FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 16, 1999

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON CLINTON/GORE '96 PRIMARY COMMITTEE, INC.

Attached please find a copy of the final audit report and related documents on Clinton/Gore '96 Primary Committee, Inc. which was approved by the Commission on June 3, 1999.

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

Attachment as stated

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

REPORT OF THE AUDIT DIVISION

ON

CLINTON/GORE '96 PRIMARY COMMITTEE, INC.

Approved June 3, 1999

FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

The Honorable William J. Clinton
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Mr. President:

Attached please find the Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. The Commission approved the report on June 3, 1999. As noted on page 5, 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 $126,680 is required within 90 calendar days after service of this report (September 13, 1999).

Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (August 13, 1999), 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 you so elect. If you decide to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530. If you do not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will placed on the public record on or about June 15, 1999. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Leroy Clay or Thomas Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

Ms. Joan Pollitt, Treasurer
Clinton/Gore '96 Primary Committee, Inc.
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Ms. Pollitt:

Attached please find the Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. The Commission approved the report on June 3, 1999. As noted on page 5, 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 $126,680 is required within 90 calendar days after service of this report (September 13, 1999).

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 (August 13, 1999), 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) 694-1650 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.

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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 Leroy Clay or Thomas Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

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CLINTON/GORE '96 PRIMARY COMMITTEE, INC.

APPROVED JUNE 3, 1999

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON CLINTON/GORE '96 PRIMARY COMMITTEE, INC.

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the Clinton/Gore '96 Primary Committee, Inc. (the Primary Committee). 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, April 10, 1995 through December 31, 1997. The Primary Committee reported an opening cash balance of $-0-; total receipts of $44,753,599; total disbursements of $44,603,123; and a closing cash balance of $150,476.

C. CAMPAIGN ORGANIZATION

The Primary Committee registered with the Federal Election Commission on April 14, 1995. The Treasurer of the Primary Committee is Ms. Joan Pollitt. The Primary Committee maintains its headquarters in Washington, DC.

During the period audited, the Primary Committee maintained depositories in the District of Columbia, Arkansas, Georgia, New York and Texas. To handle its

financial activity, the Primary Committee utilized a total of 9 bank accounts. From these accounts the campaign made approximately 23,654 disbursements. Approximately 293,043 contributions from 190,426 persons were received. These contributions totaled $28,987,800.

In addition to the above contributions, the Primary Committee received $13,412,198 in matching funds from the United States Treasury. This amount represents 87% of the $15,455,000 maximum entitlement that any candidate could receive. The Candidate was determined eligible to receive matching funds on October 31, 1995. The Primary Committee made a total of 9 matching fund requests totaling $14,245,229. The Commission certified 94.15% of the requested amount. For matching fund purposes, the Commission determined that President Clinton's candidacy ended on August 28, 1996. This determination was based on Section 9032(6) of Title 26 of the United States Code which states that the matching payment period ends "on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States, ..." see also 11 CFR §9032.6. On August 2, 1996 the Primary Committee received its final matching fund payment to defray expenses incurred through August 28, 1996 and to help defray the cost of winding down the campaign.

D. AUDIT SCOPE AND PROCEDURES

In addition to a review of the committee's expenditures to determine the qualified and non-qualified campaign expenses incurred by the campaign (see Finding III.B.), the audit covered the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding III.A.);

2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding II.A.);

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed (see Finding 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;

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;

7. adequate recordkeeping for campaign transactions;

8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by the Clinton/Gore '96 Primary Committee, Inc. to disclose its financial condition and to establish continuing matching fund entitlement (see Finding III.E.);

9. the Primary Committee's compliance with spending limitations (see Finding III.D.); and

10. other audit procedures that were deemed necessary in the situation (see Finding III.F.).

As part of the Commission's standard audit process, an inventory of campaign records is normally 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.

The inventory began on January 6, 1997. Due to the unavailability of records, the Audit staff suspended fieldwork on January 22, 1997. Prior to leaving, an itemized list of records needed was provided to the Primary Committee. These records, consisting of: bank statements and enclosures for three campaign depositories; check registers for certain operating and payroll accounts; records relative to in-kind contributions, campaign travel, campaign materials, Primary Committee credit cards, media placements, public opinion polls, fundraising, event and allocation codes; workpapers detailing FEC report preparation and components for the Statement of Net Outstanding Campaign Obligations; copies of all Primary Committee contracts/agreements; copies of IRS forms 940 and 941; a listing of key personnel, including positions and responsibilities; and, Computerized Magnetic Media for disbursements were initially requested in writing during the period January 7, 1997 through January 22, 1997.

In a letter dated January 29, 1997, the Primary Committee was notified that the records were to be made available on or before February 21, 1997; with respect to records not made available, the Commission would issue subpoenas for production of the records not only to the Primary Committee, but also to vendors, banks or any other persons in possession of relevant materials. In addition, the Audit staff identified records that, at a minimum, had to be made available before fieldwork could resume.

In addition, on January 8, 1997, the Audit staff was instructed that all requests for vendor files would be directed to a designated staff person and that such requests would be limited to documentation associated with a block of no more than 500 checks (e.g., check numbers 1000 - 1499). The Audit staff met with Primary Committee representatives on January 15, 1997 in an attempt to reach a workable solution as to

access. A solution was not reached and Primary Committee counsel was notified that we were prepared to recommend subpoenas for all vendor files in the event that a reasonable solution could not be worked out. On February 19, 1997, Audit Division representatives met with Primary Committee counsel to discuss resuming fieldwork and access to vendor files. A workable solution as to access was reached.

Audit fieldwork resumed on February 24, 1997. However, the Primary Committee continued to delay production of records. The Audit staff was informed that attorneys had to review all records prior to them being made available to the Audit staff. In certain instances, the Primary Committee refused to make records available and in other instances, were not initially accurate as to the existence and/or availability of certain records requested. For example, the Primary Committee refused to make available bank records pertaining to the bank account maintained by the media vendors who placed and paid for media buys on behalf of the Primary Committee (see Finding III.A.). Further, the Primary Committee refused to make available, without conditions and/or restrictions, copies of all polls conducted on its behalf. With respect to certain electronic spreadsheets for fundraising and/or legal and accounting allocations, as well as other computerized records, Primary Committee representatives stated on numerous occasions that such records could not or would not be made available in a computerized format. When continuing to inquire why these records could not be made available in a computerized format, the Audit staff was informed by the Primary Committee's accountant that the Primary Committee's Chief Counsel had said that computerized records were not to be made available to the Audit staff. The Audit staff made repeated attempts to meet with Counsel, however, no such meeting was ever scheduled. Near the end of fieldwork, in 1998, certain electronic spreadsheet records were eventually provided.

As a result, during the period May 28, 1997 through February 3, 1998, the Audit staff requested the Office of General Counsel to prepare subpoenas for the production of records. The Commission issued 22 subpoenas to either the Primary Committee or respective vendors in order to obtain records generally made available to the Audit staff at the beginning of fieldwork.[1]

It is the opinion of the Audit staff that the delays in production of records by the Primary Committee resulted in wasting numerous staff hours which directly delayed the completion of the audit fieldwork a minimum of four months.

Accordingly, the scope of work performed was limited due to delays encountered in obtaining records necessary to perform the audit. Certain findings in the Memorandum were supplemented with information obtained from sources other than the Primary Committee.

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[1] Records concerning payments made by the Primary Committee's media vendors on behalf of the Democratic National Committee are not in this category.

The Primary Committee as part of its response to the Exit Conference Memorandum made various comments concerning the Audit staff's discussion of the scope of the audit. The Primary committee asserted that this section of the audit report provided a distorted and incomplete view of the process, and then provides certain examples of "mischaracterizations" included therein. Further, the Primary Committee claimed that "[d]espite its full cooperation with these numerous and often conflicting requests, always maintained a cooperative posture during the audit process "*for all information requested that was reasonably within the scope of the audit.*" (Emphasis not in original.)

Various examples and explanations were cited, such as: logistical problems inherent with the Primary Committee's move to new offices; the auditors' demand for additional office space at that location; that "no existing record in the Primary Committee's possession was refused;" that the Audit Division refused all attempts at cooperative compromise pertaining to gaining access to the Primary Committee's media vendor's records; and that the auditors repeatedly insisted that particular records which the Primary Committee "did not have" in a computerized format be created.

The Audit staff stands by the scope limitation and related discussion as presented in the Exit Conference Memorandum and this report. The candidate agreed as a condition to obtaining matching funds to: furnish all documents related to disbursements and receipts, including computerized information; furnish all documentation relating to disbursements made on the candidate's behalf by other organizations; permit an audit and examination of all receipts and disbursements including those made by the candidate, authorized committee or any agent authorized to make expenditures on behalf of the candidate or authorized committee. Further, the candidate agreed to facilitate the audit by making available in one central location office space, records and such personnel as are necessary to conduct the audit and examination. The candidate and committee agreements provided for at 11 CFR §9033.1 were signed in October, 1995.

As detailed above, certain records necessary to the conduct of the audit were not made available at the commencement of audit fieldwork in January, 1997 and in some cases were not made available until subpoenas were issued by the Commission to compel production. The Primary Committee is entitled to express its opinion and attempt to explain why it feels "[i]t would be utterly inappropriate for such a distorted and one-sided description of the process to be included in the proposed draft Final Audit Report." The Primary Committee's response will be included in the documents available to the Commission when the audit report is considered in open session.

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 the audit report in an enforcement action.

In a series of meetings between December 3, 1998, and April 29, 1999, the Commission considered the findings and recommendations contained below. The action taken with respect to each issue is described at the end of the respective finding.

II. FINDINGS AND RECOMMENDATIONS - NON-REPAYMENT MATTERS

A. RECEIPT OF PROHIBITED CONTRIBUTIONS RESULTING FROM EXTENSIONS OF CREDIT BY COMMERCIAL VENDORS

The issue involved whether the extension of credit by Penn + Schoen, the Primary Committee's main polling firm, conformed to the usual and normal practice in its business or in its industry as required by 11 CFR § 116.3. The Staff concluded that a contribution in the amount of $74,970 was made by Penn + Schoen to the Primary Committee.

The Commission decided to reject the Staff's conclusion with respect to this matter.[2]

III. FINDINGS AND RECOMMENDATIONS - REPAYMENT MATTERS

A. RECEIPT OF AN APPARENT EXCESSIVE CONTRIBUTION - MEDIA ADS PAID FOR BY THE DEMOCRATIC NATIONAL COMMITTEE

The issue addressed was whether the costs associated with the production and broadcast of alleged issue ads paid for by the Democratic National Committee (DNC) were in-kind contributions to the Primary Committee and chargeable to its spending limitation.

The Staff recommended that the Commission determine that the cost, $46,580,358, of producing and broadcasting the ads discussed above represented an in-kind contribution from the DNC to the Primary Committee. The Staff also recommended that it be determined that this in-kind contribution was attributable to the Primary Committee's spending limitation.

By a vote of 6-0, the Commission rejected the Staff recommendation for a matching fund repayment related to $46,580,358 in media expenses. The repayment would have resulted from the media expenses being added to expenditures subject to the limitation, and the exceeding of that limitation.

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[2] Please refer to Agenda Documents 98-85 & 99-47at Finding II.A., and the relevant audio tapes for the Open Session meetings of December 3rd, 9th, 10th, 1998, January 14th, 28th, February 3rd,25th, March 4th, and April 29th, 1999 for additional information.

By a motion adopted on a 6-0 vote, the Commission directed the Audit Division to revise the portion of the report relating to party ads to clarify that the Commission has not reached any conclusion regarding the Audit Division's in-kind contribution analysis, and to indicate that Commissioners may submit statements for the record.

By a motion adopted on a 6-0 vote, the Commission decided that DNC expenditures for advertising, featuring the presumptive nominee, made before or during the nominating convention, and reported by the DNC as 441a(d) coordinated expenditures should be accepted as claimed and counted against the DNC's 441a(d) limit.[3]

B. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES

Section 9032.9(a) of Title 11 of the Code of Federal Regulations defines, in part, a qualified campaign expense as one incurred by or on behalf of the candidate from the date the individual became a candidate through the last day of the candidate's eligibility; made in connection with his or her campaign for nomination.

Section 9033.11(a) of Title 11 of the Code of Federal Regulations states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9.

Section 9033.11(b)(1) of Title 11 of the Code of Federal Regulations, in part, that for disbursements in excess of $200 to a payee, 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 receipt is not available, one of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or the candidate or committee may present collateral evidence to document the qualified campaign expense . Such collateral evidence may include, but is not limited to: Evidence demonstrating that the expenditure if 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; or evidence that the disbursement is covered by a pre-established written campaign committee policy. If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check.

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[3] Please refer to Agenda Documents 98-85 & 99-47 at Finding III.A., and the relevant audio tapes for the Open Session meetings of December 3rd, 9th, 10th, 1998, January 14th, 28th, February 3rd,25th, March 4th, and April 29th, 1999 for additional information.

Section 9034.4(e)(1) of Title 11 of the Code of Federal Regulations states that any expenditure for goods or services that are used exclusively for the primary election campaign shall be attributed to the expenditure limit for the primary. Any expenditure for goods or services that are used exclusively for the general election campaign shall be attributed to the general election limit.

Section 9034.4(e)(3) of Title 11 of the Code of Federal Regulations states that overhead expenditures and payroll costs incurred in connection with state or national campaign offices, shall be attributed according to when the usage occurs or the work is performed. Expenses for usage of offices or work performed on or before the date of the candidate's nomination shall be attributed to the primary election, except for periods when the office is used only by persons working exclusively on general election campaign preparations.

Section 9034.4(a) of Title 11 of the Code of Federal Regulations, states that all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

Section 9034.4(a)(5)(ii) of Title 11 of the Code of Federal Regulations, states that gifts and monetary bonuses shall be considered qualified campaign expenses, provided that all monetary bonuses for committee employees and consultants in recognition for campaign-related activities or services are provided for pursuant to a written contract made prior to the date of ineligibility and are paid no later than thirty days after the date of ineligibility.

Section 9034.4(b)(8) of Title 11 of the Code of Federal Regulations, states that the cost of lost or misplaced items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance; the type of equipment involved; and the number and value of items that were lost.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, that any expenses incurred after a candidate's date of ineligibility are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

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 candidate's total deposits, as of 90 days after the candidate's date of ineligibility.

Section 9038.2(a)(2) of Title 11 of the Code of Federal Regulations states that the Commission will notify the candidate of any repayment determinations made under this section as possible, but not later than three years after the close of the matching payment period. The Commission's issuance of the audit report to the candidate under 11 CFR §9038.1(d) will constitute notification for purposes of this section.

1. General Election Expenses Paid by the Primary Committee

During our review of vendor files, expenses were noted that appeared to further the Candidate's general election campaign for election but were paid by the Primary Committee. Each is discussed briefly below:

a. Bismarck Enterprises

The Primary Committee paid Bismarck Enterprises $22,984[4] for catering services provided on August 29, 1996 at the Democratic National Convention (the Convention). These services were provided after the Candidate's date of ineligibility (August 28, 1996) and therefore considered a general election expense. The Primary Committee contended that the Candidate's date of ineligibility was not until August 29, 1996, the last day of the Convention, because under Democratic Party rules the nominee for the office of President does not become the candidate of the Democratic Party of the United States until he or she has completed his or her acceptance speech to the Convention.[5]

[4] The catering charges include equipment rental and gratuities which were pro rated by the Audit staff based on a percentage of the catering charges for August 29th to the total catering charges.

[5] The Primary Committee submitted a letter challenging the Commission's determination that the candidate's date of ineligibility is August 28, 1996. It argued that the date should be August 29, 1996. The Commission denied the Primary Committee's request.

The Primary Committee provided a letter from Sam Karatas, Director of Food and Beverage Bismarck Enterprises, which stated that the Primary Committee utilized several suites and banquet facilities during the Convention on the dates of August 26 through August 29. Mr. Karatas also related that food and beverages were provided to nineteen suites during this period and that on August 27, a luncheon buffet was prepared for Mrs. Gore. Mr. Karatas added that a small banquet was also set up in the President's waiting lounge on August 29 before he went on the main stage.

Concerning the above information, neither Mr. Karatas nor the Primary Committee provided documentation or evidence which demonstrated that the catering services provided on August 29, 1996, the day after the President received the nomination, were goods and services used exclusively for the Candidate's primary election campaign.

In the Memorandum the Audit staff recommended that the Primary Committee provide evidence or documentation that the goods and services were used exclusively for the Candidate's primary election campaign or evidence that the General Committee has reimbursed the Primary Committee $22,984. Absent adequate documentation to demonstrate the expenses were exclusive to the primary election campaign or evidence that the Primary Committee has received reimbursement from the General Committee, the Audit staff will recommend that the Commission make at determination that the Primary Committee make a pro-rata repayment to the United States Treasury.

In response to the Memorandum, the Primary Committee stated that in light of the Commission's previous ruling on the date of ineligibility, the General Committee agreed to reimburse the Primary Committee for the full amount of the Bismarck Enterprises services ($22,984).

To date no evidence was provided which demonstrated the General Committee reimbursed $22,984 to the Primary Committee. Therefore, the payment to Bismarck Enterprises is viewed as a non-qualified campaign expense and a pro rata repayment of $7,260 is due the United States Treasury ($22,984 x .315876).

Recommendation

The Audit staff recommended the Commission make a determination that the Primary Committee make a pro-rata repayment of $7,260 ($22,984 x .315876) to the United States Treasury pursuant to 26 U.S.C. 9038(b)(2).[6] If the Primary Committee

[6] This figure (.315876) represents the Primary Committee's repayment ratio, as calculated pursuant to 11 CFR §9038.2(b)(2)(iii). The Commission decided to exclude from the repayment calculation ratio the issue ads for which the Commission has determined there would be no repayment.

receives a reimbursement of $22,984 from the General Committee, no repayment is required.

The Commission approved the Staff recommendation.

b. AT&T Capital Corporation

The Primary Committee entered into a lease agreement with AT&T Capital Corporation for equipment. The term of the lease was for 18 months commencing on June 1, 1995. It appeared, based on documentation, that the Clinton/Gore '96 General Committee, Inc. was to have assumed the lease after the Candidate's date of ineligibility (August 28, 1996) through November, 1996. The total lease payments including sales tax were $422,826. The General Committee's allocable share was $94,133[7] of which the General Committee paid only $30,397. The balance, $63,736, paid by the Primary Committee should have been paid by the General Committee. The Primary Committee in its response acknowledged that the General Committee should have paid $93,464, based on its calculation.[8] Accordingly, the Audit staff included on the Primary Committee statement of Net Outstanding Campaign Obligations an account receivable from the General Committee in the amount of $63,736.

In the Memorandum, the Audit staff recommended that the Primary Committee provide evidence that the balance, $63,736, paid by the Primary Committee is not exclusively related to the general campaign or evidence that the Primary Committee has received a reimbursement from the General Committee for $63,736. Absent adequate documentation to demonstrate the above amount was exclusive to the general campaign or evidence that the Primary Committee has received reimbursement from the General Committee ($63,736) the Audit staff will recommend that the Commission make a determination that the Primary Committee make a pro-rata repayment to the United States Treasury.

In response to the Memorandum, the Primary Committee stated that the General Committee agreed to reimburse the Primary Committee $63,736. However, the Primary Committee has not provided evidence that it received a reimbursement from the General Committee. Therefore, the amount is viewed as a non-qualified campaign expense.

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[7] This amount was derived by pro rating $30,397 for three days in August, 1996 plus $30,397 each for September, October and November.

[8] The difference between Audit and the Primary Committee is $669.

Recommendation

The Audit staff recommended the Commission make a determination that the Primary Committee make a pro-rata repayment of $20,133 ($63,736 x .315876) to the United States Treasury pursuant to 26 U.S.C. 9038(b)(2). If the Primary Committee receives a reimbursement of $63,736 from the General Committee, no repayment is required.

The Commission approved the Staff recommendation.

c. Salary and Overhead

The Primary Committee paid salary and overhead expenses, totaling $340,579, that were incurred subsequent to the Candidate's date of ineligibility. For example, the Primary Committee paid all costs associated with the Little Rock office for the period August 29, 1996 through December 5, 1996. Staff in this office, according to Primary Committee records, were working on both primary contribution processing and GELAC contribution processing. These expenses are attributable to the general election and should have been paid by the General Committee/GELAC pursuant to 11 CFR 9034.4(e)(3). The Audit staff determined based on our review of the Primary Committee's records pertaining to its allocation of salary and overhead that $192,288 in expenses are attributable to the General Committee and $148,291 to the GELAC. With respect to that portion of salary and overhead expenses attributable to GELAC ($148,291), it should be noted that the GELAC as of January 31, 1997 reimbursed the Primary Committee $94,972. Therefore, expenses for salary and overhead, totaling $53,319 ($148,291 - 94,972), is due the Primary Committee from the GELAC and $192,288 is due the Primary Committee from the General Committee.

Schedules were provided to the Primary Committee at a conference held on March 18, 1998. The Primary Committee did not respond other than to state it believed winding downing expenses, consisting of salary and overhead, should be permissible subsequent to the Candidate's date of ineligibility.

In the Memorandum, the Audit staff recommended that the Primary Committee provide documentation which demonstrates that the expenses for salary and overhead paid by the Primary Committee subsequent to the Candidate's date of ineligibility represented the cost of goods and services used exclusively for the primary election campaign or evidence that the Primary Committee has received reimbursements from the General Committee ($192,288) and the GELAC ($53,319). Absent adequate documentation to demonstrate the expenses were exclusive to the primary election campaign or evidence that the Primary Committee has received reimbursement from the General Committee totaling 192,288, and $53,319 from the GELAC the Audit staff will recommend that the Commission make a determination that the Primary Committee make

a pro-rata repayment of $77,627 ($192,288 + 53,319 x .316062)[9] to the United States Treasury.

In response to the Memorandum, the Primary Committee stated that pursuant to §9034.4(a)(3)(iii), 100% of salary, overhead and computer expenses incurred after the date of ineligibility may be treated as exempt legal and accounting beginning with the first full reporting period after the date of ineligibility. The Primary Committee stated further that nothing in the regulation limits the ability of a candidate in the general election to pay primary winding down costs during the general election period. In addition, the Primary Committee stated that the Commission's bright line regulation at §9034.4(e) refers to campaign expenditures subject to the limit, not to winding down costs. Also, it is stated by the Primary Committee that the entire accounting/matching funds staff located in Little Rock provided no general election services other than the GELAC contribution services. Finally, the Primary Committee stated that costs related to Primary Committee winding down were incurred in the DC accounting office by accounting personnel specifically assigned to accounting for the Primary Committee and those individuals spent no time related to general election activity.

The Primary Committee agreed that the General Committee would reimburse the Primary Committee for expenses totaling $39,753 that were allocable to the General Committee, but that no additional reimbursements are due the Primary Committee from the General Committee due to the inapplication of 11 CFR §9034.4(e)(3) to post DOI winding down expenses. As of 9/30/98, the $39,753 has not been paid to the Primary Committee according to disclosure reports filed.

It is the opinion of the Audit staff that 11 CFR §9034.4(e) applies to both operating costs and winding down costs. Expenditures must be exclusively for the primary campaign or the general election campaign to be attributed to that campaign. The Explanation and Justification for 11 CFR §9034.4(e)(3) addresses overhead and payroll costs incurred in connection with state or national campaign offices. These costs are attributed according to when usage of the office occurs. For usage on or before the date of the candidate's nomination, these expenses are attributed to the primary election, except for periods when the office is used only by persons working exclusively on general election campaign preparations.

Recommendation

The Audit staff recommended the Commission make a determination that the Primary Committee make a pro-rata repayment of $77,581 ($192,288 + 53,319 x .315876) to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2). If the Primary

[9] The repayment ratio used in the Memorandum (.316062) has been revised for purposes of this Audit Report to .315876.

Committee receives a reimbursement of $192,288 from the General Committee and $53,319 from the GELAC, no repayment would be required.

The Commission approved the Staff recommendation.

2. Morris & Carrick, Inc.

A consulting agreement was entered into between the Primary Committee and Morris & Carrick, Inc. (M&C). The agreement covered the period February 1, 1996 through August 30, 1996. M&C billed the Primary Committee on a monthly basis. In accordance with the agreement, the Primary Committee paid M&C $15,000 per month.

In addition, M&C billed the Primary Committee on August 30, 1996 for an additional $30,000, which the Primary Committee paid on September 30, 1996. The invoice to the Primary Committee was annotated "Remaining Primary Invoice." Although the agreement stated it may be further extended, renewed or amended upon written agreement of the parties, there was no provision in the original agreement or any amendments to the agreement which covered this billing and/or the payment made on September 30, 1996. A Primary Committee representative stated the vendor performed extra work than was originally anticipated and, therefore, was paid an additional $30,000.

Subsequently, the Primary Committee submitted a written response which stated that the $30,000 payment was actually owed by the General Committee, not the Primary Committee. M&C was actually owed a total of $95,000 under the General Committee contract, but was only paid $65,000 on October 10, 1996 by the General Committee. Further, the Primary Committee stated because M&C mistakenly billed the $30,000 to the Primary Committee, committee staff paid the invoice as directed. Although the Primary Committee stated a copy of the "misdirected invoice" was included with its response, it was not. Finally, the Primary Committee stated that the General Committee will reimburse the Primary Committee $30,000, representing the amount paid and owed to M&C.

In support of its current position, the Primary Committee provided a copy of a consulting agreement between M&C and the General Committee. This copy was not signed by either party.[10] Subsequently, the Primary Committee made available a copy of the "misdirected invoice."

The unsigned agreement between the General Committee and M&C specified an effective date of August 30, 1996 and a termination date of November 30, 1996. It further states M&C was to be paid $95,000 within 30 days of execution of the agreement.

[10] The Primary consulting agreement was signed by the Primary Committee and M&C.

In our opinion, based on the information provided as of the close of audit fieldwork, the General Committee's agreement appeared to be effective as of August 30, 1996, it was unclear why M&C would mistakenly issue an invoice on the same date and for only $30,000, when, in fact, the entire amount ($95,000) to be paid, pursuant to the agreement, was due within 30 days of execution. On September 30, 1996, when M&C did directly issue an invoice to the General Committee, it was for $65,000.

In the Memorandum, the Audit staff recommended that, the Primary Committee provide a copy of the executed contract (signed by all parties and dated) between the General Committee and Morris & Carrick. In addition, a signed statement from M & C which explains in detail why M & C billed the Primary Committee for $30,000 on August 30, 1996, when the Primary Committee obligations under its contract were fulfilled. Absent adequate documentation to demonstrate the expenses at issue were, in fact qualified campaign expenses, the Audit staff will recommend that the Commission make a determination that the Primary Committee make a pro-rata repayment of $9,482 ($30,000 x .316062) to the United States Treasury pursuant to 11 CFR §9038.2(b)(2).

In response to the Memorandum, the Primary Committee stated that an executed contract between the General Committee and Morris & Carrick did not exist. However, the Primary Committee provided an affidavit from William A. Carrick, Jr., the President of Morris & Carrick, Inc.

Mr. Carrick stated that M & C agreed to provide political consulting services to both the Primary Committee and General Committee. M & C agreed in writing to provide services to the Primary Committee in return for $105,000 - $15,000 per month for 7 months and M & C was paid in full for all services provided to the Primary Committee.

Mr. Carrick continued that the General Committee orally agreed that services would be provided in return for $95,000, to be paid within 30 days from the anticipated date of execution of the contract (August 30, 1996). The agreement was reflected in a proposed written contract, however, unintentionally, the parties never signed that contract. Mr. Carrick stated further, that both parties treated the proposed contract as though it had been fully executed and abided by all of its terms.

According to Mr. Carrick, M & C mistakenly billed the Primary Committee, instead of the General Committee for $30,000 and that the Primary Committee paid the bill without questioning it. He stated that M & C was unaware of the mistake on this bill and was also unaware that the $30,000 was paid from the Primary Committee. Further, M & C received payments totaling $200,000 in full satisfaction of all obligations owed and duties performed under the Primary and General Committee agreements and that M & C did not receive any funds above and beyond those called for in the agreements with the Primary and General Committees. Finally, Mr. Carrick stated that M & C never received a bonus payment from either the Primary or the General

Committee and that all payments were in accordance with its written agreements with both the Primary and General Committees.

Although the Primary Committee did not provide a copy of an executed contract between the General Committee and M & C, as recommended, it did provide information in the form of an affidavit from William Carrick, Jr. which explained that the Primary Committee was apparently billed in error.

In view of this apparent billing error and resulting payment by the Primary Committee of a General Committee expense, the General Committee should reimburse the Primary Committee $30,000.[11] Absent such a reimbursement, the amount paid ($30,000[12]) by the Primary Committee represents a non-qualified campaign expense.

Recommendation

The Audit staff recommended that the Commission determine that the Primary Committee make a pro rata repayment of $9,476 ($30,000 x .315876) to the United States Treasury pursuant to 11 CFR § 9038.2(b)(2). Should the Primary Committee provide evidence that it has been reimbursed by the General Committee, the repayment would not be required.

The Commission approved the Staff recommendation.

C. SHERATON NEW YORK HOTEL & TOWERS

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000.

Section 441a(a)(7)(B)(i) of Title 2 of the United States Code states that expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be contribution to such candidate.

Section 110.8(e)(1)(i)(ii) of Title 11 of the Code of Federal Regulations states that a political party may make reimbursement for the expenses of a candidate who is engaging in party-building activities, without the payment being considered a

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[11] This amount is shown as due to the Primary Committee on the Statement of Net Outstanding Qualified Campaign Expenses prepared by the Audit staff and included in the General Committee's Audit Report.

[12] This amount is not included on the Statement of Net Outstanding Campaign Obligations as due from the General Committee because the payment to M&C occurred after the candidate's date of ineligibility.

contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the limitation as long as the event is a bona fide party event or appearance; and no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination for election.

Section 110.8(e)(2)(ii) of Title 11 of the Code of Federal Regulations states that an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any contributions or expenditures are governed by the contribution and expenditure limitation.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term contribution includes the following payments, services or other things of value: a gift, subscription, loan advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. Section 100.7(a)(1)(iii)(A) of Tittle 11 of the Code of Federal Regulations states that for purposes of 11 CFR 100.7(a)(1), the term anything of value includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the provision of any goods or services is a contribution.

The Primary Committee made payments to the Sheraton New York Hotel & Towers (the Sheraton) totaling $252,555. One of the payments was a wire transfer on January 4, 1996 in amount of $134,739, which appeared to represent a deposit. In addition, the Primary Committee received and paid an estimated bill for an event in the amount of $117,816.

In response to the Audit staff's inquiry, the Primary Committee provided the following chronology regarding the payments made to the Sheraton. The payment of $134,739 pertained to an event scheduled to occur in January, 1996. This event was subsequently canceled. The Sheraton sent the Primary Committee a refund of $103,260;[13] a cancellation fee of $31,479 was charged. This event was then rescheduled to February 15, 1996. On February 8, 1996, a $117,816 payment was made to the Sheraton for the February 15, 1996 event. Finally, the Primary Committee stated the DNC invited some of its donors to the event, and based on the number of DNC attendees and the expenses incurred by DNC staff, the DNC paid $19,832. The Primary Committee provided a copy of an invoice issued by the Sheraton to the Primary Committee, dated March 8, 1996, in the amount of $142,322 plus a copy of an estimated bill issued by the Sheraton to the DNC for $19,832.

Costs itemized on the DNC's estimated bill were: dinner ($13,200), floral ($446), linen ($185), stanchions, ropes, pipe and drape, ($220), Clinton-Gore/DNC office

[13] A copy of the refund check was provided.

rental ($610), Clinton-Gore/DNC office phone/fax/printer ($671), and sleeping rooms ($4,500). Comparison of the charges listed on the Primary Committee's invoice versus the charges listed on the estimated DNC bill, revealed that except for dinners ($13,200) floral ($446) and linen ($185), the remaining categories of itemized charges on the DNC's estimated bill do not appear on the Primary Committee's invoice — the Primary Committee's invoice apparently represents all the categories or types of charges billed by the Sheraton directly related to the event. The expenses representing the difference, $6,001 ($19,832 - 13,831) appear to be related to the event, even though not included on the Sheraton's March 8, 1996 invoice. Consequently, absent additional documentation, the Audit staff could not determine how, or if, expenses totaling $10,675,[14] as reflected on the Sheraton's invoice issued to the Primary Committee were paid.

Based on the information available as of the close of audit fieldwork, the cost of the event appeared to be a qualified campaign expense; the Sheraton invoice referenced a "Clinton/Gore '96 Reception/Dinner." Further, this event did not appear to represent a joint fundraising effort in which the DNC was a participant. Absent documentation demonstrating that the expenses paid by the DNC were expenses NOT in connection with the candidate's campaign for nomination, the Audit staff viewed the amount paid by the DNC as an in-kind contribution. Further, the value of the apparent in-kind contribution ($19,832) was added to the amount of expenditures subject to the overall limitation.

It was recommended in the Memorandum, that the Primary Committee provide:

a) The final invoice issued by the Sheraton to the DNC;

b) an explanation as to the method used to "allocate" the costs of the event between the Primary Committee and the DNC, along with documentation to support that "allocation" ratio used;

c) documentation, in the form of canceled check(s) that demonstrates the $10,675 in event expenses were paid;

d) documentation to show how the expenses paid by the DNC are expenses not in connection with the candidate's campaign for nomination, and thus not an in-kind contribution to the Primary Committee.

In response to the Memorandum, the Primary Committee provided invoices and documentation which demonstrated that all expenses relating to the event were paid. Although the estimated bill for the DNC was $19,832, the actual amount paid by the DNC was $24,926 (catering and room charges). In addition, the Primary Committee provided documentation which explained the method used to "allocate" the

[14] Apparent total cost of event, $142,322 less $117,816 paid by the Primary Committee, less $13,831 paid by the DNC.

cost between the Primary Committee and the DNC. The DNC paid 11% of the cost which it considered as its share for the 165 guests invited by the DNC.

According to the Primary Committee, the primary purpose of this event was to garner support for the Clinton/Gore '96 presidential ticket and to bring attention to the candidates and their agenda in the state of New York. This was not a fundraising event for the Primary Committee. The DNC, however, was conducting fundraising in New York at the time of the event, and when it learned that the President and Vice President would be appearing, asked the Primary Committee to allow the DNC to invite a small number of potential contributors to the event (emphasis added).

The Primary Committee also submitted an affidavit from Joseph Sandler, who at the time of the event was General Counsel at the DNC. Mr. Sandler stated the DNC was raising money in New York during the same time period as the event, and when the DNC heard that the President and Vice President were attending this dinner the DNC invited its own guests. It should be noted that Mr. Sandler makes no reference in his affidavit that the DNC guests were potential contributors. No documentation has been made available that demonstrated the DNC guests received any solicitation as a result of attending this event.

Based on our review of all the information available, it appears that the DNC was conducting fundraising in New York and did invite certain individuals to attend the Primary Committee event. These individuals were among the 1,544 guests attending this event, an event that by the Primary Committee's own admission, "was to garner support for the Clinton/Gore '96 presidential ticket." The cost of this primary campaign event may not be apportioned to the DNC or any other political committee without an in-kind contribution resulting.[15]

Accordingly, the DNC made and the Primary Committee received an excessive in-kind contribution from the DNC. Further, the value of the in-kind contribution ($24,926) is included in the amount of expenditures subject to the overall limitation.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

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[15] A political party may reimburse the expenses of a candidate who is engaging in party building activities without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the limitation as long as the event is a bona fide party event or appearance and no aspect of the solicitation for the event was for the purpose of influencing the candidate's nomination or election.

D. EXPENDITURE LIMITATION

The Staff's inclusion of media expenses paid by the DNC as an in-kind contribution as discussed in Finding III.A. and the necessary adjustments/additions discussed at Findings III.B and C. would have caused the limit to be exceeded by $46,348,005, of which $46,247,210 was subject to a pro rata repayment to the United States Treasury.[16]

Based on its applicable pro rata calculation, the Staff recommended the Commission determine that $6,966,217 is repayable to the United States Treasury pursuant to 11 CFR §9038.2(b)(2)(ii)(A).

A motion that the Commission determine in general that it will make no repayment determinations based on alleged overall excessive spending by candidates receiving presidential matching funds, failed on a vote of 3-2, with 1 abstention.

As noted on page 6, by a vote of 6-0, the Commission rejected the Staff recommendation for a matching fund repayment related to $46,580,358 in media expenses. The repayment would have resulted from the media expenses being added to expenditures subject to the limitation, and the exceeding of that limitation.[17]

E. 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 net outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

In addition, 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.

President Clinton's date of ineligibility was August 28, 1996. The Audit staff reviewed the Committee's financial activity through December 31, 1997, analyzed

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16 Without the inclusion of $46,580,358 in DNC media expenses, the Primary Committee is approximately $232,000 under the spending limitation.

17 Please refer to Agenda Document 98-85 at Finding III.D., and the relevant audio tapes for the Open Session meetings of December 3rd, 9th, 10th, 1998, January 14th, 28th, February 3rd,25th, March 4th, and April 29th, 1999 for additional information.

winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations.

It should be noted that the Primary Committee submitted with its response to the Memorandum its version of the Statement of Net Outstanding Campaign Obligations. There were several differences between the Audit prepared statement and the one prepared by the Primary Committee. According to the Primary Committee, the deficit as of August 29, 1998 was $1,071,056, whereas, the deficit calculated by the Audit staff as of August 28, 1998 was $895,646 a difference of approximately $175,000. However, the Primary Committee did not provide worksheets, schedules or other documentation to support the derivation of its numbers.

The Audit staff's prepared Statement of Net Outstanding Campaign Obligations appears below. Based on our analysis, the Primary Committee did not receive matching funds in excess of its entitlement.

CLINTON/GORE '96 PRIMARY COMMITTEE, INC.
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
as of August 28, 1996
as determined through December 31, 1997

ASSETS

Cash in Bank	$ 3,389,406	(1)	
Cash on Hand	292		
Investments in U.S. Treasury Notes/Bonds	2,146,940		
Accounts Receivable:			
Accrued Interest	9,171	(2)	
Vendor Deposits	54,933	(3)	
Due from GELAC	151,757	(4)	
Clinton/Gore '96 General Committee	87,159	(5)	
Vendor Refunds	385,568	(6)	
Capital Assets	497,427	(7)	
Total Assets			6,722,653

OBLIGATIONS

Accounts Payable for Qualified Campaign Expenses	4,338,553	(8)	
Refunds of Contributions	7,275	(9)	
Federal Income Tax	165,480	(10)	
Amount Due GELAC	88,878	(11)	
Amount Due General Committee	12,427	(12)	
Amount Due U.S. Treasury - Stale-dated Checks	12,230	(13)	
Actual Winding Down Expenses December 6, 1996 - December 31, 1997	1,822,556		
Estimated Winding Down Expenses January 1, 1998 - December 31, 1999	1,170,900	(14)	
Total Obligations			7,618,299
Net Outstanding Campaign Obligations (Deficit)			(895,646)

FOOTNOTES TO NOCO STATEMENT

(1) Audited Bank Reconciliation at 8/28/96 which includes stale-dated checks dated on or before date of ineligibility added back to cash in bank.

(2) Accrued interest income 7/25/96 - 8/28/96.

(3) This amount represents vendor deposits outstanding as of 8/28/96.

(4) This amount reflects GELAC reimbursements to the Primary Committee for GELAC salaries and overhead expenses initially paid by the Primary Committee on or before 8/28/96. An offset ($88,878) was calculated by the Audit staff to reflect the expenses of individuals not working exclusively on GELAC matters (see Note 11).

(5) This amount represents: (a) Primary Committee payment ($22,984) to Bismarck Enterprises for catering services provided to the General Committee; (b) an amount ($63,736) paid by the Primary Committee for an AT&T phone lease which should have been paid by the General Committee; (c) a GTE refund ($439) addressed to the Primary Committee but erroneously deposited by the General Committee.

(6) Amounts deposited post date of ineligibility for transactions made on or before date of ineligibility plus the reported amount owed to the Primary Committee by one of its media vendors.

(7) Recognition of gross capital assets including software and licensing fees less depreciation of 40%.

(8) Reflects actual accounts payable through 12/31/97 absent a reduction to accounts payable for post date of ineligibility stale-dated checks and winding down costs.

(9) Represents contributions dated 8/28/96 or before and refunded to contributors.

(10) This amount reflects the tax liability for investment income and interest earned on deposits for the period 1/1/96-8/28/96.

(11) This offsets the GELAC reimbursement to the Primary Committee at Note 4; the difference of $62,879 represents the allowable reimbursement by GELAC for staff working 100% on GELAC matters prior to date of ineligibility.

(12) This amount represents; (a) DNC Convention related travel on TWA paid ($7,291) by the General Committee; (b) a leg of DNC Convention travel from Chicago to Cape Girardeau, MO relative to the Primary Committee that was paid ($5,136) by the General Committee (see Audit Report of the General Committee, Finding III.B.1.).

(13) Primary Committee's outstanding checks to vendors or contributors that have not been cashed.

(14) This amount is based on the Primary Committee's actual 1997 year-end winding down expenses.

F. 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 contributions 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.

During our review of the Primary Committee's disbursement activity, the Audit staff identified 97 stale-dated checks totaling $38,164 dated between April 27, 1995 and December 16, 1997. The Audit staff provided a schedule of the stale-dated check to the Primary Committee on Thursday, March 19, 1998.

In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee present evidence that the checks were not outstanding (i.e., copies of the front and back of the negotiated checks), or that the outstanding checks were voided and/or that no Primary Committee obligation exists.

In response to the Memorandum, the Primary Committee provided evidence that checks, totaling $25,934, had been voided, reissued and cleared the bank ($20,044); had cleared the bank subsequent to the end of fieldwork ($2,890); had been originally issued in error ($1,000); and, had been voided and a check reissued to the U.S. Treasury ($2,000).

Documentation was also made available with respect to action taken on the remaining stale-dated checks, totaling $12,230, however, evidence of final disposition has not been made available.

Based on the above, the Audit staff reduced the amount of unresolved stale-dated checks to $12,230.

Recommendation

The Audit staff recommended that the Commission make a determination that the Primary Committee is required to make a payment of $12,230 to the United States Treasury.

The Commission approved the Staff recommendation.

F. RECAP OF AMOUNTS DUE TO THE U.S. TREASURY

Shown below is a recap of amounts due the U.S. Treasury as discussed in this report.

Non-qualified Campaign Expenses (Finding III.B.)	$ 114,450
Stale-Dated Checks (Finding III.F.)	12,230
Total	$ 126,680

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 1, 1998

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman KBC
Associate General Counsel

Rhonda J. Vosdingh RJV
Assistant General Counsel

Delbert K. Rigsby DKR
Attorney

SUBJECT: Proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. (LRA #485)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. ("Primary Committee") submitted to this Office on September 17, 1998.[1] As you note in your cover memorandum transmitting the proposed Report to this Office, it appears that at this time the Commission seeks to address this matter in early November 1998. This proposed schedule necessarily requires an expedited legal review from

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1 Since the proposed Audit Report concerns the audit of a candidate and his authorized committee that received Presidential primary matching funds, this Office recommends that the Commission's discussion of this document be conducted in open session in accordance with 11 C.F.R. § 9038.1(e)(1). *See* also 11 C.F.R. § 2.4.

this Office. In order to efficiently perform our review and to provide you with time to make our suggested revisions, this Office intends to provide you with "rolling" comments. Thus, the following memorandum lists sections of the proposed Report in which we concur with your findings and recommendations. This Office has no comments on such sections. We understand that the proposed Audit Report was submitted to this Office prior to the completion of the referencing process and, therefore, we request that you alert us to any changes to these sections that may be made during this process. This Office is drafting comments on sections of the proposed Report that are not listed herein, and will submit those comments in future memoranda. If you have any questions concerning our comments, please contact Delbert K. Rigsby, the attorney assigned to this audit.

II. DISCUSSION

This Office concurs with your findings and recommendations on the following sections of the proposed Report and has no comments on such sections:

Receipt of Prohibited Contributions Resulting from Extensions of Credit by Commercial Vendors (II.A)[2]

Apparent Non-Qualified Expenses - Bismarck Enterprises (III.B.1.a)

Apparent Non-Qualified Expenses - AT & T Capital Corporation (III.B.1.b)

Determination of Net Outstanding Campaign Obligations (III.E)

Primary Stale-Dated Checks (III.F)

Other Staff Assigned
Delanie DeWitt Painter
Andre D. Pineda
Joel J. Roessner

[2] Parenthetical references are to the relevant sections of the Primary Committee's proposed Audit Report.

Kcrcl
10/13R

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 13, 1998

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman KBC
Associate General Counsel

Rhonda J. Vosdingh RJV by KBC
Assistant General Counsel

SUBJECT: Proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. (LRA #485)

I. INTRODUCTION

The Office of General Counsel is continuing its review of the proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. ("Primary Committee") submitted to this Office on September 17, 1998. As noted in our October 1, 1998 memorandum, this Office will present its comments to you as they are prepared. The following memorandum contains our comments on several sections of the proposed Audit Report. We understand that the proposed Audit Report was submitted to this Office prior to the completion of the referencing process and, therefore, we request that you alert us to any changes to these sections that may be made. This Office is drafting comments on matters that are not included in this memorandum or in our memorandum dated October 1, 1998. We will provide these comments in a future memorandum. If you have any questions concerning our comments, please contact Delbert K. Rigsby or Delanie DeWitt Painter.

II. SALARY AND OVERHEAD (III.B.1.c)[1]

This Office concurs with the proposed Report's finding that salary and overhead expenses paid by the Primary Committee subsequent to the candidate's date of ineligibility are non-qualified campaign expenses.[2] Moreover, we concur with the recommendation that the Commission make a determination that a *pro rata* repayment of $37,965 is due to the United States Treasury.[3]

The Commission promulgated "bright line" rules in 1995 for expenditures by candidates who receive public funding in both the primary and general elections. 11 C.F.R. § 9034.4(e); *see also*, Explanation & Justification for 11 C.F.R. § 9034.4, 60 *Fed. Reg.* 31854, 31866-67 (June 16, 1995).[4] This Office interprets 11 C.F.R. § 9034.4(e) to apply to all qualified campaign expenses, including campaign operating costs and winding down costs. *See* 11 C.F.R. § 9034.4(a)(3)(i). Section 9034.4(e) provides that any expenditure for goods and services that are used exclusively for the primary election campaign shall be attributed to the primary committee, and any expenditure for goods and services that are used exclusively for the general election campaign shall be attributed to the general committee. 11 C.F.R. § 9034.4(e)(1). There are also specific rules for certain categories of expenses. Overhead expenditures and payroll costs incurred in connection with state or national campaign offices shall be attributed according to when the usage occurs or the work is performed. 11 C.F.R. § 9034.4(e)(3). Under this rule, overhead and payroll costs for periods after the date of nomination are general election expenses, unless the expenditures were "used exclusively" for the primary election. 11 C.F.R. §§ 9034.4(e)(1) and (3). Thus, the new "bright line" rules do not allow most wind down expenditures for party nominees' primary campaigns until after the date of the general election.

For the Primary Committee to claim post-date of ineligibility winding down costs for payroll and overhead, the Primary Committee must demonstrate that the expenditures were

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[1] Parenthetical references are to the relevant sections of the proposed Report.

[2] This Office addressed the issue of the attribution of expenditures for state or national campaign offices between the primary and general election expenditure limitations in a memorandum to the Audit Division dated March 20, 1998.

[3] This Office suggests that the recommendation clarify that the repayment is due unless the Clinton/Gore '96 General Committee, Inc. (the "General Committee") reimburses $192,288 to the Primary Committee, consistent with other Report recommendations involving general election expenditures paid for by the Primary Committee.

[4] In the Explanation & Justification for 11 C.F.R. § 9034.4(e), the Commission recognized that it can be difficult to "select a single bright line date appropriate for all campaigns under all circumstances" and acknowledged that "the adoption of the bright line rules could in certain instances result in the primary committee's subsidizing the general election committee, or vice versa" and that there could be "situations in which this approach does not accurately reflect the relative impact of particular expenditures." 60 *Fed. Reg.* 31854, 31866-67. Nevertheless, the Commission reasoned that these differences should "balance themselves out over the course of a lengthy campaign" and adopted the "bright line" rules to conserve agency resources and complete audits more quickly. *Id.* at 31867.

exclusively related to winding down the primary election campaign consistent with 11 C.F.R. § 9034.4(e)(1). Since the Primary Committee has not demonstrated that the payroll and overhead costs were exclusively related to the primary election, these expenditures must be attributed to the general election, and a repayment is required.

IV. MORRIS & CARRICK PAYMENTS (III.B.2)

This Office concurs with the proposed Audit Report's finding that the Primary Committee payment of $30,000 to Morris & Carrick (M & C) on September 30, 1996 was a non-qualified campaign expense, and with the recommendation that a *pro rata* payment of $4,637 is due to the U.S. Treasury unless the General Committee reimburses $30,000 to the Primary Committee. The consulting agreement between the Primary Committee and M & C ended on August 30, 1996. M & C's agreement with the General Committee was from August 30, 1996 to November 30, 1996. Moreover, William Carrick provided an affidavit that M & C erred in sending an invoice for $30,000 to the Primary Committee rather than to the General Committee. He also averred that M & C did not receive any funds above the amounts set forth in the agreements with the Primary Committee and the General Committee. Thus, it appears that the $30,000 was not a bonus payment from the Primary Committee to M&C.[5] Nonetheless, since this payment was apparently a general election expense, it was not incurred in connection with President Clinton's campaign for the nomination. *See* 11 C.F.R. § 9032.9(a)(2). Thus, it is a non-qualified campaign expense of the Primary Committee and a *pro rata* repayment is required under 26 U.S.C. § 9038(b)(2)(A) and 11 C.F.R. § 9038.2(b)(2). Since the payment appears to have been for qualified campaign expenses of the general election campaign, a reimbursement by the General Committee to the Primary Committee would resolve the issue.

Finally, this Office believes that the proposed Report should contain a statement explaining that the $30,000 is not included on the Net Outstanding Campaign Operations (NOCO) statement under the accounts receivable category because this payment to M & C occurred after the candidate's date of ineligibility. *See* 11 C.F.R. § 9034.5.

V. SHERATON NEW YORK HOTEL & TOWERS (III.C)

This Office concurs with the proposed Audit Report's finding that the Primary Committee received an excessive in-kind contribution from the DNC in the amount of $19,832 in connection with the Primary Committee event held at the Sheraton New York Hotel on February 15, 1996. 2 U.S.C. 441a(a)(2)(A); 11 C.F.R. 100.7(a)(1). A political party may reimburse the expenses of a candidate who is engaging in party-building activities without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the limitation as long as the event is a *bona*

[5] Since it no longer appears that this issue involves a bonus payment, this Office suggests that the heading for this section of the report be changed from "Apparent Bonus Payments."

fide party event or appearance and no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election. 11 C.F.R. §§ 110.8(e)(1)(i) and (ii). Moreover, an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election and any contributions or expenditures are governed by the contribution or expenditure limitations. 11 C.F.R. § 110.8(e)(2)(ii).

The event appears to have been a Clinton/Gore campaign event. The Primary Committee acknowledges that the primary purpose of the event was to garner support and bring attention to the candidate and his agenda in New York. Thus, the Primary Committee did not rebut the presumption that the event was for the purpose of influencing the candidate's election. The fact that the DNC may have invited some of the attendees to the event does not change the nature of the campaign event or permit the DNC to defray expenditures for the event. Since the event was for the purpose of influencing the candidate's nomination or election, and was held during the year of the election, the Audit staff was correct in concluding that the DNC's payment of a portion of the costs was an excessive in-kind contribution to the Primary Committee. This Office believes that the Audit staff's argument that the DNC's payment of a portion of the costs of this event is an in-kind contribution can be strengthened by including a discussion of 11 C.F.R. § 110.8(e)(1) and (2).

Staff Assigned: Delanie DeWitt Painter
Delbert K. Rigsby
Andre Pineda
Joel Roessner

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 21, 1998

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

SUBJECT: Proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. (LRA #485)

I. INTRODUCTION

The Office of General Counsel is continuing its review of the proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. ("Primary Committee") submitted to this Office on September 17, 1998. As noted in our October 1, 1998 memorandum, this Office will present its comments to you as they are prepared. The following memorandum contains our comments on section III.D.2 of the proposed Audit Report which is entitled "Expenses in the Legal and Matching Fund Not Considered 100% Exempt Compliance." We understand that the proposed Audit Report was submitted to this Office prior to the completion of the referencing process and, therefore, we request that you alert us to any changes to this section. This Office is drafting comments on matters that are not included in this memorandum or our previous memoranda. We will provide these comments in a future memorandum. If you have any questions concerning our comments, please contact Delanie DeWitt Painter or Delbert K. Rigsby.

II. EXPENSES IN THE LEGAL AND MATCHING FUND DEPARTMENTS NOT CONSIDERED 100% EXEMPT COMPLIANCE (III.D.2)

The proposed Audit Report states that the Audit staff did not accept the Primary Committee's initial allocations of the legal-compliance and matching fund cost centers as totally exempt compliance because the activities of these cost centers were not entirely related to compliance. The Primary Committee allocated legal costs as 100% exempt compliance except for the costs related to one lawyer, Ken Stern, and matching fund cost center as approximately 83% exempt compliance and approximately 17% accounting expenditures. The Primary Committee in turn allocated the accounting expenditures as 85% compliance costs and 15% operating expenditures. Instead, the proposed Report applies 85% of the expenditures for the legal and matching fund cost centers to exempt compliance and 15% to operating expenditures. Because operating expenditures count against the expenditure limitation, 11 C.F.R. § 9035.1, such portion of the legal and matching fund cost centers that are operating expenditures result in an increase of $395,187 to expenditures subject to the overall expenditure limitation, rather than $117,817 suggested by the Primary Committee.

A candidate may exclude from the overall expenditure limitation an amount equal to 10% of all salaries and overhead expenditures as an exempt legal and accounting compliance cost. 11 C.F.R. § 9035.1(c)(1). A candidate may claim a larger compliance exemption for any person by establishing allocation percentages for each individual who performs compliance duties by keeping a detailed record to support the derivation of each percentage. 11 C.F.R. § 9035.1(c)(1)(i). Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing ("Compliance Manual") contains accepted allocation methods for calculating a compliance exemption. *Id.*; *see* Compliance Manual at 31-33. However, the allocation methods delineated in the Compliance Manual are not the exclusive alternatives available to candidates. *See* Explanation and Justification, 52 Fed. Reg. 20871 (June 3, 1987). Each cost group must be allocated consistently by a single method, but different cost groups may be allocated by different methods. Compliance Manual at 33. The costs of preparing matching fund submissions that are considered exempt compliance are limited to those functions not required for general contribution processing. 11 C.F.R. § 9035.1(c)(1)(ii). Data entry, batching contributions for deposit and preparing Commission reports are considered general contribution processing functions. *Id.*

This Office concurs with the Audit staff's conclusion that the Primary Committee did not properly allocate the expenditures related to the legal-compliance cost center. The Primary Committee initially allocated 100% of the legal cost center expenditures as exempt compliance, but the Audit staff found that several lawyers performed non-compliance duties, such as negotiating contracts and collecting rent from a tenant. In response to the Exit Conference Memorandum, the Primary Committee proposed re-allocating the expenditures for one lawyer, Mr. Stern, to another cost center because he virtually performed all non-compliance duties; the remaining legal costs were allocated as 100% compliance. However, the Primary Committee's

allocation of the expenditures related to Mr. Stern to another cost center is insufficient to support the 100% exempt allocation of the remaining expenditures of the legal-compliance cost center.[1] While the Primary Committee may change its allocation of Mr. Stern's expenditures if it recalculates all allocations for legal expenditures, 11 C.F.R. § 9035.1(c), it appears that the Primary Committee also allocated some amount of expenditures for non-compliance legal activities by legal staff other than Mr. Stern as 100% exempt legal compliance. Indeed, the Primary Committee acknowledges that other staff did "minimal" work that was not compliance related, but asserts that compliance work by Mr. Stern would offset these activities.

The proposed Report's discussion of the matching fund cost center needs clarification. Based on our discussions with Audit staff, the Primary Committee initially allocated 100% of the matching fund cost center expenditures as exempt compliance, but incorrectly included some costs for general contribution processing, such as data entry, in the matching fund cost center. *See* 11 C.F.R. § 9035.1(c)(1)(ii). The Primary Committee then proposed allocating approximately 83% of the expenditures for the matching fund cost center as 100% exempt compliance and the 17.33% in remaining expenditures as accounting expenditures. However, the Primary Committee also allocated 85% of the 17.33% accounting expenditures as exempt compliance. Thus, the amount of matching fund cost center expenditures the Primary Committee allocated to the expenditure limitation is 15% of the 17.33% accounting portion of the total, or only approximately 2.6% of the total expenditures for the matching fund cost center. We suggest that this section of the proposed Report be revised to clarify the facts, particularly the percentage of matching fund cost center expenditures the Primary Committee proposes to exempt as compliance.

The documentation the Primary Committee submitted purporting to support its allocation of the matching fund cost center expenditures is insufficient. It does not appear that the allocation is based on allocation percentages established for each individual who performed compliance duties in the matching fund cost center. *See* 11 C.F.R. § 9035.1(c)(1)(i); Compliance Manual at 30-33. For example, the Primary Committee has not provided documentation of the actual amount of time staff spent on compliance activities. Therefore, we concur that the Primary Committee's allocation of the matching fund cost center is not correct. Based on documents provided to us by the Audit staff, it appears that the Primary Committee devised its allocation of the matching fund cost center based upon a formula which calculates the average amount of time spent for data entry of accounting information based on typing speed and treats

[1] The Primary Committee's response states that there were two legal cost centers and that all non-compliance expenditures were allocated as "legal-other." The Primary Committee maintains that the auditors only questioned the expenditures for Mr. Stern and one payment to the firm of Wright, Lindsey & Jenkins. The Primary Committee states that other expenditures were compliance-related. However, the Audit staff have informed us that other staff activities allocated to the legal-compliance cost center do not appear to be exclusively related to compliance. If the Primary Committee were correct that all expenditures other than those for Mr. Stern were compliance related, this Office believes the Primary Committee's solution would be acceptable. Therefore, we suggest that the proposed Report be revised to include the evidence which indicates that other staff allocated as legal-compliance performed non-compliance activities.

time in excess of the amount theoretically needed for accounting purposes as related to matching funds purposes. The Primary Committee has not sufficiently explained its formula or provided sufficient documentation regarding the duties of certain employees within the matching fund department.[2] Moreover, the Primary Committee's formula does not appear to consider other factors that could increase the amount of time spent on accounting functions such as illegible checks, missing information, problem contributions that require clarification and staff breaks. Nor does the formula account for time spent on other non-compliance activities in addition to the time theoretically spent on typing a contributor's name, address and contribution amount.

This Office agrees that the Primary Committee has not properly allocated legal or matching funds cost centers. The Audit staff have applied a percentage of 85% compliance to the matching fund and legal cost centers.[3] Under the circumstances, such as a lack of information from the Primary Committee, this Office concurs with the Audit staff's use of an allocation method that is acceptable pursuant to 11 C.F.R. § 9035.1(c)(1)(i). It appears that the Audit staff used this ratio for the matching fund and legal compliance cost centers because an 85/15% split is one alternative delineated in the Compliance Manual for allocation of accounting expenditures for a campaign's national office. *See* Compliance Manual at 31-32; 11 C.F.R. § 9035.1(c)(1)(i). The proposed Report should clarify that this alternative allocation for accounting expenditures was the basis for using the 85/15% ratio for the matching fund and legal costs centers, and explain why these percentages represent a reasonable approach.

Staff Assigned: Delanie DeWitt Painter
Delbert K. Rigsby
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[2] On several occasions, the Audit staff attempted to obtain additional documentation from the Primary Committee and clarification on the formula, but were unsuccessful.

[3] The legal cost centers consist of "legal-compliance" and "legal-other."

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 26, 1998

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

SUBJECT: Proposed Audit Report on the Clinton/Gore'96 Primary Committee, Inc. – CoreStates Bank Wire Transfers (LRA #485 and #508)

I. INTRODUCTION

The Office of General Counsel is continuing its review of the proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. ("Primary Committee") submitted to this Office on September 17, 1998. As noted in our October 1, 1998 memorandum, this Office will present its comments to you as they are prepared. The following memorandum contains our comments on the issue of wire transfers from CoreStates Bank to media vendors. We understand that the proposed Audit Report was submitted to this Office prior to the completion of the referencing process and, therefore, we request that you alert us to any changes relevant to this issue. This Office is drafting comments on matters that are not included in this memorandum or in our memorandum dated October 1, 1998. We will provide these comments in a future memorandum. If you have any questions concerning our comments, please contact Delanie DeWitt Painter or Delbert K. Rigsby.

II. CORESTATES WIRE TRANSFERS (III.A)[1]

During the course of the audits of the Primary Committee and the Clinton/Gore '96 General Committee, Inc. ("General Committee")(collectively, "the Committees"), a question arose concerning wire transfers from CoreStates Bank ("CoreStates") to two accounts at the National Capital Bank of Washington in the name of the Committees' media vendors, Squier Knapp Ochs Communications ("SKO") and the November 5 Group, Inc. ("NOV5"); specifically, whether the transferred funds were the proceeds of a commercial loan. This Office believes that the information provided to date by CoreStates in response to the Commission subpoena issued on February 24, 1998 is sufficient to resolve any question about whether the source of funds was a commercial loan, and we recommend that the Audit Division not pursue this matter further.

As part of the audits of the Committees, the Audit staff reviewed documents provided by the National Capitol Bank of Washington for two bank accounts in the name of SKO and NOV5, media vendors for the Committees who were also paid by the Democratic National Committee and various state party committees for media expenditures which appear to have been made on behalf of President Clinton's re-election campaign. The auditors' review revealed numerous wire transfers totaling in excess of $4,000,000 into the media vendors' accounts from CoreStates between October 1995 and August 1996. The wire transfer credit advices contained the notation "CORESTATES PHIL /ORG=COMMERCIAL LOAN/HARRISBURG HARRISBURG FIS ORG #0101 PA 00." The Audit Division requested that this Office prepare a subpoena to CoreStates requesting documentation of any commercial loan that was the source of the wire transfers.[2] The Commission issued the subpoena on February 24, 1998.

CoreStates responded that the source of the wire transfers was a bank account held by the Pennsylvania Democratic Party ("PDP") and that there was no connection to any commercial loan. While CoreStates provided no loan documentation, it provided documentation of the wire transfers. In response to several requests, by telephone and letter, for an explanation of the notation on the wire transfer credit advices, Kim Heffner, CoreStates' representative, explained that the notation indicated the bank's departmental group name for the department that was involved in the wire transfers. In a memorandum dated April 16, 1998, the Audit Division requested that this Office obtain affidavits from senior officials at CoreStates explaining the notation on the wire transfer credit advices and stating that no responsive documents exist. CoreStates responded to this Office's request for affidavits with two notarized letters from senior bank officials. Katie Smarilli, Senior Vice President, states in her letter that the notation represents "the departmental name. The monies did not come from a commercial loan." Linda A. Pinkasavage, Vice President of Commercial Loan Services, states that the "original source for

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[1] Parenthetical references are to the relevant sections of the proposed Report.

[2] The possibility that a commercial loan was the source of the funds raised issues such as whether the loan was made in the ordinary course of business or was a prohibited contribution, whether an individual or prohibited source guaranteed the loan, and whether the transaction was properly reported. 2 U.S.C. §§ 434(b); 441a(a)(1)(A); 441b.

the wire transfers" was "not related in any way to a commercial loan."[3] The Audit staff believes these responses were insufficient because they were not in the form of affidavits. In addition, the Audit staff has expressed concerns that CoreStates' representatives may not have thoroughly checked the bank's records for the existence of a loan.

In several follow-up telephone conversations, Ms. Smarilli, who is currently in charge of the Commercial Banking Group for all of southern Pennsylvania, including the Harrisburg office, explained that she is in charge of the commercial department that was used to process the wire transfers and that the notation on the wire transfer documents refers to the department name, and does not indicate the existence of any commercial loan.[4] She explained that the notations "COMMERCIAL LOAN/HARRISBURG" on the wire transfer documents refer to the commercial bank department in Harrisburg that processed the wire transfer transactions and that the wire transfer credit advices state "CORESTATES PHIL" because all of the bank's wire transfers go through Philadelphia. Ms. Smarilli explained that the bank department that processed the wire transfers has been referred to by several names, including the "Commercial Department" and the "Commercial Banking Group." The department deals in financial transactions involving commercial and business entities rather than individual or consumer banking and conducts all kinds of activities, including commercial deposit accounts and cash management accounts. In addition to other services, it sells, underwrites and closes commercial loans, but it does not deal exclusively with commercial loans. Finally, she surmised that the individual who processed the wire transfers may have referred to the commercial department as the commercial loan department because of confusion over departmental names due to several bank mergers.

This Office believes that the information obtained to date from CoreStates is sufficient to resolve any question about whether the source of funds was a commercial loan. There is no evidence that the wire transfers were related to a loan or line of credit. CoreStates representatives have consistently reiterated that none of the wire transfers were related to any loan, commercial loan or line of credit. They have stated that the source of each of the wire transfers was a bank account in the name of the PDP. Their representation is supported by the

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[3] In another attempt to satisfy the Audit staff's concerns that the information was not submitted under oath, this Office prepared an affidavit including the information provided by CoreStates and seeking confirmation of additional information requested by the Audit staff. A draft of this affidavit was forwarded to the Audit staff by electronic mail on July 30, 1998. On October 8, 1998, the Audit staff informed staff of this Office that the affidavit should be sent to CoreStates. This Office will send the affidavit to CoreStates. Based on our discussions with CoreStates' legal department, we do not anticipate any problems in obtaining a signed affidavit from CoreStates. Nevertheless, this Office's recommendation that this matter should not be pursued further remains unchanged.

[4] The Audit staff has expressed concern that during one telephone conversation, Ms. Smarilli appeared to be unaware of the correct dates of the wire transfers. This Office does not believe that Ms. Smarilli's confusion of the dates undermines her credibility or the veracity of the information she provided concerning the Commercial Department. The timing of the wire transfers is not relevant to the information Ms. Smarilli provided. There is no indication that the individuals who checked the bank's records for the existence of a loan were unaware of the dates of the wire transfers. Nor is there any indication that CoreStates' representatives did not thoroughly check the bank's records for the existence of a loan during the appropriate time period.

wire transfer documents CoreStates has provided which, for example, list the PDP account as the "Account Title" on the wire transfer requests, and state the transfers were "by order of" the PDP. This explanation also comports with the PDP's disclosure reports, which disclose payments to the media vendors that generally are on the same dates and in the same amounts as the wire transfers.

CoreStates has checked its loan records and has found no evidence of any loan to the PDP or to the media vendors. There is no reason to question CoreStates' representations that they have thoroughly checked the bank's records for the existence of a loan. Moreover, other available information reviewed by this Office provides no evidence of any loan related to the wire transfers. Neither PDP's disclosure reports nor commercial databases such as Dunn and Bradstreet report any large loans to the PDP during this period. This Office's review of Democratic National Committee ("DNC") and PDP disclosure reports reveals a pattern of transfers from the DNC to the PDP and PDP payments to the media vendors that is typical of activity in numerous other states. There is no indication that a large amount of money from a loan or line of credit was received by the PDP and paid to the media vendors. The fact that some of the wire transfers to the media firms preceded DNC transfers to the PDP in similar amounts does not demonstrate that a loan or line of credit existed. It is also unclear why the PDP would not report such a loan or line of credit but would report the receipt of numerous large transfers from the DNC that appear to be the source of the funds transferred to the media firms. Finally, CoreStates' consistent explanation of the notations on the wire transfer documents is plausible. There is no reason to doubt the credibility of the CoreStates representatives or to question the veracity of their explanation that the notation merely refers to the bank department in Harrisburg that was used to process the wire transfers.

This Office believes that further pursuit of this matter would not be an effective use of the Commission's limited resources. We recognize that CoreStates provided letters rather than affidavits in response to the subpoena, and that questions remain about these transactions. However, in order to fully explore whether the PDP received a loan from any source during this period, an audit of the PDP would probably be necessary. Moreover, while this matter is related to the media expenditures issue in the audit reports, it is tangential at best and additional investigation is unlikely to reveal information which would support a repayment determination. Therefore, this Office considers this matter to be resolved and recommends that the Audit Division not pursue this matter further.

Rec'd 10/27/98
AUDIT

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 27, 1998

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MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Acting Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

SUBJECT: Proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. - Media Advertisements Paid for by the Democratic National Committee (LRA #485)

I. INTRODUCTION

The Office of General Counsel has completed its review of the proposed Audit Report on the Clinton/Gore '96 Primary Committee, Inc. ("Primary Committee") submitted to this Office on September 17, 1998. The following memorandum contains our comments on several issues related to the media section of the proposed Audit Report (sections III.A., D. of the proposed Report). We understand that the proposed Audit Report was submitted to this Office prior to the completion of the referencing process and, therefore, we request that you alert us to any changes to these sections. If you have any questions concerning our comments, please contact Delanie DeWitt Painter or Delbert K. Rigsby.

II. DNC EXPENDITURES FOR MEDIA (III.A. and D)

The proposed Audit Report attributes media expenditures paid for by the Democratic National Committee ("DNC") on behalf of President Clinton's campaign to the Primary Committee's overall expenditure limitation. The proposed Audit Report recommends that the Commission find that the DNC paid a total of $44,311,664 directly and through Democratic state party committees for media expenditures on behalf of the Clinton campaign that aired between June 1995 and August 1996. This recommendation is based on your conclusion that there is evidence the campaign staff and consultants as well as the candidate and White House staff coordinated with the DNC regarding the creation and placement of the media advertisements that appear to contain an "electioneering message" and a "clearly identified candidate."

This Office concurs with the proposed Report's recommendation that the cost of the advertisements paid for by the DNC on behalf of the Primary Committee should be added to the expenditures subject to the Primary Committee's overall expenditure limitation. For the reasons discussed below, we also believe that the costs of the advertisements which the DNC reported as coordinated party expenditures pursuant to 2 U.S.C. § 441a(d) should also be subject to the Primary Committee's overall expenditure limitation. Moreover, this Office concurs that, as a result, the Primary Committee exceeded the expenditure limitation. 2 U.S.C. §§ 441a(b)(1)(A) and (c); 26 U.S.C. § 9035(a). Further, we concur with the recommendation that the Commission determine that the Primary Committee must make a *pro rata* repayment for non-qualified campaign expenditures in excess of the expenditure limitation.

The overall expenditure limitation for candidates receiving public funds for the primary election is set forth at 26 U.S.C. § 9035(a). *See also* 11 C.F.R. §§ 110.8(a); 9035.1(a)(1). An expenditure is made on behalf of a candidate, and thus subject to the expenditure limitation, if it is made by an authorized committee or any other agent of the candidate or any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure. 2 U.S.C. § 441a(b)(2)(B). Because the statute requires that expenditures made by others at the campaign's request be subject to the expenditure limitation, this Office believes that it is appropriate to apply the DNC expenditures to the Primary Committee's overall expenditure limitation as long as the expenditures were "knowingly incurred in connection with the candidate's campaign for the nomination." 26 U.S.C. § 9035(a); *see also* Statement of Reasons Supporting Final Repayment Determination in Dole for President (February 6, 1992) (Commission concluded that in-kind contributions from a political committee to a presidential committee are subject to the state expenditure limitation). The evidence of coordination between the DNC and the Clinton campaign with regard to the media expenditures establishes that the Clinton campaign knowingly incurred the expenditures.

A. DNC's Coordination With Clinton Campaign

As noted above, your recommendations are based on the conclusion that the DNC's media expenditures were coordinated with the Clinton campaign and the advertisements

contained an electioneering message with reference to a clearly identified candidate. Thus, we begin our analysis with the question of whether the DNC's expenditures for media were "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents."[1] 2 U.S.C. § 441a(a)(7)(B)(i); *Buckley v. Valeo*, 424 U.S. 1, 78 (1976) (the term "contribution" includes "all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate"); *see* 11 C.F.R. § 109.1(b)(4). Congress's decision to treat coordinated expenditures as in-kind contributions was designed to prevent and limit the opportunities for corruption and the appearance of corruption inherent in coordinated activity. The *Buckley* Court stated that the absence of prearrangement or coordination of an expenditure "alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." 424 U.S. 1, 47 (1976). The reverse is equally true – the presence of prearrangement or advance coordination of an expenditure between a candidate or his or her committee or agents and the person making the expenditure presents a danger of an illicit *quid pro quo* like a contribution of money. The Commission must consider all of the facts and circumstances to determine whether the quantity and substance of contacts between a candidate and a person, entity or political committee compromised the independence of an expenditure and transformed it into a coordinated expenditure pursuant to 2 U.S.C. § 441a(a)(7)(B)(i).

In defining independent expenditures related to communications that include express advocacy, the Federal Election Campaign Act, as amended ("FECA" or the "Act"), 2 U.S.C. §§ 431 *et seq.*, describes the quantity and substance of contact that defeats the independence of the expenditure. 2 U.S.C. § 431(17). To be independent, an expenditure must be made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and it must not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate. *Id.* The Commission's regulation on this subject states that any arrangement, coordination, or direction by the candidate or his or her agent prior to the communication is sufficient to defeat the independence of an expenditure and to render the expenditure a contribution to the candidate. 11 C.F.R. § 109.1(b)(4) and (c).

While the line has not always been clear, the Commission has provided some guidance on the quantity and substance of contacts that constitute coordination.[2] For example, the

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[1] The statute's inclusion of authorized political committees, agents of the candidate and agents of the committees establishes that a finding of coordination can be based on the activities of any of these actors. Such a finding does not require candidate involvement.

[2] *See, e.g.*, 11 C.F.R. § 114.2(c) (any coordinated communications may negate the independence of any subsequent communications). *See also* 11 C.F.R. § 114.4(c)(5) (concerning voter guides that include express advocacy: any contact or other cooperation, coordination, consultation, request, or suggestion will result in a contribution. Concerning voter guides that do not include electioneering messages: any contact other than written exchanges about the candidate's positions on issues will result in a contribution). *But see Clifton v. FEC*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 118 S. Ct. 1036 (1998) (declaring 11 C.F.R. § 114.4(c)(5) invalid under First

Commission has taken the approach in some cases that passing any information about a candidate's plans, projects or needs from the campaign to the expending person may trigger a conclusion of coordination that compromises the independence of an expenditure.[3] However, in other cases, the Commission has not pursued matters where contacts between a candidate and an expending person resulted in changes to the content of a specific communication.[4]

In discussing the quantity and substance of contact necessary to impair the independence of an expenditure and constitute coordination, the United States Supreme Court recently stated that there was not coordination in a situation that lacked a "general or particular understanding." *FEC v. Colorado Republican Fed. Campaign Comm.* 518 U.S. 604, 614 (1996)(plurality op.).[5] This Office believes that the phrase was intended to convey a realistic understanding of the concept of coordination that is broad enough to effectuate the statute's purpose of limiting real or

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Amendment insofar as it limited contact with candidates to written inquiries and replies). *Cf.* 62 Fed. Reg. 24,367 (May 5, 1997) (notice of proposed rulemaking regarding the definition of coordination to be codified at 11 C.F.R. § 100.23).

3 *See, e.g.,* MUR 3918 (Hyatt for Senate) (supporting probable cause determination, coordination found where advertisements, ostensibly for a candidate's law firm, were written by the campaign's media adviser and approved by the candidate); MUR 3192 (Orton for Congress) (supporting probable cause determination, coordination found where an *ad hoc* citizens' group attacked a candidate's opponent where member of group had formerly been a policy advisor to the candidate in the same election cycle and the group learned from the candidate that he would not publicly attack his opponent on allegations raised by group and that the candidate did not want the allegations raised.) *See also* Advisory Opinion ("AO") 1996-1 (coordinated endorsements by a trade association may compromise its ability to make subsequent independent expenditures); AO 1984-30 (coordinated in-kind contributions in the primary election precluded independent expenditures regarding same candidates in the general election); *FEC v. National Conservative PAC,* 647 F. Supp. 987, 990 (S.D.N.Y. 1986) (use of common campaign strategist constitutes coordination).

4 *See, e.g.,* MUR 4282 (Archdiocese of Philadelphia), where it was alleged that after a candidate's committee received word that the Archdiocese's planned voter guide misstated the candidate's record and put him in no better light than his opponent, a representative of the candidate contacted the Archdiocese to complain, and as a result, the Archdiocese changed the voter guide. Although that case involved admitted contact between a candidate's representative and an expending person that was about, and resulted in changes to, the content of a specific communication, the Commission was divided 3-2 on a motion to find reason to believe that violations of the Act occurred. *See also* MUR 4116, Statement of Reasons of Chairman Joan D. Aikens and Commissioner Lee Ann Elliott, 3 (June 4, 1998) ("we would not agree that mere inquiries, without a meeting of the minds of two or more persons on a course of action resulting in expenditures, is sufficient for coordination").

5 The Supreme Court's holding in *Colorado Republicans* was that the First Amendment prohibits the presumption that national party committee's expenditures are coordinated with its congressional candidates. *Colorado Republicans,* 518 U.S. at 608. The Supreme Court expressly limited its holding, stating: "Since this case involves only the [FECA] provision concerning congressional races, we do not address issues that might grow out of the public funding of Presidential campaigns." *Id.,* 518 U.S. 604, at 612; *see also RNC v. FEC,* 487 F. Supp. 280, 284-87 (S.D.N.Y.) (Congress may condition public funding eligibility upon candidate's voluntary acceptance of expenditure limits), *aff'd mem.* 445 U.S. 955 (1980). However, the Supreme Court did not specify which public financing issues it was referencing. Of course, the conclusion in the proposed Audit Report that the DNC's media expenditures were coordinated with the Primary Committee is based on the facts, not on any presumption.

apparent corruption without violating First Amendment rights. While some "general understanding" regarding the expenditures may be necessary, requiring a specific agreement in every case would allow expending persons to make "independent" expenditures after extensive consultation with the candidate or committee about plans, projects, activities and needs, so long as the campaign had no approval of the final content or timing of the communication. Indeed, it might then be more difficult to prove that an expenditure was "coordinated" and therefore a contribution -- a statutory structure intended to broadly limit opportunities for illicit *quid pro quos* -- than it would be to prove the *quid pro quos* themselves under criminal bribery and extortion statutes such as the Hobbs Act, 18 U.S.C. § 1951. *See Evans v. United States*, 504 U.S. 255, 274 (Kennedy, J., concurring) ("The official and the payor [in a Hobbs Act bribery/extortion case] need not state the *quid pro quo* in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods."). Such a situation would be at odds with the purpose of 2 U.S.C. § 441a(a)(7)(B)(i) -- to avert real or apparent corruption.

The Primary Committee argues that coordination between a party and its candidates is both permissible and presumed. The Commission previously presumed coordination between a party and its candidates in the context of expenditures made pursuant to 2 U.S.C. § 441a(d)(a). While *Colorado Republican* invalidated this presumption with respect to congressional candidates, the Supreme Court explicitly declined to decide whether its holding applies to campaigns involving publicly financed presidential candidates. 518 U.S. at 612; *see supra*, n.5. Thus, it is unclear whether the 2 U.S.C. § 441a(d)(2) limit applies in the absence of actual coordination between a national committee and its Presidential nominee. However, the Commission need not resolve that issue here as there is evidence that the media campaign funded by the DNC was implemented in cooperation with, or at the request of, the candidate and/or his campaign committees.[6]

We concur with the proposed Report's conclusions on coordination and believe that the DNC's expenditures were "made . . . in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). Indeed, the Primary Committee essentially concedes that the advertisements were coordinated.[7] Moreover, the record in the audit includes evidence of substantial communication between the DNC and the Primary Committee on every facet of the media campaign. Thus there is sufficient evidence of coordination between the DNC, Primary Committee staff and consultants, and the candidate to support the Audit staff's conclusion that the DNC media expenditures were in-kind contributions to the Primary Committee. The

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[6] Even if they were considered to be § 441a(d) expenditures, the costs of the advertisements exceeded the 2 U.S.C. § 441a(d)(2) limit. *But see* Section C, *infra*.

[7] In its response to the Exit Conference Memoranda, the Primary and General Committees state, "The DNC consulted with Democratic officeholders and candidates, including the President, in developing and broadcasting the ads. . . . The Committee does not dispute that the ads were coordinated." This Office is aware of no evidence, however, that any candidate other than Mr. Clinton was involved with the advertisements at issue.

evidence of coordination that the Report details is such that it is difficult to distinguish between the activities of the DNC and the Primary Committee with respect to the creation and publication of the media advertisements at issue.

It appears that the DNC media advertisements and advertisements paid for by the Primary Committee were created in a similar fashion by the same media firms and consultants, and were discussed and revised in regular meetings attended by DNC representatives, Primary Committee staff and consultants, the candidate and White House staff. For example, the Primary Committee and the DNC shared the expenses for producing many advertisements, such as production expenses totaling $10,605 related to an advertisement shot in Iowa in February 1996, and production expenses for a "B-roll shoot" between February 29, 1996 and March 20,1996 which cost $23,076. Moreover, the Primary Committee and the DNC worked together with regard to the placement of advertisements. The evidence indicates, for example, that during one period the media vendor placed advertisements on behalf of both the primary Committee and the DNC with the same 112 broadcast stations. It is interesting to note that the media vendor issued checks on behalf of the DNC and the Primary Committee to 109 of those stations in the same amounts, even though the DNC subsequently decided not to air many of the media flights after the checks had been sent to the stations.[8] Furthermore, it appears that the Primary Committee and the DNC used a standard memorandum for authorizing production and air time of advertisements. The memorandum states "the cost will be allocated _____% for the DNC and _____% for Clinton/Gore '96," and the next line states "attorneys to determine." There is also evidence of coordination between the Primary Committee and the DNC with respect to polling. Mark Penn, an official of the Penn & Schoen polling firm, stated in an affidavit that "beginning in April 1995 until November 1996, I presented polling results at meetings held in the White House residence, on a weekly basis. The results were presented simultaneously to the representatives of Clinton/Gore, the White House and the DNC who were in attendance at those meetings." Thus, the facts set forth in the Audit Report are sufficient to support a conclusion that the media expenditures made by the DNC were "made . . . in coopcration, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents." 2 U.S.C. § 441a(a)(7)(B)(i).

B. Content of Advertisements Paid for by the DNC

The next question in determining whether a media expenditure by a national committee is an in-kind contribution is whether the content of the advertisement constitutes an "electioneering message" and references a "clearly identified candidate."[9] *See* AOs 1985-14; 1984-15. In order

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[8] The stations kept the money for these time buys and applied the funds to the next media buy placed by the DNC.

[9] The Act defines "clearly identified" as meaning "(A) the name of the candidate involved appears; (B) a photograph or drawing of the candidate appears; or (C) the identity of the candidate is apparent by unambiguous reference." 2 U.S.C. § 431(18); *see also* 11 C.F.R. § 100.17.

to determine if the advertisement includes an electioneering message and references to a clearly identified candidate, the Commission will consider the purpose, content and timing of the advertisements at issue.

The Commission first set forth the clearly identified candidate/electioneering message standard in AO 1984-15 and AO 1985-14. In AO 1984-15, the Commission determined that two television advertisements which the Republican National Committee ("RNC") proposed to broadcast had "[t]he clear import and purpose . . . to diminish support for any Democratic Party presidential nominee and to garner support for whoever may be the eventual Republican Party nominee" and "effectively advocate the defeat of a clearly identified candidate." The Commission concluded that because the "expenditures for these advertisements benefit the eventual Republican presidential candidate and are made with respect to the presidential general election and in connection with the presidential general election campaign," the expenditures would be reportable either as contributions subject to the limitation set forth at 2 U.S.C. § 441a(a)(2)(A), or as coordinated party expenditures subject to the limitation set forth at 2 U.S.C. § 441a(d).

AO 1985-14 involved television, radio and print advertisements, and mailers, which the Democratic Congressional Campaign Committee ("DCCC") proposed to publish, and which purported to describe Republican policies. Citing AO 1984-15, the Commission concluded that amounts used to fund the communications would be expenditures subject to the limitation set forth at 2 U.S.C. § 441a(d) if the advertisement funded by that amount "(1) depicted a clearly identified candidate and (2) conveyed an electioneering message." The Commission cited *United States v. United Auto Workers*, 352 U.S. 567, 585, 587 (1957), in which the Supreme Court stated that advertisements "designed to urge the public to elect a certain candidate or party" constitute an "expenditure in connection with any federal election."[10] Applying this standard, the Commission determined that advertisements which referred to "the Republicans in Congress" were not subject to limitation under 2 U.S.C. § 441a(d), regardless of whether the advertisement closed with the statement "Vote Democratic." The Commission also concluded that advertisements which referred to "your Republican Congressman" were not subject to limitation under 2 U.S.C. § 441a(d) if the advertisement did not close with the statement "Vote Democratic." However, the Commission on a tie vote was unable to decide whether advertisements which referred to "your Republican Congressman" and which closed with the statement "Vote Democratic" were subject to limitation under 2 U.S.C. § 441a(d). Finally, the Commission concluded that the costs of production and distribution of the proposed mailer would be subject to limitation under section 441a(d). Because the advertisements in this audit identify specific Republican and Democratic candidates, these advertisements are akin to the proposed mailer at issue in AO 1985-14, in which the DCCC intended to identify specific congressmen by name. Based on its understandings that the proposed mailers would identify particular congressmen by name, and that the distribution of the mailer would include all or part

[10] In *United States v. United Auto Workers*, the Supreme Court defined "expenditure in connection with any federal election" as used in section 304 of the Taft-Hartley Act. 352 U.S. at 582.

of the district represented by the congressman identified in that mailer, the Commission concluded that the costs of production and distribution would be subject to limitation under the Act.

In AOs 1984-15 and 1985-14, the Commission considered the purpose, content, and timing of the advertisements at issue. The Commission's determination that the costs of the proposed mailer were subject to limitation under section 441a(d) was based on the Commission's assumptions that the mailer would identify particular congressmen by name, and that the distribution of the mailer would include all or part of the district represented by the congressman identified in that mailer. As to timing, the Commission considered the proposed dates on which the advertisements were to be run, stating that the "proposed program is for the purposes of influencing the 1986 election process," "emphasiz[ing] that this opinion is limited to the timetable you have specified." The Commission's reference to the place and the timing of the communicative activity makes clear that the determination whether spending for a particular communication contains an electioneering message requires consideration of the context in which the communication is published.[11] The Commission also considered the purpose of the advertisements. In AO 1985-14 the Commission explicitly relied on the representation that the media program had "the clear purpose of influencing voter perceptions of these candidates with a view toward weakening their positions as candidates for re-election." Similarly, in AO 1984-15, the conclusion that the proposed television advertisements were subject to regulation as contributions or coordinated party expenditures was explicitly based, in part, on the opinion that "the clear import and *purpose* of [the] proposed advertisements [was] to diminish support for whoever may be the presidential nominee and to garner support for whoever may be the eventual Republican Party nominee."[12]

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[11] The Commission in AO 1985-14 assumed that the media campaign was developed without cooperation or consultation with any candidate, and based the theory that the limitations under 2 U.S.C. § 441a(d) apply to party expenditures irrespective of actual coordination with a candidate. AO 1984-15 involved a RNC media campaign which, in the view of the Commission, was intended to benefit "the eventual Republican Party nominee [for President]." Thus, AOs 1985-14 and 1984-15 both involved media campaigns which had a purpose of influencing the election of certain candidates, but which were implemented without coordination with the candidate. Both AO 1984-15 and 1985-14 were issued prior to the Supreme Court's 1996 decision, *Colorado Republicans*.

[12] In another opinion, AO 1995-25, the Commission concluded that costs related to advertisements focusing on national legislative activity and the promotion of the Republican Party were allocable between the Republican Party's federal and nonfederal accounts pursuant to 11 C.F.R. § 106.5(b)(2)(i) and (ii). Unlike the situation in AO 1995-25, here the content of the media campaign, the coordination between Clinton campaign officials and the DNC, and the content of the advertisements together reveal that the purpose of the advertising campaign was to influence the election of President Clinton. Moreover, the Commission in AO 1995-25 explicitly declined to address the issue whether or not the proposed advertisements contained an electioneering message, stating that "[t]he Commission relies on [the requesting party's] statement that those advertisements that mention a Federal candidate or officeholder will not contain any electioneering message. In view of this representation, the Commission does not express any opinion as to what is or is not an electioneering message by a political party committee." AO 1995-25 at n.1. Moreover, the Commission explicitly left open the possibility that the advertisements might be subject to section 441a(d), stating its conclusion that "legislative advocacy media advertisements that focus on national legislative activity and promote the Republican Party should be considered as

As noted, the FECA permits limited coordinated expenditures to be made by party committees "in connection with general election campaign[s] of candidates for federal office," including expenditures for communications such as media advertising. 2 U.S.C. § 441a(d). The Supreme Court, in *Colorado Republican,* did not address the appropriate measure of the content of such communications. However, the Court of Appeals in its earlier decision in *FEC v. Colorado Republican Federal Campaign Comm.*, 59 F.3d 1015 (10th Cir. 1995), *vacated and remanded on other grounds,* 518 U.S. 604 (1996) (plurality op.), expressly deferred to the Commission's long standing "construction of § 441a(d) as regulating political committee expenditures depicting a clearly identified candidate and conveying an electioneering message." 59 F.3d at 1022 (citing AO 1984-15). The Court of Appeals relied not upon particular language in the communication, but rather upon the overall impact of the message as one intended to "garner support" for one candidate and to "diminish support" for another. 59 F.3d at 1023.

The Primary Committee argues that the Audit Division did not apply the "express advocacy" and "electioneering message" standards, but rather applied an incorrect "purpose, content and timing" test.[13] However, the Commission has not required express advocacy in order to determine that a coordinated disbursement is a contribution or, in the case of coordinated party expenditures, subject to the limitations of 2 U.S.C. § 441a(d). The *Buckley* Court applied the "express advocacy" test only in the limited context of independent expenditures, 424 U.S. at 40-44, 78-79, and no court has, without being overruled by a higher court, required application of the express advocacy test to anything other than independent expenditures.[14] The Supreme Court in *Buckley* recognized a distinction between independent expenditures and expenditures for communications that are authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, and held that the latter are to be treated as expenditures of the candidate and contributions by the person or group making the expenditure. 424 U.S. at 46-47, n. 53. The Court explained that coordinated expenditures are treated as in-kind contributions subject to the contribution limitations in order to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions." 424 U.S. at 46-47.

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made in connection with both Federal and non-federal elections, unless the ads would qualify as coordinated expenditures on behalf of any general election candidates of the party under 2 U.S.C. § 441a(d)."

[13] As discussed above, this Office believes that purpose, content and timing of an advertisement are relevant to the question of whether the advertisement has an electioneering message. The proposed Audit Report correctly applies the "clearly identified candidate" and "electioneering message" standard to the advertisements at issue.

[14] Another reason to limit the express advocacy test to independent expenditures is that not all coordinated expenditures are communicative. For instance, if a supporter provided aircraft charter service to a publicly funded candidate's campaign, in coordination with the campaign, the supporter has made an in-kind contribution and an expenditure. This is consistent with the definition of "expenditure" at 2 U.S.C. § 431(9)(A) and with 2 U.S.C. § 441a(a)(7)(B)(i), which provides that coordinated expenditures are contributions. Yet, there is surely no "express advocacy" in the provision of the aircraft charter services to the campaign. As the *Colorado Republicans* Court noted, coordinated expenditures and other kinds of contributions are similar: "many [coordinated] expenditures are also virtually indistinguishable from simple contributions (compare, for example, a donation of money with direct payment of a candidate's media bills)." 518 U.S. at 624.

Furthermore, the vagueness concerns that caused the Supreme Court to apply the express advocacy test to independent expenditures in *Buckley* and *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986),[15] are not present in the case of coordinated expenditures. The *Buckley* Court was concerned that the requirements of the FECA for disclosure of independent expenditures above a certain dollar threshold "could be interpreted to reach groups engaged purely in issue discussion." 424 U.S. at 79. However, because "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," *id.* at 42, it would be difficult to know in advance without the express advocacy standard whether a given independent communication had a sufficient nexus to a Federal election to be subject to the Act; but in the case of a coordinated communication some of the required nexus to a Federal election may be found in the act of coordination itself. *See id.* at 78 ("So defined, 'contributions' have a sufficiently close relationship to the goals of the Act, for they are connected with a candidate or his campaign").

Moreover, the application of a strict "express advocacy" test to coordinated expenditures would undermine the statutory purpose of protecting the electoral process from real or apparent corruption. The *Buckley* Court noted that:

> It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office.

Buckley, 424 U.S. at 45. The Supreme Court went on to say that the independent expenditure limitations were, in any event, not necessary to close a loophole in the Act's contribution limitations, because the Act treated coordinated expenditures as contributions, thus closing the loophole. *Id.* at 45-46. Thus, express advocacy only applies to independent expenditures.

The advertisements in question in the audit explicitly identify President Clinton and in some cases Senator Dole, who were both candidates at the time the advertisements aired. Moreover, it appears that these advertisements were aimed, at least in part, at President Clinton's campaign for the nomination. They address the policies of the President and his Republican opponents in a way which, on its face, appears calculated to encourage the viewer to vote for President Clinton. Thus, the advertisements meet both the "clearly identified candidate" and

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[15] *See also California Medical Ass'n v. FEC*, 453 U.S. 182, 195 (1981) (plurality op.); *Akins v. FEC*, 101 F.3d 731, 741 (D.C. Cir. 1996) (en banc), *vacated on other grounds*, 118 S.Ct. 1777 (1998) and *Orloski v. FEC*, 795 F.2d 156, 167 (D.C. Cir. 1986).

"electioneering message" tests. The images and scripts of the advertisements generally portray President Clinton and his positions in a positive light, for example, as a protector of the elderly and children, with a background of an American flag, but portray Senator Dole and his positions in a negative light, for example, as an obstructionist who "says no" to Clinton's plans.

Based on the Audit Report, it appears that references in the advertisements which support an argument that the purpose and targeting of the advertisements were related to an overall party agenda (rather than the President's re-election) are only present because of a deliberate effort to put the advertisements outside the reach of the expenditure limitations. For example, an agenda for a September 13, 1995 meeting with President Clinton entitled "Campaign/DNC Advertising Financial Strategy" recommended four flights of advertisements for the period between January 15, 1996 to April 15, 1996, and stated that the media flights would be "answers to Republican primary attacks" and "run in primary states which are also swing states for us." The agenda suggests several ways to make the media flights appear to be for state parties and the DNC such as: "create relationship to current legislation;" "defend more Dems than Clinton; attack more Republicans than Dole, " "run in non primary states as well" and "run in some areas well before the primary."

Furthermore, a memorandum dated February 22, 1996, which relates to campaign spending projections, indicates that the Clinton/Gore campaign wanted to use DNC money on advertisements to help the re-election of Clinton. The memorandum states that the Clinton/Gore campaign would need $2.5 million through May 28, 1996 "unless Alexander is nominated and we cannot use DNC money to attack him. If Dole is nominated, we need no additional CG money for media before May 28 since we can attack Dole with DNC money." Despite these efforts, we agree that the advertisements contain electioneering messages. Therefore, this Office concurs with the proposed Audit Report's conclusion that the DNC and the Clinton campaign coordinated the media expenditures, that the advertisements contain an electioneering message and references to a clearly identified candidate, and that the advertisements should be considered an in-kind contribution to the Primary Committee.[16]

C. Treatment of Media Expenditures as Primary Expenditures

The proposed Audit Report applies the DNC media expenditures on behalf of President Clinton's campaign to the Primary Committee's overall expenditure limitation. The magnitude and type of activity involved raises the difficult question of whether these expenditures should be applied to the primary or general election expenditure limit. Based on the available evidence, there is an argument that none of the media expenditures were used exclusively for the primary or exclusively for the general campaign. Rather, it can be argued that the advertisements were used for both the primary and the general elections. For example, the September 13, 1995

[16] We understand that the audit of Dole for President, Inc., includes an issue concerning polls paid for by the RNC, while the Clinton audits have no finding concerning polls paid for by the DNC. If the facts in the Clinton and Dole situations are similar, the Audit Division should use the same approach to the polls in both audits. If there are relevant factual distinctions, then alternative approaches for the two audits may be justified.

meeting agenda discussed above stated that media flights aired between January 15, 1996 and April 15, 1996 would be "answers to Republican primary attacks" and "run in primary states which are also swing states for us." Thus, under a "functional" approach, an allocation of the expenditures between the primary and general election would seem appropriate. This Office, however, agrees with the Audit Division's conclusion that these media expenditures should be considered Primary Committee expenditures and applied to the overall Primary Committee expenditure limitation because the media expenditures were simultaneously in-kind contributions by the DNC and expenditures by the candidate, and thus, are equivalent to and commingled with expenditures paid for by his authorized committee and are subject to the expenditure limitations. *See* 11 C.F.R. § 104.13(a); 2 U.S.C. §§ 441a(b) and (c); 26 U.S.C. § 9035(a) *cf.* 11 C.F.R. § 109.1(c).

This Office reaches this conclusion because it believes that the Commission's "bright-line" rules at 11 C.F.R. § 9034.4(e) for attribution of expenditures between the primary and general election limitations provide guidance for the attribution of the media expenditures, consistent with the application of these rules to all expenditures subject to the expenditure limitations. Using this approach, based on the timing of the advertisements, the media expenditures were primary campaign expenditures that are allocable to the Primary Committee's expenditure limitations. 11 C.F.R. § 9034.4(e)(6). Therefore, this Office concurs with the finding in the Audit Report that the Primary Committee exceeded the expenditure limitation and the recommendation that the Commission determine that the Primary Committee must make a *pro rata* repayment. 26 U.S.C. § 9038(b)(2).

The Commission promulgated 11 C.F.R. § 9034.4(e) to establish a "bright line" cut-off date between primary and general election expenses "with regard to certain specific types of expenditures that may benefit both the primary and the general election." *See* Explanation and Justification for 11 C.F.R. § 9034.4(e), 60 Fed. Reg. 31,867 (June 16, 1995). The general "bright line" rule is that goods or services used exclusively for the primary or general election campaign are allocable to that election. 11 C.F.R. § 9034.4(e)(1). Otherwise, expenditures for media and other communications used for both the primary and general elections are attributed between the primary and general elections based upon whether the date of broadcast or publication is before or after the candidate's date of nomination.[17] 11 C.F.R. § 9034.4(e)(6).

In adopting the rule, the Commission recognized that the application of the rules could result in the attribution of some primary-related expenditures to the general election expenditure limitations and *vice versa,* but reasoned that "these differences should balance themselves out over the course of a lengthy campaign." 60 Fed. Reg. 31,867 (June 16, 1995). The Commission has promulgated regulations based on the timing of the contribution in other contexts, such as the designation of contributions to the primary or general election. *See, e.g.,* 11 C.F.R.

[17] Media production costs for media broadcast both before and after the date of nomination are split 50% to the primary and 50% to the general election. 11 C.F.R. § 9034.4(e)(5).

§ 110.2(b)(2)(ii); *see also* 11 C.F.R. § 102.9(e). While 11 C.F.R. § 9034.4(e) does not explicitly discuss national party committees, the regulation applies to a publicly financed candidate's expenditures subject to the limitations, which include expenditures in the form of in-kind contributions.

This Office believes that the "bright line" regulations should apply because in-kind contributions are also expenditures by the recipient candidate. *See* 11 C.F.R. §§ 104.13(a)(1) and (2); 109.1(c). By coordinating with the Primary Committee and paying for media expenditures in order to influence the election of President Clinton, the DNC made in-kind contributions to the candidate which were simultaneously expenditures by his campaign committees. *See* 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§ 100.7(a)(1)(iii) and 110.8(a)(1)(iv)(A). The Commission treats in-kind contributions like any other expenditures by a publicly financed candidate. *See* Statement of Reasons, Senator Robert Dole and the Dole for President Committee, Inc. at 24 (February 6, 1992)(The Commission "generally allocates in-kind contributions to a [publicly financed] committee's expenditure limitation."). Moreover, the in-kind contributions are considered commingled with the candidate's other expenditures and subject to repayment: "[o]rdinarily, federal matching funds and private contributions are commingled in a committee's accounts. The Commission considers in-kind contributions to be part of this commingled pool of available funds." *Id.* at 25. Thus, all of a publicly financed candidate's expenditures, including expenditures in the form of in-kind contributions received, are considered commingled in the mixed pool of expenditures subject to the expenditure limitations. *See* 2 U.S.C. §§ 441a(b) and (c); 26 U.S.C. § 9035(a). The "bright line" rules should be applied consistently to all of a campaign's expenditures, including in-kind contributions paid for by national party committees, in order to avoid having two identical media expenditures paid for and broadcast at the same time and made on behalf of a candidate's campaign treated as primary and general expenditures depending on whether the candidate or party committee paid for them. All of the advertisements in question aired before the date of President Clinton's nomination. Thus, under section 9034.4(e)(6), all the media expenditures incurred prior to President Clinton's nomination count against the Primary Committee's expenditure limitations.

This approach does give rise to an anomaly regarding 2 U.S.C. § 441a(d) expenditures which, we believe, warrants a revision to the recommendation. The DNC reported media expenditures totaling $2,098,415, which occurred in August 1996 as 2 U.S.C. § 441a(d) "coordinated party expenditures."[18] We believe that a consistent application of the rules requires these expenses to be considered Primary Committee expenditures and, therefore, counted against the Primary Committee's expenditure limitation.

[18] The remaining DNC media expenditures that occurred earlier during the primary period were not reported as 2 U.S.C. § 441a(d) coordinated party expenditures.

As a result of applying 11 C.F.R. § 9034.4(e) to some of the media expenditures involved in this audit, advertisements that may have a sufficient general election purpose to have been permitted as section 441a(d) coordinated party expenditures but for section 9034.4(e)'s requirement that mixed purpose advertisements be attributed based on broadcast timing, should not be permitted as coordinated party expenditures and, instead, should be attributed to the Primary Committee's expenditure limit. We recognize that this consequence may be undesirable. If 11 C.F.R. § 9034.4(e) did not control the attribution of the media expenditures, AO 1984-15 would provide guidance. In that advisory opinion, which was issued before the promulgation of 11 C.F.R. § 9034.4(e), the Commission concluded that a national party committee could make coordinated party expenditures pursuant to 2 U.S.C. § 441a(d) on behalf of its "presumptive nominee" before the individual has received the official nomination. The Commission explained, "[a]lthough timing is relevant, the Commission does not view the timing of broadcast as controlling how expenditures for the advertisements should be treated for limitation and reporting purposes." AO 1984-15. Instead, "the proper analytical focus for attributing a national party expenditure between a primary and a general election campaign is whether the expenditure was made for the purpose of influencing the outcome of the general election or for the purpose of influencing the outcome of the nomination." *Id.* However, the advisory opinion applies only to 2 U.S.C. § 441a(d) expenditures, while 11 C.F.R. § 9034.4(e)(1) allocates expenditures exclusively related to an election to that election regardless of timing. Thus, we do not believe that the advisory opinion resolves the issue of how to attribute expenditures between the primary and general election limitations where the expenditures appear to have a mixed purpose related to both the primary and general elections. The Commission promulgated 11 C.F.R. § 9034.4(e) in order to resolve these kinds of situations.

The Office of General Counsel believes that the better approach is to analyze these expenditures under 11 C.F.R. § 9034.4(e). To analyze each mixed purpose advertisement, including external events occurring at the time each was developed and aired, in addition to investigating activity leading to the creation of each particular advertisement, to determine which purpose predominated, would be a difficult undertaking. The Commission promulgated the "bright line" rules for expenditures having a mixed purpose in order to obviate the need to use its limited resources to perform such a time consuming task. This Office recommends that the audit report should be revised to apply 11 C.F.R. § 9034.4(e)(2) through (6), which allocate expenditures based on date, to any expenditures used to benefit both President Clinton's primary and general elections that were reported by the DNC as coordinated party expenditures pursuant to 2 U.S.C. § 441a(d). While this approach may seem to limit the DNC's ability to allocate expenditures under section 441a(d) before the candidate's date of nomination in apparent contradiction to the guidance provided by AO 1984-15, the exclusivity standard in 11 C.F.R. § 9034.4(e)(1) preserves the national party committees' ability to use coordinated party expenditures subject to 2 U.S.C. § 441a(d) prior to the nomination of their candidates. Finally, it is important to note that the repayment amount in these proposed Audit Reports is substantial not because of 11 C.F.R. § 9034.4(e)(1)'s limitation on 2 U.S.C. § 441a(d) to expenditures that are used exclusively for the general election. Instead, the repayment amounts are substantial due to the size of the DNC's in-kind contribution to the Primary Committee, which dwarfs either of the

applicable contribution limits, whether it is for a $5,000 contribution to the Primary Committee under 2 U.S.C. § 441a(a)(2) or whether it is the amount remaining under 2 U.S.C. § 441a(d) for a coordinated party expenditure.

III. OVERALL EXPENDITURE LIMITATION AND THE REPAYMENT RATIO

The Commission may seek a repayment for the amounts spent in excess of the expenditure limitations. *See* 11 C.F.R. §§ 9038.2(b)(1)(i) and (ii). Amounts in excess of the overall expenditure limitation are non-qualified campaign expenses. 11 C.F.R. § 9034.4(b)(2). The Commission may seek a repayment for non-qualified campaign expenses. 26 U.S.C. § 9038(b)(2). However, the non-qualified campaign expense or the amount in excess of the expenditure limitation is not composed of only expenditures that the DNC made on behalf of the Primary Committee, it is also composed of public funds. *See* 11 C.F.R. § 9034.4(a); *Kennedy for President Committee v. FEC*, 734 F.2d 1558, 1565 (D.C. Cir. 1984); *Reagan for President Committee v. FEC*, 734 F.2d 1569 (D.C. Cir. 1984). Therefore, when the Commission seeks a repayment for amounts in excess of the expenditure limitation, it is not capturing expenses paid by the DNC on behalf of the Primary Committee. Rather, the repayment for exceeding the expenditure limitation is an attempt "to 'recoup' only the federal funds used for unqualified expenditures." *Kennedy*, 734 F.2d at 1565. *See John Glenn Presidential Committee v. FEC*, 822 F.2d 1097, 1098 (D.C. Cir. 1987)("The statutory recoupment remedy pursued by the FEC does not call back private spending; it does police the restrictions Congress placed on the expenditure of public moneys"). The regulations contemplate that the sum to be repaid for exceeding the expenditure limitation will equal the portion of the matching payments that was used for non-qualified purposes. 11 C.F.R. § 9038.2(b)(2).

The proposed Report raises a related issue of whether contributions made by the DNC to the Primary Committee are to be included in the total deposits when calculating the repayment ratio. The repayment ratio in the proposed Report is 0.154577.[19] The Report includes all contributions, whether in-kind or monetary, in the mixed pool of public and private funds used in calculating the repayment ratio. The in-kind contributions are included in the repayment ratio's denominator as part of total deposits. This Office agrees that the method for calculating the repayment ratio in the proposed Report is correct.

The regulations establish that the amount of a repayment 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 candidate's total deposits, as of 90 days after the candidate's date of ineligibility. 11 C.F.R. § 9038.2(b)(2)(iii). Total deposits is defined as all deposits to all candidate accounts minus transfers between accounts, refunds, rebates,

[19] We note that the proposed Audit Report states a repayment ratio rounded to the nearest hundred-thousandth, while the proposed Audit Report for Dole for President, Inc. states a repayment ratio rounded to the nearest hundredth. We recommend that you round and state the ratios consistently in the two proposed Audit Reports.

reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts. 11 C.F.R. § 9038.3(c)(2). However, the Commission's regulations do not explicitly state whether in-kind contributions are to be included in the denominator of the fraction for total deposits when calculating the repayment ratio.

The Office of General Counsel believes that the in-kind contributions that are attributable to the expenditure limitation should be included in the denominator of the fraction for total deposits. The purpose of the repayment process is to recapture public funds used for non-qualified campaign expenditures. 11 C.F.R. § 9038.2(b)(2). Since federal matching funds and private contributions are commingled in the campaign fund, it is difficult to determine an absolutely accurate estimate of the amount of matching funds used for non-qualified purposes. *Kennedy*, 734 F.2d at 1565. In order to be as accurate as possible in recapturing public funds, in-kind contributions must be included in the denominator. The *Kennedy* Court noted that "by requiring repayment of 100 percent of the amount of unqualified expenditures, without at least estimating the extent to which such expenditures derived from matching funds sources, the Commission has shirked its statutory responsibility to make a reasonable determination that the repayment sum represents the matching funds used for unqualified purposes." *Id.* at 1562. Including in-kind contributions in the denominator for total deposits lowers the ratio of public funds to more accurately reflect the amount that can be recaptured as public funds spent in excess of the overall expenditure limitation.[20] Furthermore, in an example of a calculation of the repayment ratio based on surplus funds, the amount of in-kind contributions are included when determining total deposits and receipts of the committee.[21] *See Financial Control and Compliance Manual*, at 67-68 (January 1996).

It is unclear whether all in-kind contributions were included in the calculation of the repayment ratio. Therefore, we recommend that the proposed Audit Report be revised to note the amount and types of in-kind contributions that were included in the ratio calculation. In order to facilitate the discussion of this issue, this Office recommends that the Report include discussion on calculating the repayment ratio when a committee receives an in-kind contribution subject to the expenditure limitations.

Staff assigned: Delanie DeWitt Painter
Delbert K. Rigsby
Joel J. Roessner
Andre G. Pineda

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[20] According to the proposed Report, the DNC's media expenditures, and their expenditures relating to the Primary Committee event at the Sheraton Hotel were determined to be in-kind contributions by the DNC to the Primary Committee. Footnote 33 of the proposed Report states the figure that represents the repayment ratio.

[21] Had these expenditures been attributable to the General Committee, the entire contribution amount would have been repayable since publicly financed general election committees that receive the full public grant must repay the entire amount of a contribution. 26 U.S.C. § 9007(b)(3).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

The Honorable William J. Clinton
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Mr. President:

Attached please find the Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. The Commission approved the report on June 3, 1999. As noted on page 5, 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 $126,680 is required within 90 calendar days after service of this report (September 13, 1999).

Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (August 13, 1999), 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 you so elect. If you decide to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530. If you do not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will placed on the public record on or about June 15, 1999. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Leroy Clay or Thomas Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1999

Ms. Joan Pollitt, Treasurer
Clinton/Gore '96 Primary Committee, Inc.
c/o Ms. Lyn Utrecht, Esquire
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20006

Dear Ms. Pollitt:

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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 (August 13, 1999), 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.

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Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:

Audit Report

CHRONOLOGY

CLINTON/GORE '96 PRIMARY COMMITTEE

Audit Fieldwork	01/06/97 - 03/18/98
Exit Conference Memorandum to Committee	05/15/98
Response Received to the Exit Conference Memorandum	07/29/98
Final Audit Report Approved	06/03/99

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble
Press Office Ron Harris

FROM: Mary W. Dove/Veneshe Ferebee-Vines VFV
Commission Secretary

DATE: July 6, 1999

SUBJECT: Statement for the Record in Audits of
1996 Clinton/Gore and Dole/Kemp Campaigns

Attached is a copy of the Statement of Reasons regarding Audits of 1996 Clinton/Gore and Dole/Kemp Campaigns signed by Chairman Scott E. Thomas and Commissioner Danny Lee McDonald. This was received in the Commission Secretary's Office on July 6, 1999 at 11:42 a.m.

cc: V. Convery

Attachments

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Statement for the Record in Audits of 1996 Clinton/Gore and Dole/Kemp Campaigns

Chairman Scott E. Thomas
Commissioner Danny L. McDonald

Our colleagues, Commissioners Sandstrom, Wold, Elliott and Mason, recently joined in what must be seen as a very odd Statement of Reasons regarding the audits of the 1996 Clinton and Dole campaigns.[1] Little is written of the audits. Instead, the thrust of their statement is a tirade against an innocuous shorthand reference the Commission coined in Advisory Opinion 1985-14[2] to analyze whether party communications are subject to the statutory limits on support of particular candidates. The energy expended by our colleagues to savage the Commission's own advisory opinion process is surprising. The strangest aspect of the Sandstrom *et al.* Statement, though, is that it claims to abhor vagueness but, in the end, is itself very confusing.

We write this Statement to explain the state of the law in this area, and to clarify that the Sandstrom *et al.* Statement does **not** effect a 'sea change' when analyzing which party communications should be subjected to the statutory limits on coordinated expenditures. In particular, we wish to emphasize that 'express advocacy' is not required.

I.

The limits on coordinated expenditures by party committees on behalf of their candidates have been on the books for over 24 years. They were part of the Federal Election Campaign Act Amendments of 1974.[3] In addition to the

[1] Statement of Reasons of Vice Chairman Wold and Commissioners Elliott, Mason and Sandstrom issued June 24, 1999 (hereinafter "Sandstrom *et al.* Statement").
[2] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 5819.
[3] Pub. L. 93-443, 88 Stat. 1263, § 101.

$5,000 per election contribution limit available to all political committees,[4] parties have coordinated expenditure allowances permitting additional spending in connection with the general election campaigns of their candidates.[5]

The party coordinated expenditure limits serve an important role in preventing party donors from having an indirect way of effecting a 'quid pro quo' arrangement with candidates for federal office-- the link between money and official government action the statute is designed to prevent. If a party committee is able to undertake only a limited amount of coordinated expenditure activity on behalf of a particular candidate, donors or groups of donors will not be able to expect large-scale donations to the party to result in large-scale spending by the party on behalf of such candidate. For example, ten banking industry PACs who donate $15,000 each to a party's House campaign committee and who are close to a particular House committee chairman running for reelection would not be able to expect $150,000 in coordinated expenditures by the party on behalf such candidate because the coordinated expenditure limit would prevent it.

The direct payment of funds to a candidate's campaign has been treated as a "contribution"[6] subject to the contribution limit. A party's coordinated payment to a third party on behalf of a candidate has been treated as either an in-kind "contribution" or a coordinated "expenditure,"[7] at the option of the expending committee.[8] If treated as a coordinated expenditure, the party has to

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[4] Currently codified at 2 U.S.C. § 441a(a)(2)(A).

[5] 11 C.F.R. § 110.7(a)(3), (b)(3). Codified at 2 U.S.C. § 441a(d), the coordinated expenditure allowance provides:

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

Subsections (2) and (3) set forth formulas that in the last presidential election permitted a national party committee to spend over $12 million on behalf of its presidential candidate, and that in the 1998 congressional elections permitted a national and state party committee **each** to spend $32,550 for a House candidate and **each** to spend amounts ranging from $65,100 in small states like Wyoming to over $1.5 million in California for a Senate candidate.

[6] 2 U.S.C. § 431(8).

[7] 2 U.S.C. § 431(9).

[8] FEC Campaign Guide for Party Committees (1996) at 16. The FEC for many years operated with a presumption that all party spending was coordinated with the parties' eventual nominees. 11 C.F.R. § 110.7(a)(5), (b)(4) (1996). The Supreme Court invalidated that presumption in Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996) (hereinafter "Colorado I"). As a result, only party spending that can be shown to meet the legal test of 'coordination' can be subjected to the limits at 2 U.S.C. § 441a(a)(2)(A) and (d). The legal test for coordination is set forth at 2 U.S.C. § § 431(17) and 441a(a)(7)(B) and at 11 C.F.R. § 109.1(b)(4) and (d)(1).

keep within the coordinated expenditure limit, but only the party need report the transaction.[9]

Because party committees are primarily in the business of electing candidates, the Commission has required virtually all party-building activity to be at least allocated so that indirect federal candidate support is not paid for with funds not permitted under federal law.[10] At the same time, recognizing party committees sometimes undertake generic party-building activities that may help their candidates only in a general way-- a way that should not result in a contribution to or coordinated expenditure on behalf of a particular candidate-- the Commission has tried to clarify when a party activity need not be subjected to a candidate-specific limitation. Thus, the Commission has specified at 11 C.F.R. § 106.1(c) that an expenditure for rent, personnel, overhead, general administrative costs, educational campaign seminars, training of campaign workers, or registration or get-out-the-vote drives need not be attributed to individual candidates unless the expenditure is "made on behalf of a clearly identified candidate, and the expenditure can be directly attributed to that candidate."

When identifying which party activities fall under the candidate-specific limits, though, the Commission must deal first and foremost with the underlying statutory terms. A "contribution" is a payment or gift of value made "for the purpose of influencing any election for Federal office."[11] A coordinated "expenditure" is a payment, advance or gift of anything of value made "for the purpose of influencing any election for Federal office" and "in connection with the general election campaign" of a candidate for Federal office.[12]

Over the years, the Commission has grappled with the difficult factual distinctions that make a party communication a generic party-building expenditure on the one hand, or an in-kind contribution or coordinated expenditure on the other. The best-known instances were Advisory Opinion 1984-15[13] and the aforementioned Advisory Opinion 1985-14. In each of those opinions, the Commission analyzed the facts according to the basic underlying statutory provisions cited above.

In Advisory Opinion 1985-14, the Commission developed a shorthand reference to the legal analysis to be used. Instead of repeating the statutory phrases, "for the purpose of influencing" and "in connection with," the Commission described the process as a search for whether the communication

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[9] 11 C.F.R. § 104.3(a)(3)(iii).
[10] 11 C.F.R. § 106.5.
[11] 2 U.S.C. § 431(8).
[12] 2 U.S.C. §§ 431(9) and 441a(d).
[13] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 5766

contained an "electioneering message."[14] The Commission then cited a Supreme Court decision for further guidance as to what was meant by "electioneering message."[15] There, the Court simply described its view of the reach of the corporate and union prohibition at 2 U.S.C. § 441b: whether a communication is "designed to urge the public to elect a certain candidate or party."[16] This phrasing, of course, is virtually indistinguishable from the "for the purpose of influencing any election for Federal office" language at the heart of any "contribution" or "expenditure" inquiry. Thus, at most, the Commission in Advisory Opinion 1985-14 was paraphrasing the statutory language underlying any coordinated party expenditure analysis.

II.

Our colleagues grossly overstate the significance of the "electioneering message" phrase and then gyrate into an inappropriate constitutional hypothesis regarding the vagueness of that phrase and other phrases used in Advisory Opinions 1984-15 and 1985-14. Along the way, they grumble about perceived improper rulemaking through the advisory opinion process.

A.

Dealing with the last 'red herring' first, to our knowledge no commissioner has been confused about the legal effect of advisory opinions. While advisory opinions clearly have binding consequences, the statute is clear that general rules of law have to emanate from the statute or from regulations of the Commission.[17] Nonetheless, our colleagues seem convinced that the Commission's use in Advisory Opinions 1984-15 and 1985-14 of paraphrases and synonyms for the statutory test was, in fact, the creation of a new substantive rule of law.[18] The reality, of course, is that there are only so many words in the English language, and after citing the underlying statutory provisions, the Commission simply attempted to explain the legal test in other helpful ways.[19]

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[14] Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶5819 at 11,185.

[15] United States v. United Auto Workers, 352 U.S. 567 (1957) (hereinafter "UAW").

[16] Id. At 587.

[17] 2 U.S.C. §437f(b).

[18] At one point our colleagues call the phrases used a "test" and at other times they refer to them as an "amalgam." Sandstrom *et al.* Statement at 2 and 4.

[19] Lest our colleagues be struck down by a bolt of lightning for insinuating they would never stoop to helpful descriptions of the underlying statutory and regulatory provisions, they should concede that only recently in Advisory Opinion 1999-11, they engineered a description of the statute's reach that depended on whether there was "any campaign activity" at the event in question. See Memorandum from Commissioner Sandstrom, Agenda Doc. No. 99-61-A; Advisory Opinion 1999-11 (unpublished) at 3.

Thus, our colleagues have felled a demon they didn't need to imagine in the first place. The regulated community has had notice of the underlying statutory provisions at 2 U.S.C. §§ 431(8) and (9) and 441a(d) all along. Advisory Opinions 1984-15 and 1985-14 neither expanded nor diminished those underlying rules of law.

Interestingly, our colleagues do not purport to supersede Advisory Opinions 1985-14 and 1984-15, but rather disagree with the phrasing of the legal analysis therein. We take that to mean the Commission's conclusions regarding specific proposed ads in those opinions still serve as valid legal precedent in terms of the underlying statute. For example, a party committee that ran ads under materially indistinguishable circumstances could 'rely upon' the conclusions reached by a majority of commissioners in those opinions in determining whether the ads would be a coordinated expenditure or not.[20] This rightly diminishes the negative impact of our colleagues' statement and suggests only that the Commission cease using the pesky "electioneering message" phrase when explaining its interpretations under the statute.

We must address our colleagues' suggestion that an advisory opinion may not be used as a "sword of enforcement." Sandstrom *et al.* Statement at 3. Apparently, they disregard the statutory language quoted in the previous footnote. Someone who receives an advisory opinion that certain conduct would be illegal, as well as anyone in materially indistinguishable circumstances, surely may 'rely on' that legal conclusion to file a complaint against someone else engaging that conduct. Essentially, that is what happened when Democratic Party representatives received a response in Advisory Opinion 1985-14 that certain targeted communications attacking a likely opponent would be coordinated expenditures subject to limit. Other Democratic Party representatives then filed a complaint against the Colorado Republican Party regarding certain ads that attacked the likely Senate nominee, Tim Wirth. That enforcement case became the subject of the Supreme Court's decision in Colorado I, supra.

Our colleagues may have missed the fact that the 10th Circuit in that case upheld the FEC's use of Advisory Opinion 1985-14 (even its "electioneering message" phrase) to bolster its claim.[21] Although the Supreme Court vacated the 10th Circuit's opinion on other grounds, Colorado I, this is a strong indication advisory opinions can be used as a "sword."

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[20] The statute provides that any advisory opinion rendered by the Commission "may be relied upon" by the person to whom the opinion is issued or by "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects . . . ." 2 U.S.C. § 437f(c)(1).

[21] FEC v. Colorado Republican Federal Campaign Committee, 59 F. 3d 1015 (10th Cir. 1995).

This proposition is supported by a 9th Circuit decision, a case our colleagues cite but misconstrue.[22] There, in a successful enforcement action against a committee that accepted excessive contributions, the FEC used its advisory opinion precedent as a "sword," and the court specifically sanctioned this approach.[23]

The courts have strongly indicated the Commission is bound to apply its advisory opinion precedent consistently.[24] We caution our colleagues not to get so agitated over the use of paraphrases and shorthand references in prior advisory opinions that they issue statements undermining the ability of the agency to enforce the law.

B.

Our colleagues go well beyond their role as commissioners by opining about the possible unconstitutional vagueness and overbreadth of the words "electioneering message."[25] First, as just explained, everyone should agree that "electioneering message" is not a rule of law and, hence, it is not the proper focus of any constitutional debate. Second, even if it were, Commissioners are not members of the judiciary entitled to render their own rules unconstitutional.[26] It is one thing to interpret the statute in an advisory opinion, or to interpret the

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[22] FEC v. Ted Haley Congressional Committee, 852 F.2d 1111, 1115 (9th Cir. 1988) (hereinafter "Haley") ("interpretation of FECA by the FEC through its regulation and advisory opinions is entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute").

[23] We cannot fathom our colleagues' attempt to distinguish Haley. They appear to argue the court's reliance on advisory opinions is insignificant because there happened to be a relevant regulation to apply as well. Sandstrom *et al.* Statement at 4, n. 9. As our colleagues well know, the existence of a regulation is not essential to the legal value of an advisory opinion. The law, 2 U.S.C. § 437f(a), specifically contemplates advisory opinions applying the **statute** as well-- just as was the case in Advisory Opinions 1984-15 and 1985-14. As precedent, such opinions may be "relied upon" just as much as advisory opinions applying a regulation. 2 U.S.C. § 437f(c).

[24] See Common Cause v. FEC, 676 F. Supp. 286 (D.D.C. 1986) (certain FEC commissioners, including Commissioner Elliott, ordered to issue statement of reasons in dismissed enforcement case where advisory opinion precedent seemingly inconsistent); Common Cause v. FEC, Fed. Elec. Camp. Fin. Guide (CCH Transfer Binder), ¶ 9263 (D.D.C. 1988) (related case noting, "The importance of respect for the Rule of Law . . . requires that courts be vigilant to ensure that in the process 'prior policies and standards are being deliberately changed, not casually ignored.'").

[25] *Sandstrom et al.* Statement at 4.

[26] Commissioners have an obligation to seek compliance with the statute passed by Congress. 2 U.S.C. § 437c(b)(1). The D.C. Circuit has stated, "[A]dministrative agencies . . . cannot resolve constitutional issues." American Coalition for Competitive Trade v. Clinton, 128 F.3d 761, 766 n. 6 (D.C. Cir. 1997). See also, Gilbert v. National Transportation Safety Board, 80 F.3d 364, 366-67 (9th Cir. 1996) ("challenges to the constitutionality of a statute or a regulation promulgated by an agency are beyond the power or the jurisdiction of an agency").

statute through a clarifying regulation.[27] It is altogether different to opine that a mere shorthand reference used to paraphrase the statute is unconstitutional.[28]

That said, we believe it important to note a fundamental flaw in our colleagues' 'judicial detour.' Their reliance on Supreme Court analysis of independent spending provisions is simply inapposite. In the area of **coordinated** expenditures, there is no basis for applying the "express advocacy" standard created in Buckley[29] and FEC v. Massachusetts Citizens for Life[30] where **independent** disbursements were at issue. Indeed, Buckley could not have been clearer that its "express advocacy" test did not apply to coordinated expenditures. When analyzing former 18 U.S.C. § 608(e), the independent expenditure limit struck down by the Court, the *per curiam* opinion noted:

> The parties defending § 608(e)(1) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of **paying directly for media advertisements or for other portions of the candidate's campaign activities**. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet **such controlled or coordinated expenditures are treated as contributions** rather than expenditures under the Act. [footnote omitted] Section

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[27] The D.C. Circuit has noted that the advisory opinion process provides an opportunity "to reduce uncertainty or narrow the statute's reach" and that "the susceptibility of the [Federal Election Campaign Act] to challenge on the grounds of vagueness has consequently been reduced." Martin Tractor Co. v. FEC, 627 F.2d 375, 386 (D.C. Cir.), cert. denied, 449 U.S. 954 (1980).

[28] This would apply, as well, to our colleagues' constitutional analysis of other phrases used at one time or another by the Commission to explain the application of the underlying statutes, such as whether the communication would "tend to diminish support for one candidate and garner support for another candidate." Sandstrom *et al.* Statement at 4, n. 11, discussing Advisory Opinion 1984-15.

We are baffled by our colleagues' suggestion that the Supreme Court's phrase in UAW ("designed to urge the public to elect a certain candidate or party") is but "charming" and of little "practical use" because it dates back to the days of a '57 Chevy. Sandstrom *et al.* Statement at 5, n. 13. That might explain why the old case of Marbury v. Madison, 5 U.S. 137, 178 (1803) (It is for Article III judges to consider constitutional disputes and "say what the law is."), is of little value to them. More importantly, because the phrasing used in UAW is so close to the current language of the statute governing coordinated expenditures ("for the purpose of influencing any election for Federal office"), we hope our colleagues are not suggesting the latter is unconstitutionally vague. In Buckley v. Valeo, 424 U.S. 1(1976), the Court made crystal clear that it viewed the phrase "for the purpose of influencing" in the context of coordinated expenditures to be free of constitutional vagueness concerns ("We construed [the term 'contribution' which relies on a 'for the purpose of influencing' test] to include . . . expenditures placed in cooperation with or with the consent of a candidate. . . . So defined, 'contributions' have a sufficiently close relationship to the goals of the Act, for they are connected with a candidate or his campaign."). 424 U.S. at 78, referring back to n. 24 at 23.

[29] 424 U.S. at 42-44, 76-82.

[30] 479 U.S. 238, 249-50 (1986) (hereinafter "MCFL").

608(b)'s contribution ceilings . . . prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. **By contrast, § 608(e)(1) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign.**[31]

Similarly, in MCFL, the Court made clear that its "express advocacy" construction need only apply to the provision in 2 U.S.C. § 441b "that directly regulates independent spending."[32]

III.

We can only hope our colleagues' statement does not get misconstrued by the regulated community and the courts. We note with interest, for example, that one business day after our colleagues' statement was circulated at the Commission, counsel for the defendant in FEC v. Christian Coalition[33] filed a pleading suggesting its relevance to the issue in that case: whether a corporation made in-kind contributions or independent expenditures prohibited under 2 U.S.C. § 441b. In fact, no allegation in that case involves a claim that depends on the phrase "electioneering message."[34]

[31] 424 U.S. at 46,47. See also Buckley at 78-80 (defining coordinated expenditures as "contributions" and defining non-coordinated "expenditures" covered by former 2 U.S.C. § 434(e) to reach only communications containing 'express advocacy').

[32] 479 U.S. at 249.

[33] No. 96-1781 (D.D.C., filed 1996).

[34] Interestingly, the Commission passed a regulation in 1995 that implements 2 U.S.C. § 441b as it relates to certain voter guides. It uses the phrase "electioneering message." Specifically, for voter guides prepared with the candidates' cooperation and participation, the regulation specifies that such guides "shall not score or rate the candidates' responses in such way as to convey an electioneering message." 11 C.F.R. § 114.4(c)(5)(ii)(E). As it post-dates the activities at issue in FEC v. Christian Coalition, supra, it should not enter the debate there, but that has not stopped the defendant's counsel. For activities properly subject to this regulation, we can only ponder what our colleagues will say.

The confusion generated by our colleagues is regrettable. While the Commission's efforts to apply the in-kind contribution and coordinated expenditure provisions in the statute must focus, as always, on the words of the statute, surely a great deal of energy now will be expended on what to make of the banning of the innocuous "electioneering message" phrase. The answer is, "not much." Sadly, a lot of explaining will be required to get there.

7/2/99	[signature]
Date	Scott E. Thomas, Chairman
7/6/99	Danny L. McDonald [signature]
Date	Danny L. McDonald, Commissioner by FJD

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble
Press Officer Harris

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: June 25, 1999

SUBJECT: Statement of Reasons for the Audits of Clinton/Gore '96 and Dole/Kemp '96.

Attached is a copy of the Statement of Reasons in the Audits of Clinton/Gore '96 and Dole/Kemp '96 signed by Vice-Chairman Darryl R. Wold, Commissioner Lee Ann Elliott, Commissioner David M. Mason and Commissioner Karl J. Sandstrom. This was received in the Commission Secretary's Office on Thursday, June 24, 1999 at 3:47 p.m.

cc: V. Convery

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

STATEMENT OF REASONS of
VICE CHAIRMAN DARRYL R. WOLD and
COMMISSIONERS LEE ANN ELLIOTT,
DAVID M. MASON and,
KARL J. SANDSTROM
On The Audits Of
"DOLE FOR PRESIDENT COMMITTEE, INC." (PRIMARY),
"CLINTON/GORE '96 PRIMARY COMMITTEE, INC.,"
"DOLE/KEMP '96, INC." (GENERAL),
"DOLE/KEMP '96 COMPLIANCE COMMITTEE, INC." (GENERAL),
"CLINTON/GORE '96 GENERAL COMMITTEE, INC.," and
"CLINTON/GORE '96 GENERAL ELECTION
LEGAL AND COMPLIANCE FUND"

Pursuant to 26 U.S.C. §§ 9038(a) and 9007(a), the Federal Election Commission ("the Commission") audited the "Dole For President Committee, Inc.," the "Clinton/Gore '96 Primary Committee, Inc.," "Dole/Kemp '96, Inc.," the "Dole/Kemp '96 Compliance Committee, Inc.," the "Clinton/Gore '96 General Committee, Inc." and the "Clinton/Gore '96 General Election Legal And Compliance Fund." In doing so, our Audit Division and Office of General Counsel (collectively the "staff") analyzed media advertisements the Democratic and Republican National Committees (collectively "the parties") ran during 1995 and 1996. The purpose of this analysis was to determine whether the cost of these advertisements constituted in-kind contributions (coordinated expenditures) by the parties on behalf of their respective presidential candidates' committees (which, among other things, could have caused the presidential committees to exceed their primary or general election spending limits in violation of 2 U.S.C. § 441a(b)).

In analyzing these advertisements,[1] the staff examined their content for the presence of two factors to determine whether the advertisement were "for the purpose of influencing" an election for Federal office, as that phrase is used in 2 U.S.C. § 431 (8)(A) ("contribution") and (9)(A) ("expenditure"): Whether the advertisements referred to a "clearly identified candidate" and whether they contained an "electioneering message."[2]

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[1] *See, e.g.*, "Report of the Audit Division on the Dole For President Committee, Inc. (Primary)" ("Report on DFP"), Agenda Document 98-87, 11/19/98 at 14 & 50; "Report of the Audit on Clinton/Gore '96 Primary Committee, Inc." ("Report on CGP"), Agenda Document 98-85, 11/19/98 at 10, 32-35 & 36-38.

[2] The staff cited Advisory Opinions ("AO")1984-15 and 1985-14 as the authority for using "electioneering message" as a test of the content of a communication. Only AO 1985-14 used that phrase, and it did so in erroneously concluding that the Commission had employed the "electioneering message" test in AO 1984-15, *see* AO 1985-15 at 7; in fact, those words never appear in AO 1984-15. *See* footnote eleven, *infra*, for a discussion of the problems with the staff's interpretation of these opinions.

Because the staff found that both factors were present,[3] the staff recommended that the Commission determine that the costs of the advertisements were in-kind contributions from the parties to their respective presidential campaign committees.[4] The staff also recommended that the Commission determine that the applicable spending limits were exceeded based in part on the cost of the advertisements, and that the Commission require a repayment of presidential matching funds. For various reasons, the Commissioners unanimously rejected the staff's repayment recommendations.

We write here to express our disagreement with the use of "electioneering message" as a test to determine whether communications are "for the purpose of influencing" elections and, therefore, constitute expenditures or contributions under the Federal Election Campaign Act ("FECA"). Specifically, we agree that: (1) The phrase "electioneering message" cannot serve as a substantive test to describe the content of communications that are "for the purpose of influencing" an election because it is derived only from advisory opinions and is not found either in the FECA or in regulations promulgated by the Commission in accordance with the rulemaking procedures specified in the FECA; and (2) The phrase "electioneering message" cannot be used as a shorthand expression of the Commission's interpretation of the statutory standard of "for the purpose of influencing" an election because the advisory opinions from which the phrase is drawn do not convey a clear and consistent application of the statutory standard, and the phrase, standing alone, is both too vague and too broad to have a sufficiently definite meaning. Therefore, we conclude that the phrase "electioneering message" should not be used to describe the content of communications which the Commission would determine to be "for the purpose of influencing" an election to Federal office.

Procedural Defects With Employing The "Electioneering Message" Standard

Congress included an express prohibition in the FECA against the Commission using advisory opinions to establish rules of conduct. Subpart (b) of 2 U.S.C. § 437f, the section governing the use of such opinions, provides that the Commission may employ rules of law that are not set forth in the FECA only if it complies with the procedures set forth in 2 U.S.C. § 438(d) in promulgating them.[5] By necessary implication, subpart (b) of § 437f prohibits the Commission from using advisory opinions as rules of law, for the

[3] *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 50; Report on CGP, Agenda Document 98-85, 11/19/98 at 38.

[4] *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 52; Report on CGP, Agenda Document 98-85, 11/19/98 at 43.

[5] *See id.* at § 437f(b) ("Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title."); *United States Defense Committee v. Federal Election Commission*, 861 F.2d 765, 771 (2nd Cir. 1988) (*USDC*) (citing 2 U.S.C. § 438(d)) ("A rule of law may initially be proposed by the Commission only as a rule or regulation pursuant to very elaborate procedures involving submission of the rule or regulation to the Congress.").

Commission does not follow the requirements of 2 U.S.C. § 438(d) in drafting such opinions; instead, it follows the requirements of § 437f.[6]

As a result, the Commission may not use advisory opinions as a substitute for rulemaking. Rulemaking is not simply the preferred method for filling in gaps in the FECA. It is the required method. 2 U.S.C. § 437f(b), note five, *supra*. Where the law is of uncertain application, advisory opinions cannot be used as a sword of enforcement. *See generally id.* The regulated community can, however, use advisory opinions as shields against Commission enforcement actions in appropriate circumstances. 2 U.S.C. § 437f(c).

> Advisory opinions are binding only in the sense that they may be relied on *affirmatively* by any person involved in the specific transaction or activity discussed in the opinion or in any materially indistinguishable transaction or activity. . . . On the other hand, to the extent that the advisory opinion *does not affirmatively approve* a proposed transaction or activity, it is binding on no one—not the Commission, the requesting party, *or third parties*.[7]

This reading of the FECA's rulemaking requirements, of course, does not prevent the Commission from enforcing the FECA in novel or unforeseen circumstances. It only requires that, absent controlling regulations or the authoritative interpretations of the courts, the Commission's enforcement standard be the natural dictate of the language of the statute itself.[8]

The threshold problem with the "electioneering message" standard, then, is that it is not a rule. It is only a shorthand phrase that purports to describe the Commission's reasoning in two advisory opinions. See note two, *supra*. The phrase is not defined in either of those opinions. In fact, it does not appear at all in one of them. Rather than being promulgated pursuant to the requirements of the FECA (*see* 2 U.S.C. §§ 438(d) and

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[6] *See* 2 U.S.C. § 437f(b) (". . . No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with the provision of this section [i.e., § 437f].").

[7] *USDC*, 861 F.2d at 771 (emphasis added) (citing 2 U.S.C. §§ 438(d) and 437f (b)&(c)); *see also Weber v. Heaney*, 793 F. Supp. 1438, 1452 n. 9 (D. Minn 1992) (" . . . Commission advisory opinions are binding in the sense that they may be relied upon affirmatively by any person involved in the specific transaction or activity discussed in the opinion or in any materially indistinguishable transaction or opinion."), *aff'd*, 995 F.2d 872 (8th Cir. 1993); *Stockman v. Federal Election Commission*, 138 F.3d 144, 149 n. 9 (5th Cir. 1998) (same). Some argue that *Orloski v. Federal Election Commission*, 795 F.2d 156 (D.C. Cir. 1986), supports the contrary conclusion. Unlike *USDC*, however, *Orloski* did not address the FECA's clear prohibitions on using advisory opinions as rules of conduct. Instead, *Orloski* analyzed the advisory opinions implicated there for purposes of determining whether the Commission's interpretation of the FECA was reasonable and consistent and thus should be accorded deference. 795 F.2d at 164-167.

[8] *See Sullivan v. Everhart*, 494 U.S. 83, 89 (1990) (Scalia, J.) (quoting *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) and *National Labor Relations Board v. Food and Commercial Workers*, 484 U.S. 112, 123 (1987)) ("'[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute,' that is, whether the agency's construction is 'rational and consistent with the statute.'").

437f(b) & (c)), the "electioneering message" standard is an amalgam of these advisory opinions. Even at that, it is not the most natural, let alone the only reasonable, reading of those opinions. In fact, it is difficult to draw any clear meaning from a comparison or combination of AOs 1984-15 and 1985-14 (*see* "Substantive Difficulties," *infra*).

As a result, the regulated community most likely does not have *notice* as to how this standard will govern its conduct, and it certainly did not have an opportunity to *comment* on whether it should. Because of its procedural infirmities, the Commission may not employ the phrase "electioneering message" as expressing a general rule for determining whether communications are "for the purpose of influencing" a federal election.[9]

Substantive Difficulties With The "Electioneering Message" Standard

Apart from its procedural infirmities, the "electioneering message" standard suffers from serious problems of vagueness and overbreadth. As presented by the staff, a communication satisfies this standard if it includes statements which are "designed to urge the public to elect a certain candidate or party,[10] or which would tend to diminish support for one candidate and garner support for another candidate." *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 14 (citing AO 1984-15); Report on CGP, Agenda Document 98-87, 11/19/98 at 10 (citing AO 1984-15).[11]

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[9] *Democratic Congressional Campaign Committee v. Federal Election Commission*, 645 F. Supp. 169 (D.D.C. 1986), *aff'd in part and rev'd in part*, 831 F.2d 1131 (D.C. Cir. 1987) (*DCCC*) and *Federal Election Commission v. Ted Haley Congressional Committee*, 852 F.2d 1111 (9th Cir. 1988) (*Haley*) do not affect this conclusion. In *DCCC*, the Commission dismissed a complaint, contrary to the recommendation of its General Counsel, without providing a statement of reasons for doing so when it appeared the complaint alleged activity that satisfied the "electioneering message" standard. 645 F. Supp. at 170-171. The Court, in an action brought pursuant to 2 U.S.C. § 437g(a)(8), was faced with the question of whether the Commission had acted "contrary to law" for appearing to disregard its "electioneering message" test without articulating any reason for doing so, *id.* at 171-174; the Court was not faced with the issue here: whether that test, itself, was validly established. In *Haley*, the Court noted that the Commission's interpretation of the FECA in its regulations and advisory opinions was entitled to due deference. 852 F.2d at 1115. But all the advisory opinions to which that Court referred interpreted a Commission regulation, *id.* at 1114-1115; they did not attempt to circumvent the FECA's clear requirement that for rules of conduct, the Commission *have* a regulation. *See also Federal Election Commission v. Legi-Tech*, 967 F. Supp. 523, 529-530 (D.D.C. 1997) (Commission advisory opinions interpreted regulation).

[10] The staff cites AO 1984-15 as authority for this phrase. This phrase, however, comes from 1985-14. *See id.* at 7 (citing *United States v. United Auto Workers*, 352 U.S. 567, 587 (1957)).

[11] There is substantial question as to whether the staff's analysis properly characterizes AO 1984-15. While that opinion uses the phrases "diminish support" and "garner support," *id.* at 5, it concludes that advertisements which clearly identify presidential candidates of one party and include exhortations to "vote" for another party "effectively advocate the defeat of a clearly identified candidate." *Id.* Whatever distinction there may be between "effectively" and "expressly" advocating, the facts presented in that advisory opinion bear similarities to the facts in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), and the Commission's conclusion in AO 1984-15 and the court's conclusion in *MCFL* can be read consistently. The staff suggests an extremely broad interpretation of AO 1984-15, citing the phrase "dimish [or] garner support." *See* Reports on DFP & CGP, *supra*. That opinion's facts, however, suggest a more narrow, and more natural, construction, similar to *MCFL*.

Such formulations, the Supreme Court has held, offend the First Amendment. In *Buckley v. Valeo,* 424 U.S. 1, 42-44 (1976), the High Court held as impermissibly vague the "relative to . . . advocating the election or defeat of [a clearly identified] candidate" standard in 18 U.S.C. § 608(e) (1970) of the original FECA. The "diminish support for one candidate" prong—like the "relative to" standard in the original FECA— is especially problematic because "the distinction between discussion of issues and candidates and *advocacy of election or defeat of candidates* may often dissolve in practical application." *Buckley,* 424 U.S. at 42 (emphasis added).[12]

The factual question of what a particular statement was *designed* to do also gives rise to vagueness problems. The fact that the term "electioneering" and the phrase "designed to urge the public to elect a certain candidate or party" were plucked out of context from a four-decade old Supreme Court opinion (*United States v. Auto Workers,* 352 U.S. 567 (1957) (*UAW*)) does not resolve the question.[13] First, it is clear that *UAW* was not enunciating a constitutionally-permissible standard for regulating speech, but describing a particular communication in the course of an opinion explicitly refusing to reach a ruling on the constitutionality of regulating the specific speech so described. *See id.* at 591 (internal citation omitted) ("Clearly in this case it is not absolutely necessary to a decision to canvass the constitutional issues."). Second, the speech at issue in *UAW* included specific endorsements of candidates. *Id.* at 584. Third, the *per curiam* opinion in *Buckley* cites the dissent in *UAW*, *see* 424 U.S. at 43 (citing *UAW*, 352 U.S. at 595-596 (Douglas, J., dissenting)), which had urged that the FECA's predecessor statute be declared unconstitutional as applied to the electioneering speech at issue in *UAW.*

The relationship, if any, of the two prongs of the "electioneering message" test underscores the test's vagueness. Read narrowly, "urge the public to elect a candidate," AO 1985-14 at 7, could be construed as equivalent to communications "that expressly

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[12] The "relative to" standard, on its face, was thus unhelpful in distinguishing between these two types of speech. *Id.* As a result, to allow unfettered issue discussion while regulating candidate advocacy, the government, under this standard, had to attempt to divine the speaker's intent. *Id.* at 43. This, the Court noted, would not only be difficult, but dangerous.

> Whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning. Such a distinction offers no security for free discussion. In these conditions, it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.

Id. (quoting *Thomas v. Collins,*.323 U.S. 516, 535 (1945)). The second prong of the "electioneering message" test—given its "diminish [candidate] support" focus—requires the same difficult and dangerous subjective inquiry.

[13] Like a '57 Chevy, a dated Supreme Court opinion may be charming, but often requires substantial restoration to be of practical use.

advocate the election or defeat of a clearly identified candidate." *Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238, 249-250 (1986) (quoting *Buckley*, 424 U.S. at 80). In contrast, there is virtually nothing which could be said about a candidate for federal office which might not be interpreted as "diminish[ing] support for one candidate [or] garner[ing] support for another candidate." *See, e.g.*, Report on DFP, Agenda Document 98-87, 11/19/98 at 14 (citing AO 1984-15); Report on CGP, Agenda Document 98-87, 11/19/98 at 10 (citing AO 1984-15).

The "electioneering message" test is also unconstitutionally overbroad for related reasons. As the *Buckley* Court observed,

> [c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.

424 U.S. at 42. Regulation of any statement which " diminishes [or garners] support for [a] candidate," AO 1984-15 at 5, would encompass, then, virtually any meaningful utterance identifying a candidate.

The vagueness and overbreadth problems of the "electioneering message" and "relative to" standards are thus two sides of the same counterfeit coin. They are vague because it is not clear when they encompass issue discussion and not candidate advocacy. They are overbroad because, given the nature of campaigning, they will inevitably encompass both. For the same substantive reasons that the Supreme Court held the "relative to" standard in the FECA to be unconstitutional, the Commission may not employ "the electioneering message" standard. Even in the context of coordinated, or presumably coordinated, communications in which the "electioneering message" test has generally been proposed (*see* 11 C.F.R. § 114.4(c)(5)(ii)(B)(2)(E) (regulation of voter guides)), the Commission may not ignore these constitutional requirements.

Conclusion

Given the procedural and substantive infirmities with the "electioneering message" standard, the Commission may not employ it in administering the FECA, the Presidential Primary Matching Payment Account Act, the Presidential Election Campaign Fund Act, or its own regulations.

Darryl R. Wold — Date 6/24/99
Vice Chairman

Lee Ann Elliott — Date 6-24-99
Commissioner

David M. Mason — Date 6/24/99
Commissioner

Karl J. Sandstrom — Date 6/24/99
Commissioner

Public Records

RECEIVED
FEDERAL ELECTION
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2000 MAR 27 P 4: 10

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 23, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Leslie Bright
Associate General Counsel

SUBJECT: President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (LRA #529)

Pursuant to the Commission's March 16, 2000 discussion and determination in connection with Agenda Document No. 00-31, attached for your information is a letter to Lyn Utrecht, counsel for the Clinton/Gore '96 Primary Committee, Inc. The letter summarizes the Commission's action with respect to the Future Tech disgorgement determination.

If you have questions about this letter, please contact Andre G. Pineda, the attorney assigned to this matter.

Attachment

Letter from Kim Leslie Bright to Lyn Utrecht

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Lyn Utrecht, Esq.
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036

Re: Clinton/Gore '96 Primary Committee, Inc.
Disgorgement Payment (LRA #529)

Dear Ms. Utrecht:

On July 15, 1999, the Commission determined that President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must disgorge $25,000 to the United States Treasury for contributions that were identified as being part of a corporate contribution scheme involving Future Tech International ("Future Tech") and its corporate officers. By letter dated October 8, 1999, the Committee sent the Office of General Counsel a $25,000 check made payable to the United States Treasury. In addition to enclosing the disgorgement payment, the letter indicated that the Committee is "somewhat concerned about the Commission's authority to order the disgorgement, particularly in light of a lawsuit that has been related to a Commission disgorgement order to another 1996 presidential campaign." The Committee's letter also stated that "[w]e assume that the Commission would defend [it] should any legal action be brought against the Committee to seek return of these funds to the contributor."

Although the letter does not identify the lawsuit, it appears that it is referring to *Fireman v. United States*, 44 Fed. Cl. 528 (1999), a United States Court of Federal Claims decision which granted, in part, and denied, in part, a motion to dismiss that was filed by the Department of Justice ("DOJ"). The lawsuit, filed by Simon C. Fireman, was a claim against the United States for $69,000 pursuant to 28 U.S.C. § 1491 ("the Tucker Act"). The amount sought was equal to the amount of contributions Mr. Fireman and Aqua-Leisure Industries, Inc. made to the Dole for President Committee, Inc. and the Dole for President Compliance Committee, Inc. (collectively "the Dole Committees"), which were later disgorged to the United States Treasury by the Dole Committees. On November 1, 1999, the United States Court of Federal Claims dismissed Mr. Fireman's lawsuit.

On March 16, 2000, the Commission determined to retain the disgorgement with the United States Treasury. Please note that any Tucker Act claim filed in the United States Court

of Federal Claims by a donor for monies disgorged by the Committee would name the United States as a party. Accordingly, it appears that the Committee would not properly be named a party to such a claim.

My Office will keep you apprised of any developments regarding this matter, should any occur. If you have any questions, please contact Andre G. Pineda, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Kim Leslie Bright
Associate General Counsel

P.R.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 8 4 12 PM '99

September 7, 1999

TO: THE COMMISSION

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REPAYMENTS RECEIVED FROM CLINTON/GORE '96 PRIMARY COMMITTEE, INC. & CLINTON/GORE '96 GENERAL COMMITTEE, INC.

On August 12, 1999 the subject committees submitted their responses to the audit reports approved by the Commission. In the case of the Clinton/Gore 1996 primary campaign, a check in the amount of $11,180, payable to the United States Treasury, was included to satisfy the amount due the Treasury related to stale-dated checks.[1] The repayment ($114,450) related to non-qualified campaign expenses cited in the audit report was obviated by virtue of the primary campaign having made or received reimbursements to/from the general campaign as discussed in the audit report.

With respect to the Clinton/Gore 1996 general campaign a check in the amount of $3,241, payable to the United States Treasury, was included to satisfy the amount due the Treasury related to interest earned (less applicable taxes). The repayment ($12,427) related to non-qualified campaign expenses cited in the audit report was obviated by virtue of the general campaign having received a reimbursement from the primary campaign as discussed in the audit report.

Photocopies of the receipts indicating delivery of the repayment checks to the United States Treasury are attached. If you have any questions, please contact Ray Lisi or Tom Nurthen at 694-1200.

Attachments as stated
96cgprim/admin/repayments

[1] The amount ($12,230) cited in the audit report was adjusted to account for $1,050 in checks which cleared the bank, leaving $11,180 due the Treasury.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 31, 1999

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on August 31, 1999 from the Federal Election Commission (by hand delivery) a check drawn on Nations Bank, N. A. for $3,241.00. The check represents a payment for interest income on federal funds from the Clinton/Gore '96 General Committee, Inc.

The payment should be deposited into the General Fund of the U. S. Treasury.

Clinton/Gore '96 General Committee, Inc.

Amount of Payment: $3,241.00

Presented by:

for the
Federal Election Commission

Received by:

for the
United States Treasury

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 31, 1999

**RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY**

Received on August 31, 1999 from the Federal Election Commission (by hand delivery) a check drawn on Nations Bank, N. A. for $11,180. The check represents a payment for stale dated checks from Clinton/Gore '96 Primary Committee, Inc.

The payment should be deposited into the General Fund of the U. S. Treasury.

Clinton/Gore '96 Primary Committee, Inc.

Amount of Payment: $11,180

Presented by:

for the
Federal Election Commission

Received by:

for the
United States Treasury

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 4, 1999

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

SUBJECT: President Clinton and the Clinton/Gore '96 Primary Committee, Inc.
(LRA #529)

Attached is the revised Notice of Repayment Determination and Disgorgement Determination circulated for informational purposes. On June 15, 1999, the Commission determined that President Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must repay $10,948.25 to the United States Treasury for receiving funds in excess of entitlement. On the same date, the Commission also determined that the Committee must disgorge $25,000 for contributions that were associated with the Department of Justice Campaign Task Force Investigation of Future Tech International, Inc., et al.

At the July 15, 1999 meeting on this matter, the Commission approved a draft Notice of Repayment Determination with the condition that this Office add language setting forth the basis of the disgorgement determination. The attached Notice of Repayment Determination and Disgorgement Determination contains this additional language. Staff from this Office has been in contact with the offices of Commissioners Mason and Thomas regarding this language.

This Office will send the attached Notice of Repayment Determination and Disgorgement Determination to the Committee at the conclusion of the circulation period, unless we receive an objection. If you have any questions, please contact Andre G. Pineda, the attorney assigned to this matter, at 694-1650.

Attachment

Notice of Repayment Determination and Disgorgement Determination

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
President William J. Clinton	)	LRA #529
Clinton/Gore '96 Primary Committee, Inc.	)	
	)	

NOTICE OF REPAYMENT DETERMINATION AND DISGORGEMENT DETERMINATION

On July 15, 1999, the Federal Election Commission ("the Commission") determined that President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. (collectively "the Committee") must repay $10,948.25 to the United States Treasury for receiving funds in excess of entitlement. 26 U.S.C. § 9038(b)(1). Specifically, the Commission determined that the Committee must repay payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable. 11 C.F.R. § 9038.2(b)(1)(iii). The Committee is ordered to pay $10,948.25 to the United States Treasury within 90 calendar days after service of this determination. 11 C.F.R. §§ 9038.2(c)(1) and (d)(1). This Notice of Repayment Determination sets forth the legal and factual basis for the repayment determination. 11 C.F.R. § 9038.2(c)(1).

On July 15, 1999, the Commission also determined that the Committee must disgorge $25,000 to the United States Treasury for 25 contributions that were associated with the Department of Justice ("DOJ") Campaign Finance Task Force ("Task Force") investigation of

Future Tech International, Inc., et al., and the subsequent criminal guilty pleas that were entered into as a result of that investigation[1]. See *infra*, pp. 3-6 and 8-10.

I. BACKGROUND

In 1995 and 1996, President Clinton was a candidate for the Democratic presidential nomination. On April 14, 1995, the Committee registered with the Commission. On October 31, 1995, the Commission determined that the Committee was eligible to receive public funds under the Presidential Primary Matching Payment Account Act ("the Matching Payment Act").[2] 26 U.S.C. §§ 9031-9042; *see also*, Memorandum to the Commission entitled *Notification of Date of Ineligibility - President William J. Clinton (LRA#485)*, dated August 29, 1996. The Committee received $13,412,198 in public funds pursuant to the Matching Payment Act.[3] *See* Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. (approved June 3, 1999) ("the audit report").

The DOJ created the Task Force to investigate alleged violations of the Federal Election Campaign Act of 1971, as amended ("the FECA"), by various individuals and entities that may have occurred during the 1995-1996 Presidential election cycle. The investigations resulted in

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[1] The repayment procedures described at 11 C.F.R. §§ 9038.2(c) and 9038.5 do not apply to the disgorgement determination.

[2] Pursuant to the Matching Payment Act, the Committee was entitled to received public funds for campaign activity through August 28, 1996, the date that President Clinton garnered the Democratic presidential nomination. 26 U.S.C. §§ 9031-9042; *see also*, 11 C.F.R. §§ 9032.6 and 9033.5.

[3] The Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses, as provided for in the Matching Payment Act and the Commission's regulations. 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1. The findings of the audit and examination are contained in the Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc. (approved June 3, 1999) ("the audit report"). The facts which are the basis for the additional repayment determination set forth in this Notice of Repayment Determination and Disgorgement Determination were not included in the audit report. *See* 11 C.F.R. § 9038.2(f).

criminal indictments against individuals and entities for their activity involving contributions to the Committee.

One of the Task Force investigations involved Future Tech International, Inc. ("Future Tech"); Mark Vision Computers, Inc. ("Mark Vision"); Mark Jimenez, the Chief Executive Officer ("CEO") of Future Tech; and Juan Ortiz, the Chief Financial Officer ("CFO") of Future Tech (collectively "the Future Tech investigation").[4] Another involved Johnny Chung.

One aspect of the Future Tech investigation involved 25 contributions to the Committee totaling $25,000.[5] Future Tech was a Miami, Florida based corporation whose primary business involved the distribution of computer components and related equipment in South America; it also distributed equipment manufactured by leading United States companies. Attachment B at 18 and Attachment C at 24. Mark Vision was a Florida corporation that assembled computer systems. Attachment B at 18 and Attachment C at 26. Mr. Jimenez was CEO of Future Tech; he also exerted "substantial control" over Mark Vision. Attachment B at 17-18 and Attachment C at 24 and 26.

Beginning "at least as early as September 1994, and continuing until in or about November of 1996," Future Tech, with the knowledge and consent of Mr. Jimenez, "devised and executed a scheme whereby corporate money belonging to [Future Tech] would be used to make

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[4] On September 30, 1998, DOJ filed an indictment against Mr. Jimenez alleging violations of 2 U.S.C. § 441f and 18 U.S.C. §§ 2, 371, and 1001. Attachment A at 1. On April 15, 1999, DOJ filed another indictment against Mr. Jimenez alleging violations of 2 U.S.C. § 441f, 18 U.S.C. §§ 2, 371, 1001, and 1343 as well as 26 U.S.C. § 7201; the April 15th indictment purportedly incorporates the allegations contained in the September 30th indictment. Mr. Jimenez reportedly is residing in the Philippines, and the United States has reportedly requested that Mr. Jimenez be extradited to the United States.

[5] The Future Tech investigation involved contributions to the Committee as well as contributions to other political committees. *See* Attachments A-C. This Notice concerns only those contributions to the Committee that were identified by DOJ as part of the Future Tech investigation.

secret, disguised and illegal corporate campaign contributions to various federal candidates . . . and their political committees." Attachment C at 30. To execute this scheme, Mr. Jimenez identified candidates that Future Tech would support, then "solicited or instructed others to solicit campaign contributions from numerous conduits," including Future Tech and Mark Vision employees. *Id.* Future Tech agreed to reimburse these conduits for their contributions with either Future Tech or Mark Vision funds or with Mr. Jimenez' personal funds. *Id.* These reimbursements were disguised in Future Tech and Mark Vision books and records "by coding the reimbursements as employee wages, bonuses, adjustments to regular wages, or 'other.'"[6] *Id.* Later, at the direction of Mr. Jimenez, Future Tech reimbursed conduit contributors by cash. *Id.* at 31. The treasurer of Future Tech "exchanged checks from Jimenez' personal bank account for cash available at [Future Tech] and distributed that cash to conduit campaign contributors as reimbursement for their contributions . . . " *Id.*

Around July 1995, Mr. Jimenez pledged to raise $25,000 in connection with a Committee fundraising event that was held in Miami, Florida on September 19, 1995. *Id.* at 34. Around September 1995, Mr. Jimenez informed Mr. Ortiz, as well as Future Tech's President and Operations Vice-President, "that he needed $25,000 from 25 [Future Tech] employees in personal $1,000 checks." *Id.* Mr. Jimenez instructed "certain [Future Tech] employees to solicit the checks from employees in their departments and that they would be reimbursed." *Id.* Based on his past experience, Mr. Ortiz reimbursed the employees who gave checks through Future Tech and Mark Vision payroll systems. *Id.*

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[6] This scheme included Future Tech and Mark Vision reimbursement to employees through payroll accounts. Attachment C at 30.

In September 1995, Mr. Jimenez arranged for 26 individuals to make contributions to the Committee and to have Future Tech and Mark Vision reimburse these individuals for their contributions. Between September 6, 1995 and September 8, 1995, Mr. Jimenez solicited Mr. Ortiz for a $1,000 personal check payable to the Committee and promised him reimbursement. Attachment B at 22-23 and Attachment C at 35. On or about September 6, 1995, Mr. Ortiz wrote a personal check for $1,000 to the Committee. Attachment B at 22. Between September 6, 1996 and September 8, 1995, Mr. Jimenez also "collected or caused to be collected 25 checks payable to the [Committee] in the amount of $1,000." Attachment C at 35.

Shortly after September 6, 1995, Mr. Ortiz was given a list of approximately 23 Future Tech or Mark Vision employees who were asked to make personal checks payable to the Committee. Attachment B at 23. Between September 6, 1995 and September 8, 1995, Mr. Ortiz instructed a Future Tech accounting department employee to contact Automated Data Processing ("ADP"), Future Tech's and Mark Visions' payroll processor, to arrange for corporate reimbursement to 15 non-executive and eight executive employees who had contributed $1,000 each to the Committee. *Id.*; *see also*, Attachment C at 35. Pursuant to this request, ADP "executed the requested reimbursements to 23 [Future Tech] and [Mark Vision] employees with payroll checks or credits in the net amount of approximately $1,000" on or about September 8, 1995.[7] *Id.* Once these transactions were completed, Mr. Jimenez "delivered or caused to be delivered 25 [$1,000] checks" on or about September 13, 1995 to the Committee. Attachment C at 36.

[7] These reimbursements were coded as "bonus" or "other" to "conceal the fact of reimbursements from auditors, lawyers and the [Internal Revenue Service]." Attachment C at 35-36.

Twenty-five checks submitted by the Committee for matching funds were associated with Future Tech and Mark Vision.[8] Attachment D. The Committee received $6,083.25 in matching funds for these contributions (25 x $243.33).[9] *Id.*

Another target of the Task Force investigation was Johnny Chung ("the Chung investigation"). One aspect of the Chung investigation involved 20 contributions to the Committee totaling $20,000.[10] Mr. Chung was the chief executive officer and majority shareholder of Automated Intelligent Systems, Inc. ("AISI"), a California corporation. Attachment E at 1. On September 21, 1995, Mr. Chung attended a Committee fundraising event in Century City, California with "approximately twenty guests;" the cost for attending the event was $1,000 a person. *Id.* at 7. To pay for the attendance of his guests at this event, Mr. Chung and others agreed on September 22, 1995 to an arrangement whereby Mr. Chung would contribute "at least $20,000 of his own money" to the Committee that he would disguise as contributions from other persons. *Id.* at 7-8. Mr. Chung instructed an AISI employee to recruit conduit contributors "by asking them to write individual checks [for $1,000 to the Committee], drawn on their own checking accounts." *Id.* at 8. Mr. Chung then directed that cash be

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[8] The Audit Division queried the Committee's database and its related matching fund database; based on these queries, 25 individuals associated with Future Tech, and one individual associated with Mark Vision, were identified as each making a $1,000 contribution to the Committee. Attachment D at 1. In addition, the Audit Division identified one contributor who had the same address as another contributor who listed his employer as Future Tech, and another individual whose check to the Committee was returned for non-sufficient funds. *Id.* The Commission's repayment determination does not include any matching funds that may have been paid for the former contribution. Nor does it include the latter contribution, as it was not submitted for matching.

[9] The Committee submitted 25 checks for matching; thus, it sought $250 in matching funds for each submitted check. *See* 26 U.S.C. § 9034(a). The total amount of matching funds approved was $6,083.25 (25 x $250 x .9733). Attachment D at 3.

[10] Like the Future Tech investigation, the Chung investigation involved contributions to the Committee, as well as contributions to another political committee. *See* Attachment C at 6-12. Additionally, the Chung investigation involved tax evasion and bank fraud. *Id.* at 1-5. This Notice concerns only those contributions to the Committee that were identified by DOJ as part of the Chung investigation.

withdrawn from two of his personal bank accounts and delivered to him and an AISI employee at AISI's offices; he also directed an AISI employee to deliver $1,000 in cash to each of 20 conduit contributors to reimburse them for their contributions. *Id.* Mr. Chung also directed an AISI employee to deliver the 20 conduit checks to the Committee.[11] *Id.*

Twenty checks submitted by the Committee for matching funds were associated with Johnny Chung. Attachment F. The Committee received $4,865 in matching funds for these contributions (20 x $243.25).[12] *Id.*

II. ANALYSIS

A. LAW

Candidates who are eligible to receive public funding under 26 U.S.C. § 9033 may submit contributions that they receive from their contributors for matching of up to $250 for each individual contributors' contribution. 26 U.S.C. § 9034(a). However, certain types of contributions are not matchable. 11 C.F.R. § 9034.3. Contributions from a corporation or contributions made in the name of another cannot be matched with public funds. 11 C.F.R. §§ 9034.3(d) and (e); *see* 2 U.S.C. § 441b and 441f. If a contribution was matched and it is later determined to be non-matchable, the Commission may seek a repayment to the United States Treasury for the non-matchable payment. 26 U.S.C. § 9038(b)(1) and 11 C.F.R. § 9038.2(b)(1)(iii). A committee may be required to make an additional repayment to the United

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[11] Additional details pertaining to the Chung contributions are contained in an Interim Report from the Committee on Government Reform and Oversight Campaign Finance Investigation and Related Matters, Chapter IV, Part C (*Johnny Chung: His Unusual Access to the White House and His Political Donations).* <http://www.house.gov/reform/reports/fundraising/4c_chung.html>.

[12] The Committee submitted 20 checks for matching; thus, it sought $250 in matching funds for each submitted check. *See* 26 U.S.C. § 9034(a). The total amount of matching funds approved was $4,865 (20 x $250 x .9730. Attachment F at 1.

States Treasury when there exist facts not used as the basis for any previous determination. 11 C.F.R. § 9038.2(f). Any additional repayment determination will be made in accordance with 11 C.F.R. § 9038.2. *Id.*

A guilty plea in a criminal matter "is the equivalent of admitting all material facts alleged in the charge." *United States v. Kelsey*, 15 Fed. 3rd 152, 153 (10th Cir. 1994). A knowing and voluntary plea constitutes an admission of all material facts alleged in an indictment and a waiver of all non-jurisdictional defects in the proceeding. *United States v. McFarlane*, 881 F. Supp. 562, 565-66 (M.D. Fla. 1995), *aff'd*, 140 F.3d 1042 (11th Cir. 1998). If a guilty plea is "voluntary (and entered with effective assistance of counsel), it is conclusive on all factual and legal issues other than a contention that the very initiation of the proceedings violated the Constitution." *Young v. United States*, 124 F.3d 795, 797 (7th Cir. 1997), *cert. denied*, 118 S.Ct. 2324 (1998).

B. DISCUSSION

1. The Future Tech Investigation

The information underlying Future Tech's and Mr. Ortiz's guilty plea is sufficient to conclude that the related contributions to the Committee were non-matchable. By signing the plea agreements and factual resumes, Future Tech and Mr. Ortiz have agreed that all of the facts surrounding the pleas are true. *See Kelsey*, 15 F.3d at 153. The plea agreements and factual resumes demonstrate that the source of the funds used for the contributions to the Committee were Future Tech monies and the contributions were made by the contributors at the direction of Future Tech officials. Therefore, the contributions should not have been matched. *See* 11 C.F.R. § 9034.3(d) and (e).

On January 5, 1999, Mr. Ortiz pled guilty to violating 2 U.S.C. § 441f for his involvement in the contributions at issue in the Future Tech investigation. Attachment B at 2-16.

The factual resume accompanying the plea agreement sets forth the basis for his guilty plea and includes specific reference to the reimbursement scheme outlined in the DOJ indictment against Mr. Jimenez. Attachment B at 17-28; *see also*, pp. 3-6, *supra.*

On December 17, 1998, Future Tech pled guilty to violating 26 U.S.C. § 7201 for filing false Federal Income Tax forms stemming, in part, from the Committee conduit contribution scheme. Attachment C at 4-23. The factual resume accompanying the plea agreement sets forth the basis for the guilty plea and includes specific reference to the reimbursement scheme. Attachment C at 34-37; *see also*, pp. 4-6, *supra.*

The guilty pleas entered into by Mr. Ortiz and Future Tech are "the equivalent of admitting all material facts alleged in the [indictment]." *United States v. Kelsey*, 15 Fed. 3rd 152, 153 (10th Cir. 1994) and *United States v. McFarlane*, 881 F. Supp. 562, *aff'd*, 140 F.3d 1042 (3rd Cir. 1998). The plea agreements were entered into voluntarily and there is no indication that Mr. Ortiz and Future Tech received ineffective assistance of counsel; accordingly, "[the plea agreements are] conclusive on all factual and legal issues." *Young v. United States*, 124 F.3d 795, 797 (7th Cir. 1997), *cert. denied*, 118 S.Ct. 2324 (1998).

The conduit contribution scheme described in the Ortiz and Future Tech plea agreements and factual resumes clearly indicate that the contributions to the Committee associated with the Future Tech investigation were in violation of the FECA. As a result, the Committee should not have received matching funds for these contributions and it should repay $6,083.25 to the United States Treasury.[13] 11 C.F.R. § 9034.3(e).

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[13] The factual resumes for Mr. Ortiz and Future Tech collectively refer to 26 contributions. *See* pp. 4-6, *supra.* However, they also refer to a payroll reimbursement scheme involving 23 individuals. *Id.* The Commission's review of the Committee's matching fund submissions identifies 25 contributions that are associated with Future Tech and Mark Vision. Attachment D. The Commission's repayment determination is based on the number of contributions that were submitted for matching. *See* note 8, *supra.*

2. The Chung Investigation

The information underlying Mr. Chung's guilty plea is also sufficient to conclude that the related contributions to the Committee were non-matchable. By signing a plea agreement, Mr. Chung agreed that all of the facts surrounding the plea are true. *See Kelsey*, 15 F.3d at 153. Although Mr. Chung's plea agreement was filed under seal and has not been publicly released, his indictment demonstrates that the source of the funds used for the contributions to the Committee were his own and the contributions were made by the contributors at the direction of Mr. Chung. Therefore, the contributions should not have been matched. *See* 11 C.F.R. § 9034.3(d) and (e).

On March 16, 1998, Johnny Chung pled guilty to violating 2 U.S.C. §§ 441a, 441f and 437g(a), 18 U.S.C. §§ 371 and 1344 as well as 26 U.S.C. § 7201. *Chung Pleads Guilty* (last modified March 16, 1998) <http://www.cnn.com/ALLPOLITICS/ 1998/03/16/chung.pleads/ index.html>. Although Mr. Chung's plea agreement was filed under seal, his indictment sets forth the basis for his guilty plea and includes specific reference to the conduit contribution scheme. Attachment E at 6-9; *see also*, pp. 6-7, *supra.*

The guilty plea entered into by Mr. Chung is "the equivalent of admitting all material facts alleged in the [indictment]." *United States v. Kelsey*, 15 Fed. 3rd 152, 153 (10th Cir. 1994) and *United States v. McFarlane*, 881 F. Supp. 562, *aff'd*, 140 F.3d 1042 (3rd Cir. 1998). The plea agreement was entered into voluntarily and there is no evidence which indicates that Mr. Chung received ineffective assistance of counsel; accordingly, "[the plea agreement is] conclusive on all factual and legal issues." *Young v. United States*, 124 F.3d 795, 797 (7th Cir. 1997), *cert. denied*, 118 S.Ct. 2324 (1998).

The conduit contribution scheme described in the Chung indictment, as well as the Interim Report from the Committee on Government Reform and Oversight Campaign Finance Investigation and Related Matters, clearly indicate that the contributions to the Committee associated with the Chung investigation were in violation of the FECA. As a result, the Committee should not have received matching funds for these contributions and it should repay $4,865 to the United States Treasury. 11 C.F.R. § 9034.3(e).

III. DISGORGEMENT

A. LAW

Disgorgement is an equitable remedy which serves "to prevent defendants from profiting from their illegal conduct." *SEC v. Bilzerian*, 814 F. Supp. 116, 121 (D.D.C. 1993), *aff'd*, *SEC v. Bilzerian*, 29 F. 3d. 689 (D.C. Cir. 1994); *see also*, *SEC v. Tome*, 833 F. 2d 1086, 1096 (2nd Cir. 1987). Disgorgement also prohibits unjust enrichment and deprives the wrongdoer of ill-gotten gains. *SEC v. First Financial Corp.*, 890 F.2d 1215, 1231 (D.C.Cir. 1989); *SEC v. Commonwealth Chemical Securities, Inc.*, 574 F. 2d. 90, 95 (2nd Cir. 1978). Disgorgement does not constitute punishment. *SEC v. Bilzerian*, 29 F. 3d. 689, 696 (D.C. Cir. 1994).

Governmental agencies can order disgorgement as an appropriate remedy, even in the absence of a specific statutory provision, if an agency's enabling statute permits equitable relief.[14] *SEC v. Texas Gulf Sulphur Co.*, 446 F. 2d 1301, 1307 (2d Cir. 1971), *cert denied*, 404 U.S. 1005 (1971); *see also*, *CFTC v. Hunt*, 591 F.2d 1211, 1222 (7th Cir. 1979). Disgorgement

[14] Federal agencies whose enabling statutes do not specifically permit equitable relief can avail themselves of the disgorgement remedy based on "the traditional equity powers of a court." *CFTC v. Hunt*, 591 F.2d 1211, 1222 (7th Cir. 1979); *see also, SEC v. First Financial Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989).

of ill-gotten gains have been made payable to the United States Treasury. *See U.S. v. Bonanno Organized Crime Family*, 683 F. Supp. 1411 (E.D.N.Y. 1988), *aff'd*, 879 F.2d 20 (2d. Cir. 1989).

B. DISGORGEMENT DETERMINATION

The Commission has required political committees to disgorge excessive and prohibited contributions to the United States Treasury in a variety of circumstances.[15] For example, the Commission has required publicly-funded committees to disgorge monies to the United States Treasury for excessive or prohibited contributions in the 1992 and 1996 election cycles.[16] *See* Explanation and Justification for 11 C.F.R. § 9007.1, 60 Fed Reg. 31863 (June 16, 1995) (Disgorgement in the public financing context eliminates the need to monitor the refunds of excessive or prohibited contributions that have not been timely refunded, permits one payment to be made to United States Treasury, rather than refunding multiple contributions, and is a practical solution when a sample review has revealed excessive or prohibited contributions).

The Commission has also required the disgorgement of excessive and prohibited contributions in signed conciliation agreements with political committees.[17] Moreover, the

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[15] In the mid-1970's, the President Ford Committee paid monies to the United States Treasury for apparent excessive contributions. *See* Memorandum to Robert J. Costa from Charles N. Steele entitled Response of the Mondale for President Committee, Inc. to the Interim Addendum to the Final Audit Report, p. 2. (undated). In the early 1980's, the Kennedy for President Committee disgorged to a charity an amount equal to the contributions that the Commission had identified as being legally suspect. *Id.* Finally, in 1987, the Mondale for President Committee, Inc. disgorged an amount equal to outstanding stale-dated checks to a tax exempt charitable organization based on a Commission determination. *See* Memorandum to Robert J. Costa from Lawrence M. Noble and Kim L. Bright-Coleman entitled Addendum to the Final Audit Report on the Mondale for President Committee, Inc. (LRA 203), p. 4, dated May 26, 1987.

[16] For the 1992 election cycle, the following committees made disgorgements to the United States Treasury: Buchanan for President, Americans for Harkin, Inc., Tsongas for President Committee, Inc. (disgorgement required, but never made), Bush-Quayle '92 Primary Committee, Inc. and Wilder for President Committee. For the 1996 election cycle, the Commission required Arlen Specter '96 to disgorge monies to the United States Treasury for excessive or prohibited contributions.

[17] *See* MURs 1704 (Mondale for President Committee, Inc., et al.), 2595 (Populist Party), 2992 (People for Joseph DioGuardi), 3309 (Dole for President), 3360 (Kemp for President), 3471 (Gantt for Senate Campaign Committee), 4194 (Mascara for Congress, et al.), 4427 (Elgin Builders, Inc., et al), and 4259 (Lautenberg

Commission has recommended disgorgement of improper contributions by non- presidential committees that have been selected for audit pursuant to 2 U.S.C. § 438(b).[18] Finally, the Commission has recommended disgorgement as an appropriate remedy in the advisory opinion process.[19]

The information obtained by the Task Force investigation regarding contributions to the Committee that were associated with Future Tech is sufficient to conclude that they were legally suspect. *See, supra,* p. 3-6 and 8-10. By signing the plea agreements and factual resumes, Future Tech and Mr. Ortiz have agreed that all of the facts surrounding the pleas are true. *See Kelsey,* 15 F.3d at 153. The plea agreement and factual resumes demonstrate that the source of funds used for the 25 contributions identified by the Audit Division were Future Tech monies, and that the contributions were made by donors at the direction of Future Tech officials. Accordingly, based on past Commission practice, the Committee is required to disgorge $25,000 to the United States Treasury, an amount equal to the 25 Future Tech related contributions. *See Bilzerian,* 814 F. Supp. at 121 and *First Financial Corp.*, 890 F.2d at 1231.

Committee, et al). In the 1980's, the Commission also obtained a disgorgement remedy for illegally solicited contributions in a consent order involving the National Right to Work Committee. *See* Memorandum to Robert J. Costa from Charles N. Steele entitled Response of the Mondale for President Committee, Inc. to the Interim Addendum to the Final Audit Report, p. 2. (undated).

The Commission has also sought disgorgement in the following matters, even though disgorgement was not included in signed conciliation agreements: MURs 2241 (Mondale for President Committee, Inc.), 2892 (Waihee, et al.), 4235 (Murkowski for U.S. Senate Committee, et al.), 3460 (Sports Shinko (Pukalani) Co., Ltd., et al.), and 4582 (Indian-American Leadership Investment Fund, et al.).

[18] *See* Report of the Audit Division on the Republican Campaign Committee of New Mexico, p. 18 (approved July 30, 1996) and Report of the Audit Division on Kemp for Vice President, p. 8 (approved May 13, 1999).

[19] *See* Advisory Opinion ("AO") 1991-39 (Friends of Senator D'Amato); AO 1995-19 (Indian-American Leadership Investment Fund) and AO 1996-5 (Jay Kim for Congress).

IV. CONCLUSION

For the foregoing reasons, the Commission has determined that President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. must repay $10,948.25 ($6,083.25 for the Future Tech-related contributions + $4,865 for the Chung-related contributions) to the United States Treasury for payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable. 11 C.F.R. § 9038.2(b)(1)(iii). Accordingly, President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. are ordered repay $10,948.25 to the United States Treasury. 11 C.F.R. §§ 9038.2(c)(1) and (d)(1).

The Commission has also determined that President William J. Clinton and the Clinton/Gore '96 Primary Committee, Inc. must pay $25,000 to the United States Treasury for 25 contributions that were associated with the Department of Justice Campaign Task Force Investigation of Future Tech International, Inc., et al.

Attachments

A. Indictment of Mark B. Jimenez filed on September 30, 1998 in the United States District Court for the District of Columbia
B. Information, Plea Agreement, and Factual Resume of Juan M. Ortiz filed on December 17, 1998 in the United States District Court for the District of Columbia (with DOJ notations)
C. Information, Plea Agreement, and Factual Resume of Future Tech International, Inc. filed on December 17, 1998 in the United States District Court for the District of Columbia
D. Memorandum to the Office of General Counsel from the Audit Division dated December 29, 1998
E. Indictment of Johnny Chung filed on March 5, 1998 in the United States District Court for the Central District of California
F. Memorandum to the Office of General Counsel from the Audit Division dated June 16, 1999.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1999

MEMORANDUM

TO: The Commission

THROUGH James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

Delanie DeWitt Painter
Attorney

SUBJECT: Status of Repayment Determinations – Clinton/Gore'96 Primary Committee, Inc., Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund (LRA #485 and #508)

On June 3, 1999, the Commission approved the audit reports on the Clinton/Gore'96 Primary Committee, Inc. ("Primary Committee"), the Clinton/Gore '96 General Committee, Inc. ("General Committee") and the Clinton/Gore '96 General Election Legal and Accounting Compliance Fund ("GELAC") (collectively, the "Committees") containing the Commission's repayment determinations and payment determinations.[1] The audit reports recommended that most of the repayments would not be necessary if specific amounts of funds were transferred among the Committees. The Committees were notified of the determinations by letters dated

[1] The repayments and payments arising from the Commission's audits of the Committees are distinct from the Commission's repayment determination on July 15, 1999, which was based on the Primary Committee's receipt of matching funds in excess of its entitlement for illegal contributions related to a corporate contribution scheme involving Future Tech International and its corporate officers and a reimbursement scheme involving Johnny Chung. *See* 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii).

June 10, 1999. On August 12, 1999, the Committees filed a joint response and attached payment and repayment checks for stale-dated checks and interest income, as well of documentation of several transfers recommended in the audit reports, which obviated the remaining repayments.[2] Attachment 1. Because the checks and documentation submitted resolve all of the outstanding repayment and payment matters for the Committees, these repayment matters are now concluded.

The Committees' response states that the Committees are "providing this information in order to demonstrate that a lesser repayment is required in each of their respective cases." Attachment 1 at 1. On September 9, 1999, staff of this Office contacted the Committees' counsel to clarify whether the Committees dispute the repayment determinations and seek an administrative review pursuant to 11 C.F.R. §§ 9007.2(c)(2) and (3) and 9038.2(c)(2) and (3). The Committees' counsel stated that it was her understanding that the checks and documentation submitted by the Committees would resolve the repayment matters and there are no issues remaining in dispute; therefore an administrative review would not be necessary.

The Commission determined that the Primary Committee must repay $114,450 to the United States Treasury for non-qualified campaign expenses that were allocable to the general election pursuant to 11 C.F.R. § 9034.4(e), including $7,260 for catering services, $20,133 for equipment, $77,581 for salary and overhead and $9,476 for political consulting services. *See* 26 U.S.C. § 9038(b)(2); 11 C.F.R. § 9038.2(b)(2). However, the audit report stated that no repayment would be required if the Primary Committee received reimbursements in the amounts of: $22,984 from the General Committee for catering services; $63,736 from the General Committee for equipment; $192,288 from the General Committee and $53,319 from the GELAC for salary and overhead; and $30,000 from the General Committee for political consulting services. The audit report also contained a determination that the Primary Committee must pay $12,230 to the Treasury for unresolved stale-dated checks. *See* 11 C.F.R. § 9038.6.

In response, the Primary Committee provided documentation that it received $309,008 in wire transfer reimbursements from the General Committee and $53,319 in wire transfer reimbursements from the GELAC. Attachment 1 at 1, 5-11. Since the Primary Committee has provided sufficient documentation to demonstrate that the wire transfers have been made, the repayment determinations are obviated and no further action is required. With respect to the stale-dated checks, the Primary Committee provided documentation that $1,050 in additional stale-dated checks have cleared the bank. Attachment 1 at 1, 12-22. The Primary Committee adjusted the amount of stale-dated checks to $11,180 ($12,230 - $1,050) and submitted a check in the amount of $11,180 made payable to the United States Treasury. Attachment 1 at 3. The Primary Committee has provided adequate documentation that the stale-dated checks totaling $1,050 have cleared, and its payment of the remaining $11,180 to the United States Treasury resolves the issue.

---

[2] On September 7, 1999, the Audit Division circulated a memorandum with the repayment and payment checks to the Commission.

The Commission determined that the General Committee must repay $16,412 to the United States Treasury, including $12,427 for non-qualified campaign expenses related to travel costs allocable to the primary election, and $3,985 for interest earned on investment of public funds. *See* 26 U.S.C. § 9007(b)(4); 11 C.F.R. §§ 9007.2(b)(2); 9004.5. However, the audit report noted that if the General Committee provides evidence that it has been reimbursed by the Primary Committee for the travel expenses, the $12,427 repayment would not be necessary. Moreover, the audit report stated that the amount repayable for interest income would be $3,985 less applicable federal, state and local taxes due.

In response, the General Committee provided documentation that it received $12,427 in reimbursements from the Primary Committee by wire transfer. Attachment 2 at 2, 23-32. Because the General Committee has provided adequate documentation to demonstrate that the wire transfers have been made, the repayment determination is obviated and no further action is required. Moreover, the General Committee calculated the amount of interest income net of taxes at $3,241, and attached a worksheet, documentation and a repayment check for this amount. Attachment 1 at 2, 33-43. The General Committee's calculation of the amount of interest income net of taxes appears to be correct and is supported by adequate documentation. Therefore, the repayment of $3,241 to the United States Treasury resolves this issue.

Attachment

Letter from Lyn Utrecht and Eric Kleinfeld dated August 12, 1999 (with attachments)

RYAN, PHILLIPS, UTRECHT & MACKINNON*
ATTORNEYS AT LAW
*NONLAWYER PARTNER
1133 CONNECTICUT AVENUE, N.W.
SUITE 300
WASHINGTON, D.C. 20036
(202) 293-1177
FACSIMILE (202) 293-3411

August 12, 1999

Robert J. Costa
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Clinton/Gore '96 Primary Committee
Clinton/Gore '96 General Committee

Dear Mr. Costa:

This is the response of the Clinton/Gore '96 Primary Committee and the Clinton/Gore '96 General Committee (the "Committees") to the Final Audit Reports of the Audit Division. Pursuant to 11 C.F.R. §9038.2(c)(2), the Committees are hereby providing this information in order to demonstrate that a lesser repayment is required in each of their respective cases.

Clinton/Gore '96 Primary Committee

With respect to the Clinton/Gore '96 Primary Committee, the Commission made a determination that a repayment to the Secretary of the Treasury of $126,680 would be required, unless the Primary Committee received certain reimbursements. Accordingly, per the recommendation of the Audit Division, the Primary Committee has received $309,008 in reimbursements from the General Committee. In addition, the Primary Committee received $53,319 in reimbursements from the Clinton/Gore '96 General Election Legal and Accounting Compliance Fund (the "GELAC"). These reimbursements were made by wire transfer; and the appropriate documentation is attached hereto as Exhibit 1.

As a result of the reimbursements described above, the only remaining repayment issue in the Audit Report of the Primary Committee relates to stale-dated checks. Attached as Exhibit 2 is documentation demonstrating that an additional $1050 in stale-dated checks have cleared the bank. Consequently, the amount of the repayment due for stale-dated checks has been adjusted to $11,180 ($12,230 less $1050), and attached is a repayment to the U.S. Treasury in that amount.

ATTACHMENT 1
Page 1 of 42

Clinton/Gore '96 General Committee

With respect to the Clinton/Gore '96 General Committee, the Commission made a determination that a repayment to the Secretary of the Treasury of $16,412 would be required, unless the General Committee received certain reimbursements. Accordingly, per the recommendation of the Audit Division, the General Committee has received $12,427 in reimbursements from the Primary Committee. These reimbursements were made by wire transfer, and the appropriate documentation is attached hereto as Exhibit 3.

As a result of the reimbursements described above, the only remaining issue in the Audit Report of the General Committee relates to interest income. Attached as Exhibit 4 is a worksheet and other documentation demonstrating that the interest income net of taxes is $3,241. Attached is a repayment in this amount to the U.S. Treasury.

Conclusion

The Committees respectfully request that the Commission revise the repayment determinations contained in the Audit Reports to reflect the materials and information supplied herein.

Respectfully submitted,

Lyn Utrecht

Eric Kleinfeld

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.

15395

LCN 485/5

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.
PO BOX 18983
WASHINGTON D.C. 20036-8983

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

15395

DATE

AMOUNT

PAY TO THE ORDER OF

*******11,180 DOLLARS AND 00 CENTS

United States Treasury
C/O
Federal Election Commission
Washington DC 20463

TWO SIGNATURES REQUIRED IF OVER $2000.00

"015395" 1:0540012041: 193306756 2"

$11,180 -

ATTACHMENT 1
Page 3 of 43

22-07-0255/5

1622

CLINTON/GORE '96 GENERAL COMMITTEE, INC.
P.O. BOX 19584
WASHINGTON, DC 20036

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

DATE AMOUNT

PAY TO THE ORDER OF

TWO SIGNATURES REQUIRED IF OVER $2000.00

"016224" :054001204: 193306477211"

$3,741-

ATTACHMENT 1
Page 4 of 43

Exhibit 1

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 1

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION	SCREEN BALANCE
2101*060799	601.10		84110564496	Deposit	76,621.41
3052*060899	1,557.03		00008130608	ZBA TRANSFER	75,064.38
			2000000	00001933067559	
1101*060999	1,386.18	15347	83110876341	Check	73,678.20
2101*061499	31,819.19		83310863850	Deposit	105,497.39
3052*061899	1,363.36		00008130618	ZBA TRANSFE	104,134.03
			2000000	00001933067559	
3052*062199	1,159.99		00008130621	ZBA TRANSFE	102,974.04
			2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

BOSS TASK BOSS TRANSACTION HISTORY SEARCH 99/08/10 9:57:33

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 2

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062399	240.39	15348	83810621222	Check	102,733.65
1101*062399	13.25	15350	83310535425	Check	102,720.40
1101*063099	1,086.40	15351	84010663403	Check	101,634.00
1101*070299	8.25	15349	83710173995	Check	101,625.75
3052*070299	1,363.36		00008130702	ZBA TRANSFE	100,262.39
			2000000	00001933067559	
1101*070699	1,086.40	15355	84010566615	Check	99,175.99
3052*070699	1,159.99		00008130706	ZBA TRANSFER	98,016.00
			2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
LINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 3

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*	070999	217.00	15353	83210181836	Check	97,799.00
1101*	071299	31,601.46	15357	83210680543	Check	66,197.54
1101*	071399	5,842.36	15356	83710573076	Check	60,355.18
1101*	071399	39.75	15354	83710578871	Check	60,315.43
1101*	071599	432.32	15352	83210518599	Check	59,883.11
3052*	071699	1,363.36		00008130716	ZBA TRANSFER	58,519.75
				2000000	00001933067559	
3052*	072099	1,159.99		00008130720	ZBA TRANSFER	57,359.76
				2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)
LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 4

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*072199	1,086.40	15358	84110285029	Check	56,273.36
1101*073099	970.32	15360	83410052882	Check	55,303.04
1101*073099	217.00	15361	83210095363	Check	55,086.04
1101*073099	15.00	15362	83210117371	Check	55,071.04
1101*073099	13.25	15363	83210117370	Check	55,057.79
1101*080499	1,086.40	15359	83210046486	Check	53,971.39
3052*080499	2,530.80		00008130804	ZBA TRANSFER	51,440.59
			2000000	00001933067559	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

181.3.5.52.07.022

ATTACHMENT 1
Page 9 of 43

3003 THSA BOOS TRANSACTION HISTORY SEARCH 99/08/10 9:07:57
CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933067562 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
PRIMARY CAMPAIGN COMMITTEE INC AMT(S)
CK/SER#(S)
LEDGER BALANCE: 401,340.59 TRAN CODE PAGE: 5

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
4005*	080699	53,319.00		00094500806	ACCOUNT TRA	104,759.59
				9020021	0002902 NBKOS45	
9011*	080699	12,427.00		00094500806	FUNDS TRANSF	92,332.59
				4460178	NMD 5018446 NBKB1SP	
4005	080999	309,008.00		00094500809	ACCOUNT TRA	401,340.59
				9020002	0002902 NBKOS45	

*** NO MORE TRANSACTIONS ***

FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

B013 THSR ** BOSS-TRANSACTION HISTORY SEARCH ** 99/08/11 11.07.59
CONVERSATION 0 ENTITY: NAR

ACCOUNT: 000089455841 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON/GORE '96 GENERAL ELECTION DATE(S) 080699
LEGAL & ACCT COMPLIANCE FUND INC AMT(S)
CK/SER#(S)

LEDGER BALANCE: 94,624.62 TRAN CODE PAGE: 1

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
9011	080699	53,319.00		00094500806	ACCOUNT TRAN	94,624.62
				9020020	0002902 NBKOS45	
9011	080699	250,000.00		00094500806	ACCOUNT TRA	147,943.62
				9020022	0002902 NBKOS45	
4013	080699	299,490.83		00094060806	INVTRN 8919	397,943.62
				0001497	EFF DATE: 080699	
9011*072399		12,000.00		00094500723	ACCOUNT TRAN	98,452.79
				9020009	0002902 NBKOS45	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 081099
PF9=TR MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

ATTACHMENT 1
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Exhibit 2

CLINTON/GORE '96 PRIMARY COMMITTEE
REPAYMENT TO TREASURY FOR STALE-DATED CHECKS

Repayment required per final audit report	$12,230
Adjust for checks clearing after audit performed:	
Check #3094 Mrs. Harry Reasoner	1,000
Check #3101 Cantrell Properties, Inc.	25
Check #3157 Judith Spaers	25
Adjusted Repayment required	**$11,180**

Copies of checks are attached.

NationsBank

H

NationsBank, N.A.
Regional Center, VA2-125-04-01
P.O. Box 27025
Richmond, VA 23261-7025

Account Reference Information
Account Number: 0019 3306 7562
Tax ID Number: 52-1923232
W 05 0 C Enclosures 3
Statement Period
01/09/99 through 01/15/99

CLINTON GORE '96
PRIMARY CAMPAIGN COMMITTEE INC
PO BOX 2100
LITTLE ROCK AR 72203

Customer Service:
NationsBank, N.A.
P.O. Box 27025
Richmond, Virginia 23261-7025
1-800-289-1299

Full Analysis Business Checking

Account Summary Information

Statement Period	01/09/99 through 01/15/99	Statement Beginning Balance	81,355.48
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	4	Amount of Withdrawals/Debits	1,520.84
		Statement Ending Balance	80,334.64
Number of Enclosures	3	Average Ledger Balance	88,286.66
Number of Days in Cycle	18	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Paid	Bank Reference Number	Check Number	Amount	Date Paid	Bank Reference Number
15236	15.00	01/12	813003310865530	15312*	27.48	01/14	8130032108032
15237	75.00	01/12	813003310865531				

*Preceding check (or checks) is outstanding, is included in summary listing, or has been included in a previous statement.

Other Debits

Date Posted	Amount	Description	Bank Reference Number
01/15	1,403.36	ZBA Transfer To 00001933067559	081301152000000

Daily Ledger Balances

Date	Balance	Date	Balance
01/09	81,355.48	01/14	81,738.00
01/12	81,765.48	01/15	80,334.64

ATTACHMENT 1
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22.07.025.3587

CLINTON-GORE '96 PRIMARY COMMITTEE, INC.
PO BOX 18983
WASHINGTON D.C. 20036-8983

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

15236

06/30/98
260089331 012 0189 0117 12 26
DATE AMOUNT

PAY ***********15 DOLLARS AND 00 CENTS $*********15.00

TO THE ORDER OF
James Loftus
325 Constitution Ave, NE
Washington DC 20002

TWO SIGNATURES REQUIRED IF OVER $2000.00

⑈015236⑈ ⑆054001204⑆ 1933067562⑈ ⑈0000001500⑈

01210000 1STMIX
260089331 0520-0027-8
260089331 01-12-99

056007387
01/12/99

3310865530

→2540755514←
JAN 11 1999
FOR DEPOSIT ONLY - WHITE HOUSE FCU
WASHINGTON, D.C.

15 43

CLINTON - GORE '96 PRIMARY COMMITTEE, INC.
PO BOX 18983
WASHINGTON D.C. 20036-8983

NATIONSBANK, N.A.
WASHINGTON, D.C.
15-120-540

15297

06/30/98
260089332 012 0189 0117 12 26
DATE

AMOUNT
**********75.00

PAY TO THE ORDER OF
**********75 DOLLARS AND 00 CENTS

James Loftus
325 Constitution Ave, NE
Washington DC 20002

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth A. Toone

Security features included. Details on back.

⑈015297⑈ ⑆054001204⑆ 193306756 2⑈ ⑈0000007500⑈

NationsBank

NationsBank, N.A.
MO1-800-17-09
P.O. Box 790251
St. Louis, MO 63179-0251

Account Reference Infor
Account Number: 0000 894-
Tax ID Number: 40-0000000
W 04 0 C Enclosures 1
Statement Period
12/18/98 through 12/24/98

CLINTON/GORE 96 PRIMARY COMMITTEE
PO BOX 2100
LITTLE ROCK AR 72203-2100

Customer Service:
NationsBank, N.A.
P.O. Box 798
Wichita, KS 67201
1-800-551-7050

Full Analysis Business Checking

Account Summary Information

Statement Period	12/18/98 through 12/24/98	Statement Beginning Balance	32,138.21
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	1	Amount of Withdrawals/Debits	[illegible]0
		Statement Ending Balance	32,
Number of Enclosures	1	Average Ledger Balance	32,134.29
Number of Days in Cycle	27	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Posted	Bank Reference
3101	25.00	12/24	813003720066391

Daily Ledger Balances

Date	Balance	Date	Balance
12/18	32,138.21	12/24	32,113.21

ATTACHMENT 1
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CLINTON/GORE '96 PRIMARY COMMITTEE, INC.
P.O. BOX 2100
LITTLE ROCK, AR 72203

BOATMEN'S
NATIONAL BANK OF ARKANSAS
LITTLE ROCK, ARKANSAS
81-7-820

3101

06/26/98
DATE

PAY ***********25 DOLLARS AND 00 CENTS

AMOUNT
$*********25.00

TO THE ORDER OF
Cantrell Properties, Inc.
320 N. Tennessee Ave.
Etowah TN 37331

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth G Tanni

⑈003101⑈ ⑆082000073⑆ 0089444195⑈ ⑈0000002500⑈

08/11/1999 11:12 5013757777 CLINTON-GORE'96 PAGE 08

NationsBank

NationsBank, N.A.
MO1-800-17-09
P.O. Box 790251
St. Louis, MO 63179-0251

Account Reference Infor
Account Number: 0000 8944
Tax ID Number: 40-0000000
W 04 0 C Enclosures 1 35
Statement Period 0000067
01/01/99 through 01/07/99

CLINTON/GORE 96 PRIMARY COMMITTEE
PO BOX 2100
LITTLE ROCK AR 72203-2100

Customer Service:
NationsBank, N.A.
P.O. Box 798
Wichita, KS 67201
1-800-551-7050

Full Analysis Business Checking

Account Summary Information

Statement Period	01/01/99 through 01/07/99	Statement Beginning Balance	32,113.21
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	1	Amount of Withdrawals/Debits	
		Statement Ending Balance	32,0
Number of Enclosures	1	Average Ledger Balance	32,105.85
Number of Days in Cycle	7	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Posted	Bank Reference
3157	25.00	01/06	813004420220180

Daily Ledger Balances

Date	Balance	Date	Balance
01/01	32,113.21	01/06	32,088.21

ATTACHMENT 1
Page 19 of 43

22.07.025.3592

0110-0001-5
060095053 0110-0001-5
060095053 01-06-99
082000138
01/06/99
5100505394

For deposit only
Judith T. Sapers

CLINTON/GORE '96 PRIMARY COMMITTEE, INC.
P.O. BOX 2100
LITTLE ROCK, AR 72203

BOATMEN'S
NATIONAL BANK OF ARKANSAS
LITTLE ROCK, ARKANSAS
81-7-820

3157

06/26/98
DATE

AMOUNT

PAY ***********25 DOLLARS AND 00 CENTS 060095053 10 6600 ********25.00

TO THE ORDER OF
Judith T. Sapers
26 Chesham Rd.
Brookline MA 02146

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth G. Towne

⑈003157⑈ ⑆082000073⑆ 00894419⑈5⑈ ⑈0000002500⑈

Security features included. Details on back.

ATTACHMENT 1
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NationsBank

NationsBank, N.A.
MO1-800-17-09
P.O. Box 790251
St. Louis, MO 63179-0251

Account Reference Infor
Account Number: 0000 8944
Tax ID Number: 40-0000000
W 04 0 C Enclosures 2 35
Statement Period 0000070
11/13/98 through 11/19/98

CLINTON/GORE 96 PRIMARY COMMITTEE
PO BOX 2100
LITTLE ROCK AR 72203-2100

Customer Service:
NationsBank, N.A.
P.O. Box 798
Wichita, KS 67201
1-800-551-7050

Full Analysis Business Checking

Account Summary Information

Statement Period	11/13/98 through 11/19/98	Statement Beginning Balance	35,138.21
Number of Deposits/Credits	0	Amount of Deposits/Credits	0.00
Number of Withdrawals/Debits	2	Amount of Withdrawals/Debits	3,00
		Statement Ending Balance	32,13
Number of Enclosures	2	Average Ledger Balance	35,032.73
Number of Days in Cycle	19	Service Charge	0.00

Withdrawals and Debits

Checks

Check Number	Amount	Date Posted	Bank Reference	Check Number	Amount	Date Posted	Bank Reference
3094	1,000.00	11/19	813004220592448	3183*	2,000.00	11/18	813003110485968

preceding check (or checks) is outstanding, is included in summary listing, or has been included in a previous statement.

Daily Ledger Balances

Date	Balance	Date	Balance	Date	Balance
/13	35,138.21	11/18	33,138.21	11/19	32,138.21

ATTACHMENT 1
Page 21 of 43

Mrs. Harry M. Reasoner
(Mary Hodges Reasoner)

3094

CLINTON/GORE '96 PRIMARY COMMITTEE, INC.
P.O. BOX 2100
LITTLE ROCK, AR 72203

BOATMEN'S
NATIONAL BANK OF ARKANSAS
LITTLE ROCK, ARKANSAS
81-7-820

06/26/98
DATE

AMOUNT
$*******1,000.00

PAY
TO THE
ORDER
OF

********1,000 DOLLARS AND 00 CENTS

Mrs. Harry M. Reasoner
Vinson & Elkins, LLP
2800 1st City Twr 1001 Fannin
Houston TX 77002-6760

TWO SIGNATURES REQUIRED IF OVER $2000.00

Elizabeth G. Toone

Security features included. Details on back.

"003094" :082000073: 008944419" 5" "0000100000"

ATTACHMENT 1
Page 22 of 43

Exhibit 3

BUUS INSR BUSS-TRANSACTION HISTORY SEARCH 99/08/10 9:37:40

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
"LINTON GORE 96 DATE(S)
ENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 1

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
2101*	060799	614.00		84110564499	Deposit	100,984.72
1101*	060999	15.16	16147	83110876342	Check	100,969.56
2011*	061499	23,000.00		00090410614	WIRE TYPE:F	123,969.56
				0025036	DATE:061499 TIME:1725	
1101*	061699	800.00	16159	83210146987	Check	123,169.56
1101*	061799	400.00	16166	83810518990	Check	122,769.56
1101*	062199	503.94	16162	83110882789	Check	122,265.62
1101*	062199	410.71	16168	83210878930	Check	121,854.91
1101*	062199	214.50	16165	83110882790	Check	121,640.41

*** ADDITIONAL TRANSACTIONS ***
*** FOR EXPANDED DESCRIPTIONS, PRESS PF2 *** FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 2

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062199	173.58	16176	83210863118	Check	121,466.83
1101*062199	105.90	16163	83110882788	Check	121,360.93
1101*062199	78.75	16164	83110882791	Check	121,282.18
1101*062299	7,748.14	16170	83110526869	Check	113,534.04
1101*062299	6,250.00	16169	83110526868	Check	107,284.04
1101*062299	600.00	16160	83210063769	Check	106,684.04
1101*062399	600.00	16167	83810764881	Check	106,084.04
1101*062499	509.36	16171	89030003192	Check	105,574.68
1101*062499	195.00	16148	83210548201	Check	105,379.68

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

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VERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 3

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062499	195.00	16149	83210548202	Check	105,184.68
1101*062499	106.13	16161	83210548229	Check	105,078.55
1101*062499	33.54	16154	83210520677	Check	105,045.01
1101*062599	4,236.21	16156	83110557928	Check	100,808.80
1101*062599	44.40	16151	83520739157	Check	100,764.40
1101*062599	12.57	16152	83520739490	Check	100,751.83
1101*062599	12.57	16153	83920688562	Check	100,739.26
1101*062899	262.70	16155	83210875684	Check	100,476.56
1101*062899	41.98	16150	84220599537	Check	100,434.58

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

22.07.0025.3598

BUSS TRSX ** BUSS-TRANSACTION HISTORY SEARCH ** 99/08/10 9.57.51
CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 4

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*062899	31.84	16158	83110774487	Check	100,402.74
1101*063099	53.00	16174	83410471856	Check	100,349.74
1101*063099	27.90	16173	83410471855	Check	100,321.84
1101*063099	13.15	16172	83410490497	Check	100,308.69
2011*070299	20,000.00		00090410702	WIRE TYPE:F	120,308.69
			0027021	DATE:070299	TIME:1729
1101*070699	17.90	16186	84010566614	Check	120,290.79
1101*070899	90.00	16177	83210527972	Check	120,200.79
1101*070999	217.00	16182	83210181835	Check	119,983.79

*** ADDITIONAL TRANSACTIONS ***
*** FOR EXPANDED DESCRIPTIONS, PRESS PF2 *** FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

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BOSS TASK ** BOSS-TRANSACTION HISTORY SEARCH ** 99/08/10 9:57:52
CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 5

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
2101*071299	31,601.46		83210680542	Deposit	151,585.25
1101*071299	12.51	16178	84120919072	Check	151,572.74
1101*071299	12.51	16179	84120919073	Check	151,560.23
1101*071399	17,568.93	16189	83710573077	Check	133,991.30
1101*071399	19.05	16188	83710490811	Check	133,972.25
1101*071499	509.65	16190	88130025625	Check	133,462.60
1101*071499	40.95	16193	83510010687	Check	133,421.65
1101*071499	22.42	16191	84110241756	Check	133,399.23
1101*071599	66.93	16181	83210517892	Check	133,332.30

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

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ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 6

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*071599	39.61	16180	83110169672	Check	133,292.69
1101*071699	65.70	16194	84310106829	Check	133,226.99
1101*071699	56.49	16187	83210114979	Check	133,170.50
1101*072099	228.00	16192	83920777400	Check	132,942.50
1101*072199	50.76	16195	83310832511	Check	132,891.74
1101*072299	106.13	16185	83210402939	Check	132,785.61
4005*072399	12,000.00		00094500723	ACCOUNT TRA	144,785.61
			9020010	0002902 NBKOS45.	
1101*072799	800.00	16199	83210264113	Check	143,985.61

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

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CONVERSATION 0 ENTITY: NDC

:OUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)

CLINTON GORE 96 DATE(S)

GENERAL COMMITTEE OPERATING AMT(S)

CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 7

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION	SCREEN BALANCE
1101	*072799	400.00	16196	83210759623	Check	143,585.61
1101	*072899	600.00	16184	83110045496	Check	142,985.61
1101	*072999	510.54	16204	83210608883	Check	142,475.07
1101	*072999	503.94	16200	83210608879	Check	141,971.13
1101	*072999	277.04	16210	83110366351	Check	141,694.09
1101	*072999	78.45	16203	83210608882	Check	141,615.64
1101	*072999	29.85	16201	83210608880	Check	141,585.79
1101	*072999	24.45	16202	83210608881	Check	141,561.34
1101	*073099	217.00	16198	83210095364	Check	141,344.34

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA

PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

BO03 THSR

CONVERSATION 0 ENTITY: NDC

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)

LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 8

T/C DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
1101*080299	1,392.50	16197	83510472788	Check	139,951.84
1101*080299	185.16	16208	83210623990	Check	139,766.68
1101*080299	184.46	16209	83210623991	Check	139,582.22
1101*080299	14.47	16206	83210735480	Check	139,567.75
1101*080499	22.04	16212	83210046487	Check	139,545.71
1101*080499	87.41	16211	83310455848	Check	139,458.30
1101*080599	7,748.14	16207	83210097554	Check	131,710.16
4005*080699	250,000.00		00094500806	ACCOUNT TRA	381,710.16
			9020023	0002902 NBKOS45	

*** ADDITIONAL TRANSACTIONS ***

FILE DATE 080999

PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

BOOS INSR ENTITY: NBC
CONVERSATION 0

ACCOUNT: 001933064772 PRD: BUS TYPE: FABC SEARCH DATA: ITEM TYPE (C,D,S)
CLINTON GORE 96 DATE(S)
GENERAL COMMITTEE OPERATING AMT(S)
CK/SER#(S)
LEDGER BALANCE: 85,129.16 TRAN CODE PAGE: 9

T/C	DATE	ITEM AMOUNT	CHECK/SER#	REFERENCE	DESCRIPTION-SCREEN	BALANCE
4005*	080699	12,427.00		00094500806	FUNDS TRANS	394,137.16
				4460179	FDES NMD 5018446	NBKB1SP
9011	080999	309,008.00		00094500809	ACCOUNT TRAN	85,129.16
				9020001	0002902	NBKOS45

*** NO MORE TRANSACTIONS ***

FILE DATE 080999
PF9=TH MENU PF10=PAGE FORWARD PF11=PAGE BACK PF8=CLEAR SEARCH DATA
PF4=MAIN MENU PF5=HELP PF6=NEW CONVERSATION PF7=OLD CONVERSATION PF12=LINE 24

22-07-025-3905

Exhibit 4

CLINTON/GORE '96 GENERAL COMMITTEE
PAYMENT DUE TO TREASURY FOR INTEREST INCOME NET OF TAXES PAID OR PAYABLE

Income Year	Interest Income	Federal Tax	State Tax	Net Due
1996	$ 28	$ 0	$ 0	$ 28
1997	663	97	4	562
1998	3,295	493	151	2,651
	$3,986	$ 590	$ 155	**$ 3,241**

Form **1120-POL**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for Certain Political Organizations

OMB No. 1545-0123

1996

For calendar year 1996 or other tax year beginning , 1996, and ending , 19

Note: If you are a section 501(c) organization or a separate segregated fund described in section 527(f)(3), check here ▶ ☐

Please print or type

Name of organization
CLINTON/GORE '96 GENERAL ELECTION COMMITTEE

Employer identification number
52-1988597

Number, street, and room or suite no. (If a P.O. box, see page 4 of instructions.)
P.O. BOX 19100

City or town, state, and ZIP code
WASHINGTON, D.C. 20036

Candidates for U.S. Congress Only
If this is a principal campaign committee, and it is the ONLY political committee, check here ☐
If this is a principal campaign committee, but is NOT the only political committee, check here and attach a copy of designation (See instructions on page 2.) ☐

Check if: (1) ☐ Final return (2) ☐ Change of address (3) ☐ Amended return

Income	1	Dividends (attach schedule)	1	
	2	Interest	2	28
	3	Gross rents	3	
	4	Gross royalties	4	
	5	Capital gain net income (attach Schedule D (Form 1120))	5	
	6	Net gain or (loss) from Form 4797, Part II, line 20 (attach Form 4797)	6	
	7	Other income and nonexempt function expenditures (see instructions)	7	
	8	**Total income.** Add lines 1 through 7	8	28
Deductions	9	Salaries and wages	9	
	10	Repairs and maintenance	10	
	11	Rents	11	
	12	Taxes and licenses	12	
	13	Interest	13	
	14	Depreciation (attach Form 4562)	14	
	15	Other deductions (attach schedule)	15	
	16	**Total deductions.** Add lines 9 through 15	16	
	17	Taxable income *before* specific deduction of $100 (see instructions). Section 501(c) organizations show:		
	a	Amount of net investment income ▶		
	b	Aggregate amount expended for an exempt function (attach schedule) ▶	17c	
	18	Specific deduction of $100 (not allowed for newsletter funds defined under section 527(g))	18	
Tax	19	**Taxable income.** Subtract line 18 from line 17c (If line 19 is zero or less, do not file Form 1120-POL.)	19	0
	20	Income tax (see instructions)	20	0
	21	Tax credits (Attach all applicable forms.) (see instructions)	21	0
	22	Total tax. Subtract line 21 from line 20	22	0
	23	Payments: a Tax deposited with Form 7004 — 23a		
		b Credit from regulated investment companies (attach Form 2439) — 23b		
		c Credit for Federal tax on fuels (attach Form 4136) — 23c		
		d Total. Add lines 23a through 23c	23d	
	24	**Tax due.** Subtract line 23d from line 22. See instructions on page 3 for depository method of payment	24	0
	25	**Overpayment.** Subtract line 22 from line 23d	25	0

Additional Information

1 At any time during the 1996 calendar year, did the organization have an interest in or a signature or other authority over a financial account (such as a bank account, securities account, or other financial account) in a foreign country? (See instructions.) ☐ Yes ☒ No
If "Yes," enter the name of the foreign country ▶

2 During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? ☐ Yes ☒ No
If "Yes," see page 4 for other forms the organization may have to file.

3 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ NONE

4 Date organization formed ▶ July, 1996

5a The books are in care of ▶ SHANNON TANNER b Enter name of candidate ▶ WILLIAM J. CLINTON

c The books are located at ▶ 410 W. 3RD LITTLE ROCK ARK. d Telephone No. ▶ 501-375-1290

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer Date ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶ Date Check if self-employed ▶ ☐ Preparer's social sec. 432-88-620

Firm's name (or yours, if self-employed) and address ▶ BAIRD, KURTZ & DOBSON P.O. BOX 3667, LITTLE ROCK AR

EIN ▶ 44-0160260 ZIP code ▶ 72203-3667

State of Arkansas
1996 CORPORATION INCOME TAX RETURN
AR1100CT

FOR OFFICE USE ONLY

Tax Year beginning 01/01, 19 96 and ending 12/31, 19 96

- [ ] Check if Final Arkansas Return
- [ ] Check if Filing as Financial Institution
- [ ] Check if Single Weighting Sales Factor

FEIN: 52-1988597

FEDERAL BUSINESS CODE: 8980

NAME: CLINTON/GORE '96 GENERAL ELECTION COMMITTEE

Type of Corporation: 5 [X] Domestic 6 [ ] Foreign

DATE OF INCORPORATION: July 1996

ADDRESS: P.O. BOX 19100

DATE BEGAN BUSINESS IN ARKANSAS: July 1996

CITY: WASHINGTON STATE: DC ZIP: 20036 TELEPHONE NUMBER:

FILING STATUS (Check Only One Box)

1 [X] CORPORATION OPERATING ONLY IN ARKANSAS

2 [ ] MULTI-STATE CORPORATION - APPORTIONMENT

3 [ ] MULTI-STATE CORPORATION - DIRECT ACCOUNTING (Prior written approval required for Direct Accounting)

4 [ ] CONSOLIDATED RETURN # OF CORP. ENTITIES IN AR ____

NOTE: Attach completed copy of Federal Return and sign Arkansas Return. (Refer to Important Reminders, page 2, Items 2 and 3, Corporation Tax Booklet.)

Section	Line	Description	Line	ARKANSAS
INCOME	7.	Gross Sales: *(Less returns and allowances)*	7.	00
	8.	Less Cost of Goods Sold:	8.	00
	9.	Gross Profit: *(Line 7 less Line 8)*	9.	00
	10.	Dividends: *(See Instructions page 6)*	10.	00
	11.	Interest: *(U.S. Obligations - See Instructions page 6)*	11.	00
	12.	Other Interest: *(See Instructions page 6)*	12.	28.00
	13.	Gross Rents:	13.	00
	14.	Gross Royalties:	14.	00
	15.	Gains or Losses:	15.	00
	16.	Other Income:	16.	00
	17.	TOTAL INCOME: *(Add Lines 9 - 16)*	17.	28.00
DEDUCTIONS	18.	Compensation of Officers:	18.	00
	19.	Other Salaries and Wages:	19.	00
	20.	Repairs:	20.	00
	21.	Bad Debts:	21.	00
	22.	Rent on Business Property:	22.	00
	23.	Taxes:	23.	00
	24.	Interest:	24.	00
	25.	Contributions:	25.	00
	26.	Depreciation:	26.	00
	27.	Depletion:	27.	00
	28.	Advertising:	28.	00
	29.	Pension Profit Sharing:	29.	00
	30.	Employee Benefit Programs:	30.	00
	31.	Other Deductions:	31.	00
	32.	TOTAL DEDUCTIONS: *(Add Lines 18 - 31)*	32.	00
	33.	Taxable Income Before Net Operating Losses: *(Line 17 less Line 32)*	33.	28.00
	34.	Net Operating Losses: *(Adjust for Non-taxable Income - See Instructions, page 7C.)*	34.	00
TAX COMPUTATION	35.	Net Taxable Income: *(Line 33 less Line 34 or Schedule A C4 page 2)*	35.	28.00
	36.	Tax from Table: *(Instruction Booklet pages 15 and 16)*	36.	NONE 00
	37.	Business & Incentive Credits: *(Attach all original certificates)*	37.	00
	38.	Tax Liability: *(Line 36 less Line 37)*	38.	NONE 00
	39.	Estimated Tax Paid: *(Including estimate carryforward from prior year)*	39.	00
	40.	Payment With Extension Request: *(Voucher 5, AR1100ESCT)*	40.	00
	41.	Overpayment: *(Line 39 plus Line 40 less Line 38, enter here)*	41.	00
	42.	Amount Applied to 1997 Estimated Tax: 42 [ ] 00		
	43.	Amount Applied To United States Olympic Committee Program: 43 [ ] 00		
	44.	Amount To Be Refunded: *(Line 41 less Line 42 and 43)* REFUND	44.	00
	45.	Tax Due *(Line 38 less Lines 39 and 40)*	45.	NONE 00
	46.	Penalty For Underpayment of Estimated Tax: (Attach AR2220) List exception checked in Part 3. [ ]	46.	00
	47.	Amount Due: *(Line 45 plus Line 46)* AMOUNT DUE	47.	NONE 00

6D0411 4.000

ATTACHMENT 7

Page 36 of 43

Form **1120-POL** — Department of the Treasury, Internal Revenue Service

U.S. Income Tax Return for Certain Political Organizations

1997

For calendar year 1997 or other tax year beginning , 1997, and ending , 19

Note: If you are a section 501(c) organization or a separate segregated fund described in section 527(f)(3), check here ▶ ☐

Please print or type

Name of organization: CLINTON GORE '96 GENERAL COMMITTEE, INC.

Employer identification number: 52-1988597

Number, street, and room or suite no. (If a P.O. box, see page 4 of instructions.): P.O. BOX 19100

Candidates for U.S. Congress Only
If this is a principal campaign committee, and it is the ONLY political committee, check here ☐
If this is a principal campaign committee, but it is NOT the only political committee, check here and attach a copy of designation (See instructions on page 2) ☐

City or town, state, and ZIP code: WASHINGTON, D.C. 20036

Check if: (1) ☐ Final return (2) ☐ Change of address (3) ☐ Amended return

Income	1	Dividends (attach schedule)	1	
	2	Interest	2	663
	3	Gross rents	3	
	4	Gross royalties	4	
	5	Capital gain net income (attach Schedule D (Form 1120))	5	
	6	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)	6	
	7	Other income and nonexempt function expenditures (see instructions)	7	
	8	Total income. Add lines 1 through 7	8	663
Deductions	9	Salaries and wages	9	
	10	Repairs and maintenance	10	
	11	Rents	11	
	12	Taxes and licenses	12	
	13	Interest	13	
	14	Depreciation (attach Form 4562)	14	
	15	Other deductions (attach schedule) STATEMENT ONE	15	285
	16	Total deductions. Add lines 9 through 15	16	285
	17	Taxable income before specific deduction of $100 (see instructions). Section 501(c) organizations show:		
	a	Amount of net investment income ▶		
	b	Aggregate amount expended for an exempt function (attach schedule) ▶	17c	378
	18	Specific deduction of $100 (not allowed for newsletter funds defined under section 527(g))	18	100
Tax	19	Taxable income. Subtract line 18 from line 17c (If line 19 is zero or less, do not file Form 1120-POL)	19	27
	20	Income tax (see instructions)	20	1
	21	Tax credits (Attach all applicable forms.) (see instructions)	21	
	22	Total tax. Subtract line 21 from line 20	22	97
	23	Payments: a Tax deposited with Form 7004 — 23a: 100		
		b Credit for tax paid on undistributed capital gains (attach Form 2439) — 23b:		
		c Credit for Federal tax on fuels (attach Form 4136) — 23c:		
		d Total. Add lines 23a through 23c	23d	100
	24	Tax due. Subtract line 23d from line 22. See instructions on page 3 for depository method of payment	24	
	25	Overpayment. Subtract line 22 from line 23d	25	3

Additional Information

1 At any time during the 1997 calendar year, did the organization have an interest in or a signature or other authority over a financial account (such as a bank account, securities account, or other financial account) in a foreign country? (See instructions.) ☐ Yes ☒ No
If "Yes," enter the name of the foreign country ▶

2 During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? ☐ Yes ☒ No
If "Yes," see page 4 for other forms the organization may have to file.

3 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ NONE

4 Date organization formed ▶ 8/22/96

5a The books are in care of ▶ SHANNON TANNER b Enter name of candidate ▶ WILLIAM J. CLINTON

c The books are located at ▶ 410 W. 3RD LITTLE ROCK AR 72201 d Telephone No. ▶ 501-375-1290

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer — Date — ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶ — Date — Check if self-employed ▶ ☐ — Preparer's social security no. 432-88-6201

Firm's name (or yours, if self-employed) and address ▶ BAIRD, KURTZ & DOBSON P.O. BOX 3667 LITTLE ROCK AR 72203 — FIN ▶ 71-0160260 — ZIP code ▶ 72203-3667

For Paperwork Reduction Act Notice, see instructions on page 4. Form **1120-POL** (1997)

GA

ATTACHMENT 1

Page 35 of 43

FORM 1120-POL, LINE 15 DETAIL

Line 15 - Other deductions

ACCOUNTING FEES	285.
Total	285.

ATTACHMENT 1
Page 38 of 43

State of Arkansas
1997 CORPORATION INCOME TAX RETURN
AR1100CT

FOR OFFICE USE ONLY

Tax Year beginning 01/01, 19 97 and ending 12/31, 19 97

- [ ] Check if Final Arkansas Return
- [ ] Check if Filing as Financial Institution
- [ ] Check if Single Weighting Sales Factor

FEIN: 52-1988597		
FEDERAL BUSINESS CODE: 8980	NAME: CLINTON/GORE '96 GENERAL COMMITTEE, INC.	Type of Corporation: 5 [X] Domestic
DATE OF INCORPORATION: 08/22/96	ADDRESS: P.O. BOX 19100	6 [ ] Foreign
DATE BEGAN BUSINESS IN ARKANSAS: 08/22/96	CITY: WASHINGTON STATE: DC ZIP: 20036	TELEPHONE NUMBER

FILING STATUS *(Check Only One Box)*

1 [X] CORPORATION OPERATING ONLY IN ARKANSAS
2 [ ] MULTI-STATE CORPORATION - APPORTIONMENT
3 [ ] MULTI-STATE CORPORATION - DIRECT ACCOUNTING (Prior written approval required for Direct Accounting)
4 [ ] CONSOLIDATED RETURN # OF CORP. ENTITIES IN AR

NOTE: Attach completed copy of Federal Return and sign Arkansas Return. *(See Instructions, Important Reminders, page 3, items 2 and 3)*

Section	Line	Description	Line	ARKANSAS
INCOME	7.	Gross Sales: *(Less returns and allowances)*	7.	.00
	8.	Less Cost of Goods Sold:	8.	.00
	9.	Gross Profit: *(Line 7 less Line 8)*	9.	.00
	10.	Dividends: *(See Instructions, page 6)*	10.	.00
	11.	Interest: *(U.S. Obligations - See Instructions, page 6)*	11.	.00
	12.	Other Interest: *(See Instructions, page 6)*	12.	663.00
	13.	Gross Rents:	13.	.00
	14.	Gross Royalties:	14.	.00
	15.	Gains or Losses:	15.	.00
	16.	Other Income:	16.	.00
	17.	TOTAL INCOME: *(Add Lines 9 - 16)*	17.	663.00
DEDUCTIONS	18.	Compensation of Officers:	18.	.00
	19.	Other Salaries and Wages:	19.	.00
	20.	Repairs:	20.	.00
	21.	Bad Debts:	21.	.00
	22.	Rent on Business Property:	22.	.00
	23.	Taxes:	23.	.00
	24.	Interest:	24.	.00
	25.	Contributions:	25.	.00
	26.	Depreciation:	26.	.00
	27.	Depletion:	27.	.00
	28.	Advertising:	28.	.00
	29.	Other Deductions: Stmt 1	29.	285.00
	30.	TOTAL DEDUCTIONS: *(Add Lines 18 - 29)*	30.	285.00
	31.	Taxable Income Before Net Operating Losses: *(Line 17 less Line 30)*	31.	378.00
	32.	Net Operating Losses: *(Adjust for Non-taxable Income - See Instructions, page 7C)*	32.	.00
TAX COMPUTATION	33.	Net Taxable Income: *(Line 31 less Line 32 or Schedule A C4 page 2)*	33.	378.00
	34.	Tax from Table: *(Instruction Booklet pages 15 and 16)*	34.	4.00
	35.	Business & Incentive Credits: *(Attach all original certificates)*	35.	.00
	36.	Tax Liability: *(Line 34 less Line 35)*	36.	4.00
	37.	Estimated Tax Paid: *(Including estimate carryforward from prior year)*	37.	.00
	38.	Payment With Extension Request: *(Voucher 5, AR1100ESCT)*	38.	.00
	39.	Overpayment: *(Line 37 plus Line 38 less Line 36, enter here)*	39.	.00
	40.	Amount Applied to 1998 Estimated Tax: 40. .00		
	41.	Amount Applied to:		
		United States Olympic Committee Program. 41A. .00		
		Arkansas DisasterRelief Program. 41B. .00		
	42.	Amount To Be Refunded: *(Line 39 less Line 40, 41A and 41B)*	42.	.00
	43.	Tax Due *(Line 36 less Lines 37 and 38)*	43.	4.00
	44.	Penalty For Underpayment of Estimated Tax (Attach AR2220) List exception checked in Part 3. [ ]	44.	.00
	45.	Amount Due: *(Line 43 plus Line 44)* AMOUNT DUE	45.	4.00

ATTACHMENT Page 39 of 43

22"07"05"M0419

Form **1120-POL**
Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for Certain Political Organizations

OMB No. 1545-0129

1998

For calendar year 1998 or other tax year beginning , 1998, and ending , 19

Note: If you are a section 501(c) organization or a separate segregated fund described in section 527(f)(3), check here ▶ ☐

Please print or type

Name of organization
CLINTON/GORE '96 GENERAL COMMITTEE, INC.

Employer identification number
52-1988597

Number, street, and room or suite no. (If a P.O. box, see page 3 of instructions.)
P.O. BOX 19100

Candidates for U.S. Congress Only
If this is a principal campaign committee, and it is the ONLY political committee, check here ☐
If this is a principal campaign committee, but is NOT the only political committee, check here and attach a copy of designation (See instructions on page 2.) ☐

City or town, state, and ZIP code
WASHINGTON, DC 20036

Check if: (1) ☐ Final return (2) ☐ Change of address (3) ☐ Amended return

Income	1 Dividends (attach schedule)	1	
	2 Interest	2	3,295
	3 Gross rents	3	
	4 Gross royalties	4	
	5 Capital gain net income (attach Schedule D (Form 1120))	5	
	6 Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)	6	
	7 Other income and nonexempt function expenditures (see instructions)	7	
	8 Total income. Add lines 1 through 7	8	3,295
Deductions	9 Salaries and wages	9	
	10 Repairs and maintenance	10	
	11 Rents	11	
	12 Taxes and licenses	12	
	13 Interest	13	
	14 Depreciation (attach Form 4562)	14	
	15 Other deductions (attach schedule) . . . SEE STATEMENT 1	15	1,786
	16 Total deductions. Add lines 9 through 15	16	1,786
	17 Taxable income before specific deduction of $100 (see instructions). Section 501(c) organizations show:		
	a Amount of net investment income ▶		
	b Aggregate amount expended for an exempt function (attach schedule) ▶	17c	1,509
	18 Specific deduction of $100 (not allowed for newsletter funds defined under section 527(g))	18	100
Tax	19 Taxable income. Subtract line 18 from line 17c (If line 19 is zero or less, do not file Form 1120-POL.)	19	1,409
	20 Income tax (see instructions)	20	493
	21 Tax credits (Attach all applicable forms.) (see instructions)	21	
	22 Total tax. Subtract line 21 from line 20	22	493
	23 Payments: a Tax deposited with Form 7004 — 23a: 200		
	b Credit for tax paid on undistributed capital gains (attach Form 2439) — 23b:		
	c Credit for Federal tax on fuels (attach Form 4136) — 23c:		
	d Total. Add lines 23a through 23c	23d	200
	24 Tax due. Subtract line 23d from line 22. See instructions on page 3 for depository method of payment	24	307
	25 Overpayment. Subtract line 22 from line 23d	25	

Additional Information

1 At any time during the 1998 calendar year, did the organization have an interest in or a signature or other authority over a financial account (such as a bank account, securities account, or other financial account) in a foreign country? (See instructions.) ☐ Yes ☒ No
If "Yes," enter the name of the foreign country ▶

2 During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? ☐ Yes ☒ No
If "Yes," the organization may have to file Form 3520.

3 Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $ NONE

4 Date organization formed ▶ 8/22/96

5a The books are in care of ▶ SHANNON TANNER b Enter name of candidate ▶ WILLIAM J. CLINTON

c The books are located at ▶ 110 W 3rd, LITTLE ROCK, AR d Telephone No. ▶ 501-375-1290

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ▶ Date ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ▶ ☐	Preparer's social security no. 432-88-6204
Firm's name (or yours, if self-employed) and address ▶ BAIRD, KURTZ & DOBSON, P.O. BOX 3667, LITTLE ROCK, AR 72203		EIN ▶ 44-0160260	ZIP code ▶ 72203-3667

CLINTON/GORE '96 GENERAL COMMITTEE, INC. 52-1988597

Form 1120, Page 1 Detail

Line 26 - Other deductions

ACCOUNTING FEES	1,786.
Total	1,786.

CLINTON/GORE '96 GENERAL COMMITTEE, INC. 52-1988597

Form 1120, Page 1 Detail

Original due date of return: 03/15/1999 Date return filed: 07/15/1999
Extended due date of return: 09/15/1999

Late filing penalty:			
Months filing late			
Late filing penalty rate		%	
Amount subject to penalty			
Amount of late filing penalty			
Late payment penalty:			
Months paying late	4.0		
Late payment penalty rate	2.0	%	
Amount subject to penalty	293.		
Amount of late payment penalty			6.
Amount of late payment interest (see detail below)			8.
Amount of additional penalty and/or interest			
Total penalties and/or interest			14.

Revised tax due including late penalties and/or interest:	
Total tax, Page 1, line 31	493.
Less: Payments, Page 1, line 32h	200.
Plus: Underpayment penalty, Form 2220	
Plus: Late payment and filing penalties and/or interest	14.
Less: Backup withholding	
Total tax to Page 1, line 34	307.

Detail of late payment interest

Amount subject to interest	From	To	Days	Rate	Interest
293.	03/15/1999	03/31/1999	16	8.00	1.
294.	03/31/1999	06/30/1999	91	8.00	6.
300.	06/30/1999	07/15/1999	15	8.00	1.
Total late payment interest					8.

ATTACHMENT 1
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D-20 1998
Corporation Franchise Tax Return

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF TAX AND REVENUE

DATE RECEIVED

Taxable year beginning 01/01/1998 and ending 12/31/1998

NAME OF CORPORATION: CLINTON/GORE '96 GENERAL COMMITTEE, INC.	D C BUSINESS TAX NUMBER: APPLIED FOR	
D.C. ADDRESS: P.O. BOX 19100, WASHINGTON, DC 20036	FEDERAL I.D. NUMBER: 52-1966697	
MAILING ADDRESS: P.O. BOX 19100, WASHINGTON, DC 20036	NUMBER OF BUSINESS LOCATIONS In the District: NONE Outside the District: 1	TYPE OF BUSINESS: POLITICAL ORG.

READ INSTRUCTIONS BEFORE PREPARING RETURN - (NON-BUSINESS ITEMS TO BE ALLOCATED)

ATTACH CHECK OR MONEY ORDER HERE

GROSS INCOME	1. GROSS RECEIPTS, LESS RETURNS AND ALLOWANCES		1
	2. COST OF GOODS SOLD (from Schedule A) AND/OR OPERATIONS (Attach statement)		2
	3. GROSS PROFIT FROM SALES AND/OR OPERATIONS - (Line 1 minus Line 2)		3
	4. DIVIDENDS (from Schedule C)		4
	5. INTEREST (Attach statement)	3,295.	5
	6. GROSS RENTAL INCOME		6
	7. ROYALTIES (Attach statement)		7
	8. (a) NET CAPITAL GAINS (Attach copy of completed Federal Schedule D)		8(a)
	(b) ORDINARY GAIN (LOSS) FROM PART II, FEDERAL FORM 4797 (Attach copy of completed Form 4797)		8(b)
	9. OTHER INCOME (Attach statement)		9
	10. TOTAL GROSS INCOME (Add Lines 3 through 9)	3,295.	10
DEDUCTIONS	11. COMPENSATION OF OFFICERS (from Schedule E)		11
	12. SALARIES AND WAGES		12
	13. REPAIRS		13
	14. BAD DEBTS (See Instructions)		14
	15. RENT		15
	16. TAXES (from Schedule I)		16
	17. INTEREST		17
	18. CONTRIBUTIONS (Attach statement)		18
	19. AMORTIZATION (Attach copy of completed Federal Form 4562)		19
	20. DEPRECIATION (Attach copy of completed Federal Form 4562)		20
	21. DEPLETION (Attach statement)		21
	22. ADVERTISING		22
	23. PENSION, PROFIT-SHARING PLANS		23
	24. OTHER DEDUCTIONS (Attach statement) See Statement 1	1,786.	24
	25. TOTAL DEDUCTIONS - Add Lines 11 through 24	1,786.	25
	26. NET INCOME (Line 10 minus Line 25)	1,509.	26
	27. NET OPERATING LOSS DEDUCTION		27
	28. NET INCOME AFTER NET OPERATING LOSS DEDUCTION (Line 26 minus Line 27)	1,509.	28
	29. (a) NON-BUSINESS INCOME (Attach statement)		29(a)
	(b) EXPENSE RELATED TO NON-BUSINESS INCOME (Attach statement)		29(b)
	(c) 29(a) minus 29(b) (Attach detailed statement)		29(c)
TAXABLE INCOME	30. NET INCOME SUBJECT TO APPORTIONMENT (Line 28 minus 29(c))	1,509.	30
	31. D.C. APPORTIONMENT FACTOR (from Line 5, Schedule K, If none, enter "zero").	1.000000	31
	32. NET INCOME FROM TRADE OR BUSINESS APPORTIONED TO THE DISTRICT (Line 30 multiplied by Line 31)	1,509.	32
	33. PORTION OF LINE 29(c) ATTRIBUTABLE TO D.C. (Attach statement)		33
	34. TOTAL DISTRICT TAXABLE INCOME - (Line 32 plus or minus Line 33)	1,509.	34
TAX	35. TAX (9.975% of Line 34). If less than $100, enter $100	151.	35
	36. (a) TAX PAID, IF ANY, WITH REQUEST FOR EXTENSION OF TIME TO FILE		36(a)
	(b) 1998 EST. TAX PAYMENTS		36(b)
	(c) ECONOMIC DEVELOPMENT ZONE INCENTIVES CREDIT (from Schedule D)		36(c)
	37. ADD LINES 36(a), 36(b), and 36(c) and ENTER TOTAL		37
	38. TAX DUE (Line 35 minus Line 37, if Line 35 is greater than Line 37)	151.	38
	39. PENALTY / INTEREST / TOTAL PENALTY AND INTEREST		39
	40. TOTAL DUE ADD LINES 38 AND 39 PAY IN FULL	151	40
	41. OVERPAYMENT (Line 37 minus Line 35 if Line 37 is greater than Line 35)		41
	42a. CREDIT TO 1999 ESTIMATED TAX / 42b. TO BE REFUNDED - Line 41 minus Line 42a		42b

Under penalties of law, including criminal penalties for false statements and tax preparer penalties under D.C. Code § 22-3614 and § 47-161, *et seq.*, I declare that I have examined this return and, to the best of my knowledge and belief, it is true, correct, and complete. If prepared by a person other than the taxpayer, this declaration is based on all information available to the preparer.

CORPORATE SEAL	SIGNATURE OF OFFICER	TITLE	DATE
	SIGNATURE OF PREPARER (if other than Taxpayer)	ADDRESS P. O. BOX 9867	DATE
	BAIRD, KURTZ & DOBSON	LITTLE ROCK, AR 72203-9867	

MAILING INSTRUCTIONS: Make check or money order payable to D.C. Treasurer. (Include D.C. business tax number, D-20 and tax year on your payment). Mail this return and payment to the D.C. Office of Tax and Revenue, Ben Franklin Station, P.O. Box 601, Washington, D.C. 20044-0601, on or before the 15th day of the third month following the close of the taxable year

AD1011 4-000