make a letter request. The Committee states that if the Commission considers the submission a late letter request, under the Commission's procedures, the certification would have been delivered to Treasury on July 18, 1988.*/ The regulations at 11 C.F.R. §9036.2(b)(2) state that a Committee may make a letter request in lieu of a regular submission, however the regulation goes on to say that a Committee may not submit two consecutive letter requests. In this case, since the Committee had made a letter request on July 11, 1988, it could not follow with another letter request until a full submission had been made. As stated above, the next scheduled submission date was July 25, 1988.**/

Recommendation #5

On October 10, 1991, the Commission made an initial determination that the amount of the matching fund payment in excess of the Candidate's entitlement (\$314,640.35) is repayable to the United States Treasury in accordance with Section 9038.2(b)(1) of Title 11 of the Code of Federal Regulations.

*/ In actuality, if a letter request was received on Monday, July 18, 1988, the certification papers would have been delivered to Treasury on Thursday, July 21, 1988.

**/ The candidate/committee was notified in writing in September 1987, that letter requests could only be made during calendar year 1988, on the second Monday of each month, provided the candidate did not become ineligible (Governor Dukakis' date of ineligibility was July 20, 1988).

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: \$314,640.35

E. Stale-Dated Checks

Section 9038.6 of Title 11 of the Code of Federal Regulations states that, if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

1. A review of the Committee's outstanding checks indicated that committee checks totaling \$29,150.14 from its operating and payroll accounts were stale-dated.

At the exit conference, Committee officials were provided a schedule of the stale-dated checks. Committee officials responded that they would research the checks.

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

- (a) provide photocopies (front and back) of any of the above mentioned checks which have now cleared the banks;
- (b) inform the Commission of its efforts to encourage the payees to cash these checks or provide evidence documenting the Committee's efforts to resolve these items;
- (c) submit a check payable to the United States Treasury for the total amount of such checks which are still outstanding at the conclusion of the response period.

In response to the interim audit report, the Committee provided copies of four checks, totalling \$3,460.01, which have been cashed. Another check for \$900 was voided, since it had been issued in error. The Committee stated that a check for the remaining balance (\$24,790.13), payable to the United States Treasury, will be forwarded.

2. A review of disclosure reports revealed that the Committee voided \$17,610 in checks issued subsequent to its date of ineligibility. The voided checks represented refunds of excessive contributions that were not cashed by the contributors and were outstanding in excess of one year.

A Committee representative informed the Audit staff that the voided refund checks will not be reissued to the contributors; rather, the amount will be forwarded to the United States Treasury.

Recommendation #6

On October 10, 1991, the Commission made an initial determination that the amount of stale-dated checks, \$42,400.13 (24,790.13 + 17,610), be paid to the United States Treasury in accordance with Section 9038.6 of Title 11 of the Code of Federal Regulations.

Amount: \$42,400.13

RECAP OF AMOUNTS PAYABLE TO THE UNITED STATES TREASURY

Amount Paid in Excess of the Iowa and New Hampshire State Limitation	\$ 99,489.65
Surplus Funds	35,634.00
Matching Funds Received in Excess of Entitlement	314,640.35
Stale-dated Checks	<u>42,400.13</u>
Total	492,164.13 */
Less Partial Repayment Received April 1, 1991	<u>485,000.00</u>
Remaining Amount Due	<u>\$ 7,164.13</u>

*/ This amount is subject to change based on the review of additional records (see Finding III.B.), as well as the disposition of other matters related to the NOCO statement.

93070190493

Public
Records



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DATE & TIME TRANSMITTED: WEDNESDAY, NOVEMBER 24, 1993 4:00

BALLOT DEADLINE: TUESDAY, NOVEMBER 30, 1993 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, MCGARRY, POTTER, THOMAS

SUBJECT: RATIFICATION OF REPAYMENT DETERMINATIONS
FOR 1988 PRESIDENTIAL CAMPAIGNS. MEMORANDUM
TO THE COMMISSION FROM THE OFFICE OF THE
GENERAL COUNSEL DATED NOVEMBER 24, 1993.

- () I approve the recommendation(s)
- () I object to the recommendation(s)

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

RECEIVED
F.E.C.
SECRETARIAT

NOV 24 AM 10:43

November 24, 1993

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

SUBJECT: Ratification of Repayment Determinations for 1988
Presidential Campaigns

On November 9, 1993, the Commission approved the Office of General Counsel's recommendation to ratify the repayment determinations made with respect to the 1988 presidential campaigns in light of FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). Accordingly, we have prepared this memorandum to effect the ratification of each preliminary repayment calculation, initial repayment determination, and final repayment determination for each publicly financed presidential campaign for the 1988 presidential election cycle in which the repayment determination is not yet finally closed and paid. The ratification would confirm the repayment determinations made with respect to Americans for Robertson, Inc., Paul Simon for President, Dukakis for President Committee, Inc., and LaRouche Democratic Campaign. Each of these committees instituted suits challenging the Commission's repayment determinations that are ongoing.

Attached for your information are copies of the certifications for the previous approval of the preliminary repayment calculation, initial repayment determination, and final repayment determination for each committee.^{1/}

^{1/} It should be noted that the preliminary repayment calculation is contained in the interim audit report and the initial repayment determination is set forth in the final audit report for each committee. The final repayment determination is supported by a statement of reasons. The certifications are for the Commission's approval of these documents.

RECOMMENDATION

The Office of General Counsel recommends that the Commission ratify the preliminary repayment calculations, initial repayment determinations, and final repayment determinations made with respect to the following 1988 publicly financed presidential candidates and committees:

Marion G. Robertson and Americans for Robertson, Inc.;
Michael S. Dukakis and Dukakis for President Committee, Inc.;
Senator Paul Simon and Paul Simon for President; and
Lyndon H. LaRouche and LaRouche Democratic Campaign.

Attachments

Certification of Commission votes on the interim audit reports, final audit reports and statements of reasons

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Americans for Robertson, Inc.
Interim Audit Report

)
) Agenda Document
) #X89-87
)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 19, 1989, do hereby certify that the Commission decided by a vote of 6-0 to approve the Interim Audit Report on Americans for Robertson, Inc. as submitted in Agenda Document #X89-87, subject to amendment of recommendation 29, and certain other amendments agreed to during the meeting discussion.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

12-27-89
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Americans for Robertson, Inc. -) Agenda Document #92-46
Final Audit Report.)

CERTIFICATION

I, Delores R. Harris, recording secretary for the Federal Election Commission open meeting on Thursday, March 26, 1992, do hereby certify that the Commission took the following actions in the above-captioned matter:

1. Decided by votes of 5-0 to approve recommendations 1-8, as submitted in Agenda Document #92-46.

Commissioners Aikens, Elliott, McDonald, McGarry and Thomas voted affirmatively for the decisions; Commissioner Potter was not present.

(continued)

Federal Election Commission
Certification for Americans
for Robertson, Inc. - Final
Audit Report
Thursday, March 26, 1992

2. Decided by a vote of 5-0 to approve the Final Audit Report - Americans for Robertson, Inc., as submitted in Agenda Document #92-46, and as amended by the Audit Division to add a footnote regarding the overall limitation.

Commissioners Aikens, Elliott, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Potter was not present.

Attest:

March 27, 1992
Date

Delores R. Harris
Delores R. Harris
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Americans for Robertson, Inc. -
Final Repayment Determination
Proposed Statement of Reasons
(LRA #335).

)
)
) a
) Agenda Documents #93-76
) and #93-76-A
)
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CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, September 23, 1993, do hereby certify that the Commission took the following actions on Agenda Document #93-76:

1. Decided by a vote of 5-1 to approve Section II, as submitted in Agenda Document #93-76, subject to the addition of a footnote with language acknowledging the distinction between raising new legal issues versus factual materials in response to Commissioners inquiries on issues previously raised.

Commissioners Aikens, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

(continued)

Federal Election Commission
Certification for
American for Robertson, Inc.
Final Repayment Determination and
Proposed Statement of Reasons
(LRA #335).
September 23, 1993

2. Decided by a vote of 5-1 to:

- a. Determine that Marion G. Robertson and Americans for Robertson, Inc. must repay \$290,793.66 to the United States Treasury;
- b. Order Marion G. Robertson and Americans for Robertson, Inc. to refund \$105,634.56 to certain press organizations; and
- c. Approve the Statement of Reasons in support of the final repayment determination and refund order, as recommended in Agenda Document #93-76, subject to the amendments agreed upon pursuant to the meeting discussion.

Commissioners Aikens, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented and will issue a statement of reasons.

Attest:

September 24, 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Interim Audit Report -)
Dukakis for President)
Committee, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 14, 1990, the Commission decided by a vote of 5-1 to approve the Interim Audit Report - Dukakis for President Committee, Inc., as submitted under staff memorandum dated February 8, 1990.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

2-14-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thursday, Feb. 8, 1990 3:05 p.m.
Circulated to the Commission: Friday, Feb. 9, 1990 12:00 p.m.
Deadline for vote: Tuesday, Feb. 13, 1990 4:00 p.m.
Objection received: Monday, Feb. 12, 1990 5:17 p.m.
Placed on Agenda for: Tuesday, Feb. 27, 1990
Objection withdrawn: Wednesday, Feb. 14, 1990 12:20 p.m.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Dukakis for President Committee, Inc.) Agenda Document #91-99

CERTIFICATION

I, Delores R. Harris, recording secretary for the Federal Election Commission open meeting on October 10, 1991, do hereby certify that the Commission took the following actions on Agenda Document #91-99:

1. Decided by votes of 5-0 to:
- a. approve recommendation 1, as found on page 6 (bottom pagination).
 - b. approve recommendation 2, as found on page 7 (bottom pagination).
 - c. approve recommendation 3, as found on page 25 (bottom pagination).
 - d. approve recommendation 5, as found on page 35 (bottom pagination).
 - e. approve recommendation 6, as found on page 37 (bottom pagination).

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decisions; Commissioner Josefiak was not present.

(continued)

Federal Election Commission
Certification for Dukakis for
President Committee, Inc. -
Final Audit Report
October 10, 1991

2. Decided by a vote of 4-1 to approve recommendation 4, except have the Audit Division revise the calculations to back out of the surplus calculation, those contributions which the committee has indicated were transferred over to the General Election Legal and Compliance Fund within 60 days or less.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented; and Commissioner Josefiak was not present.

Attest:

October 11, 1991
Date

Delores R. Harris
Delores R. Harris
Administrative Assistant

0507012110

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Governor Michael S. Dukakis and) Agenda Document
the Dukakis for President Committee,) #93-14
Inc. - Proposed Final Repayment)
Determination and Statement of Reasons)
(LRA #340).)

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, February 25, 1993, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to the above-captioned matter:

1. Determine that Governor Michael S. Dukakis and the Dukakis for President Committee, Inc. must repay \$491,282.31 to the United States Treasury; and
2. Approve the draft Statement of Reasons in support of the final repayment determination, as recommended in the General Counsel's report dated February 8, 1993.

(continued)

Federal Election Commission
Certification for
Governor Michael S. Dukakis and
the Dukakis for President Committee,
Inc. - Proposed Final Repayment
Determination and Statement of Reasons
Thursday, February 25, 1993

3. Direct the General Counsel's office to reopen negotiations with Governor Michael S. Dukakis and the Dukakis for President Committee, Inc.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter was not present at the time of the vote.

Attest:

March 1, 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

050701911

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Interim Audit Report on Paul Simon) Agenda Document
for President) #X90-039

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 26, 1990, do hereby certify that the Commission took the following actions with respect to the Interim Audit Report on Paul Simon for President as submitted under FEC Audit Division memorandum dated June 13, 1990:

1. Decided by a vote of 5-0 to approve recommendation #1 on pages four and five of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

2. Decided by a vote of 5-0 to approve recommendation #2 on page seven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

Federal Election Commission
Certification for Interim Audit
Report on Paul Simon for President
June 26, 1990

3. Decided by a vote of 5-0 to approve recommendation #3 on page eight of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

4. Decided by a vote of 5-0 to approve recommendation #4 on page ten of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

5. Decided by a vote of 5-0 to approve recommendation #5 on page eleven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

6. Decided by a vote of 5-0 to approve recommendation #6 on page twelve of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

7. Decided by a vote of 5-0 to approve recommendation #7 on page twelve of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

8. Decided by a vote of 5-0 to approve recommendation #8 on page thirteen of of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

9. Decided by a vote of 5-0 to approve recommendation #10 on page forty-two of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

10. Decided by a vote of 5-0 to approve recommendation #9 on page twenty-seven of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

11. Decided by a vote of 5-0 to approve recommendation #11 on page forty-three of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

12. Failed in a vote of 2-3 to pass a motion to approve recommendation #12 on pages forty-six and forty-seven of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented; Commissioner Aikens was not present.

13. Failed in a vote of 3-2 to pass a motion to approve recommendation #12 on pages forty-six and forty-seven of the audit report, subject to amendment of the last section to delete the third part, thereby reducing the recommended repayment to zero.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented; Commissioner Aikens was not present.

(continued)

14. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to show the split votes with respect to recommendation #12 on pages forty-six and forty-seven, using the language incorporated in previous audit reports.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

15. Failed in a vote of 2-3 to pass a motion to approve recommendation #13 on page fifty-one of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented. Commissioner Aikens was not present.

16. Failed in a vote of 3-2 to pass a motion to approve recommendation #13 on page fifty-one of the audit report, subject to amendment of the dollar amount to a figure of \$56,759.89, and that the preceding text be revised to include appropriate language in accord with this adjustment in the figures.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented. Commissioner Aikens was not present.

(continued)

17. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to reflect the split votes with respect to recommendation #13, and that the alleged double counting figure that was not agreed to would be deleted, so that the repayment figure would be \$56,759.89, and that necessary language changes be made to conform with this.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

18. Failed in a vote of 2-3 to pass a motion to approve recommendation #14 on page 53 of the audit report.

Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry, and Thomas dissented; Commissioner Aikens was not present.

19. Failed in a vote of 3-2 to pass a motion to approve recommendation #14 on page 53 of the audit report, subject to amendment of the figures to read: \$347,796.25 (\$65,326.28 + \$282,469.97), and that the accompanying text would be revised to include these adjustments.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Elliott and Josefiak dissented; Commissioner Aikens was not present.

(continued)

20. Decided by a vote of 5-0 to direct the Audit Division to amend the audit report to reflect the votes taken by the Commission on recommendation #14, and that the alleged double counting figure be excluded from the repayment figures, so that the repayment figure would read \$347,796.25, and make the appropriate changes to the other figures and changes to the text.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

21. Decided by a vote of 5-0 to approve recommendation #15 on page 58 of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

(continued)

Federal Election Commission
Certification: Interim Audit Report
on Paul Simon for President
June 26, 1990

22. Decided by a vote of 5-0 to approve recommendation #16 on page fifty-nine of the audit report.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

23. Decided by a vote of 5-0 to direct the Audit Division to amend the report as agreed at this meeting and to circulate the amended report for Commission approval on a tally vote basis.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens was not present.

Attest:

7-3-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Paul Simon for President -) Agenda Document #91-82
Final Audit Report.)

CERTIFICATION

I, Delores Harris, recording secretary of the Federal Election Commission open meeting on August 29, 1991, do hereby certify that the Commission took the following actions with respect to Agenda Document #91-82:

1. Decided by a vote of 6-0 to:
 - a. Approve recommendation #1, as found on page 9 (bottom pagination).
 - b. Approve recommendation #2, as found on page 15 (bottom pagination).

Commissioners Aikens, Elliott, Josefiak, McDonald McGarry and Thomas voted affirmatively for the decision.

(continued)

Federal Election Commission
Certification for Paul Simon
for President - Final Audit
Report
Thursday, August 29, 1991

Page 2

2. Failed by a vote of 3-3 to pass a motion to have the Audit Division back out of Iowa and New Hampshire any cost that upon review could be identified as cost related to individuals who did not spend five days or more in Iowa or New Hampshire, and that any such provision be included in a revised audit report to be circulated to the Commission for approval on a tally vote basis.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

3. Failed in a vote of 3-3 to pass a motion to approve recommendation 3, as submitted in Agenda Document #91-82.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion and Commissioners McDonald, McGarry and Thomas dissented.

continued)

4. Decided in a vote of 4-2 to approve recommendation 3, as revised by backing out those expenses pertaining to salary or travel and subsistence that upon review the Audit Division finds relating to individuals who did not spend five or more days in Iowa or New Hampshire working out of the Rock Island or Boston Office, and revised to include language explaining the 3-3 split vote. The amount of repayment will be reduced accordingly.

Commissioners Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

Attest:

September 3, 1991
Date

Delores Harris
Delores Harris
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Paul Simon for President, Inc.
Final Repayment Determination and
Proposed Statement of Reasons
(LRA #355).

)
)
) Agenda Document #93-25
)
)
)

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission open meeting for Thursday, March 4, 1993, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions on Agenda Document #93-25:

1. Determine that Senator Paul Simon and the Paul Simon for President Committee must make a repayment to the United States Treasury, subject to the finding that the expenditures by the campaign for the Murphine Corporation be allocated as follows: 1/3 to national consulting services; 1/3 to Iowa limitations; and 1/3 to New Hampshire limitations.
2. Approve the Statement of Reasons in support of the final repayment determination, subject to the amendments agreed upon during the meeting discussion.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

March 9, 1993
Date

Delores Hardy
Delores Hardy
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
 Interim Audit Report on) Agenda Document #89-73
 LaRouche Democratic Campaign)

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission executive session of September 19, 1989, do hereby certify that the Commission took the following actions with respect to the above-captioned audit:

1. Decided by a vote of 6-0 to approve recommendation 1 on page 3 of the subject audit.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

2. Decided by a vote of 6-0 to approve recommendation 2 on page 4 of the subject audit.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

3. Decided by a vote of 6-0 to approve recommendation 3 on page 5 of the subject audit.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

4. Decided by a vote of 5-0 to approve recommendation 4 on page 6 of the subject audit.

Commissioners Aikens, Elliott, Josefiak, McDonald and Thomas voted affirmatively for the decision; Commissioner McGarry was not present.

(continued)

FEDERAL ELECTION COMMISSION
CERTIFICATION FOR INTERIM AUDIT
REPORT ON LAROUCHE DEMOCRATIC CAMPAIGN
SEPTEMBER 19, 1989

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5. Failed on a vote of 3-3 to pass a motion to approve recommendation 5 on page 8 of the subject audit, as recommended by the Audit Division.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry and Thomas dissented.

6. Failed on a vote of 3-3 to pass a motion to revise recommendation 5 on page 8 of the subject audit to reduce the amount to be repaid to the U.S. Treasury to \$3,658.25.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

7. Decided by a vote of 5-1 to amend recommendation 5 on page 8 of the subject audit, to add certain language to be approved by the Commission.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

(continued)

FEDERAL ELECTION COMMISSION
CERTIFICATION FOR INTERIM AUDIT
REPORT ON LAROUCHE DEMOCRATIC CAMPAIGN
SEPTEMBER 19, 1989

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8. Failed on a vote of 3-3 to pass a motion to approve recommendation 6 on page 10 of the subject audit, as recommended by the Audit Division.

Commissioners Aikens, Elliott and Josefiak voted affirmatively for the motion; Commissioners McDonald, McGarry and Thomas dissented.

9. Failed on a vote of 3-3 to pass a motion to approve recommendation 6 on page 10 of the subject audit to reduce the amount to be repaid to U.S. Treasury to \$41,924.68.

Commissioners McDonald, McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott and Josefiak dissented.

10. Decided by a vote of 5-1 to amend recommendation 6 on page 10 of the subject audit, to add certain language to be approved by the Commission.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

(continued)

FEDERAL ELECTION COMMISSION
CERTIFICATION FOR INTERIM AUDIT
REPORT ON LAROUCHE DEMOCRATIC CAMPAIGN
SEPTEMBER 19, 1989

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11. Decided by a vote of 6-0 to approve the Interim Audit Report on LaRouche Democratic Campaign as contained in Agenda Document #89-73, as amended at the meeting, and noted above.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

12. Decided by a vote of 6-0 to circulate to the Commission for approval, on a tally vote basis, the Interim Audit Report on LaRouche Democratic Campaign, as amended at this meeting.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

9/21/89
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant
Office of the Secretariat

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Final Audit Report on the) Agenda Document #90-47
LaRouche Democratic Campaign)

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission meeting on May 17, 1990, do hereby certify that the Commission took the following actions with respect to Agenda Document #90-47:

Decided by a vote of 6-0 to:

1. Approve the recommendation of the Audit staff that no further action be taken with respect to Transactions Related to LaRouche Democratic Campaign Special Legal Account.
2. Make an initial determination that \$1,160.95 in stale-dated checks is repayable to the United States Treasury pursuant to Section 9038.6 of Title 11 of the Code of Federal Regulations.
3. Make an initial determination that \$109,148.88 in matching funds received by the Committee represents matching funds received in excess of entitlement, and that an equal amount must be repaid to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1).

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

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Democratic Campaign

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Decided by a vote of 5-1 to:

1. Make an initial determination that the pro rata portion of \$3,634.37, concerning New Hampshire Expenditures in Excess of State Limitation, is repayable to the United States Treasury.
2. Make an initial determination that the pro rata portion of \$40,949.93, concerning Apparent Non-qualified Campaign Expenses: Post-Ineligibility Campaign Expenditures, is repayable to the United States Treasury.

Commissioners Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision. Commissioner Aikens dissented.

Decided by a vote of 6-0 to:

Approve the proposed final audit report of the LaRouche Democratic Campaign as found in Agenda Document #90-47, subject to the motions already approved at this meeting.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

May 18, 1990
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Proposed Final Repayment Determination) Agenda Document
and Statement of Reasons -- Lyndon H.) #92-119
LaRouche Democratic Campaign (LRA #326).)

CERTIFICATION

I, Delores R. Hardy, recording secretary for the Federal Election Commission open meeting on Thursday, September 17, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to Agenda Document #92-119:

1. Determine that Lyndon H. LaRouche, Jr. and the LaRouche Democratic Campaign must repay \$151,259.76 to the United States Treasury; and
2. Approve the draft Statement of Reasons in support of the final repayment determination, as recommended in the General Counsel's report dated September 3, 1992.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

September 18, 1992
Date

Delores R. Hardy
Delores R. Hardy
Administrative Assistant