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**REPORT OF THE AUDIT DIVISION**  
**ON THE**  
**ALAN KEYES FOR PRESIDENT '96,**  
**INC.**  
**ALAN KEYES COMMITTEE**  
**AND OTHER AUTHORIZED**  
**COMMITTEES**

**Approved January 15, 1998**



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

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**WASHINGTON, D.C.**

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 15, 1998

**MEMORANDUM**

TO: RON M. HARRIS  
PRESS OFFICER  
PRESS OFFICE

FROM: ROBERT J. COSTA   
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE REPORT OF THE AUDIT DIVISION ON  
ALAN KEYES FOR PRESIDENT '96, INC.; ALAN KEYES  
COMMITTEE AND OTHER AUTHORIZED COMMITTEES

Attached please find a copy of the report and related documents on Alan Keyes For President '96, Inc.; Alan Keyes Committee and other Authorized Committees which was approved by the Commission on January 15, 1998.

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

11-10-98 11:00 AM

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ALAN KEYES COMMITTEE  
AND OTHER AUTHORIZED COMMITTEES**

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CONFIDENTIAL



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION  
ON  
ALAN KEYES FOR PRESIDENT '96, INC.  
ALAN KEYES COMMITTEE  
AND OTHER AUTHORIZED COMMITTEES**

**EXECUTIVE SUMMARY**

Alan Keyes for President '96, Inc. (the Primary Committee) registered with the Federal Election Commission on May 26, 1995. In addition, the Alan Keyes Committee (the Exploratory Committee) registered with the Commission on October 24, 1994. Finally, there were 20 other committees which were authorized by the Candidate. With the exception of the Primary Committee, all committees have been terminated.

The audit was conducted pursuant to 26 U.S.C. §9038(a) which requires the Commission to audit committees that receive matching funds. The Candidate received \$2,145,766 in matching funds.

The findings of the audit were presented to representatives of the Primary Committee at a conference held at the end of fieldwork and were addressed in the Exit Conference Memorandum presented on September 30, 1997. The Committees' responses to those findings are contained in the audit report. The following is an overview of the findings contained in the audit report.

**MISSTATEMENT OF FINANCIAL ACTIVITY** — 2 U.S.C. §§434(b)(1), (2) and (4). Both, the Primary Committee and the Exploratory Committee misstated financial activity on disclosure reports filed during 1995. Additionally, two authorized committees misstated financial activity on disclosure reports filed during 1996. The Committees filed adequate amended disclosure reports.

**ITEMIZATION OF DISBURSEMENTS** — 2 U.S.C. §434(b)(5)(A). The Primary Committee and the Exploratory Committee failed to itemize disbursements totaling \$49,446 and \$85,453, respectively. Both Committees have filed amended reports disclosing these disbursements.

**DISCLOSURE OF OCCUPATION/NAME OF EMPLOYER** — 2 U.S.C. §§434(b)(3) and 431(13)(A). Exploratory Committee reports inadequately disclosed occupation and name of employer for contributions from individuals totaling \$73,666 and, in addition, it was also found not to have demonstrated best efforts to obtain, maintain and disclose this information. The Primary Committee submitted documentation of its efforts to obtain the needed information and filed the necessary amended reports.

**FAILURE TO FILE DISCLOSURE REPORTS** — 2 U.S.C. §§432(e) and (f). During 1996, three authorized committees did not file disclosure reports as required. In addition, a fourth committee never registered with the Commission and never filed any disclosure reports for 1995. The Primary Committee filed a statement of organization and the requisite disclosure reports for these other authorized committees.

**RECEIPT OF ANONYMOUS CASH CONTRIBUTIONS IN EXCESS OF THE LIMITATION** — 2 U.S.C. §441g and 11 CFR §110.4(c)(3). The review of contributions from individuals received by the Exploratory Committee identified excessive, anonymous cash contributions which totaled \$10,435. As permitted under 11 CFR §110.4(c)(3), the Primary Committee donated the excessive, anonymous cash contributions to a non-profit organization.

**UNRESOLVED PROHIBITED CONTRIBUTIONS** — 2 U.S.C. §441b(a). Testing of the Primary Committee's contributions initially indicated that it had received a number of prohibited contributions. However, the Primary Committee provided documentation establishing that it had not received a material amount of corporate contributions.

**UNRESOLVED EXCESSIVE CONTRIBUTIONS** — 2 U.S.C. §441a(a)(1)(A). Reviews of contributions from individuals received by the Primary and Exploratory Committees identified unresolved, excessive contributions totaling \$69,271. The Primary Committee provided documentation resolving one \$4,000 contribution and submitted a payment of \$65,271 to the U.S. Treasury.

**DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS** — 11 CFR §§9034.5(a) and 9034.1(b). A Statement of Net Outstanding Campaign Obligations was prepared based on a review of the Primary Committee's financial activity through September 30, 1997, to include an analysis of allowable winding down costs. It was determined that the Primary Committee had not received matching funds in excess of its entitlement.

**NON-QUALIFIED CAMPAIGN EXPENSES - UNDOCUMENTED** — 11 CFR §§9032.9(a), 9033.11(b) and 9038.2(b)(3). Disbursements totaling \$94,469 were identified which lacked adequate supporting documentation, or for which no canceled check or other payment device was maintained. The Primary Committee provided sufficient documentation for disbursements totaling \$25,141 and made a pro rata repayment, to the U.S. Treasury in the amount of \$8,728 for the remaining non-qualified campaign expenses.

**STALE-DATED COMMITTEE CHECKS** — 11 CFR §9038.6. The Primary Committee paid the U.S. Treasury \$10,737 for unnegotiated, stale-dated checks that had been issued by the Exploratory Committee.



FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20543

**REPORT OF THE AUDIT DIVISION  
ON  
ALAN KEYES FOR PRESIDENT '96, INC.  
ALAN KEYES COMMITTEE  
AND OTHER AUTHORIZED COMMITTEES<sup>1</sup>**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of Alan Keyes for President '96, Inc. ("the Primary Committee") the Alan Keyes Committee ("the Exploratory Committee") and other authorized committees. The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section 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." Also, Section 9039(b) of Title 26 of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 ("FECA") as amended.

**B. AUDIT COVERAGE**

The audit of the Primary Committee covered the period from its inception on May 26, 1995, through September 30, 1996. The Primary Committee reported an opening cash balance of \$-0-; total receipts of \$4,141,870<sup>2</sup>; total disbursements of

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<sup>1</sup> In addition to the Alan Keyes Committee and Alan Keyes for President '96, Inc., there were 20 other committees which operated as authorized committees. Attachment 1 is a list of those committees.

<sup>2</sup> All figures in this report have been rounded to the nearest dollar.

\$4,094,276; and a closing cash balance of \$47,603.<sup>3</sup> In addition, a limited review of activity was conducted for the period October 1, 1996 through September 30, 1997, for the purpose of determining the Primary Committee's remaining matching fund entitlement based on its financial position.

The audit of the Exploratory Committee covered the period from its inception, October 24, 1994, through August 7, 1995. The Exploratory Committee reported an opening cash balance of \$-0-; total receipts of \$290,350; total disbursements of \$252,344; and a closing cash balance of \$38,006 for the period October 24, 1994 through June 30, 1995.<sup>4</sup>

The audits of the other authorized committees covered the period of each committee's inception through the date of the closure of its bank account or termination. As a group, these authorized committees reported opening cash balances of \$-0-; total receipts of \$122,574, total disbursements of \$121,005, and a closing cash balance of \$1,569.<sup>5</sup>

### C. CAMPAIGN ORGANIZATION

#### 1. Primary Committee

The Primary Committee maintained its headquarters in Atlanta, Georgia until July 14, 1995. On July 15, 1995, the Primary Committee relocated to Alexandria, Virginia until January, 1996. During January, 1996, the Primary Committee relocated to St. Paul, Minnesota where it is currently located.

The Primary Committee registered with the Federal Election Commission on May 26, 1995. The Treasurer of the Primary Committee from its inception has been William G. Spiegel.

<sup>3</sup> The reported activity does not foot due to a discrepancy in carrying the ending cash on hand balance of one period to the subsequent report's beginning cash on hand balance.

<sup>4</sup> The Exploratory Committee's July Quarterly Report disclosed a closing balance of \$38,006 on June 30, 1995. No subsequent reports were filed (see Finding III.A) Its only bank account was closed on August 7, 1995. This committee was formally terminated on November 24, 1997.

<sup>5</sup> This ending cash balance was determined when the bank reconciliations of the authorized committees were completed. Two of these committees accounted for the \$1,569 closing cash balance: the Alan Keyes for President '96 - Northern Texas Office amount, \$149 (see Finding III.D.) and the Keyes Campaign in Illinois amount, \$1,420 (see Finding III.A.). These committees were formally terminated on November 5, 1997, and the cash balances were \$0.



To handle its financial activity, the Primary Committee utilized a total of thirteen bank accounts. Approximately 89,900 contributions totaling \$3,741,000 were received. From these accounts the campaign made approximately 2,600 disbursements.

In addition to contributions, the Primary Committee received \$2,145,766 in matching funds from the United States Treasury. This amount represented about 14% of the \$15,455,000 maximum entitlement that any candidate could receive. Alan Keyes was determined eligible to receive matching funds on February 13, 1996. The Primary Committee made a total of eleven matching fund requests totaling \$2,473,035. The Commission certified 86.8% of the requested amount. For matching fund purposes, the Commission determined that Alan Keyes candidacy ended March 25, 1996. This determination was based on the Commission's regulation at 11 CFR §9033.5(b) which states, in part, that the Candidate's date of ineligibility shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10% of the number of popular votes cast for all candidates of the same party for the same office in that primary election. However, the Candidate continued to campaign until the Republican Party nominated its candidate on August 14, 1996. As such, certain winding down and continuing campaign expenses were excluded when determining the Primary Committee's remaining matching fund entitlement as provided by 11 CFR §9034.4(a)(3) (see Finding IV.B.).

## 2. The Exploratory Committee

The Exploratory Committee registered with the Federal Election Commission on October 24, 1994. The Treasurer of the Exploratory Committee from its inception through June 23, 1995 was John Wilson Wright. He was succeeded by Elyria L. Mackie, who served until he resigned on September 1, 1995. By this time, active exploratory operations had ceased. The Primary Committee began operations in May 1995. No Treasurer was designated to replace Mr. Mackie. The Exploratory Committee filed a formal termination report with the Commission on November 24, 1997.

The Exploratory Committee used one bank account. Approximately 3,380 contributions totaling \$317,649 and other receipts totaling \$7,687 were received. From this account, the Exploratory Committee made approximately 390 disbursements that totaled \$325,336. The account was closed on August 7, 1995.

## 3. Other Authorized Committees

There were 20 other committees which operated as authorized committees. All of these committees, with the exception of the Alan Keyes for President '96 - Kansas Committee, registered with the Federal Election Commission. All were formally authorized by Alan Keyes. These authorized committees had receipts totaling

approximately \$122,600, of which \$94,225 was received in the form of transfers from the Primary Committee. From their accounts, the other authorized committees made about 260 disbursements totaling approximately \$122,600, including \$5,120 transferred to the Primary Committee. Termination reports have been filed for all other authorized committees.

## **II. AUDIT SCOPE AND PROCEDURES**

In addition to reviews of each committees' expenditures to determine the qualified and non-qualified campaign expenses incurred by the Campaign, the audit of each committee covered the following general categories:

1. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations (Finding III.F.);
2. the receipt of contributions or loans in excess of the statutory limitations (Findings IV.A. and III.E.);
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed (Finding III.C.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as the completeness and accuracy of the information disclosed (Finding III.B.);
5. proper disclosure of Campaign debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to Campaign bank records (Findings III.A. and III.D.);
7. adequate recordkeeping for Campaign transactions (Finding IV.C.);
8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by Alan Keyes for President '96, Inc. (the Primary Committee) to disclose its financial condition and establish continuing matching fund entitlement (Finding IV.B.);
9. the Committee's compliance with spending limitations; and,
10. other audit procedures that were deemed necessary in the situation (Finding IV.D.).

As part of the Commission's standard audit process, an inventory of campaign records is conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state. Based on our review of records presented, it was concluded that the records were not complete. Among the records missing were bank statements; debit and credit memoranda; copies of deposited items; deposit tickets; canceled checks, and vendor invoices. Campaign representatives were presented with written lists detailing these missing records on August 30, 1996, and granted 30 days to provide the missing records. At the end of that time it was judged that records were sufficiently complete to begin fieldwork. Additional records were provided as the audit process continued.

In addition, the Audit staff notes that 11 CFR §9033.1 requires committees that maintain records in a computerized format to provide electronic copies of those records in a format published by the Commission. Among other records, the Primary Committee maintained contribution information in a computerized file. Several attempts were made to produce a useable file. The file that was eventually provided was replete with duplicate entries and did not contain information for all Primary Committee contributions.

The Audit staff first requested a computer file containing Primary Committee receipt information by letter dated March 28, 1996. This letter included guidelines and specifications for production of such a file. As part of this process, the Audit staff met with representatives of the company which provided the computer software used by the Primary Committee for maintaining its receipt information. In addition, the Audit staff discussed and provided the Primary Committee's computer specialist and computer software vendor with a format for production of the computer file that was tailored to the Primary Committee's software.

The audit notification letter, dated July 26, 1996, again requested a computer file for receipts, which had not yet been provided. On July 29, 1996, the Audit staff received a magnetic tape from the software vendor containing the Primary Committee's contribution file. However, it was neither usable nor complete.

Upon completion of the inventory phase of the audit, August 28, 1996, the Primary Committee was again requested to provide the required receipts file. In October, 1996, the Primary Committee produced another receipts file. The Audit staff determined that this file did not contain approximately \$1 million in receipts, and also contained duplicate entries.<sup>6</sup> Primary Committee representatives advised the Audit staff that a file, maintained separately for matching funds, of approximately \$1.1 million, had not been included. Rick Freimuth, the Primary Committee's audit consultant, acknowledged that duplicate entries were on the receipts file. In a memorandum, he indicated it was the

<sup>6</sup> Based on a comparison of the date, amount, batch, and or check number for contributions from the same individual, or from a spouse, it was apparent that some contributions had been entered twice onto the receipts file.

result of having many data entry operations around the country which "were not following a standard, disciplined methodology... The Phoenix data consolidation operation attempted to correct this, but was not completely successful."

Between December, 1996 and January, 1997, the Primary Committee provided several updated versions of the previously submitted receipts file. The Audit staff determined that, based on a preliminary reconciliation, the version received on January 9, 1997 appeared to contain most of the previously missing receipt information. However, it was also evident that the file still contained duplicate entries, which in many cases, could be easily identified. These omissions and duplications limited some audit procedures relative to receipts, such as testing for excessive contributions.

The Audit staff used its statistical sample review of receipts to estimate the dollar value of the duplicate entries. This in turn was used to estimate the dollar value of the non-duplicate contributions in the file. Using our bank reconciliations and Primary Committee reported information, the Audit staff determined that the receipt file should have contained contributions totaling about \$3,164,000. Based on the results of the sample, the tape was estimated to contain accurate information with respect to contributions totaling about \$3,034,000. It was this file that was used as the basis of our contribution testing.

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

### **III. AUDIT FINDINGS AND RECOMMENDATIONS: NON-REPAYMENT MATTERS**

#### **A. MISSTATEMENT OF FINANCIAL ACTIVITY**

Section 434(a) of Title 2 of the United States Code states, in relevant part, that each treasurer of a political committee shall file reports of receipts and disbursements.

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in relevant part, that each report shall disclose the amount of cash on hand at the beginning of the reporting period, the total amount of all receipts and the total amount of all disbursements for the reporting period and calendar year.

#### **1. The Primary Committee**

The Audit staff's reconciliation of the Primary Committee's reported financial activity to its bank activity for the period from its inception on May 30,

1995 to December 31, 1995, revealed a material misstatement of its reported disbursements as well as its reported ending cash on hand.

The Primary Committee reported total disbursements of \$1,356,448 for 1995. The Audit staff determined that \$1,378,446 in disbursements should have been reported. Therefore, disbursements were understated by \$21,998. Based on our analysis, it appears that the understatement is the net result of disbursements amounting to \$24,215 not being reported and the overstating of reported disbursements by \$2,217.

The Primary Committee's reported ending cash on hand of \$49,122 as of December 31, 1995 was overstated by \$16,926. The correct ending cash on hand was \$32,195. This overstatement was caused by the understatement of \$21,998 in disbursements noted above; \$1,046 in receipts that were not reported; and a \$4,026 unexplained difference in receipts.

## 2. The Exploratory Committee

The Audit staff reconciled the Exploratory Committee's reported financial activity for the period January 1, 1995 through June 30, 1995 (no activity was reported after this date) to its bank activity for the period January 1, 1995 through August 7, 1995, the date the Exploratory Committee's bank account was closed. The Audit staff noted misstatements of reported receipts and disbursements as well as reported ending cash on hand.

The Exploratory Committee reported receipts of \$282,144 for the period through June 30, 1995. The Audit staff determined that \$317,130 in receipts should have been reported through August 7, 1995. Therefore, receipts were understated by \$34,986. Based on our analysis, the understatement of receipts was caused, in part, by the Exploratory Committee's failure to file a 1995 October Quarterly Report or a Termination Report; and, as a result, deposits of \$9,938 in July, and \$729 in August, were not reported. In addition, for the 1995 April Quarterly Report, receipts were overstated by \$3,099; and, for the 1995 July Quarterly Report, receipts were understated by \$27,418. Since portions of each reporting period's receipts were unitemized, and the Exploratory Committee did not provide workpapers to demonstrate how the reported receipt figures were derived, a more exact explanation of the misstatement is not possible.

Similarly, the Exploratory Committee reported disbursements of \$245,547 for the period through June 30, 1995. The Audit staff determined that \$318,238 in disbursements should have been reported through August 7, 1995. Therefore, disbursements were understated by \$72,691. Based on our analysis, \$1,650 of this understatement resulted from the Exploratory Committee's failure to file a 1995 October Quarterly Report or a Termination Report.

The Audit staff also compared reported disbursements to the amount that should have been reported based on bank account records. For the 1995 April and July Quarterly reports, disbursements were understated by \$71,136. The understatement is the net result of disbursements amounting to \$86,457 not being reported and the overstating of reported disbursements by \$15,321. As noted above, the Exploratory Committee did not provide workpapers to demonstrate how the reported disbursement figures were derived.

Finally, on June 30, 1995, the Exploratory Committee reported an ending cash on hand balance of \$38,006. The Audit staff determined that the cash balance should have been \$-0- on August 7, 1995, the date the Exploratory Committee's bank account was closed. Therefore, ending cash on hand was overstated by \$38,006. This overstatement of ending cash on hand was the result of the misstatements noted above and the failure to file reports after June 30, 1995.

### 3. Other Authorized Committees

Thirteen of the 20 other authorized committees opened bank accounts. Reconciliations of these committees' reported activity to their respective bank records noted the following material misstatements:

The Keyes Campaign in Illinois reported total receipts of \$2,500. Using committee bank records, it was determined that \$3,500 in receipt activity should have been reported. Therefore, reported receipts were understated by \$1,000. In addition, disbursements were understated by \$30 and ending cash on hand was understated by \$970.

The Texans for Alan Keyes for President '96 Committee reported total receipts of \$2,869 and total disbursements of \$2,489. Committee bank records indicated that \$8,784 in receipt and disbursement activity should have been reported. Therefore, reported receipts were understated by \$5,915, and reported disbursements were understated by \$6,295.

The above misstatements were discussed with Campaign representatives at a conference held at the end of fieldwork. At that time, copies of bank reconciliations were provided to the Campaign. Campaign representatives indicated that the appropriate steps would be taken to comply with the Audit staff recommendations.

In the Exit Conference Memorandum ("the Memorandum") the Audit staff recommended that the Primary Committee file amended Summary and Detailed Summary Pages, as well as Schedules A-P and B-P (as appropriate) to correct the misstatements noted above for each committee. The Audit staff further recommended

that the Primary Committee file termination reports for the Exploratory Committee and all other inactive, authorized committees.<sup>7</sup>

In response to the Memorandum, the Primary Committee submitted amended and termination reports on November 5, 1997, which materially corrected the problems noted above.

## B. ITEMIZATION OF DISBURSEMENTS

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

### 1. The Primary Committee

The Audit staff's testing indicated the Primary Committee had failed to properly itemize disbursements associated with one of its bank accounts (Quorum Media Group account at NationsBank of Texas). Therefore, the Audit staff reviewed all disbursements from this account and determined that 101 disbursements, totaling \$49,446, were not itemized as required.

### 2. The Exploratory Committee

During our review of all Exploratory Committee disbursements, the Audit staff noted 71 disbursements, totaling \$85,453, which were not disclosed on Schedule B-P as required. The Audit staff was unable to determine why these disbursements were not itemized.

At a conference held at the end of fieldwork, these matters were discussed with Campaign representatives and copies of the schedules detailing these disbursements were provided. The Campaign representatives indicated that they would take the appropriate steps to comply with the Audit staff's recommendation.

In the Memorandum, the Audit staff recommended that the Primary Committee file amended Schedules B-P, by reporting period, to itemize the noted disbursements for each committee.

In response to the Memorandum, the Primary Committee filed amended Schedules B-P. The Audit staff concluded that the amended schedules materially corrected the itemization of disbursements.

<sup>7</sup> The Audit staff has discussed the resolution of these issues with the Reports Analysis Division.

### C. DISCLOSURE OF OCCUPATION/NAME OF EMPLOYER

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

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

Section 432(h)(2)(i) of Title 2 of the United States Code states, in part, when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act, any report or any records of such committee shall be considered to be in compliance with the Act.

Section 104.7(b) of Title 11 of the Code of Federal Regulations states, in part, that the treasurer and the committee will only be deemed to have exercised best efforts if all of the following are present: all written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include the statement that such reporting is required by Federal law; the treasurer makes at least one effort after the receipt of the contribution, in either a written request or documented oral request, within thirty days of the receipt of the contribution, to obtain the information; and the treasurer reports all contributor information not provided by the contributor, but in the committee's possession, including information in contributor records, fundraising records and previously filed reports, in the same two year election cycle.

The Audit staff reviewed 242 contributions from individuals, totaling \$133,844, which were itemized on Schedules A-P by the Exploratory Committee. Of these, there were 135 contributions, totaling \$73,666, for which the Exploratory Committee did not disclose the occupation and/or name of employer of the contributor. The Exploratory Committee's records did not include copies of solicitation devices. In addition, there were no records of any follow-up efforts to obtain the necessary information. As such, best efforts to obtain this information were not demonstrated.

At the conference held at the conclusion of fieldwork, Campaign representatives were advised of this matter. They agreed to make requests for the information and file amended Schedules A-P for the Exploratory Committee.

In the Memorandum, the Audit staff recommended that the Primary Committee submit documentation to demonstrate that best efforts were utilized by the Exploratory Committee to obtain the required occupation and name of employer information related to contributions from individuals. Absent such a demonstration, the Audit staff recommended that the Primary Committee make an effort to obtain the



missing occupation and name of employer information and file amended Schedules A-P (by reporting period) for the Exploratory Committee to disclose any information obtained. The Audit staff further recommended that, where the information could not be obtained, the Primary Committee submit records of its efforts to acquire this information.

In response to the Memorandum, the Primary Committee submitted documentation of its efforts to obtain missing occupation and name of employer information and, where such information was obtained, amended Schedules A-P were provided. Based upon our review, the Audit staff determined that although the Primary Committee has now made best efforts to obtain the required occupation and name of employer information, it was not accomplished in a timely manner.

#### **D. FAILURE TO FILE DISCLOSURE REPORTS**

Sections 432(e) and (f) of Title 2 of the United States Code state, in relevant part, that each candidate shall designate in writing a political committee to serve as the principal campaign committee of such candidate. A candidate may designate additional political committees to serve as authorized committees of such candidate. Such designation shall be in writing and filed with the principal campaign committee of such candidate. Each principal campaign committee shall receive all designations, statements, and reports required to be filed with it and shall compile and file such designations, statements, and reports in accordance with the Act.

Section 434(a) of Title 2 of the United States Code states, in relevant part, that each treasurer of a political committee shall file reports of receipts and disbursements and, Section 434(b) specifies the information that each report must contain.

During 1996, the Alan Keyes for President - Iowa Committee did not file disclosure reports as required. The Audit staff determined that \$5,101 in receipt and disbursement activity should have been reported. In addition, there was no documentation related to purpose for \$3,261 in disbursements.

The Alan Keyes for President '96 - Kansas Committee never registered with the Commission and never filed any disclosure reports for 1995.<sup>8</sup> The Audit staff determined that \$8,017 in receipt and disbursement activity occurred during 1995.

During 1996, the Alan Keyes for President - Northern Texas Office did not file disclosure reports as required. The Audit staff determined that \$1,750 in receipts, \$1,601 in disbursements, and an ending cash on hand balance of \$149 should have been reported.

<sup>8</sup> During audit fieldwork a completed copy of the Statement of Organization for the Kansas committee was located in its records. This statement was never filed with the Commission.

**The Texans for Alan Keyes for President '96 Committee did not file disclosure reports for January, February and March of 1996. Using available records, the Audit staff determined that \$5,915 in receipts and \$6,295 in disbursements were not reported during this period.**

**These matters were discussed with Campaign representatives at a conference held at the end of fieldwork. At that time, the Audit staff provided workpapers relative to these matters. The Campaign manager indicated that appropriate steps would be taken to comply with the Audit staff's recommendations.**

**In the Memorandum, the Audit staff recommended that the Primary Committee file a statement of organization for the Kansas committee, and file disclosure reports that include the appropriate supporting schedules for the Kansas, Iowa, Northern Texas, and Texas committees.**

**In response to the Memorandum, the Primary Committee filed the requested documents.**

**E. RECEIPT OF ANONYMOUS CASH CONTRIBUTIONS IN EXCESS OF THE LIMITATION**

**Section 110.4(c)(3) of Title 11 of the Code of Federal Regulations states that a candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.**

**Section 441g of Title 2 of the United States Code states that no person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.**

**Section 9038.1(f)(3) of Title 11 of the Code of Federal Regulations states, in part, that within 30 days of service of the Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contribution not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR §103.3(b)(1), (2) or (3).**

**During our review of contributions from individuals received by the Exploratory Committee, the Audit staff identified all cash listed on deposit tickets and determined that the Exploratory Committee did not maintain any records in support of these cash contributions. As such, all deposits of cash were considered anonymous cash contributions. The Audit staff identified 38 deposits which contained cash totaling \$11,415. Of these, 14 deposits listed cash in excess of \$50 and were considered excessive, anonymous cash contributions. These excessive amounts totaled \$10,435.**

The Exploratory Committee did not dispose of any of the excessive, anonymous cash contributions prior to closing its bank account. For most of the audit period, the Primary Committee maintained sufficient funds to refund these contributions.

Campaign representatives were advised of the excessive, anonymous cash contributions and provided a schedule of these items. They indicated that they would attempt to resolve the issue.

In the Memorandum, the Audit staff recommended that the Primary Committee provide evidence that the noted cash contributions received by the Exploratory Committee were not excessive. Absent such evidence, the Audit staff would recommend that the Commission determine that the Primary Committee would be required to make a payment to the United States Treasury in the amount of \$10,435.

In its response to the Memorandum, the Primary Committee stated,

"According to 11 CFR, 110.4(c)(3), the [Primary] Committee is allowed to disburse anonymous cash that exceeds \$50 'may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.' (sic)...When we were informed of this fact, we promptly disbursed the \$10,434(sic) to a 501(c)(3) [non-profit] educational group."

The Primary Committee included a copy of the negotiated check (front and back) that was used to donate the excessive anonymous cash contributions to The Declaration Foundation. The Primary Committee's disposition of these funds complies with the provisions of 11 CFR §110.4(c)(3) except that it was not promptly done.

#### F. UNRESOLVED PROHIBITED CONTRIBUTIONS

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

Section 103.3(b)(1) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer shall be responsible for examining all contributions received for evidence of illegality. Contributions that present genuine questions as to whether they were made by corporations, may be, within ten days of the treasurer's receipt, either deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer shall make his or her best efforts to determine

the legality of the contribution. The treasurer shall make at least one written or oral request for evidence of the legality of the contribution. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Further, under 11 CFR §103.3(b)(4), any contribution which appears to be illegal under 11 CFR §103.3(b)(1) and which is deposited into a campaign depository shall not be used for any disbursements until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository or maintain sufficient funds to make all such refunds.

Section 9038.1(f)(3) of Title 11 of the Code of Federal Regulations states, in part, that within 30 days of service of the Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contribution not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR §103.3(b)(1), (2) or (3).

The Audit staff reviewed contributions received by the Primary Committee on a sample basis. The sample projected that the total dollar value of unresolved prohibited contributions received by the Primary Committee was \$10,724. For each apparent prohibited contribution identified, the corporate status of the contributor was verified with the appropriate Secretary of State.

Campaign representatives were notified of this matter and provided a schedule of the unresolved prohibited contributions identified in the sample. They offered no comment with respect to this matter.

In the Memorandum, the Audit staff recommended that the Primary Committee demonstrate that it did not receive prohibited contributions as noted above. Absent such a demonstration, it was noted a recommendation would be made that the Commission determine the Primary Committee would be required to make a payment to the United States Treasury in the amount of \$10,724.

In its response to the Memorandum, the Primary Committee provided documentation establishing that a portion of the questioned contributions were from permissible sources and that it had not received a material amount of corporate contributions.

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**IV. AUDIT FINDINGS AND RECOMMENDATIONS : AMOUNTS DUE TO THE U.S. TREASURY**

**A. UNRESOLVED EXCESSIVE CONTRIBUTIONS**

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

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(l) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor. If a political committee does not retain the written records concerning reattribution as required, the reattribution shall not be effective, and the original attribution shall control.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR §110.1(k). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 9038.1(f)(3) of Title 11 of the Code of Federal Regulations states, in part, that within 30 days of service of the Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited

contribution not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR §103.3(b)(1), (2) or (3).

1. The Primary Committee

The Audit staff used the Primary Committee's computerized receipts file to identify all individuals who contributed in excess of \$500 and then researched Exploratory Committee files for additional contributions from those individuals. In addition, all individuals who contributed in excess of \$200 to the Exploratory Committee were identified and the Primary Committee's receipt file were reviewed for additional contributions from those individuals. These reviews identified unresolved excessive contributions totaling \$56,678. No record of any refunds or reattribution letters could be located in Primary Committee or Exploratory Committee files.

In addition, the Audit staff reviewed all 22 contributions deposited to a bank account opened by the Primary Committee, which although designated as a legal and compliance fund, was never registered as a separate committee<sup>9</sup>. Our review identified four excessive contributions, totaling \$3,250, which had not been refunded. These contributions were from individuals who had already contributed \$1,000 to the Primary Committee.

2. The Exploratory Committee

Based on our review of contributions received from individuals by the Exploratory Committee, the Audit staff identified six individuals that exceeded their contribution limitation to the Exploratory Committee by a total of \$5,343. No record of any refunds to these individuals or reattribution letters could be located in the Exploratory Committee's files.

In addition, the Audit staff noted a \$5,000 check reported as a loan from the candidate which was drawn on a joint checking account held in the name of the candidate and Elyria L. Mackie. This check is signed only by Mr. Mackie and therefore appeared to be an additional \$4,000 excessive contribution.

The Primary Committee did not deposit excessive or prohibited contributions into a separate account; however, there were sufficient funds available for most of the audit period to refund these contributions.

These matters were discussed with Campaign representatives at the conference held at the end of fieldwork. At that time, schedules of the excessive

<sup>9</sup> The receipts and disbursements of the legal and compliance fund account were reported by the Primary Committee. Therefore, it is treated as a Primary Committee account rather than a General Election Legal and Accounting Compliance Fund account as described at 11 CFR §9003.3(a).

contributions received from individuals were provided to the Campaign. The Campaign's representatives stated they would research the contributions. In addition, the Audit staff requested that the Campaign obtain documentation regarding the unpaid \$5,000 loan made to the Campaign by Mr. Mackie.

In the Memorandum, the Audit staff recommended that the Primary Committee provide evidence that the contributions in question were not excessive. Absent such information, the Audit staff stated that it would recommend that the Commission determine that the Primary Committee would be required to make a payment to the U. S. Treasury in the amount \$69,271 (\$56,678 + \$3,250 + \$5,343 + \$4,000).

In its response to the Memorandum, the Primary Committee provided documentation regarding the \$4,000 excessive contribution received by the Exploratory Committee and attributed to Elyria L. Mackie. The documentation included the following: (1) a letter from the Primary Committee explaining the information provided regarding the loan transaction; (2) a letter from the Primary Committee's counsel, dated February 23, 1997, indicating there was a \$4,000 loan from the candidate that would be repaid with interest; (3) a letter signed by the Candidate dated July 29, 1997, stating that he authorized a \$5,000 check be drawn on a Sun Trust Bank account which contained funds from honoraria he earned from speaking at various events, that Elyria Mackie was a co-signer on the account, and the loan was still outstanding; and (4) relevant portions of a transcript from the deposition of Elyria Mackie on January 24, 1997 which states he maintained an account for Alan Keyes and a \$5,000 check was sent to the Alan Keyes Committee as a loan. The Primary Committee asserts that the \$5,000 check drawn on the account and signed by Mr. Mackie was indeed a candidate loan and not an excessive contribution from Mr. Mackie. No documentation related to any other excessive contribution was provided. Based on a review of the evidence provided, the Audit staff concludes that the \$5,000 at issue represents the personal funds of the Candidate, not a \$4,000 excessive contribution by Mr. Mackie. Therefore, excessive contributions totaling \$65,271 (\$69,271 - \$4,000) remain unresolved.

On December 2, 1997, the Primary Committee submitted a check payable to the United States Treasury which included payment for the unresolved excessive contributions.

### **Recommendation #1**

The Audit staff recommends that the Commission determine that \$65,271 is payable to the United States Treasury pursuant to 11 CFR §9038.2(c).

## **B. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS**

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which reflects the total of all outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

Section 9034.1(b) of Title 11 of 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 provided that on the date of payment there are remaining net outstanding campaign obligations.

Section 9034.4(a)(3)(ii) of Title 11 of the Code of Federal Regulations states, in part, that if the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR §9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs.

Under 11 CFR §9033.5(b), the Candidate's date of ineligibility shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10% of the number of popular votes cast for all candidate's of the same party for the same office in that primary election.

The Commission determined that Alan Keyes' date of ineligibility was March 25, 1996, as a result of not having received ten percent of the vote in two consecutive Republican Presidential Primary elections. However, he continued to campaign until the Republican Party nominated its candidate for President of the United States on August 14, 1996. As a result, the Candidate can not claim any winding down costs incurred on or between March 26 and August 14, 1996. The Audit staff reviewed the Primary Committee's financial activity through September 30, 1997, analyzed allowable winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations (NOCO) which appears below.



**ALAN KEYES FOR PRESIDENT '96, INC.**  
**STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS**  
as of March 25, 1996  
as determined September 30, 1997

**ASSETS**

Cash	\$ 236,209
Accounts Receivable	76,237
Capital Assets:	<u>14,948</u> <sup>(a)</sup>
Total Assets	\$ 327,394

**OBLIGATIONS**

Accounts Payable for Qualified Campaign Expenses	1,784,546
Amounts Payable to the U.S. Treasury:	
Excessive Contributions	65,271
Stale - Dated Checks <sup>(b)</sup>	10,737
Winding Down Costs:	
03/26/96 - 9/30/97: Actual	\$ 745,817 <sup>(c)</sup>
10/1/97 and later: Estimated	<u>22,925</u> <sup>(d)</sup>
	<u>768,742</u>
Total Obligations	<u>2,629,296</u>
<b>NET OUTSTANDING CAMPAIGN OBLIGATIONS (Deficit)</b>	<b><u>\$(2,301,902)</u></b>

<sup>(a)</sup> All Capital Assets are valued at 60% of cost as provided under 11 CFR §9034 5(c)(1) (effective date 8-16-95). Prior to this date, 11 CFR §9034 5(c)(1) allowed committees the option of valuing capital assets at fair market value, rather than at 60% of cost. Included is one Capital Asset valued at \$3,780 (60% of cost) that was purchased prior to the effective date of the regulation.

<sup>(b)</sup> These checks are not considered outstanding for purposes of determining the cash figure shown above.

<sup>(c)</sup> As provided under 11 CFR §9034 4(a)(3)(ii) for a candidate who continues to campaign after having been determined ineligible, winding down costs incurred on or between 3-26-96 and 8-14-96 have not been included. In addition, undocumented expenditures totaling \$13,914 (U) paid during this period have also been excluded, some of which may be qualified accounts payable if documentation is provided by the Primary Committee to show goods/services were supplied prior to DOI.

<sup>(d)</sup> Since estimates were used in computing this amount, the Audit staff will review the Committee's disclosure reports and records to compare the actual figure with the estimates and prepare adjustments as necessary.

Shown below are adjustments for funds received after March 25, 1996, based on the most current financial information available:

Net Outstanding Campaign Obligations (Deficit) as of 3-25-96	(\$2,301,902)
Matching Funds Received 3-26-96 to 9-30-97	2,145,766
Net Private Contributions and Other Receipts Received 3-26-96 to 9-30-97	<u>131,771</u>
Remaining Net Outstanding Campaign Obligations (Deficit)	<u>(\$ 24,365)</u>

Based on this audited NOCO, the Primary Committee has not received matching funds in excess of its entitlement.

**C. NON-QUALIFIED CAMPAIGN EXPENSES: UNDOCUMENTED DISBURSEMENTS**

Section 9032.9(a) of Title 11 of the Code of Federal Regulations defines, in part, the term "qualified campaign expense" as a purchase or payment incurred by or on behalf of the candidate or his or her authorized committee made in connection with his or her campaign for nomination; which neither the incurrence nor the payment of which constitutes a violation of any law of the United States or the State in which the expense is incurred or paid.

Section 9033.11(b) of Title 11 of the Code of Federal Regulations provides that for disbursements in excess of \$200, the candidate shall present a canceled check negotiated by the payee and either: a receipted bill from the payee that states the purpose of the disbursement; or if such a receipt is not available, one of the following documents generated by the payee: a bill, invoice, voucher, or contemporaneous memorandum from the candidate or committee that states the purpose of the disbursement. Where the documents specified are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or if neither a receipted bill nor other supporting documentation is available, a canceled check negotiated by the payee that states the purpose of the disbursement. Where the supporting documentation is not available, the candidate or committee may present a canceled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to: Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement

which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office; evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy. For disbursements of \$200 or less a canceled check negotiated by the payee that states the payee, date, amount and purpose of the disbursement.

Section 9038.2(b)(3) of Title 11 of the Code of Federal Regulations states that the Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR §9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR §9038.2(b)(2)(iii).

1. The Primary Committee

The Audit staff's sample review of Primary Committee disbursements identified a material number of disbursements for which no canceled checks were maintained. Most of these disbursements were drawn on five specific accounts. The Audit staff reviewed all disbursements drawn on those accounts and identified 29 disbursements, totaling \$38,425, for which no canceled check or other payment device, such as a debit memo, were maintained.

2. The Exploratory Committee

As part of our review of all Exploratory Committee disbursements, the Audit staff noted 27 disbursements, totaling \$27,642, which lacked adequate supporting documentation. Twenty-two of these disbursements were for expense reimbursements to Exploratory Committee staff members or commissions and expense reimbursements to consultants. The only documentation available to support any of the disbursements noted were canceled checks that contained either no purpose or an inadequate purpose.

3. Other Authorized Committees

The Audit staff reviewed all disbursements made by each of the other authorized committees. These reviews revealed undocumented disbursements, which totaled \$28,402, as follows.

The review of disbursements made by Alan Keyes for President - Iowa revealed that there were four disbursements totaling \$3,261 for which there was no documentation of purpose. These were withdrawals made from the committee's bank account utilizing counter checks.

The review of disbursements made by Northwestern States for Keyes revealed that there were 56 disbursements, totaling \$25,141, for which there were no canceled checks or other supporting documentation.

At the end of fieldwork, the Audit staff discussed this issue with Campaign representatives and provided schedules of the inadequately documented disbursements. These disbursements totaled \$94,469 (\$38,425 + \$27,642 + \$28,402). Campaign representatives indicated that they would attempt to obtain the missing documentation.

In the Memorandum, the Audit staff recommended that the Primary Committee submit evidence documenting the above expenditures were qualified campaign expenses. Absent such a demonstration, the Audit staff noted that it would recommend that the Commission make a determination that the Primary Committee would be required to make a pro-rata repayment of \$11,893 ( $\$94,469 \times .125893^{10}$ ) to the United States Treasury pursuant to Section 9038(b)(3) of Title 26 of the United States Code.

In its response to the Memorandum, the Primary Committee provided canceled checks (front and back) relating to the 56 disbursements, totaling \$25,141, made by Northwestern States for Keys. For most of these checks, an adequate purpose was provided on the check. Based on our review of the checks and other available documentation, the Audit staff concluded the purposes of these disbursements were sufficiently documented. No documentation related to any other non-qualified campaign expenses addressed above was provided. Therefore, the Audit staff concluded that there remains non-qualified campaign expenses, totaling \$69,328, which are subject to pro rata repayment of \$8,728 ( $\$69,328 \times .125893$ ).

On December 2, 1997, the Primary Committee submitted a check payable to the United States Treasury which included a repayment for the non-qualified campaign expenses.

### **Recommendation #2**

The Audit staff recommends that the Commission make a determination that the Primary Committee is required to make a pro-rata repayment of \$8,728 ( $\$69,328 \times .125893$ ) to the United States Treasury pursuant to 26 USC §9038(b)(3).

#### **D. STALE-DATED COMMITTEE CHECKS**

Section 9038.6 of Title 11 of the Code of Federal Regulations states, in part, that if the committee has checks outstanding to creditors 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

<sup>10</sup> This figure (.125893) represents the repayment ratio, as calculated pursuant to 11 CFR §9038.2(b)(2)(iii).

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.

Based on our bank reconciliations, the Audit staff identified 29 checks, totaling \$10,737, that had been issued by the Exploratory Committee but had not been negotiated.

The Audit staff discussed this matter with Campaign representatives and provided them with a schedule of the Exploratory Committee's stale-dated checks. They indicated that they would research each of the checks on the schedule.

In the Memorandum, the Audit staff recommended that the Primary Committee submit evidence that either the checks were not outstanding by providing copies of the front and back of the negotiated checks along with bank statements; or, that the outstanding checks were void by providing either copies of the voided checks with evidence that no obligation exists; or, provide copies of negotiated replacement checks. Absent such information, the Audit staff noted that it would recommend that the Commission determine \$10,737 would be payable to the United States Treasury.

The Primary Committee's response to the Memorandum did not contain any evidence regarding stale-dated checks.

On December 2, 1997, the Primary Committee submitted a check payable to the United States Treasury which included a payment of \$10,737 for the stale-dated checks.

### **Recommendation #3**

The Audit staff recommends that the Commission determine that the Primary Committee is required to pay the United States Treasury \$10,737 pursuant to 11 CFR §9038.6.

**V. SUMMARY OF AMOUNTS DUE TO THE U.S. TREASURY**

<b>Finding IV. A.</b>	<b>Unresolved Excessive Contributions</b>	<b>\$65,271</b>
<b>Finding IV. C.</b>	<b>Non-Qualified Campaign Expenses: Undocumented Disbursements</b>	<b>8,728</b>
<b>Finding IV. D.</b>	<b>Stale - Dated Checks</b>	<b><u>10,737</u></b>
	<b>Amount Due To The U.S. Treasury</b>	<b>\$84,736</b>
	<b>Repayment Received 12/2/97</b>	<b><u>\$84,736</u></b>
	<b>Remaining Amount Due</b>	<b>\$0</b>

-FUNDING UNIT- 33

**Alan Keyes for President '96, Inc.  
Authorized Committees**

<b>Committee</b>	<b>Date Registered With Commission</b>	<b>City State</b>	<b>Treasurer</b>	<b>Total Receipts</b>	<b>Total Disbursements</b>	<b>Ending Cash</b>
11 Maryland for Keyes '96	12/15/95	Germantown, MD	Terry Turner	0 00	0 00	0 00
12 Massachusetts for Alan Keyes	1/19/96	Somerville, MA	Patrick Lannon	0 00	0 00	0 00
13 Michigan for Keyes '96	2/22/96	Ann Arbor, MI	Bart L Staker	0 00	0 00	0 00
14 Minnesota for Keyes	2/29/96	Richfield, MN	Thomas W Strahan, Sr	2,716 17	2,716 17	0 00
15 Northwestern States for Keyes	10/15/95	Brooks OR	Bonnie J Mabon	34,954 55 <sup>2</sup>	34,954 55	0 00
16 South Carolinians for Keyes '96	1/19/96	Taylors, SC	Carolyn R Rice	1,697 00	1,697 00	0 00
17 South Dakotans for Alan Keyes '96	1/30/96	Sioux Falls SD	Gretchen A Hoffman	3,350 44	3,350 44	0 00
18 Texans for Alan Keyes for President '96	1/24/96	Houston, TX	Christopher T Kuhlman	8,784 11	8,784 11	0 00
19 Wisconsin for Alan Keyes	10/31/95	Sheboygan, WI	Micheal J Heinen	0 00	0 00	0 00
20 Alan Keyes for President '96 - Kansas	Never Filed	Elbing, KS	Kirt Poovey	8,017 48	8,017 48	0 00
				=====	=====	=====
				\$122,573 81	\$122,573 81	\$0 00
				=====	=====	=====

The actual amount deposited into this committee's bank account was \$32,158 77. The amount reported was \$34,954 55 which included \$2,795 78 in receipts that were not deposited in the committee's bank account but were instead sent to the Primary Committee

**Alan Keyes for President '96, Inc.  
Authorized Committees**

<b>Committee</b>	<b>Date Registered With Commission</b>	<b>City, State</b>	<b>Treasurer</b>	<b>Total Receipts</b>	<b>Total Disbursements</b>	<b>Ending Cash<sup>1</sup></b>
1 <b>Alabama Keyes Committee</b>	2/13/96	Huntsville, AL	Amelia C Wisdom	\$ 0 00	\$ 0.00	\$ 0.00
2 <b>Alan Keyes for President '96 - Colorado</b>	12/12/95	Colorado Springs, CO	William V Mole	0 00	0.00	0.00
3 <b>Alan Keyes for President '96 Kentucky Affiliate</b>	1/30/96	Crescent Springs, KY	John A Shelton	1,182 99	1,182 99	0 00
4 <b>Alan Keyes for President '96, NC Committee</b>	1/11/96	Greenville, NC	Daniel C Morris	1,810 00	1,810 00	0 00
5 <b>Alan Keyes for President '96 Northern Texas Office</b>	1/19/96	Denton, TX	James D Green	1,750 00	1,750 00	0 00
6 <b>Alan Keyes for President - Iowa</b>	12/15/95	Des Moines, IA	Jonathan A Jackson	5,101 08	5,101 08	0 00
7 <b>Arizona for Alan Keyes '96</b>	2/13/96	Tucson AZ	Robert A Gentala	0 00	0 00	0 00
8 <b>Californians for Keyes</b>	1/29/96	Ventura, CA	Sandy Palrizio	43,518 13	43,518 13	0 00
9 <b>Committee to Elect Alan Keyes President of the United States</b>	11/2/95	Fresno, CA	Marian Mosley	6,191 86	6,191 86	0 00
10 <b>Keyes Campaign in Illinois</b>	2/13/96	Park Ridge, IL	Eugene T Carter	3,500 00	3,500 00	0 00

<sup>1</sup> Amounts were determined with information available when the bank reconciliations for the Authorized Committees were completed, as well as our review of disclosure reports and amended reports filed through termination





FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20543

December 23, 1997

**MEMORANDUM**

**TO:** Robert J. Costa  
Assistant Staff Director  
Audit Division

**THROUGH:** John C. Sutina  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

Kim Bright-Coleman  
Associate General Counsel

Lorenzo Holloway  
Assistant General Counsel

Susan L. Kay  
Attorney

**SUBJECT:** Proposed Audit Report on Alan Keyes for President '96, Inc., Alan Keyes  
Committees and other Authorized Committees (LRA #493)

The proposed Audit Report on Alan Keyes for President '96, Inc., Alan Keyes Committee and other Authorized Committees (the "Committee") was submitted to the Office of General Counsel on December 16, 1997. The following memorandum summarizes our comments on the proposed report.<sup>1</sup> We concur with the findings in the Audit Report which are not discussed in the following memorandum. If you have any questions, please contact Susan Kay, the attorney assigned to this audit.

<sup>1</sup> We recommend that the Commission consider this document in open session since the proposed Audit Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

11/23/97 11:58 AM

The proposed Audit report includes a finding that the Committee received anonymous cash contributions that were in excess of \$50. The total amount at issue was \$10,435. In response to the Exit Conference Memorandum, the Committee provided a copy of a negotiated disbursement check that was used to donate the excessive anonymous cash contributions to an entity that was established as a tax exempt organization under 26 U.S.C. § 501(c)(3). Pursuant to 11 C.F.R. § 110.4(c)(3), a candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate. *Id.* Since the Committee donated the excessive cash to a tax exempt entity organized under 26 U.S.C. § 501(c)(3), it appears that the Committee's disposition of the cash was unrelated to a Federal election.<sup>2</sup> However, the Audit Report does not conclude that the Committee's disposition was permissible. The Office of General Counsel recommends that the Audit Division revise the proposed Report to state whether the Committee's disposition of the funds complies with 11 C.F.R. § 110.4(c)(3).

In addition, the proposed Audit Report includes a finding that the Committee received excessive contributions that were not resolved. In the Exit Conference Memorandum, the Audit staff found unresolved excessive contributions in the amount of \$69,271. A portion of the excessive contributions included a \$5,000 contribution that was originally considered a \$4,000 excessive contribution from an individual. However, the Primary Committee provided documentation indicating that this was a candidate loan and not an excessive contribution from an individual contributor. The proposed Audit Report concludes that the contribution was not an excessive contribution from an individual.

A candidate who receives matching funds can make expenditures from his or her personal funds, or funds of his or her immediate family in connection with his or her campaign for nomination for election to the office of President which do not exceed \$50,000. 11 C.F.R. § 9035.2(a)(1).<sup>3</sup> Therefore, if the source of the \$5,000 was the candidate's personal funds, then it is not an excessive contribution from the individual. Because the check was signed by an individual other than the candidate, the Audit staff originally considered it an excessive contribution. If, based on additional information, the Audit staff found that the \$5,000 were the personal funds of the candidate and therefore not an excessive contribution from the individual, then the Audit Report should specifically state that the funds at issue appear to be the personal funds of the candidate.

<sup>2</sup> Section 110.4(c)(3) requires a committee to promptly dispose of anonymous cash contributions in excess of \$50. However, the Committee did not dispose of the excessive cash until it was notified during the audit.

<sup>3</sup> Personal funds include, for example, assets under the candidate's control; salary and other earned income; proceeds from the sale of stock, and income from trusts established before candidacy. 11 C.F.R. §§ 110.10(b)(1) and (2).

Further, the Audit staff reviewed contributions received by the Primary Committee on a sample basis and projected that the Primary Committee received unresolved prohibited contributions in the amount of \$10,724. The Exit Conference Memorandum states that the Audit staff verified that these were contributions from corporations. However, the proposed Audit Report states that the Primary Committee provided documentation establishing that it had not received a material amount of corporate contributions. The Report does not discuss the additional information that was received to show that these are not corporate contributions. The Office of General Counsel recommends that the Audit Division revise the proposed Audit Report to include a discussion of the additional information provided in response to the Exit Conference Memorandum.

# Alan Keyes for President '96, Inc.

2515 White Bear Ave - Suite 8A-301 - St Paul, MN 55109  
(612) 483-0079 - FAX (612) 483-9880  
Paid for by Alan Keyes for President '96, Inc.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
AUDIT DIVISION

Nov 5 3 41 PM '97

October 31, 1997

Robert Costa  
Federal Election Commission  
999 E Street  
Washington, D C

Memorandum

Dear Mr Costa

The FCM called for a total disbursement to the U.S. Treasury of \$113,060. We have enclosed a check made payable to the U.S. Treasury in the amount of \$86,443.

The difference between the recommended disbursement in the FCM and the amount of the check is explained below:

• \$4,000 to account for the loan from Alan Keyes which had previously been classified as an excessive contribution

• \$10,724 for inappropriate contributions which have been dropped as immaterial due to the additional documentation provided herein

• \$11,893 from the NCEI calculations due to additional documentation provided

Thank you for providing this additional information.

Sincerely,

  
Dave Racer  
National Campaign Manager

9901021198

# Alan Keyes for President '96, Inc.

2515 White Bear Ave - Suite 8A-301 - St Paul, MN 55109

(612) 483-0079 - FAX (612) 483-9880

Paid for by Alan Keyes for President '96, Inc

October 31, 1997

Robert Costa  
Federal Election Commission  
990 I Street  
Washington DC

Memorandum

Dear Mr Costa

The FECM called for a total disgorgement to the U S Treasury of \$113,060. By the time we had answered the FECM, we were able to reduce the disgorgement amount significantly by providing the FEC with additional information. We issued a check made payable to the U S Treasury in the amount of \$80,443. That amount was in error.

According to 11 CFR, 110.41(c)(3) the Committee is allowed to disburse anonymous cash that exceeds \$500 may be used for any lawful purpose unrelated to any federal election, campaign, or candidate. The audit team determined that the Friends of Alan Keyes Committee had, in fact, accumulated anonymous cash in excess of \$500 for a total of \$10,434. When we were informed of this fact, we promptly disbursed the \$10,434 to a 501(c)(3) educational group.

When we forwarded the check mentioned above to the FEC made payable to the Treasury, we failed to take into account this previous disbursement of funds.

- I am requesting that either a refund of \$10,434 be made to the Committee, or that the FEC return the \$80,443 check and we will void it issuing a new check in the amount of \$70,000.

Thank you for helping resolve this situation.

Sincerely,

  
Dave Racer  
National Campaign Manager

NOT FOR DEPOSIT INTO A BANK



ALWAYS GET THE FULL PAYMENT FROM THE BANK  
2010 WHITE CLARK AVENUE, SUITE 6A-201  
ST. PAUL, MN 55108

CHARRON, A  
BANK  
EMPLOYED ON 01-10-10  
IN MINN. ST.

10627

DATE  
NO. OF CHECKS

United States Treasury

Date 12/1/97  
\$ 84,736.00

Eighty-Four Thousand Seven Hundred Thirty-Six and 00/100

DOLLARS

United States Treasury  
Washington, DC

*[Handwritten Signature]*  
0627

Memo for disbursement per FEC audit

1.



FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20541

January 15, 1998

Mr. William G. Spiegel, Treasurer  
Alan Keyes for President '96, Inc.  
3585 North Lexington Ave., Suite 172  
St. Paul, MN 55126

Dear Mr. Spiegel:

Attached please find the Audit Report on Alan Keyes for President '96, Inc., Alan Keyes Committee and Other Authorized Committees. The Commission approved the report on January 15, 1998. As noted on page 6, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9038.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$84,736 is required and notes the receipt of this repayment on December 2, 1997.

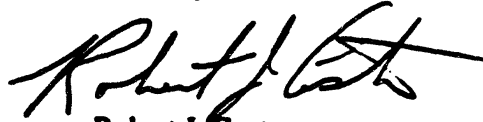
Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (March 19, 1998), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report was placed on the public record on January 15, 1998. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Joe Stoltz or Alex Boniewicz of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

FOR INFORMATION USE ONLY





FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20543

January 15, 1998

Mr. Alan Keyes  
c/o Mr. Dave Racer  
Alan Keyes for President '96, Inc.  
3585 North Lexington Ave., Suite 172  
St. Paul, MN 55126

Dear Mr. Spiegel:

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Any questions you may have related to matters covered during the audit or in the audit report should be directed to Joe Stoltz or Alex Boniewicz of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

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**CHRONOLOGY**

**ALAN KEYES FOR PRESIDENT '96, INC.  
ALAN KEYES COMMITTEE  
AND  
OTHER AUTHORIZED COMMITTEES**

<b>Audit Fieldwork</b>	<b>8/19/96 — 3/28/97</b>
<b>Exit Conference Memorandum to the Committee</b>	<b>9/30/97</b>
<b>Response Received to the Exit Conference Memorandum</b>	<b>11/25/97</b>
<b>Audit Report Approved</b>	<b>1/15/98</b>

000001: UNIB: VIB: 4.9

**Alan Keyes for President '96, Inc.  
Authorized Committees**

<b>Committee</b>	<b>Date Registered With Commission</b>	<b>City, State</b>	<b>Treasurer</b>	<b>Total Receipts</b>	<b>Total Disbursements</b>	<b>Ending Cash<sup>1</sup></b>
1 <b>Alabama Keyes Committee</b>	2/13/96	Huntsville, AL	Amelia C Wisdom	\$ 0 00	\$ 0.00	\$ 0.00
2 <b>Alan Keyes for President '96 - Colorado</b>	12/12/95	Colorado Springs, CO	William V Mote	0 00	0.00	0.00
3 <b>Alan Keyes for President '96 Kentucky Affiliate</b>	1/30/96	Crescent Springs, KY	John A Shelton	1,182 99	1,182.99	0 00
4 <b>Alan Keyes for President '96, NC Committee</b>	1/11/96	Greenville, NC	Daniel C Morris	1,810 00	1,810 00	0 00
5 <b>Alan Keyes for President '96 Northern Texas Office</b>	1/19/96	Denton, TX	James D Green	1,750 00	1,750 00	0 00
6 <b>Alan Keyes for President - Iowa</b>	12/15/95	Des Moines, IA	Jonathan A Jackson	5,101 08	5,101.08	0 00
7 <b>Arizona for Alan Keyes '96</b>	2/13/96	Tucson, AZ	Robert A Gentala	0 00	0 00	0 00
8 <b>Californians for Keyes</b>	1/29/96	Ventura, CA	Sandy Patrizio	43,518.13	43,518.13	0 00
9 <b>Committee to Elect Alan Keyes President of the United States</b>	11/2/95	Fresno, CA	Marian Mosley	6,191 86	6,191 86	0 00
10 <b>Keyes Campaign in Illinois</b>	2/13/96	Park Ridge, IL	Eugene T Carter	3,500 00	3,500 00	0 00

<sup>1</sup> Amounts were determined with information available when the bank reconciliations for the Authorized Committees were completed, as well as our review of disclosure reports and amended reports filed through termination.

ALAN KEYES FOR PRESIDENT '96  
 Alan Keyes for President '96, Inc.  
 Authorized Committees

Committee	Date Registered With Commission	City, State	Treasurer	Total Receipts	Total Disbursements	Ending Cash
11 Maryland for Keyes '96	12/15/95	Germanstown, MD	Terry Turner	0 00	0 00	0 00
12 Massachusetts for Alan Keyes	1/19/96	Somerville, MA	Patrick Lannon	0 00	0 00	0 00
13 Michigan for Keyes '96	2/22/96	Ann Arbor, MI	Bart L. Staker	0 00	0 00	0 00
14 Minnesota for Keyes	2/29/96	Richfield, MN	Thomas W Strahan, Sr	2,716 17	2,716 17	0 00
15 Northwestern States for Keyes	10/15/95	Brooks, OR	Bonnie J Mabon	34,954 55'	34,954 55	0 00
16 South Carolinians for Keyes '96	1/19/96	Taylors, SC	Carolyn R Rice	1,697 00	1,697 00	0 00
17 South Dakotans for Alan Keyes '96	1/30/96	Sioux Falls, SD	Gretchen A Hoffman	3,350 44	3,350 44	0 00
18 Texans for Alan Keyes for President '96	1/24/96	Houston, TX	Christopher T Kuhlman	8,784 11	8,784.11	0 00
19 Wisconsin for Alan Keyes	10/31/95	Sheboygan, WI	Micheal J Heinen	0 00	0 00	0 00
20 Alan Keyes for President '96 - Kansas	Never Filed	Elbing, KS	Kirt Poovey	8,017 48	8,017 48	0 00
				=====	=====	=====
				\$122,573 81	\$122,573 81	\$0 00
				=====	=====	=====

The actual amount deposited into this committee's bank account was \$32,158.77. The amount reported was \$34,954 55 which included \$2,795 78 in receipts that were not deposited in the committee's bank account but were instead sent to the Primary Committee.







WASH. STATE UNIV. LIB.

