



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

THIS IS THE BEGINNING OF MUR # 3342

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MUR 3111

AUDIT REFERRAL - AUGUST 14, 1990

(MUR 3111 SUBSEQUENTLY WAS MERGED INTO MUR 3342)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AR-90-35

NJ001256

August 14, 1990

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: GEPHARDT FOR PRESIDENT COMMITTEE, INC. -
MATTERS REFERABLE TO THE OFFICE OF GENERAL
COUNSEL

Attached please find 5 matters approved by the Commission on August 14, 1990 for referral to your office for the action indicated. If you have any questions or wish to review any audit workpapers, please contact Tom Nurthen at 376-5320.

Attachments:

- Exhibit A: Iowa Staff Housing
- Exhibit B: Candidate Spending Limitation(incl. Att. #1)
- Exhibit C: Loans Apparently Not Made in the Ordinary Course of Business(incl. Att. #1)
- Exhibit D: Apparent Excessive Contributions
- Exhibit E: Apparent Excessive Contribution - Advance

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 1990

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

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

SUBJECT: GEPHARDT FOR PRESIDENT COMMITTEE, INC. - MATTERS
REFERABLE TO THE OFFICE OF GENERAL COUNSEL AND
REQUEST FOR SUBPOENAS

Attached as Exhibits A and B are matters which the Audit staff and the Office of General Counsel agree should be referred at this time for the issuance of subpoenas to obtain records necessary to evaluate fully the scope of the possible violation. A formal referral for possible compliance action will be made after review of the documents obtained under subpoena.

Although the above Exhibits will not be included in the final audit report, the following language will be included in the final audit report as an introduction to Section III:

Finding C., Use of Funds For Non-Qualified Campaign Expenses, as set forth in this report is not complete due to the Committee's failure to provide certain records requested in the interim audit report. If necessary, additional allocations and/or repayments of matching funds will be addressed in an addendum or supplement to this report following review of these records.

Attached as Exhibits C and D are two additional matters recommended for referral to the Office of General Counsel for possible compliance action.

Exhibit C is entitled Loans Apparently Not Made in the Ordinary Course of Business. This matter includes loans from Chippewa First Financial Bank - \$100,000, Federal City National Bank - \$125,000 bridge loan and various lines of credit, and Texas Commerce Bank - \$150,000.

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1. Chippewa First Financial Bank - \$100,000

The Audit staff and the Office of General Counsel agree that the loan does not appear to be made in the ordinary course of business. However, the Audit staff disagrees with Counsel's analysis with respect to its conclusion as to why the matters should be referred.

It is the Audit staff's opinion that the collateral represented by the security agreement and the personal guaranty are both deficient, and of major importance to this referral. Whereas, the Audit staff and the Counsel's office are in agreement with respect to the short-comings of the collateral represented by the security agreement, we are not in agreement with respect to inadequacies presented by the personal guaranty. Specifically, the referral states and the legal analysis acknowledges that the Committee in its response to the interim audit report did not adequately address the personal guaranty issue. However, Counsel appears to conclude that, since the Committee stated that it did not operate with Swiss watch precision and that the campaign was in a hurry to complete the loan, "we [Counsel] believe that the signing of the guaranty may have been an error by the bank and by Mr. Susman" (see page 25 of legal analysis - first full paragraph).

It is the Audit staff's opinion that it is highly unlikely that either Mr. Susman could have signed the personal guaranty in error or that the bank accepted as collateral Mr. Susman's personal guaranty in error. Moreover, based on the paucity of documents provided, it is even more unlikely that both Mr. Susman and the Bank erred on the same document.

Further, it is the Audit staff's opinion that the circumstances surrounding the inclusion of the personal guaranty as collateral for this loan and the Committee's reluctance to obtain and provide the documents recommended in the interim audit report with respect to the personal guaranty (Interim Audit Report, Recommendation #3, Chippewa First Financial Bank, items five and six) casts additional doubt concerning the legitimacy of the actions of the parties involved. Finally, Mr. Susman's personal guaranty is in violation of 2 U.S.C. § 441a(a)(1)(A) as it represents an excessive contribution of \$100,000 to the Committee for the period of time the loan was outstanding.

It is our opinion that the personal guaranty issue should be fully investigated in the context of the MUR.

2. Federal City National Bank - \$125,000 Bridge Loan and Subsequent Lines of Credit

Although the Audit Division and the Office of General Counsel are in agreement that documentation made available to date appears to indicate that the loan was not made in the ordinary

course of business, the Audit staff is concerned that OGC's comments, at page 27 of the legal analysis, appear to suggest some uncertainty with respect to Progressive Direct Marketing's (PDM) involvement, specifically that of its President, in the loan negotiations.

OGC states it is not clear why PDM's role in the loan negotiations is suspect. Further, OGC appears to conclude that since there is no evidence that PDM had any connection to the bank its (PDM's) involvement may have been legitimate (see legal analysis page 27).

The letter submitted by Counsel in response to the interim audit report, as well as Counsel's comments, establishes that some level of involvement by PDM existed with respect to arranging the financing. Absent submission of the documentation requested in the interim audit report, it is not possible to determine whether or not PDM's involvement was appropriate to a vendor-client relationship or constituted a contribution to the Committee by PDM. See Attachment I to Exhibit C.

Texas Commerce Bank - \$150,000

The Audit Division and the Office of General Counsel do not agree on the disposition of this loan. Based on documentation made available to date, the Audit staff believes that the loan was not made in the ordinary course of business and recommends the matter be referred to OGC. The Counsel's office believes the loan was made in the ordinary course of business and recommends no further action.

It is our opinion that the alleged collateral and respective security agreement are defective and that based on the following, it appears that the loan was not made in the ordinary course of business:

- ° although required by the security agreement to do so, the Committee did not deposit the proceeds from the event into the deposit-only account at the bank;
- ° since the proceeds were not deposited into the deposit-only account, the bank not only forfeited control of the contributions but also of any matching funds generated by contributions received at the event;

According to the loan officer, the proceeds of the event represented the Bank's primary collateral.

- ° the stated value of the computer equipment collateralizes approximately one-third of the loan, and was considered by the bank along with the potential matching funds to be secondary collateral; and
- ° the letter from the fundraising representative to the Bank, which estimates the total proceeds from the event will be \$150,000, is not supported by documentation (i.e. justification for the estimate) and is almost identical to the letter used for the \$100,000 loan at the Chippewa First Financial Bank.

Counsel believes you only have to examine the adequacy of the security and the risk reducing factors at the time the loan was made. While the Audit staff does not disagree with the above, we believe it is prudent to view the actions of the Bank and the Committee subsequent to making the loan.

Based on the above, it is our opinion that the Bank's actions, before the loan was made as well as after the loan was made, were questionable, which should be sufficient basis for the referral of this loan.

Finally, it should be noted that the Committee did not comply with many of the recommendations contained in the interim audit report with respect to the Chippewa loan and the Federal City National Bank loan. Such non-compliance is detailed at Exhibit C. Although the Committee complied with the majority of the recommendations with respect to the Texas Commerce Bank loan, specific recommendations with respect to documents contained in the bank files (Interim Audit Report, Recommendation #3, Texas Commerce Bank, first item) as well as a detailed accounting of all funds raised at the March 6, 1988 event (second item) were not addressed in the Committee's response.

Exhibit D is entitled Apparent Excessive Contributions. The Audit Division and the Office of General Counsel are in agreement that this matter should be referred.

Exhibit E is entitled Apparent Excessive Contribution - Advance. The matter involves payments, totaling \$3,555.95, made on behalf of the Committee by John B. Crosby, during the period April 1987 through June 1987. The individual billed the Committee on two separate occasions. In our opinion, the individual's requests for payment were timely. On December 20, 1988, the individual agreed to a debt settlement of \$385.60.*/

*/
Mr. Crosby's debt settlement statement was submitted to the Commission on March 30, 1990.

The Counsel's office recommends and the Audit staff agrees that this matter should be referred separately (from Exhibit D) in order for the Commission to consider this matter and the proposed debt settlement at the same time.

With respect to Finding III.C., Use of Funds for Non-Qualified Campaign Expenses (final audit report), no recommendation for referral of this matter is being made at this time since certain documentation requested in the interim audit report with respect to Exhibits A and B has not been provided. A recommendation for referral to the Office of General Counsel will be made subsequent to our receipt and review of the documentation for which subpoena enforcement action is recommended.

Recommendation

Approve Recommendations R-1 through R-5 regarding referral of Exhibits A, B, C, D and E to the Office of General Counsel.

This matter is recommended for placement on the August 14, 1990 Executive Session agenda. Due to its volume, and the fact that the Committee provided a photocopy of its response to the interim audit report to each Commissioner's office, the committee's response is not attached. Should you have any questions, please contact Tom Nurthen or Alex Boniewicz at 376-5320.

Attachments:

Exhibit A: Iowa Staff Housing
Exhibit B: Candidate Spending Limitation (incl. Att. #1 to Exh. C)
Exhibit C: Loans Apparently Not Made in the Ordinary Course of Business (incl. Att. #1 to Exh. C)
Exhibit D: Apparent Excessive Contributions
Exhibit E: Apparent Excessive Contribution - Advance
Attachment 1: OGC Analysis, dated July 20, 1990, portions expunged

Iowa Staff Housing

Section 9033.1(b)(5) of Title 11 of the Code of Federal Regulations states, in part, that the candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 C.F.R. § 9033.11 and other information that the Commission may request.

In addition, Section 106.2 (a)(1) states that unless specifically exempt, all qualified campaign expenses made for the purpose of influencing the nomination of a candidate with respect to a particular state must be allocated to that state and subject to the state expenditure limitation. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his proposed method of allocation or claim of exemption was reasonable.

During our review of outstanding accounts payable, the Audit staff noted a number of final bills from various Iowa utilities. The bills identified houses rented by the Committee in Des Moines, Iowa. The Committee rented three houses, located at 17 E. Durham Street, 3430 Forest Avenue and at 3432 Forest Avenue. Two of the houses commonly were referred to as the Gephardt staff house and Gephardt advance house. The rental at 17 East Durham Street, Des Moines, Iowa appears to have been rented by Laura Nichols, who was the Iowa state press director.

The Audit staff was unable to determine, and the Committee could not provide, a detailed accounting of the costs associated with the houses. We did note that a draft for \$100, allocated to Iowa, was annotated "one-sixth rent Gephardt staff house," however, it was not known who paid the remaining five-sixths (\$500) of the monthly rent.

Committee officials said they were not aware of the above rentals but stated the matter would be looked into.

In the interim audit report, the Audit staff recommended that the Committee provide a detailed accounting of all costs associated with the above rentals, to include but not be limited to:

- ° the monthly rent due, the monthly rent paid, and the source of all such payments, to include the check/draft number, date, payee, payor, and signor.
- ° all associated costs, including all deposits, utilities, furniture and/or equipment rental, etc. The source of all such payments, to include the check/draft number, date, payee, payor, and signor.
- ° copies of all leases identifying the leasee, lessor, and the period of time covered by the lease;
- ° a detailed listing of all known individuals who stayed at the houses, to include their length of stay and their job titles.

In response to the interim audit report, the Committee stated that it has been unsuccessful in its attempts to obtain documentation for the Gephardt staff house, located at 3430 Forest Avenue, Des Moines, Iowa. According to the Committee, it contacted the Jim Vogel Agency, which was apparently the rental agent involved, but was not provided with any documentation. However, it is, the Committee's understanding that only one staff house was rented on Forest Avenue, and the Committee was unable to explain why the records appear to reflect two separate addresses. The Gephardt campaign has no record of who stayed in the house, or which expenses were paid by whom. Further, the Committee has been unable to obtain any information for the 17 East Durham Street rental.

Recommendation #R-1

The Audit staff recommends that this matter be referred to the Commission's Office of General Counsel and that the necessary information from the Jim Vogel Agency and various Iowa utilities be obtained through the issuance of a subpoena(s).

When the necessary documentation is obtained, the Audit staff will (1) adjust the amount allocable to the Iowa spending limit and advise the Office of General Counsel regarding any repayment ramifications, and (2) make a formal referral of the Iowa spending limitation finding contained in the final audit report. An effort should also be made to ascertain the identities of the individuals who occupied the houses in question.

Candidate Spending Limitation

Section 9035.2 (a)(1) and (2) of Title 11 of the Code of Federal Regulations state, in part, that no candidate who has accepted matching funds shall knowingly make expenditures from his personal funds in connection with his campaign for nomination for election to the office of President which exceeds \$50,000. Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

The Committee made available certain American Express receipts and associated documentation for campaign related expenses charged on the Candidate's personal American Express card. However, billing statements requested during the audit fieldwork for the period October 1986 through December 31, 1988, were not made available for review. Based on the documentation made available it appears that the Candidate has exceeded the limitation at 11 C.F.R. § 9035.2(a).

Our review indicated that on February 5, 1988, the Candidate made a direct contribution to the Committee of \$50,000 and as of February 5, 1988, had outstanding charges for qualified campaign expenses on his personal American Express card totaling \$16,309.21, of which \$13,981 was incurred in October, 1987. As a result, it appears that the Candidate exceeded his spending limitation by \$16,309.21 (\$66,309.21 - 50,000).

Additionally, outstanding American Express charges as of March 10, 1988, totaled \$20,853.29 (with certain charges being outstanding since October, 1987). The next Committee payment did not occur until May 23, 1988. Again, it appears that the limitation has been exceeded.

The Audit staff realizes and made it known to the Committee at the exit conference that without the benefit of reviewing billing statements, a determination cannot be made as to whether a particular charge counts against the limitation, since it is not known if such charge was or was not paid within 60 days of the closing date of the billing statement on which the charge first appeared.

At the exit conference a Committee official stated he is extremely reluctant to provide the billing statements requested because of privacy considerations of the Candidate. He further stated that the Committee will be able, and it's their desire to address our request without compromising the Candidate's privacy.

On March 6, 1989 the Committee restated its desire to protect the privacy of the Candidate since his American Express card was used for the congressional campaign, presidential campaign, and for official and personal travel. Further, the Committee did its own analysis with respect to the American Express charges in question and determined that the charges were paid between 33 and 129 days after they appeared on the billing statement. The Committee also appears to be stating that they consider all payments timely since it may be 60 days before the Committee receives the billing statements from the congressional office. According to the Committee, the billing statements were received at the congressional office in St. Louis. The bills were examined and appropriate charges were allocated (to the congressional campaign, presidential campaign, etc.). The statement, with the presidential charges identified, was sent to the presidential committee for payment.

The Audit staff does not consider the Committee's analysis to be complete since it appears limited to those American Express charges made available to the Audit staff during the audit fieldwork. Further, the Committee's analysis appears to refute its own conclusion that all payments should be considered timely since 60 days had past before the billings statements were received from the congressional office.

According to its analysis, on February 17, 1988, the Committee made a partial payment towards the January 15, 1988 billing statement. Subsequently on May 23, 1988, 96 days after the February 17, 1988 payment, the Committee made another payment to American Express, part of which was applied to charges on the January 15, 1988, billing statement.

It is our opinion that the Committee's analysis indicates that the Committee was in possession of the January 15, 1988, billing statement well within the 60 day time frame (since it made a payment on February 17, 1988), and that certain charges contained on the January 15, 1988, billing statement were outstanding until May 23, 1988, or 129 days from when first appearing of the billing statement.

It is also our opinion, that in order to insure that a comprehensive review is conducted with respect to the limitation at 11 C.F.R. § 9035.2(a), all billing statements and supporting documentation for the period October, 1986 through December 31, 1988 should be made available for review, since it is apparent that the limitation has been exceeded.

In the interim audit report, the Audit staff recommended that the Committee provide billing statements and supporting documentation for all charges on the Candidate's American Express Card for the period October 1986 through December 31, 1988.

In response to the interim audit report, Counsel states that the Committee was unaware that such an extensive request had been made. Rather, until these dates appeared in the interim audit report, it was the Committee's understanding that the auditors had requested only those records relating to the period January 1, 1988 through the end of the campaign in March, 1988. The Committee still maintains that the privacy concerns related to these credit card expenses are significant. Yet, in an effort to cooperate with the Commission's request, the Committee produced, for the entire period requested, "billing statements and supporting documentation that relate to charges incurred by and paid by the Gephardt for President Committee." Counsel further states that those expenses on the American Express statements that were incurred for other purposes have been redacted and for periods when billing statements are not submitted, there were no expenditures or payments by the Committee reflected on the billing statements.*/

It should be noted that the audit workpapers, the exit conference summary, and an outline of the topics to be discussed during the exit conference, given to the Committee (and Counsel) immediately before the exit conference, all document the request to be for the period October, 1986 through December, 1988.

Further, it is our opinion that the Committee has still not complied with the recommendation. It did not provide certain statements and for other statements, certain information has been redacted.

However, based on our review of the documentation submitted, it is our opinion that the Candidate exceeded the contribution limitation by \$98,973.40. The excessive amounts occurred as follows, \$14,610.94 on March 16, 1988; \$1,809.35 on

*/ An inference could also be drawn that charges incurred by the Gephardt for President Committee, Inc. but paid by some other person/entity were not produced.

GEHARDT FOR PRESIDENT
Referral Matter
8/14/90

EXHIBIT B
Page 4 of 4

April 14, 1988; \$19,424.65 on May 14, 1988; and, \$63,128.46 on June 15, 1988.* / See Attachment I to Exhibit B. The Committee made payments relative to the above American Express charges totaling \$29,308.89, leaving an unresolved amount of \$69,664.51 as of June 15, 1988.

Recommendation #R-2

The Audit staff recommends that this matter be referred to the Commission's Office of General Counsel in order to obtain via subpoena to the Candidate and/or American Express the records necessary to complete this analysis. After reviewing the information obtained, the Audit staff will revise this analysis accordingly and forward the results to Office of General Counsel.

* / The documentation submitted by the Committee for billing statements subsequent to June 15, 1988, was inadequate for purposes of further analysis.

GEHARDT FOR PRESIDENT
Referral Matter - PAR
8/14/90

ATTACHMENT I
to EXHIBIT B

Schedule of Contributions
Made by Congressman Richard Gephardt

Contributions Made as of*/	Direct Contributions	American Express Charges**/ (New charges)	Total Contributions	Aggregate Amount in Excess of Limitation
02/05/88	\$50,000.00	\$ -0-	\$ 50,000.00	\$ -0-
03/16/88		14,610.94	64,610.94	14,610.94
04/14/88		1,809.35	66,420.29	16,420.29
05/14/88		19,424.65	85,844.94	35,844.94
06/15/88		63,128.46	148,973.40	98,973.40
	Limitation at 26 U.S.C. §9035(a)		\$ 50,000.00	
	Amount in Excess of Limitation		<u>98,973.40</u>	
	Amount in Excess of Limitation		\$ 98,973.40	
	Less: Committee payments relative to the above Amer. Express charges		<u>29,308.89</u>	
	Unresolved amount as of 6/15/88		\$ <u>69,664.51</u>	

*/ (American Express charges only) - Represents the 60th day from the closing date of the billing statement, on which the outstanding American Express charges first appeared.

**/ Outstanding 60 days from the closing date of billing statement on which the charges first appeared.

Loans Apparently Not Made in the Ordinary Course of
Business

Section 431(8)(B)(vii) of Title 2 of the United States Code states, in part, that any loan of money by a State bank, a federally chartered depository institution shall be made in accordance with applicable law and in the ordinary course of business, on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule, and such loan shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

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

1. Chippewa First Financial Bank

On February 29, 1988, the Committee received a \$100,000 loan from the Chippewa First Financial Bank ("the Bank"). The loan was payable on demand, but not later than April 1, 1988. According to the loan documentation, the loan was secured as follows:

- ° Security Agreement which states "receipts from individual donors' campaign contributions. Debtor hereby grants to the Secured Party a security interest in the following collateral: All proceeds received by Debtor as campaign contributions from individuals, including, without limitation, contributions resulting from a fundraising event to be held in St. Louis, Missouri, Wednesday, March 2nd Gephardt for President Luncheon hosted by Louis B. Sussman (sic)."

In addition, the "Debtor agrees to deposit the contributions resulting from the March 2, 1988, fundraising event into a deposit-only account at the Secured Party".

- ° Personal Guaranty - this guaranty states that "to induce Chippewa First Financial Bank (the "Bank") to make loans and advance credit to GEPHARDT FOR PRESIDENT COMMITTEE, INC. ("Borrower"), the signer or signers ("Guarantors" or a "Guarantor") jointly and severally unconditionally guarantee full payment when due of all Liabilities (as hereinafter defined) of Borrower to the Bank. This shall be a continuing guaranty."

The named signatory on the demand note and security agreement is "Gephardt For President Committee, Inc. Louis B. Sussman (sic) Attorney In Fact." The named signatory on the personal guaranty is "Louis B. Sussman (sic), Attorney In Fact (Guarantor)." Further, Mr. Susman's apparent signature appears on each document. It should be noted that the Committee has not provided a Power of Attorney document which appoints Louis B. Susman* to act of behalf of the Committee.

From our review of the language contained in the demand note and collateral securing same, it appears that the Bank's extension of credit to the Committee was based on the strength of the personal guaranty of Louis B. Susman. The above mentioned Security Agreement appears to be defective, since at the time the loan was approved the Committee had not opened a deposit only account, nor did they maintain any other account at the Bank for the purpose of depositing contributions generated at the March 2, 1988 fundraising event, as required by the Security Agreement. Furthermore, the loan file did not contain any projections with respect to funds expected to be generated at the fundraising event, such projections would be pertinent to the Bank if a loan was to be secured in this manner.

As a result, it appears that the loan was not made in the ordinary course of business, and that Louis B. Susman, as sole guarantor, made a \$100,000 contribution to the Committee for the period of time the loan was outstanding (2/29/88 through 4/12/88), which exceeds the limitation at 2 U.S.C. § 441a(a)(1) by \$100,000 since the individual had already contributed \$1,000 to the Committee. Further, it should be noted that the Security Agreement and the Financing Statement of the secured party were signed by A.J. Schmitz, President. Mr. Schmitz is listed in the Polk's Bank Directory, Fall 1988, as the Bank's President/Loans, Director and contributed \$250 by personal check dated February 26, 1988.**/

*/ This individual corresponded with the Commission relative to the 438b audit of St. Louisians for Better Government and advised that the firm of Thompson & Mitchell was, as of the letter dated 2/29/88, representing the auditee.

**/ Three days prior to making the subject loan.

The Committee's Counsel stated that he had never seen the guarantee before and emphasized that Mr. Susman had signed as Attorney In Fact on behalf of the Committee and that neither Mr. Susman nor the Bank had any intent to execute a personal guaranty for the loan.

In a letter to the Committee's Counsel, dated March 7, 1989, Mr. Susman stated that "pursuant to our telephone conversation, please be advised that at no time did I ever agree, intend or implement any personal guarantees for Gephardt for President loan at Chippewa Bank. I was requested to act as Attorney In Fact for the Gephardt for President Committee in reference to a loan they were making at the Chippewa Bank. A staff member of the Gephardt for President brought me a number of papers to execute. If I inadvertently signed a personal guarantee, it was a mistake. I have never furnished any financial statements or had any conversations with the Bank regarding my potential personal guarantee."

In the interim audit report, the Audit staff recommended that the Committee provide the following:

- ° all materials presented to the Bank at the time the loan was requested, to include but not be limited to, the loan application, fundraising projections with respect to the March 2, 1988 event, financial statements, etc.;
- ° a detailed accounting of all funds raised at the March 2, 1988 event;
- ° an explanation as to why a deposit only account was not opened at the Bank;
- ° an explanation from officials of the Bank as to why the Security Agreement should not be considered defective;
- ° an explanation from officials of the Bank concerning the Bank's acceptance and inclusion of Mr. Susman's personal guaranty of \$100,000;
- ° all documents presented to the Bank by Mr. Susman which support the above mentioned guarantee;
- ° a notarized copy of the Power of Attorney document which appoints Louis B. Susman to act on behalf of the Committee with respect to this loan; and
- ° an explanation from officials of the Committee and/or Bank as to why the loan should be considered as having been made in the ordinary course of business.

It should be noted that the Committee did not comply with any of the above components of the recommendation, except for a three-page letter from Louis B. Susman to Mr. Al Schmitz, Chippewa First Financial Bank, which provides background information on Louis B. Susman, and his conservative estimate that the net proceeds from the March 2, 1988 event would be \$150,000. The Committee also provided a one page undated and unsigned "Resolution" with respect to Lewis Sussman [apparently the same Louis B. Susman in question] being authorized as "Attorney-in-fact" and a certificate from William A. Carrick stating that the "attached copy of certain Resolution duly adopted by the Board of Directors on February 26, 1988, is a true and correct copy of certain actions...on that date." The Committee states that the certificate carrying the signature of William A. Carrick was signed by an authorized representative of Perkins Coie at the instruction of William A. Carrick, and if needed, an affidavit concerning same can be provided.

Counsel for the Committee states "this campaign, like so many campaigns, did not operate with Swiss watch precision. If the Security Agreement called for the establishment of an account, then the account should have been established. And if the account was to hold for immediate repayment to the bank all contributions raised by the Sussman (sic) event, then surely this too should have been done. It was not done, however. This may represent a breach in the terms of the Security Agreement but it does not represent -- the crucial point -- a legal weakness in the bank's security.

Exhibit C-5 reflects the UCC Security Agreement filed by Chippewa First Financial Bank laying claim to 'receipts from individual donor's campaign contributions' as a source of repayment for the loan. The statement did not require that these contributions derive from the St. Louis fundraising event, or from any particular event, but rather laid claim to any individual donor campaign contributions totaling the \$100,000 principal (plus interest) of the loan. That the Bank would have preferred to have the campaign's compliance with the deposit-only requirement, applicable to this St. Louis event, does not mean that in the absence of such an account, it had no legally secured interest. And as it happened, the campaign plainly did not take

advantage of this lapse of compliance with the terms of the Security Agreement, but rather repaid the loan promptly.

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The confusion of the auditors here is between a defect in contractual compliance and a defect in legal compliance. The one does not automatically translate into the other. A contract might, for example, call for a loan to be paid on one date, when it is paid instead five days later, but there has never been a suggestion that a five-day tardiness in repayment of a loan -- in and of itself a breach of contract -- causes a loan to lose its ordinary course character. Here, too, the failure of the campaign to establish an account or to deposit its fundraising proceeds into that account for immediate loan repayment breaches its contract but not the relevant standards of law. In July of last year the Commission noted in its proposed rulemaking that it might require candidates borrowing funds against the receipt of future contributions to enter into loan agreements 'requiring that when the committees receive such pledge collateral they deposit it in a separate account for use in retiring the debt.' 54 Fed. Reg. at 31287 (July 27, 1989). Should this proposal become law then a contractual requirement would become also a legal requirement bearing on the question of ordinary course lending. The two have not yet become the same."

The Audit staff disagrees with Counsel's comments made with respect to the Security Agreement. It is our opinion that in order for the bank to proceed in the most prudent manner, which insures repayment under any circumstances, it should have required the Committee to deposit the proceeds from the March 2, 1988 event into a deposit only account at the bank. Schedule A to the Security Agreement specifically states "in consideration of the matters set forth in the Security Agreement, Debtor agrees to deposit the contributions resulting from the March 2, 1988 fundraising event into a deposit-only account at the Secured Party, and further agrees...all indebtedness secured hereby."

It is also our opinion that the Committee has not sufficiently addressed the matter of the "personal guaranty".

The demand note, dated February 29, 1988, indicated that the loan is secured via a Security Agreement, respective UCC filing and a personal guaranty. The unlimited guaranty is signed by Louis B. Susman, Attorney In Fact, not Gephardt for President Committee, Inc., Louis B. Susman Attorney In Fact as the demand note and security agreement were signed. The Committee's response is silent with respect to all recommendations concerning the personal guaranty.

Absent evidence to the contrary, it is the opinion of the Audit staff that the loan was not made in the ordinary course of business and that Louis B. Susman appears to have exceeded the contribution limitation in the amount of \$100,000.

2. Federal City National Bank

On August 28, 1987, the Committee received a \$125,000 loan from Federal City National Bank ("FCNB"). Repayment of the loan was due on September 11, 1987, however, the Committee did not repay the loan until October 8, 1987. According to the loan documentation, it was secured by "a commitment from Adams National Bank for a \$400,000 line of credit to be disbursed on or about September 10, 1987". The Committee did not receive the above mentioned \$400,000 line of credit from Adams National Bank.

On March 6, 1989, the Committee submitted a copy of a letter dated March 3, 1989, that it received from Martha Foulín-Tonat, Assistant Vice President FCNB. The letter made the following assertions:

- ° in August, 1987, John Duffy, Senior Vice President and I met with Charles Curry, President of Progressive Direct Marketing, Inc. and Boyd Lewis, Finance Director for the Committee;
- ° Progressive Direct Marketing was to begin a direct mail program for the Committee and had arranged for a \$400,000 line of credit facility from Adams National Bank (emphasis added);
- ° the purpose of the meeting was to arrange for a bridge loan, based on Adams' commitment to allow Progressive Direct Marketing to begin the program;

- ° FCNB requested a copy of the letter from Adam's indicating their commitment to extend the line of credit;
- ° in the letter, signed by the President of Adams National Bank, Adams extended their commitment contingent on submission of requested documents;
- ° FCNB's Executive (Loan) Committee approved the loan. Mr. McAuliffe abstained as he is also the Committee's finance chairman;
- ° there in no way was any special treatment extended to the Committee. The financial information and source of repayment was more than adequate to justify the decision to grant the loan request;
- ° on September 8, 1987, FCNB was informed that Adams had reneged on their loan commitment; and,
- ° FCNB's Executive Committee then approved a \$400,000 line of credit on October 7, 1987, secured by matching funds.*/
_

*/
_ The \$125,000 loan was repaid on October 8, 1987, (loan balance of \$90,000 at that time) from proceeds of this line of credit

The Audit staff has not reviewed any documentation relating to the purported \$400,000 line of credit request with the Adams National Bank, nor has the Committee provided a copy of the letter from the President of the Adams National Bank concerning its commitment and requested documents. Further, it appears that Progressive Direct Marketing, Inc. may have arranged for the purported \$400,000 line of credit with the Adams National Bank on behalf of the Committee.

The \$125,000 loan at FCNB appears to have been made on the strength of the collateral, a purported \$400,000 line of credit commitment from the Adams National Bank. However, the loan was actually unsecured during the entire period it was outstanding. As a result, it is the opinion of the Audit staff that the loan was not made in the ordinary course of business.

As previously stated, FCNB's Executive Committee approved a \$400,000 line of credit on October 7, 1987. This line of credit was ultimately increased to \$1,400,000.* In addition, the Committee received two loans of \$40,000 and \$30,000, and subsequent to repaying the \$1,400,000 line of credit, the Committee received another \$400,000 line of credit. All of the above were secured by matching funds.

It is the opinion of the Audit staff that the above lines of credit and loans were made in the ordinary course of business, provided that Mr. McAuliffe abstained from voting on same.

In the interim audit report, the Audit staff recommended that the Committee provide the following:

- ° all materials presented to the FCNB at the time the loan was requested, to include but not be limited to, the loan application, the Committee's financial statements, contribution projections, financial statements of Progressive Direct Marketing, etc.;
- ° a copy of the aforementioned letter, signed by the President of the Adams National Bank, extending its commitment contingent on the submission of requested documents;

*/ The line of credit was increased from \$400,000 to \$445,000; from \$445,000 to \$1,000,000; and finally from \$1,000,000 to \$1,400,000.

- ° a copy of the transmittal from the Adams National Bank concerning its reason for declining to issue the \$400,000 line of credit, and any other documents on file concerning the Adams line of credit;
- ° a statement from officials of Progressive Direct Marketing concerning their role in the attempt to obtain the line of credit from the Adams National Bank;
- ° an explanation from officials of the FCNB as to why the loan should be considered a secured loan when in fact the alleged collateral did not exist at the time the loan was made and was not expected to be in existence until one day (September 10, 1987) before the due date of the loan (September 11, 1987);
- ° a copy of the FCNB's official record concerning Mr. McAuliffe's abstention of this loan (\$125,000);
- ° a copy of the FCNB's official record concerning its vote approval of the October 7, 1987, \$400,000 line of credit and subsequent increases to \$1,400,000, to include copies of abstentions by any Executive Committee member;
- ° a copy of the FCNB's official vote on the loans of \$40,000 and \$30,000, and on the February 23, 1988 \$400,000 line of credit, to include copies of abstentions by any Executive Committee member; and
- ° an explanation from officials of the Committee and/or the FCNB as to why the \$125,000 loan should be considered as having been made in the ordinary course of business.

In response to the interim audit report, Counsel states that "the bridge loan appears to have troubled the Audit staff because in its words it 'has not reviewed any documentation,' including a copy of the letter of commitment from the president of Adams National Bank. The auditors are, therefore, uncertain that there was any such commitment upon which FCNB could base security for the bridge loan. There is also their remarkable suggestion that even if there were such a commitment, Adams' apparent renunciation of that commitment after the fact means that somehow FCNB's \$125,000 loan was unsecured.

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On both counts -- whether there was a commitment and whether the reneging on the commitment somehow eliminated the assurance of repayment to FCNB -- the evidence and the law overwhelmingly refute the auditors. Attached as Exhibit C-6 is a letter from the president of Adams National Bank dated August 26, 1987, committing to make a line of credit available to the Gephardt for President Committee 'secured by [matching fund] proceeds and from direct mail fundraising,' and contingent solely on the submission by the campaign of the requested documentation.

This documentation included, inter alia, the campaign's presentation of the determination of its eligibility to receive matching funds issued by the Commission on April 27, 1987. Attached also as Exhibit C-7 is a letter from counsel to the campaign dated August 27, 1987, confirming to Federal City National Bank that all documents requested by Adams 'are being prepared and will be delivered...as soon as possible.' Documents in the files of both the bank and of the law firm, which documents will be made available to the Commission staff for inspection upon request, confirm that these documents were in fact delivered as committed."

"As it happened, Adams abrogated its commitment. The reasons are set forth in a letter from the Director of Progressive Direct Marketing, a direct mail firm which assisted the Gephardt Campaign in negotiations with Adams National Bank. That letter dated September 30, 1987, addresses at great length the circumstances

apparently surrounding this breach of
commitment.^{4/}

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^{4/} In another suspicious leap of faith, the auditors are concerned that the Adams National Bank may have 'arranged' this line of credit with the direct mail firm. Here there is a thought that the direct mail firm may have somehow illegally extended credit to the campaign. As the PDM letter of September 30, 1987, makes abundantly clear, the participation of this firm in the negotiations with Adams was completely appropriate in view of the purpose of the Adams loan: to fund an early Gephardt Campaign direct mail effort conducted by PDM. It was the expectation of PDM in the Gephardt campaign that the loan would be repaid with contributions and relating matching funds received as a result of this direct mail effort. For this reason, PDM's participation in these negotiations was required to explain to Adams the nature of the direct mail effort and the basis upon which the campaign could project successful returns sufficient to repay the Adams' line of credit. The term 'arranged' appearing in a letter from an officer of FCNB who had no knowledge of direct mail fundraising may be taken to be somewhat misleading; but could not the auditors have asked the question and spared all the introduction into the interim report of an unnecessary note of gross suspicion? [end of footnote 4]

There was then a commitment by Adams National Bank and it was abrogated. Does this cause the loan made by FCNB on the basis of this commitment, before its abrogation, 'unsecured' in a legally defective fashion? This is the apparent suggestion of the auditors and it is simply wrong. FCNB issues many bridge loans on a weekly basis in their ordinary course of business. FCNB could not have known that Adams would renege on the commitment. When it issued its bridge loan on the strength of that commitment it was plainly acting in the exercise of perfectly reasonable business judgment, acting in the ordinary course in every sense of the term."

Counsel further states that "recourse against the Committee and Adams National Bank was not the sole basis for reassurance to FCNB. At all times, FCNB had cash deposits of GPC on hand entirely sufficient to pay off the loan and a debit to the GPC account for this purpose was expressly authorized under the loan agreement."

It is the opinion of the Audit staff that the documentation provided by the Committee and its Counsel's response to this matter is not persuasive enough to make a determination that the loan was made in the ordinary course of business. Conversely, it appears that the loan was not made in the ordinary course of business based on the following:

- ° Counsel's statement with respect to deposits on account at FCNB, specifically that a debit to the Committee's account for this purpose was expressly authorized under the loan agreement is simply not true. The note, signed by the Committee's Campaign Manager and Controller, does not provide for any debit provision; and
- ° the letter, signed by the President of Adams National Bank, extending its commitment of a \$400,000 line of credit was, in fact, contingent "upon submission of the campaign of the requested documentation". The letter is dated August 26, 1987, and oddly enough is addressed to the President of Progressive Direct Marketing (PDM) and not to the Committee. The date of the letter (August 26, 1987) and its contingencies are important, since the FCNB bridge loan for \$125,000 was made two days later on August 28, 1987. FCNB obviously knew that the contingencies attached to the Adams commitment were not satisfied, at the time it made the \$125,000 loan, because in a letter dated August 27, 1987 to FCNB, Counsel for the Committee stated that the documentation requested by Adams is being prepared and will be forwarded as soon as possible.

It is obvious to the Audit staff that at the time FCNB made the \$125,000 bridge loan neither the Committee nor FCNB had a firm commitment from Adams; and

- ° in support of its assertions that "in another suspicious leap of faith, the auditors are concerned that Adams may have arranged this line of credit with the direct mail firm", Counsel provided a copy of a three page letter from the President of PDM to a Vice President of Adams National Bank; which Counsel states makes abundantly clear the participation of this firm in the negotiations with Adams was completely appropriate.

The letter submitted by Counsel in response to the interim audit report, as well as Counsel's comments, establishes that some level of involvement by PDM existed with respect to arranging the financing. Absent submission of the documentation requested in the interim audit report, it is not possible to determine whether or not PDM's involvement was appropriate to a vendor-client relationship or constituted a contribution to the Committee by PDM.*/ See Attachment I to Exhibit C.

Finally, the Committee did not comply with the following subsections of the recommendation:

- ° all materials presented to the FCNB at the time the loan was requested, to include but not be limited to, the loan application, the Committee's financial statements, contribution projections, financial statements of Progressive Direct Marketing, etc.;
- ° a copy of the transmittal from the Adams National Bank concerning its reason for declining to issue the \$400,000 line of credit, and any other documents on file concerning the Adams line of credit;
- ° an explanation from officials of the FCNB as to why the loan should be considered a secured loan when in fact the alleged collateral did not exist at the time the loan was made and was not expected to be in existence until one day (September 10, 1987) before the due date of the loan (September 11, 1987)

With respect to the subsequent loan activity with FCNB, the Audit staff stated it was our opinion that the remaining lines of credit and loans were made in the ordinary course of business, provided that Mr. McAuliffe**/ abstained from voting on same.

In response, the Committee submitted a copy of a notarized letter from an officer of FCNB which states that Terence McAuliffe did not participate in any discussion of, nor did he vote on, any of these loans.

*/ On October 27, 1988, the Committee and PDM agreed to debt settle a \$273,235.77 debt for \$107,000.

**/ According to Polk's Bank Directory, Fall 1988 and Fall 1989, Terence R. McAuliffe is Chairman of the Board, Federal City National Bank.

Based on our review of the documentation submitted, the Audit staff believes, absent any indication to the contrary as a result of additional documentation obtained by the Office of General Counsel, the remaining lines of credit and loans were made in the ordinary course of business.

3. Texas Commerce Bank

The Texas Commerce Bank ("the Bank") made a loan of \$150,000 to the Committee on February 26, 1988. The maturity date of the loan was April 15, 1988.* According to the loan documentation, the loan was secured as follows:

- ° Security Agreement which states that the Debtor hereby grants to the Secured Party "all proceeds received by Debtor as campaign contributions from individuals, including, without limitation, contributions resulting from a fundraising event to be held in Highland Park, Texas on March 6, 1988; and all proceeds received by Debtor from the United States Department of the Treasury pursuant to the certification of the Federal Election Commission as required by the Presidential Primary Matching Payment Account Act which relates to and arise by reason of the contributions received by Debtor resulting from the fundraising event to be held in Highland Park, Texas on March 6, 1988."

In addition, Debtor agrees to deposit the contributions resulting from the March 6, 1988, fundraising event into a deposit only account at the secured Party.

- ° a second Security Agreement which grants the Secured Party a security interest in various - computer equipment.

It should be noted that the Committee did open an account at the Bank, but did not deposit any of the proceeds from the fundraising event. When making a loan payment, the Committee would transfer the funds into the account at the Bank, and the Bank would debit this account and apply the said funds to the loan balance. In addition, matching funds were already pledged as security against a \$400,000 line of credit established with the Federal City National Bank on February 23, 1988 (three days before the above mention loan was made). With respect to the second Security Agreement, the computer equipment was leased by the

*/ As of May 31, 1988, the balance of the loan was \$45,000.

Committee through February 9, 1988, at which time the equipment was purchased. A letter to the Committee dated February 10, 1988, from the Client Services Manager at Straton, Inc. valued the computer equipment at \$53,600.

As a result it does not appear that the loan was made in the ordinary course of business.

In the interim audit report, the Audit staff recommended the following:

- ° all materials presented to the Bank at the time the loan was requested, to include but not be limited to, the loan application, fundraising projections with respect to the March 6, 1988 event, financial statements, etc.;
- ° a detailed accounting of all funds raised at the March 6, 1988 event;
- ° an explanation as to why funds raised at the event were not deposited into the account maintained at the Bank;
- ° an explanation as to how matching funds could be assigned as collateral when in fact such assignment was already in effect with FCNB;
- ° copies of all documents which assigned to the Bank (assignee) rights to all matching funds generated by contributions received at the March 6, 1988 event and all documents which perfect said rights;
- ° an explanation from officials of the Bank as to why the Security Agreement, which grants the Bank an interest in the contributions raised at the March 6, 1988 event and respective matching funds, should not be considered defective;
- ° copies of all documents which perfect the Bank's security interest in the computer equipment; and
- ° an explanation from officials of the Committee and/or Bank as to why the loan should be considered as having been made in the ordinary course of business.

In response to the interim audit report, the Committee has provided a majority of the documentation requested. In a letter to the Committee's Counsel, the loan officer who had responsibility for closing the loan stated that the loan was secured (i) primarily by proceeds from a scheduled March 6, 1988 fundraising event hosted by J. McDonald Williams, (ii) by any matching funds received with respect to the proceeds, and (iii) by certain of the Committee's office equipment. He further stated that the loan file contained a letter from J. McDonald Williams which outlined the fundraising event, including Mr. Williams' conservative estimate that net proceeds from the event would total \$150,000.*/

The Bank's loan file appears to have all the necessary documents with respect to the above mentioned collateral, including copies of filed UCC forms which perfects the Bank's secured interest.

Although on the surface it appears that this loan was, in fact, made in the ordinary course of business, it is the opinion of the Audit staff that using an estimate of net proceeds based on a letter from an individual which apparently did not include documentation to support such estimate, and accepting same as your primary collateral is tenuous at best. Further, since the Committee did not provide a detailed accounting of the proceeds from the fundraising event, as recommended, and said proceeds were not deposited into the established deposit only account, and matching funds used as security were restricted to those generated from contributions received at the event, the Audit staff cannot offer an opinion with respect to the credibility of the estimate.

It is the opinion of the Audit staff that the security agreement for contributions from the fundraising event and related potential matching funds is defective, since the contributions were not deposited into the account at the Bank and the matching funds for same were already pledged against a line of credit at the Federal City National Bank. In addition, the value of the pledged computer equipment is not sufficient to fully secure the loan.

Recommendation #R-3

It is the opinion of the Audit staff that the Committee has not complied with the recommendations and that the three loans were not made in the ordinary course of business. As a result, the Audit staff recommends that this matter be referred to the Commission's Office of General Counsel for treatment as a MUR.

*/ The letter is formatted similar to the letter provided with respect to the Chippewa First Financial Bank loan which also projected net proceeds of \$150,000.

PROGRESSIVE DIRECT MARKETING, INC.

Suite 400 • 2100 M Street, N.W. • Washington, D.C. 20037 • (202) 775-9001

September 30, 1987

Ms. Carol J. Lichtenstein
Vice President
The Adams National Bank
1627 K Street, N.W.
Washington, D.C. 20006

ATTACHMENT I
TO EXHIBIT C
P 1 of 3

copy to
J
Duffy
11. Loma

Dear Ms. Lichtenstein,

In reply to your letter of September 23rd regarding the proposed Gephardt Campaign loan, I feel it is important to set out the reasons from my standpoint for the failure of our negotiations to conclude a loan agreement with your bank. I had looked forward to working with you and Ms. Blum, and am very disappointed that our discussions and efforts did not materialize.

As I indicated very directly in a conference in Ms. Blum's office on Friday afternoon, September 4th, our request for a loan was always based on the understanding that it would involve advances at the time of mailing our prospect letters. As our mailing program developed, with several mailing dates, the accumulated advance or loan needed, above the dollar return on mail receipts, would be secured by federal matching funds.

As evidence of this understanding, we had indicated from our earliest discussions in early August that we desired an advance under the loan on or before September 1, 1987 to cover the postage and other up-front costs involved in the September 1st mailings that we made. As you know, we mailed around 800,000 letters in early September. Originally, in early August, you indicated that such an advance around September 1st or before was probably possible, but we would need to organize all the loan papers required. Later, in the last week or ten days of August, you indicated the loan would probably not be approved by August 31st and at that time I indicated we would like temporary financing until the expected loan approval was received by September 10th or 11th. After discussing this with your bank, I arranged a loan of \$125,000 from another bank (a bridge loan) based on a letter from your President Barbara Blum stating that your loan and line of credit was to be approved soon when the necessary documents in process were submitted.

It was never communicated to us at this time that your loan approval was to be only on the collateral of a pledge of federal matching funds which at this stage would have to be from receipts already contributed to the Gephardt Campaign from sources other than direct mail.

My entire conversations and application for a line of credit was based on the assumption and understanding that: (1) direct mail receipts and matching funds thereon would secure the line of credit, and (b) advances could be made initially around September 1, 1987 based on the security of anticipated receipts from letters sent out on that mailing date, along with their federal matching funds. It was understood and discussed that there was a technical and practical difficulty in pledging with adequate security the matching funds on direct mail receipts only as distinguished from matching funds on other non-direct mail receipts, and that some resolution of this would have to be worked out. However, it was my understanding that we would both review this and would make every effort to solve this problem in some way.

It was never understood or discussed, to the best of my awareness, that there would be no advances at the time of making a major "direct mail" mailing except on the basis of federal matching funds already accumulated from non-direct mail sources. I stated this understanding on our part very clearly in the conference on Friday afternoon September 4th in Ms. Blum's office.

In addition to learning, and making clear from our standpoint, that The Adams Bank had a quite different view of the proposed loan than the understanding that the Gephardt Campaign and I had, it was my further impression in that conference that there was still serious doubt as to whether the loan would be approved in the coming week. Questions asked by Ms. Gertzog both while Ms. Blum was present and after she left the meeting and asked me to continue the discussion with Ms. Gertzog, repeatedly brought up the question of what kind of loan was being requested (the loan we had been processing for a month or more), and whether it was an appropriate loan for The Adams Bank.

The result of this conference caused great concern for the outlook for the loan in spite of the letter received on August 26, 1987 from The Adams Bank which was submitted to back-up the bridge loan of \$125,000 secured from another bank on August 28th.

It seemed obviously necessary after the conference on September 4th, from a standpoint of fair dealing, to notify the other bank of the current status of the line of credit that their bridge loan was based upon, approval of which line of credit was already delayed longer than originally contemplated.

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ATTACHMENT I
EXHIBIT C
p 3 of 3

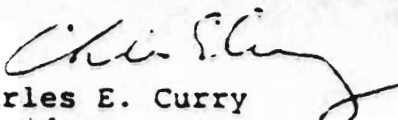
The Gephardt Campaign thereafter, properly in my view, arranged to receive longer term financing from the other bank to resolve a situation that had become embarrassing and very unexpected in the overall negotiation for direct mail financing. I of course regret that it was not then appropriate to attempt to conclude the loan that was being discussed and negotiated with The Adams Bank.

One other point in connection with these matters I feel should be pointed out very clearly and positively. At no time prior to September 8th, did the Gephardt Campaign or myself, directly or indirectly negotiate or try to arrange a line of credit with any bank or financing source other than The Adams Bank. There was no undisclosed dealing with another bank during the period of our loan negotiations. The only other contact in that period was for the "bridge loan" as discussed with you and officers of your bank and which was made with your agreement and cooperation. It was only after September 4th that there was at any time consideration of "entertaining other loan proposals".

I would personally hope that the occasion for future financing might come up with The Adams Bank at some time on a mutually agreeable basis.

I enjoyed working with you and the officers of The Adams Bank in spite of the misunderstanding that developed and regret that this occurred. Although the matter has caused great concern for all parties, I recognize that communication problems and misunderstandings sometimes occur in spite of the best of intentions.

Yours very truly,


Charles E. Curry
President

cc: Ms. Barbara D. Blum
President, The Adams Bank
Hon. Richard Gephardt
Ms. Joanne Symonds

Apparent Excessive Contributions

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

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which on their face exceed the contribution limitations set forth in 11 C.F.R. 110.1 and contributions which do not appear to be excessive on their face, but which exceed the contribution limit set forth in 11 C.F.R. 110.1 when aggregated with other contributions from the same contributor may be either deposited into a campaign depository under 11 C.F.R. 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request reattribution of the contribution by the contributor in accordance with 11 C.F.R. 110.1(k). If reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.*/

Section 110.1(k)(3) of Title 11 of the Code of Federal Regulations states, in part, that if a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitation on contributions set forth in 11 C.F.R. 110.1(b), the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person.

A contribution shall be considered to be reattributed to another contributor if within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

*/ One of the excessive contributions was received prior to April 8, 1987, the effective date of the above cited regulations. It is, however, the Audit staff's opinion that appropriate action was not taken in a timely fashion under either regulation in force.

Finally, Section 110.1(1)(3) and (5) of Title 11 of the Code of Federal Regulations state, in part, that if a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor as required by 11 C.F.R. 110.1(k). If a political committee does not retain the written records concerning reattribution required, the reattribution shall not be effective and the original attribution shall control.

The Audit staff's review of contributions received from individuals indicated that 134 contributors exceeded their contribution limitation by the amount of \$74,230 (excessive portion). It should be noted that the Committee made refunds, totaling \$6,185 to 17 of the above contributors and on March 6, 1989, submitted copies of 29 reattribution letters from contributors in support of the reattribution of all or a portion of the respective contributors' excessive contribution (\$16,800) to another individual. Further, the Committee has been provided detailed schedules of all excessive contributors/contributions.

It is the opinion of the Audit staff that neither the refunds nor reattributions were made in a timely manner. The refunds were made between 91 and 270 days subsequent to the date on which the excessive contributions were deposited. The reattribution letters, not made available during audit fieldwork, were not dated. Further, the Committee has not provided any additional documentation as to when the reattribution letters were sent to the contributors or when responses were received by the Committee.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the contributions in question (\$74,230 excessive amounts) were not in excess of the limitation or refund \$51,245 (\$74,230 - \$6,185 refunded - \$16,800 reattributed) to the contributors and present evidence of such refunds (copies of the front and back of the negotiated refund checks). If funds were not available to make such refunds, disclose the excessive contributions as debts owed by the Committee on Schedule D-P.

In response to the interim audit report, the Committee refunded \$44,825 to contributors, reattributed an additional \$6,170, and demonstrated that one contribution of \$250 (excessive portion) was not an excessive contribution.

It should be noted that the refunds were made between February 8, 1990, and February 15, 1990*/, therefore, the Committee provided only a copy of the front of the non-negotiated refund check. Further, the reattribution letters are not dated, and the Committee has not provided any additional documentation as to when the reattribution letters were sent to the contributors or when responses were received by the Committee.

Recommendation #R-4

The Audit staff recommends that pursuant to the Commission-approved Materiality Thresholds, this matter, excessive contributions totaling \$73,980 (\$74,230 - \$250) from 133 contributors, be referred to the Commission's Office of General Counsel for treatment as a MUR.

*/ The Committee's response to the interim audit report was received on February 15, 1990.

Apparent Excessive Contribution - Advance

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

Section 431 (8)(A)(i) of Title 2 of the United States Code states that the term "contribution" includes any 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.

The Audit staff identified expenditures made on behalf of the Committee, totaling \$2,855.95 (\$3,855.95 - \$1,000 limitation) by one individual. According to documentation made available, the individual incurred the expenses during the period April, 1987 through June, 1987, and requested reimbursement for same on July 20, 1987, and again on September 3, 1987. On October 12, 1988, the Committee issued a check to the individual for \$385.60 or 10 percent and considered this obligation paid (debt settled) in full. It is the opinion of the Audit staff that the request for reimbursement was timely, and that the aforementioned payment by the Committee does not obviate the need to refund the excessive contribution that exists.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the contribution in question (\$2,855.95 excessive amount) was not in excess of the limitation or refund \$2,470.35 (\$3,855.95 - \$1,000 limitation - \$385.60 reimbursement). 25

In response to the interim audit report the Committee stated that the correct amount is \$3,555.95, the difference represents a \$300 cash advance received by the individual, and that the documentation indicates that \$1,247.40 of the expenditures represent personal travel and subsistence expenses by the individual which are exempted pursuant to 11 C.F.R. §100.7(b)(8). Further, the Committee states that the remaining expenses made by this individual represent payment for hotel rooms and food to be used in connection with a reception for Congressman Gephardt and several other Members of Congress traveling with Congressman Gephardt. The Committee also states that the Gephardt campaign regarded at all times the expenditures of funds by this individual as an obligation owed by it to him.

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The Audit staff agrees with the Committee that the individual received a \$300 cash advance, and that the total amount of expenditures should be \$3,555.95. However the Audit staff disagrees with the Committee that expenditures totaling \$1,247.40 should be considered exempt under the volunteer travel and subsistence provisions at 11 C.F.R. §100.7(b)(8). It is our opinion that the individual did not intend to incur such costs without being reimbursed, because on two occasions, he billed the Committee for payment. In his letter of September 3, 1987, to the Committee's Controller, he states "these expenditures were approved in advance and, therefore, there should be no problem regarding their reimbursement."

As a result, the unreimbursed amount of \$2,170.35¹⁵ (\$3,555.95 - \$1,000 limitation - \$385.60 reimbursement) represents an unresolved excessive contribution to the Committee.

Recommendation #R-5

The Audit staff recommends that pursuant to the Commission-approved Materiality Thresholds, this matter, excessive contribution totaling \$2,555.95 (\$3,555.95 - \$1,000 limitation) be referred to the Commission's Office of General Counsel.

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 3111

STAFF MEMBER: Anne A. Weissenborn

SOURCE: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS: Gephardt for President Committee
and S. Lee Kling, as treasurer

Chippewa First Financial Bank

Federal City National Bank

Texas Commerce Bank

Louis B. Susman

F.P. Blank

Edmund M. Reggie

James C. Robinson

William D. Rollnick

RELEVANT STATUTES: 2 U.S.C. § 441b
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)

INTERNAL REPORTS CHECKED: Gephardt for President

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The issues addressed in this matter were referred to the Office of the General Counsel by the Commission on August 14, 1990. (Attachment 1). The referral indicated that the Gephardt for President Committee ("the Committee") had obtained certain bank loans which had apparently not been made in the ordinary course of business, that the possible guarantor of one of these loans had

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exceeded his contribution limitation, and that the Committee had accepted other excessive contributions from 133 contributors. The referral also included an apparent excessive advance made by an individual which has since been addressed in the context of debt settlements submitted for approval by the Committee.¹

II. FACTUAL AND LEGAL ANALYSIS

A. Bank Loans

2 U.S.C. § 431(8)(vii) states that, as used in the Federal Election Campaign Act, the definition of contribution does not include a loan made by a State bank, by a federally chartered depository institution, or by a federally insured depository institution, provided that such loan is made "in accordance with applicable law and in the ordinary course of business" The loan must have been made on a basis which assures repayment, be evidenced by a written instrument, be subject to a due date or amortization schedule, and bear the usual and customary interest rate of the lending institution. See also 11 C.F.R. §§ 100.7(b)(11) and 100.8(b)(12). Section 431(8)(vii) also states that a loan guarantee is to be considered a loan by each guarantor or endorser "in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors."

2 U.S.C. § 441b prohibits any national bank or any corporation organized by authority of any law of Congress from making a

1. Also addressed in the referral were two issues requiring the issuance of subpoenas for additional documents needed to complete the audit of the Committee. Those subpoenas have been handled separately.

contribution or expenditure in connection with any election to any political office, any corporation from making a contribution in connection with a federal election, and any candidate, political committee or other person from knowingly accepting or receiving any contribution prohibited by this section. 2 U.S.C. § 441b(b)(2) excludes from the definition of "contribution or expenditure . . . a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business"

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 per election the amount which any individual may contribute for the purpose of influencing a federal election. Pursuant to 2 U.S.C. § 441a(a)(6), "all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election."

A determination as to whether a bank loan has been handled in the ordinary course of business necessitates a three step analysis covering the original making of the loan, its repayment, and the compliance by the parties with any contract requirements in addition to repayment. In other words, it is first necessary to examine each loan to ascertain whether it met the requirements set out at 2 U.S.C. § 431(8)(vii) in terms of being evidenced by a written instrument, being subject to a due date or amortization schedule, bearing a usual and customary interest rate, and having been made "on a basis which assures repayment." Secondly, even if the loan met these requirements at the time it was made, facts as to whether and when it was repaid may raise additional questions;

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non-repayment or late repayment may be evidence that the loan has not been administered by the bank as an arms-length transaction. And thirdly, even if the loan meets the four requirements of Section 431(8)(vii) and has been repaid in full and on a timely basis, the failure of the recipient to meet special requirements in the loan agreement beyond repayment, and of the bank to insist upon the fulfillment of these requirements, may be evidence that the parties never intended to follow the additional provisions, or that the bank has been overly lenient in servicing the loan. Evidence of a failure to make or to service a loan at arms length is evidence of a failure to make that loan in the ordinary course of business and thus of a violation of 2 U.S.C. § 441b.

a. Chippewa First Financial Bank

On March 1, 1988, the Gephardt for President Committee received a \$100,000 loan from the Chippewa First Financial Bank of St. Louis, Missouri, ("Chippewa"), a state-chartered bank and member of the Federal Deposit Insurance Corporation ("FDIC"). According to the terms of the written loan agreement or Demand Note dated February 29, 1988; the loan was payable on demand but no later than April 1, 1988; interest was not to exceed the prime rate; and the loan was secured by a "Security Agreement, UCC's Personal Guaranty." (Attachment 2). The Committee's reports show that the interest rate was 8 1/2%.

According to the Financing Statement filed pursuant to the Missouri Uniform Commercial Code, and to the Security Agreement which accompanied the Note, the loan was secured by "receipts from

individual donors' campaign contributions" (Attachments 3 & 4); the Security Agreement stated that this was to include "[a]ll proceeds received by Debtor as campaign contributions from individuals, including, without limitation, contributions resulting from a fundraising event to be held in St. Louis, Missouri, Wednesday, March 2nd Gephardt for President Luncheon hosted by Louis B. Sussman [sic]." (Attachment 4).

The latter language is also found on the Schedule A attached to the Security Agreement. In addition, the Schedule A stated,

In consideration of the matters set forth in this Security Agreement, Debtor agrees to deposit the contributions resulting from the March 2, 1988, fundraising event into a deposit-only account at the Secured Party, and further agrees that the Secured Party may offset and charge such account for all principal and interest payable by Debtor to Secured Party. Debtor agrees that it will not withdraw any funds from such account until all obligations secured hereby have been paid in full. Secured Party agrees to pay the balance of such account to Debtor after all permissible offsets and charges have been made by Secured Party and Secured Party is paid in full for all indebtedness secured hereby.

No account was ever opened in compliance with the second provision of Schedule A. \$79,000 of the loan was repaid on March 9, 1988, or one week after the March 2 event. The remainder was repaid on April 12, 1988, 11 days after the due date.

The Demand Note, Financing Statement, and Security Agreement were all signed by Louis B. Susman. All of these documents included the typed words "Louis B. Sussman [sic], Attorney In

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Fact" beneath Mr. Susman's actual signature.² The Demand Note and Security Agreement were both dated February 29, 1988.

Also signed by Mr. Susman on February 29 was an "Unlimited Guaranty" the first paragraph of which read,

To induce Chippewa First Financial Bank (the "Bank") to make loans and advance credit to Gephardt for President Committee, Inc. ("Borrower"), the signer or signers hereof ("Guarantors" or a "Guarantor") jointly and severally, unconditionally guarantee full payment when due of all liabilities (as hereinafter defined) of Borrower to the Bank.

(Attachment 5). The typed name below Mr. Susman's signature on the guarantee again read, "Louis B. Sussman [sic], Attorney In Fact."

2. An attorney in fact is a legal agent who has power of attorney to act on behalf of another. In response to the Interim Audit Report the Committee furnished copies of a Resolution and of a Certificate from the secretary of the Committee stating that the Resolution is "a true and correct copy of certain actions taken by the Corporation's board of directors" on February 26, 1988. The Resolution itself stated in part:

RESOLVED, that the following individual, herein called "Authorized Person,":

<u>Name</u>	<u>Title</u>
Lewis Sussman [sic]	Attorney-in-fact

is hereby authorized personally, and acting alone on behalf of and as the act and deed of this Corporation, to borrow money or to obtain credit in an amount up to but not to exceed \$100,000, from Chippewa First Financial, St. Louis, Missouri ("Bank") in such amount, for such times, in such forms . . . and upon such terms as may be deemed by such Authorized Persons to be advisable; . . .

There is nothing in the resolution concerning a personal guarantee by Mr. Susman of any loan to be obtained from Chippewa.

The Certificate is not sworn to; however, counsel for the Committee has indicated the willingness of the Secretary, William A. Carrick, to provide an affidavit regarding Mr. Susman's authorization.

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Two issues arise from the facts outlined above: (1) whether the "Unlimited Guarantee" signed by Mr. Susman constituted a personal guarantee by him of a \$100,000 loan to the Committee, thus placing him in violation of the contribution limitations at 2 U.S.C. § 441a(a)(1)(A), and (2) whether the Chippewa First Financial Bank made the \$100,000 loan to the Committee in the ordinary course of business.

1. Personal Guarantee

Mr. Susman, in a letter to the general counsel of the Committee dated March 7, 1989, stated that at no time did he ever "agree, intend or implement any personal guarantees for Gephardt for President loan at the Chippewa Bank." (Attachment 6). He went on to state:

I was requested to act as Attorney In Fact for the Gephardt for President Committee in reference to a loan they were making at the Chippewa Bank. A staff member of the Gephardt for President Committee brought me a number of papers to execute. If I inadvertently signed a personal guarantee, it was a mistake. I have never furnished any financial statements or had any conversations with the Bank regarding my potential personal guarantee.

Despite Mr. Susman's claims of non-intent and mistake, the facts remain that he did sign both the Demand Note, which specified "Personal Guaranty" as one form of security for the \$100,000 loan to the Committee, and a Chippewa First Financial Bank form entitled "Unlimited Guaranty" which was related to the same \$100,000 loan. It is also a fact that the typed title below his signatures on these documents was "Attorney In Fact," indicating that he was signing as a representative of the

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Committee; however, with regard to the Unlimited Guaranty such a signature would have been a legal impossibility since the Committee could not act as a guarantor of its own loan. Thus either Mr. Susman's signature on the Unlimited Guaranty served as his personal guarantee, or the document was without effect.

No information is in hand at present as to the extent to which the Chippewa Bank relied upon a personal guarantee by Mr. Susman in its decision to grant the \$100,000 loan. On February 26, 1988, Mr. Susman wrote to the Chippewa First Financial Bank in response to the bank's request for a description of the role which Mr. Susman would play in meeting the cash flow projections furnished to the bank by the Committee in support of its loan application. (Attachment 7). In his letter Mr. Susman outlined his prior experience as a fund-raiser, including his success in raising funds for political candidates, explained his involvement as the sponsor of the particular fundraising event to be held on March 2, 1988, stated his estimate that this event would yield \$150,000 in net proceeds, and gave his positive evaluation of the caliber of the Gephardt Committee staff. There is nothing in this letter regarding an intention to personally guarantee the loan being sought by the Committee. Yet such a guarantee appeared on the Demand Note which was signed three days later.

As stated above, a guarantee of a loan is a contribution to a political committee. A sole guarantor of a loan would be liable for the entire amount, and thus the amount of his or her contribution would equal the full amount of the loan. Therefore,

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if Mr. Susman in fact served as the guarantor of the Committee's loan, he made a contribution of \$100,000 to the Committee. Mr. Susman had already contributed \$500 on or about February 18, 1987, and \$750 on or about June 30, 1987; \$250 was refunded to him on December 30. (See discussion of late refunds at pages 28-32 below.) Thus he had already surpassed his contribution limitation by the date of the \$100,000 loan here at issue.

The facts presently indicate that there is reason to believe Mr. Susman served as guarantor of the Chippewa loan. Therefore, the Office of the General Counsel recommends that the Commission find reason to believe that Louis B. Susman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee, and that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Mr. Susman.

2. Ordinary Course of Business

As outlined above, in order for a bank loan to a political committee to be deemed to have been made in accordance with applicable law and in the ordinary course of business, it must at the least be evidenced by a written instrument, it must be subject to a due date or amortization schedule, it must bear the usual and customary interest rate of the bank for the type of loan involved, and it must be made on a basis which assures repayment. The loan obtained by the Committee from the Chippewa Bank clearly met the first two of these criteria in that it was evidenced by a demand note signed on February 29, 1988, which specified that the principal and accrued interest were due on April 1, 1988. The interest rate charged was apparently the Bank's then prime

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rate of 8 1/2%.

The most problematic issue is that involving the Chippewa Bank's assurance of repayment. As stated above, the Demand Note shows two forms of security, a Security Agreement and a Personal Guaranty. The Security Agreement provided as collateral all proceeds from campaign contributions, including a fundraising event to be held in St. Louis on March 2, 1988, under the sponsorship of Louis B. Susman. The bank sought assurance from Mr. Susman that the Committee would be able to raise the private contributions needed to repay the loan. Mr. Susman provided such assurance in a letter in which he estimated the amount to be raised at the March 2 fundraising event; the letter did not, however, provide details concerning that event such as the numbers of persons to be invited and the amounts to be solicited from each. The bank also built into the security agreement a commitment by the Committee to deposit proceeds from the March 2 event into a deposit-only account. Further, the bank apparently prepared an Unlimited Guaranty which was signed by Mr. Susman.

In earlier enforcement matters and in advisory opinions the Commission has addressed loans secured by future expectations of contributions and, in the case of presidential campaigns, by expectations of public funds. See, e.g., MUR's 1195, 1689, 1721 and 2062 and Advisory Opinion 1980-108. In these previous instances the Commission has examined the legitimacy of the candidate's expectations, and also looked for the existence of secondary or alternative sources of repayment, such as the personal assets of a candidate or guarantees by third parties. If no such

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secondary sources were present, the Commission has looked to other risk-reducing factors such as assurances that future contributions or public funds would in fact be applied to the debt at issue. In the latter regard, protection of the bank's interest in particular receipts could take the form of a special bank account into which a campaign promises to deposit the receipts being pledged as collateral. In the present instance, the steps taken by Chippewa to assure repayment of the loan, including the Unlimited Guaranty signed by Mr. Susman and the agreement by the Committee to establish a deposit-only account, appear to have been designed to provide a secondary source and an additional risk-reducing factor.

Despite these attempts to meet the requirements for assuring repayment, questions arise. First, as to the validity of the security offered, the lack of specific information in Mr. Susman's letter to the bank supporting his estimate of potential contributions raises questions as to the reasonableness of the bank's reliance upon contributions to be received at the March 2 fundraiser as security for the loan.

Secondly, as regards any Susman guarantee, elements pointing to a lack of due care range from the Bank's acceptance of the designation "Attorney In Fact" after Mr. Susman's name on the "Unlimited Guaranty" to the bank's apparent failure to ascertain Mr. Susman's financial ability to sustain such a guarantee. It is unclear whether Chippewa in fact relied upon a guarantee from Mr. Susman; if it did, questions arise as to whether it was justified in doing so considering Mr. Susman's denial of intent and the weaknesses in the bank's documentation.

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Further, as discussed above, a \$100,000 guarantee by Mr. Susman would have placed him in violation of 2 U.S.C. § 441a(a)(1)(A), thus rendering illegal his guarantee. Courts do not enforce illegal contracts. Therefore, even if it were to be determined that Mr. Susman did guarantee the loan, the amount of that guarantee made its enforceability highly questionable and thus apparently not to be relied upon by the bank.

Even though an initial loan arrangement may be appropriate, this Office also believes that the failure of a debtor to fulfill its obligations under a valid loan agreement indicates the possibility of failure on the part of the lender to require adherence to that agreement, thus raising a new issue. In the present matter, Chippewa apparently failed to service the loan adequately by insisting upon compliance with the provision of the security agreement which required the Committee to place the proceeds from the March 2 fundraiser into a deposit-only account.³

With regard to this failure counsel for the Committee has argued that, while the account should have been established, the fact that it was not "does not represent . . . a legal weakness in the bank's security." (emphasis in original.) Counsel has noted that the Security Agreement provided the bank with a security interest in any individual donor campaign contribution. "That the Bank would have preferred to have the campaign's compliance with

3. As noted above, the Committee was 11 days late with the repayment of 21% of the loan. This late repayment does not appear serious enough to reflect materially upon the validity of the original agreement.

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the deposit-only requirement . . . does not mean that in the absence of such an account, it had no legally secured interest."

The FDIC has consistently found the failure of banks to establish or enforce loan repayment programs to be evidence of unsafe or unsound banking practices. See, e.g., FDIC-83-254b (May 6, 1985) and FDIC-84-23b (October 7, 1985). In the present matter, it appears from the language of the Security Agreement that Chippewa was looking especially to the receipts from the March 2 event as security for its loan; it required the establishment of a deposit-only account to protect that interest. This risk-reducing factor, however, never materialized. The apparent failure of the bank to insist upon the actual establishment of the special account raises questions as to the seriousness with which the bank viewed full and timely repayment. If Chippewa did not, or should not have, relied upon a guarantee by Mr. Susman, the protection of its security interest in the receipts from the fundraiser would have been even more important.

In light of the questions which have arisen regarding the bank's reliance upon the proceeds from the March 2 fundraiser and possibly upon a guarantee of the loan by Mr. Susman, and given the bank's apparent failure to safeguard its security interest in the proceeds from the March 2 event, this Office recommends that the Commission find reason to believe that the Committee and Chippewa First Financial Bank have violated 2 U.S.C. § 441b.

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b. Federal City National Bank

Earlier, on August 28, 1987, the Committee received from the Federal City National Bank ("FCNB") of Washington, D.C. a loan of \$125,000. FCNB is a national bank and a member of FDIC.

The undated "Business Loan Application" signed by William A. Carrick, Jr., the Committee's campaign manager, and by Jacqueline Forte, campaign controller, stated that the loan was a "time loan" (no date given) and that it was to be secured by a "Loan committment [sic] from Adams Nat'l Bank in the amount of \$400,000 to be disbursed 9/10/87." (Attachment 8). The loan agreement (Attachment 9), signed by the same two campaign representatives, stated that this was to be a "Bridge Loan" related to a "\$400,000 Committment [sic] from Adams Nat BK," that it would carry an interest rate of 8.750%, that the maturity date was September 11, 1987, and that it was to be secured by the same "committment [sic] from Adams National Bank for a \$400,000 line of credit to be disbursed on or around September 10, 1987." Late charges of 5% were to be paid if the loan were to be "delinquent by at least 10 calendar days." No copy of a separate security agreement has been provided by the Committee.

According to a letter to the Committee from Martha Foulon-Tonat, an assistant vice-president of FCNB, which was dated March 3, 1989, and written at the Committee's request (Attachment 10), FCNB's senior vice-president for lending, John Duffy, and Ms. Foulon-Tonat met in mid-August, 1987, with Boyd Lewis, the Committee's finance director, and Charles Curry, president of Progressive Direct Marketing, Inc. At that meeting arrangements

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were discussed for a loan by FCNB to the Committee of \$125,000. This loan was needed so that Progressive Direct Marketing could begin a direct mail campaign for the Committee which was to be financed by a \$400,000 line of credit from Adams National Bank ("Adams") of Washington, D.C. The FCNB bridge loan was to be based upon a commitment by Adams to extend the line of credit which, according to Ms. Foulon-Tonat's letter, the FCNB understood would be available on or about September 10, 1987.

Apparently at the above meeting, FCNB requested a copy of the letter from Adams containing the latter's commitment regarding the line of credit. The Adams letter was furnished to FCNB.

(Attachment 11) It stated that such a commitment was being made contingent upon Adams' receipt of requested documents. On August 27, 1987, the Committee's attorney, Judith L. Corley, wrote to Mr. Duffy confirming "that all documents requested from the Committee by The Adams National Bank in connection with the extension of a line of credit to the Committee are being prepared and will be delivered to the Adams National Bank as soon as possible."

(Attachment 12). According to Ms. Foulon-Tonat's letter, included in the additional documentation provided, presumably to FCNB, was "a six-month F.E.C. report dated 6/30/87 indicating that the Committee had a strong asset to liability position and a strong contribution base."

The Committee received the bridge loan from the FCNB on August 28, 1987, after it had been approved by the FCNB's Executive (Loan) Committee. One of the members of that committee and of the FCNB's Board of Directors was Terence R. McAuliffe, who

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was then serving as the Gephardt Committee's finance director. According to Ms. Foulon-Tonat, Mr. McAuliffe abstained from the vote on the Committee's loan.³

Ms. Foulon-Tonat wrote further that on September 8, 1987, "the FCNB was informed that Adams had reneged on their loan commitment. Consequently, we began working on establishing a permanent facility secured by F.E.C. matching funds. That facility, a \$400,000 line of credit secured by F.E.C. Matching Funds, was approved by the Executive Committee and extended on October 7, 1987."

Based upon a letter from Charles Curry of Progressive Direct Marketing, Inc., to Adams dated September 30, 1987, (Attachment 14), it appears that Adams decided in the end not to extend the line of credit because of a disagreement as to which matching funds were to serve as security. The bank apparently was willing to accept only a pledge of matching funds based upon contributions already received, while the Committee and Progressive Direct Marketing wished future direct mail receipts and matching funds to be accepted as security.⁴

3. The Committee has also submitted a letter dated January 24, 1990, from Treva N. Elkins, Senior Vice-President, Operations, FCNB, stating that, as the result of a "thorough review of all loans and lines of credit pertaining to the Gephardt for President Committee," the bank found "that Terence McAuliffe did not participate in any discussions of nor did he vote on, any of these loans." (Attachment 13).

4. In his letter to Adams National Bank, Mr. Curry stated,

As I indicated very directly in a conference in Ms. Blum's office on Friday afternoon, September 4th, our request for a loan was always based on the understanding that it would involve advances at the

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The Committee made a payment of \$35,000 on the \$125,000 loan

(Footnote 4 continued from previous page)
time of mailing our prospect letters. As our mailing program developed, with several mailing dates, the accumulated advance or loan needed, above the dollar return on mail receipts, would be secured by federal matching funds.

. . . .

It was never communicated to us at this time [presumably prior to September 4] that your loan approval was to be only on the collateral of a pledge of federal matching funds which at this stage would have to be from receipts already contributed to the Gephardt Campaign from sources other than direct mail.

My entire conversations and application for a line of credit was based on the assumption and understanding that: (1) direct mail receipts and matching funds thereon would secure the line of credit, and (b) advances could be made initially around September 1, 1987 based on the security of anticipated receipts from letters sent out on that mailing date, along with their federal matching funds. . . .

It was never understood or discussed, to the best of my awareness, that there would be no advance at the time of making a major "direct mail" mailing except on the basis of federal matching funds already accumulated from non-direct mail sources. . . .

In addition to learning, and making clear from our standpoint, that The Adams Bank had a quite different view of the proposed loan than the understanding that the Gephardt Campaign and I had, it was my further impression in that conference that there was still serious doubt as to whether the loan would be approved in the coming week.

. . . .

It seemed obviously necessary after the conference on September 4th, from a standpoint of fair dealing, to notify the other bank [Federal City] of the current status of the line of credit that their bridge loan was based upon, approval of which line of credit was already delayed longer than originally contemplated.

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on September 30, 1987, and, on October 8, 1987, the remaining \$90,000 was apparently rolled over into the \$400,000 line of credit approved the day before by FCNB. The \$125,000 loan was treated by the bank as having been paid in full on October 8.

Regarding the \$125,000 loan, Ms. Foulon-Tonat stated, "There in no way was any special treatment extended to the Committee. The financial information and source of repayment were more than adequate to justify the decision to grant the loan request." Her letter closed with the statement, "I again emphasize that the credit decision was made under normal guidelines and that the loan was extended as an ordinary course of business."

It can be seen from the above information that the FCNB loan of \$125,000 met the first two criteria set forth at 2 U.S.C. § 431(8)(vii); it was evidenced by a written instrument and was subject to the due date of September 11, 1987. It also carried an interest rate of 8.75% which does not appear to have been unreasonable.

There remains the issue of whether the \$125,000 loan from FCNB was made on a basis which assured repayment; i.e., whether it was reasonable for the bank to rely upon a commitment by Adams to extend to the Committee a \$400,000 line of credit when such commitment was contingent, not final.

Counsel for the Committee has argued, in the Committee's response to the Interim Audit Report, that there was a commitment by Adams which was actionable. "FCNB had legal recourse at all times not only against the Committee but against Adams for full satisfaction of the amount of the bridge loan." Counsel does not

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however, spell out the basis for this legal recourse, and it is not clear that FCNB would have been successful given the apparent and significant lack of agreement on security which is evidenced in the Curry letter cited above. No documents originating with Adams have been supplied to date and thus that bank's position can only be surmised.

Counsel has also argued that the FCNB could have relied upon other forms of "reassurance," citing cash deposits of the Committee on hand which would have been "entirely sufficient to pay off the loan." Counsel has stated that "a debit to the GPC account for this purpose was expressly authorized under the loan agreement." (emphasis in original). There is nothing, however, in the copy of the loan agreement supplied to the Commission which cites cash deposits as additional security or even mentions such deposits. Further, in ascertaining the reasonableness of a loan, conjecture about what possible security could have been relied upon by a bank is no substitute for a determination of what in fact constituted the security to which the bank looked in deciding to extend the loan at issue.

Counsel has also stated that "the six month FEC financial statements provided to FCNB were also reassuring; that they showed a cash on-hand of slightly under \$1 million, limited liabilities, and gross receipts through June 30, 1987, of \$2.1 million. In addition, GPC pledged non-direct mail matching funds to FCNB." However, by the time the FCNB received the Committee's 1987 Mid-Year Report in August the information therein was almost two

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months out of date. And there is no mention of non-direct mail matching funds in the loan agreement itself.

In summary, there is reason to believe that FCNB may not have been reasonable in having apparently relied upon the contingent commitment by Adams to grant the Committee a \$400,000 line of credit as assurance of repayment for its \$125,000 bridge loan to the Committee. Therefore, this Office recommends that the Commission find reason to believe that the Federal City National Bank and the Committee have violated 2 U.S.C. § 441b.

c. Texas Commerce Bank

The third loan at issue in this matter is one for \$150,000 obtained by the Committee from Texas Commerce Bank of Dallas, Texas, ("Texas Commerce") on February 26, 1988. Texas Commerce is a national bank and a member of FDIC.

The Promissory Note signed by a representative of the Committee, Terry W. Conner, stated that the loan was subject to an interest rate of 1% above the prime rate, or 9 1/2%, and that the maturity date was April 15, 1988. (Attachment 15). According to two security agreements signed on February 26, and the attached Schedules A (Attachments 16 and 17), the loan was secured in three ways, (1) by "[a]ll proceeds received by Debtor as campaign contributions from individuals, including, without limitation, contributions resulting from a fundraising event to be held in Highland Park, Texas on March 6, 1988;" (2) by "[a]ll proceeds received by the Debtor from the United States Department of the Treasury . . . which relate to and arise by reason of the contributions received by Debtor resulting from the fundraising

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event to be held in Highland Park, Texas on March 6, 1988;" and (3) by certain itemized computer equipment belonging to the Committee and appraised at \$53,600.⁵ With regard to the first of these forms of security, the Committee also agreed to deposit the contributions received as a result of the March 6 fundraiser into a deposit-only account at Texas Commerce with the bank being able to charge this account for "all principal and interest payable by Debtor"

According to a letter to the Committee from J. McDonald Williams, it was estimated that the March 6 fundraiser would result in contributions of at least \$150,000. (Attachment 18) The matching funds to be received from the Treasury Department based upon proceeds from this event had previously been pledged as security for a \$400,000 line of credit which had been established with the Federal City National Bank on February 23, 1988.

The Committee made only four deposits into the required deposit-only account: \$60,000 on March 16, 1988, or ten days after the March 6 event; \$15,000 on April 15, 1988, the due date of the loan; \$5,000 on May 16, 1988; and \$5,000 on May 23, 1988. According to the bank's history of this account these payments were credited by the bank as payments of the \$150,000 loan on March 17, April 18, May 17, and June 14, 1988, respectively. (Attachment 19). Thus a total of \$75,000 or half the amount of

5. The bank's interest in the computer equipment was perfected pursuant to the requirements of the Uniform Commercial Code. The valuation of the equipment was based upon a letter dated February 10, 1988, from the Client Services Manager at Straton, Inc.

the loan had been deposited in the special account by the close of April 15. According to the Audit Division, however, these deposits did not consist of proceeds from the March 6 fundraising event.⁶

An additional \$10,000 had been repaid directly, rather than through the special account, on March 28, 1988, for a total of \$85,000 in payments on the Promissory Note by April 15. The remainder of the loan plus interest was repaid as follows: \$10,000 by check dated April 27, 1988; the two \$5,000 payments cited above as paid into the special account on May 16 and 23, 1988; \$35,000 paid by check dated June 14, 1988; and \$12,196.05 paid on June 24, 1988 (\$10,000 in principal and \$2,196.05 in interest). A final payment of \$19.44 in interest was made on July 11, 1988.

The loan obtained from Texas Commerce appears to have met three of the criteria established at 2 U.S.C. § 431(8)(vii) in that it was evidenced by a written instrument, was subject to a fixed due date, and bore an interest rate which exceeded the prime rate at that time. Again, the remaining issue as to the making of the loan is whether or not the bank can be said to have made the loan on a basis which assured repayment and which was in accordance with applicable law.

6. Information obtained during the audit indicates that the Committee transferred funds into the account at Texas Commerce and the bank then debited the account and applied the funds to the loan balance.

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The following questions arise concerning the security offered by the Committee: whether the bank should have relied upon an estimate of future proceeds from a fundraiser without supporting documentation; whether the bank should have accepted as collateral matching funds to be received based upon contributions to be made at a fundraiser when those matching funds were already pledged as security for another loan, namely an FCNB line of credit; and whether office equipment valued at approximately one-third of the loan was adequate collateral.

Included with the Committee's response to the Interim Audit Report was a letter to the Committee dated February 12, 1990, from D. Matt Reynolds, a vice-president of Texas Commerce and the loan officer responsible for closing the February, 1988 loan. In his letter Mr. Reynolds stated,

As you know, the loan was evidenced by a Promissory Note dated February 26, 1988, in the principal amount of \$150,000 . . . which was secured (i) primarily by proceeds from a scheduled March 6, 1988, fund raising event hosted by J. McDonald Williams . . . , (ii) secondarily by any matching funds received with respect to Party Proceeds . . . , and (iii) thirdly by certain of the Committee's office equipment

. . .

In connection with the Committee's application for the Loan, you furnished TCB with a copy of a February 22, 1988, letter from J. McDonald Williams to S. Lee Kling, Treasurer of the Committee, which outlined the fund raising event, including Mr. Williams' estimate of Party Proceeds The Letter was useful to TCB's consideration of this Loan because Mr. Williams was a knowledgeable member of the Dallas business community as the managing partner of the Trammell Crow Company in February of 1988, and Mr. Williams had considerable familiarity with political fund raising prospects. Further, the Letter was an appraisal of the likely proceeds of an already scheduled and planned fund

raising event under Mr. Williams' personal supervision and Mr. Williams stated in the Letter that his estimate of \$150,000 in net proceeds "is a conservative one." Based on this estimate of Party Proceeds, TCB determined that adequate cash flow would be received by the Committee to fully repay the Loan. Accordingly, TCB secured the Loan with Party Proceeds.

However, to provide additional collateral to secure the Note, the Committee offered, and TCB accepted (i) a pledge of the Matching Funds, subject to any prior perfected security interest in the Committee's matching funds generally that may have existed at the time of the pledge to TCB, and (ii) the grant of a security interest in the Equipment. TCB did not rely primarily upon its lien priority with respect to the Matching Funds or with the value of the Equipment because it was TCB's determination, in the ordinary course of business, that payment of the Note was secured by obtaining a security interest in the Party Proceeds. In TCB's judgment, these additional security interests could have generated an independent source of cash flow to supplement any possible, though not expected, shortfall in Party Proceeds.

The purpose of the February, 1988, letter from J. McDonald Williams to the Committee, which is cited in the Reynolds letter above, was to support the Committee's application for the Texas Commerce loan by explaining the role which Mr. Williams would play in raising the funds to be used to repay the loan, particularly through the March 6 fundraising event he was to host. In his letter Mr. Williams outlined his prior activity as a fundraiser for the Effective Government Committee, a political action committee associated with Mr. Gephardt, and for the Committee, stating that he had raised "\$420,734 out of the state of Texas and . . . [had] been personally responsible for raising \$175,000 for Gephardt for President." He also stated that his best estimate of the net yield from the March 6 event was \$150,000, a figure which

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was "stated conservatively." He then went on to cite the anticipated cooperation of the Committee staff and to praise their abilities, (as did Mr. Susman in his letter regarding the loan from the Chippewa First Financial Bank discussed above.⁸)

Mr. Williams' letter did not cite the number of individuals being invited to the March 6 event nor the amounts to be asked of each. Neither has it been possible to weigh the credibility of the estimate of \$150,000 on the basis of actual receipts because the Committee has not provided a detailed accounting of the proceeds of the March 6 event as recommended in the interim audit report.

With regard to the first form of security accepted by Texas Commerce, counsel for the Committee has stated,

The bank makes it abundantly clear that it was relying in principal part on the prominent fundraising support to the Committee provided by Mr. Donald Williams. . . . The assurance provided by prominent and well-established businessmen and the commitments they make to assist a campaign in raising monies to repay a loan constitute reassurance of importance to many banks.

As for the pledge of matching funds which were already serving as security for another loan, counsel has asserted,

Many banks accept subordinated liens as security for lending. That Texas Commerce Bank had a lien subordinate to Federal City National Bank's did not mean that it had no lien at all and, thus, no significant security. In any event, FCNB only had a lien on matching funds in the amount required to repay the amount of the loan provided by FCNB.

8. The language of Mr. Williams' letter is in many instances identical to that employed in the letter signed by Mr. Susman. Both talk in terms of a "schedule of events" to which they "have committed," yet each cites specifically only one event. Therefore it appears that the letters were prepared by others for each of these individuals.

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There is no reason for Texas Commerce to resist a subordinate lien when the Committee might have generated matching funds in excess of what was required to repay FCNB, or if the Committee had chosen to repay FCNB with a mix of matching funds and other funds, leaving some government funds for repayment on all or a part of the Texas Commerce Bank loan. (emphasis in original)

And, regarding the computer equipment, counsel has stated,

[T]he use of multiple forms of security represents a mix of potential sources of repayment which are, taken together, thought to provide the bank with sufficient assurance of repayment. The computer equipment standing alone may not have been sufficient to repay the loan, but there was no reason why the bank would not have wanted access to that equipment if the loan had been in default, and additional funds -- perhaps only this amount of funds -- were required to fulfill complete repayment.

Although no one of the three forms of security provided by the Committee would alone have been sufficient to assure repayment of the \$150,000 loan at issue, it appears that in combination they should be deemed to have been adequate. According to the letter from Mr. Reynolds, the bank relied primarily upon the future proceeds of the March 6 fundraiser as estimated in broad terms by an individual apparently known to the bank. But it also was provided with other forms of security including a interest, albeit subordinate, in matching funds to be received as a result of the March 6 affair and an interest in computer equipment. In addition, the loan agreement required the establishment of a deposit-only account into which the Committee was to deposit the proceeds from the March 6 event. Thus the bank looked not only to secondary sources of repayment but also to the risk-reducing requirement that proceeds go into the special account. Taking all

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of these security factors together, this loan appears to have met the fourth criterion for having been made in the ordinary course of business.

More difficult questions arise, however, with regard to the whether Texas Commerce serviced the loan in the ordinary course of business. Although the Committee did establish a deposit-only account as required by the loan agreement, it did not deposit proceeds from the fundraising event into that account. Nor did the Committee pay back the entire loan until two months after the due date. These omissions cast doubt upon the steps taken by the bank to protect its interests.

Counsel has argued, regarding the failure of the Committee to deposit the proceeds of the March 6 event into the special account that

the failure of a campaign to meet the precise terms of a contractual obligation to a bank does not translate into a failure to comply with requirements of the law. The failure is, in any event, the campaign's, not the bank's. Should the Commission decide that the failure of a campaign to accept and then abide by the full terms of a deposit-only requirement for funds raised from a particular fundraising event, then the law and the contractual obligations will have merged into one. This is not the case today

As stated above, the failure of a debtor to fulfill its obligations under a loan agreement may indicate that the lender has failed to require compliance with that agreement. In the absence of information showing efforts made by the bank to assure the required deposits of fundraising proceeds into the special account and also to assure timely repayment, there is a basis for findings of reason to believe that Texas Commerce Bank

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and the Committee have violated 2 U.S.C. § 441b. This Office recommends that the Commission make these determinations.

This Office further recommends that the attached subpoenas for documents and orders for answers to written questions be approved and sent to the Chippewa First Financial Bank, Adams National Bank, the First National City Bank and Texas Commerce Bank. Questions will also be posed to the Committee regarding the loans here at issue, but not under order at this time.

B. Apparent Excessive Contributions

2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1 limit to \$1000 the amount which any person may contribute to a candidate for the office of President with respect to any primary or general election. 2 U.S.C. § 441a(f) prohibits federal candidates or committees from accepting contributions in excess of the limitations at 2 U.S.C. § 441a(a). 11 C.F.R. § 103.3(b)(3) states that contributions which on their face exceed the contribution limitations and contributions which, when aggregated with other contributions, exceed the limitations, may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. 11 C.F.R. § 110.1(k)(3) permits the reattribution of

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joint contributions if, within sixty days of receipt, the contributors provide a written reattribution of the contribution signed by each contributor and stating the amount to be attributed to each contributor if an equal attribution is not intended.

In the present matter the review by the Audit Division of contributions received by the Committee from individuals indicated that 133 contributors had exceeded their contribution limitation. These contributors, the amounts given, and the dates of reattributions and refunds of excessive amounts are as follows:

<u>Contributor</u>	<u>Total Contributions & Date Exceeded Limitation</u>	<u>Reattributed & Date of Reattribution</u>	<u>Refunded & Date of Refund</u>
Anthony R. Abraham	\$1,500 - 2/88	0	\$ 500 - 2/90
R.D. Anacker	2,000 - 12/87	0	1,000 - 2/90
Roland Attenborough	1,500 - 12/87	0	500 - 3/88
John Bachmann	2,000 - 2/88	0	1,000 - 2/90
W.H. Bates	2,000 - 2/88	\$1,000 - ?	0
F.P. Blank	3,000 - 11/87	0	2,000 - 2/90
Robert D. Blitz	2,000 - 2/88	0	1,000 - 2/90
William J. Bogaard	1,100 - 4/88	100 - ?	0
John L. Boland	1,200 - 3/88		200 - 2/90
George Bristol	1,250 - 3/88		250 - 2/90
James E. Brown	1,270 - 2/88	270 - ?	0
Melvin F. Brown	1,250 - 3/88	0	250 - 2/90
David E. Butler	2,000 - 2/88	1,000	0
Georgina Casanova	1,500 - 2/88	0	500 - 2/90
Carol F. Casey	1,025 - 3/88	0	25 - 2/90
Katherine Cassell	1,030 - 3/88	30	0
Gail E. Catlin	2,000 - 2/88	1,000	0
Margaret A. Clawson	1,250 - 6/87	0	250 - 12/87
Nancy L. Cleary	1,100 - 2/88	100	0
Jerry G. Clinton	1,500 - 3/88	0	500 - 2/90
Katy Close	1,250 - 3/88	250	0
Sam Cook	2,000 - 3/88	0	1,000 - 2/90
Milton Cobb	1,070 - 1/88	70	0
Jeptha W. Dalston	1,100 - 2/88	0	100 - 2/90
Janice L. Davis	1,500 - 3/88	500	0
Ernesto Del Valle	1,250 - 3/88	250	0
Ronald E. Dowdy	2,000 - 11/87	0	1,000 - 2/90
James A. Downing	1,500 - 3/88	0	500 - 2/90
Yvette D. Dubinsky	2,000 - 6/87	0	1,000 12/87
Mark A. Elardo	2,000 - 2/88	0	1,000 - 2/90

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Contributor	Total Contributions & Date Exceeded Limitation	Reattributed & Date of Reattribution	Refunded & Date of Refund
Clyde C. Farris	1,295 - 2/88	250 - ?	45 - 2/90
Jean A. Findeiss	2,000 - 12/87	0	1,000 - 2/90
Dwight L. Fine	1,025 - 3/88	25 - ?	0
David D. Franklin	1,250 - 12/87	0	250 - 2/90
Jeffrey B. Fuqua	2,000 - 2/88	0	1,000 - 2/90
Harry A. Gampel	1,250 - 2/88	0	250 - 2/90
Byron H. Gerson	1,250 - 3/88	0	250 - 2/90
Sheila M. Gouraud	1,500 - 10/87	0	500 - 2/90
Martin M. Green	1,025 - 3/88	0	25 - 2/90
W. David Hanks	1,100 - 12/87	0	100 - 3/88
Lisa Wilson Hart	1,300 - 9/87	0	300 - 3/88
Harvey A. Harris	1,250 - 2/88	250 - ?	0
Narcisco Hernandez	1,250 - 2/88	0	250 - 2/90
Allan Hoffman	2,000 - 3/88	1,000 - ?	0
Donald P. Hogg	1,500 - 2/88	0	500 - 2/90
Morris Horn	2,000 - 2/88	1,000 - ?	0
Chris Horthy	1,250 - 12/87	250 - ?	0
Charles E. Hurwitz	2,000 - 2/88	0	1,000 - 2/90
Marjorie N. Hyde	1,025 - 1/88	25 - ?	0
Philip Isserman	1,200 - 9/87	200 - ?	0
Bernard G. Johnson	2,000 - 2/88	0	1,000 - 2/90
E.J. Justema	1,500 - 2/88	0	500 - 2/90
Jerold B. Katz	1,650 - 2/88	0	650 - 2/90
Stuart R. Kaufman	1,500 - 11/87	0	500 - 3/88
Chandra S. Kaup	1,150 - 2/88	150 - ?	0
Robert J. Keefe	1,250 - 2/88	250 - ?	0
Leslie Krat	1,500 - 3/88	500 - ?	0
Richard L. Kudlak	2,000 - 2/88	0	1,000 - 2/90
Everett R. Lerwick	1,150 - 11/87	0	150 - 3/88
John G. Lewis	1,125 - 12/87	0	125 - 3/88
Joseph P. Logan	1,060 - 12/87	0	60 - 3/88
Rene A. Lopez	1,250 - 2/88	0	250 - 2/90
Dorian Luciani	1,100 - 9/87	0	100 - 2/90
E.W. Lynch, Jr.	2,000 - 2/88	1,000 - ?	0
Edward Massey	1,500 - 2/88	500 - ?	0
Charlotte Matthes	1,250 - 10/87	0	250 - 2/90
W.R. McCain	1,250 - 2/88	250 - ?	0
Kathleen McCarthy	1,500 - 2/88	0	500 - 2/90
Michael McCarthy	2,000 - 2/88	0	1,000 - 2/90
George McCleary	2,000 - 2/88	1,000 - ?	0
Flaud McCreary	1,025 - 1/88	0	25 - 2/90
John G. McMillan	2,000 - 9/87	0	1,000 - 3/88
James R. McNab, Jr.	1,250 - 11/87	0	250 - 3/88
John D. Menke	1,750 - 9/87	0	750 - 1/88
Kenneth E. Meyer	1,250 - 3/88	250 - ?	0
Isabel A. Mondavi	1,250 - 4/88	0	250 - 2/90
R.M. Mondavi	1,250 - 4/88	0	250 - 2/90
Rob Mondavi	1,250 - 4/88	0	250 - 2/90
Kathleen B. Moss	1,075 - 6/87	75 - ?	0
Gerald L. Murphy	2,000 - 2/88	1,000 - ?	0

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Contributor	Total Contributions & Date Exceeded Limitation	Reattributed & Date of Reattribution	Refunded & Date of Refund
John L. Nau, III	1,250 - 6/87	0	250 - 2/90
Joseph Neill	1,055 - 2/88	0	55 - 2/90
D.J. Nelson	2,000 - 9/87	1,000 - ?	0
Ronald D. Null	1,750 - 2/88	0	750 - 2/90
William L. Patton	1,250 - 12/87	0	250 - 2/90
Michael J. Peretto	2,000 - 1/88	1,000 - ?	0
Catherine D. Perry	1,500 - 9/87	0	500 - 2/90
Monique J. Pfleger	1,440 - 11/87	0	440 - 2/90
James D. Pitcock, Jr.	1,250 - 11/87	0	250 - 3/88
Brent Platt	1,250 - 2/87	250 - ?	0
Ronald A. Piperi	1,200 - 9/87	0	200 - 3/88
Marta Prado	1,250 - 6/87	0	250 - 1/88
Abdel H. Ragab	1,500 - 5/88	0	500 - 2/90
Audre Rapoport	1,500 - 2/88	0	500 - 2/90
Chester J. Reed	1,500 - 2/88	0	500 - 2/90
Edmund M. Reggie	3,500 - 6/87	0	2,500 - 2/90
Reinald Reinertson	2,000 - 12/87	0	1,000 - 2/90
Richard M. Reizman	2,000 - 2/88	0	1,000 - 2/90
A.W. Rich	1,250 - 2/88	0	250 - 2/90
Janice Ricks	1,050 - 9/87	0	50 - 2/90
James C. Robinson	4,000 - 6/87	1,000 - ?	2,000 - 2/90
Pedro N. Rodriguez	1,500 - 2/88	500 - ?	0
Robert L. Rogers	1,750 - 2/88	250 - ?	500 - 2/90
William D. Rollnick	3,000 - 2/88	1,000 - ?	1,000 - 2/90
Philip Samuels	1,200 - 2/88	0	200 - 2/90
Lorraine Scherrer	1,110 - 3/88	0	110 - 2/90
Barry Shalov	2,000 - 3/88	0	1,000 - 2/90
Douglas Shoreinstein	2,000 - 2/88	0	1,000 - 2/90
Daniel L. Simmons	2,000 - 3/88	1,000 - ?	0
Wayman F. Smith	1,500 - 2/88	0	500 - 2/90
Sondra Spatt	1,500 - 12/87	0	500 - 2/90
C.M. Stockstill	1,025 - 3/88	25 - ?	0
Leon R. Strauss	1,350 - 1/88	0	350 - 2/90
Thomas W. Strauss	2,000 - 2/88	0	1,000 - 2/90
Louis B. Susman	1,250 - 6/87	0	250 - 12/87
Jack C. Taylor	1,750 - 2/88	0	750 - 2/90
David Tessler	1,250 - 11/87	0	250 - 3/88
Mordecai Tessler	1,250 - 11/87	250 - ?	0
Marjorie B. Thomas	1,250 - 2/88	250 - ?	0
William Turner	1,250 - 2/88	250 - ?	0
Donna S. Victory	1,500 - 2/88	400 - ?	100 - 2/12/90
Lanny S. Vines	2,000 - 8/87	1,000 - ?	0
Floyd C. Warmann	2,000 - 2/88	0	1,000 - 2/15/90
Andrew J. Weiner	2,000 - 3/88	0	1,000 - 2/15/90
Howard Weingrow	1,500 - 3/88	0	500 - 2/8/90
J.T. Wells	1,200 - 1/88	0	200 - 2/8/90
C.H. Wester	1,900 - 2/88	0	900 - 2/12/90
Roger J. Wikner	1,500 - 1/88	0	500 - 2/8/90
William Wilmot	2,000 - 1/88	0	1,000 - 2/15/90
James Wolfensohn	2,000 - 2/88	1,000 - ?	0

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<u>Contributor</u>	<u>Total Contributions & Date Exceeded Limitation</u>	<u>Reattributed & Date of Reattribution</u>	<u>Refunded & Date of Refund</u>
Teresita Yanes	1,250 - 2/88	0	250 - 2/8/90
Leonard I. Zeid	1,250 - 3/88	250 - ?	0
Joanna M. Zumwalt	2,000 - 3/88	1,000 - ?	0
		\$22,970	\$51,010

Total Excessive Contributions - \$73,980

The Committee has submitted copies of all of the reattribution statements received; these contain the signature of the second persons on the joint accounts involved (see Attachment 20 for samples), but none are dated. Thus it is not possible to ascertain whether the reattributions were obtained within the sixty days permitted by the regulations.

As can be seen from the above charts all of the refunds of the excessive contributions at issue were made at least three months, and as much as two years or more, after the contribution limitations were first exceeded. Therefore, it is evident that the Committee did not meet the sixty day deadline for refunds of these contributions.

All of the contributions here at issue should be deemed excessive. The Office of the General Counsel recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$73,980 in excessive contributions.

Four of the above listed individuals contributed in excess of \$2,000, with the excess not having been reattributed or refunded within sixty days of receipt. These persons are F.P. Blank (\$3,000), Edmund M. Reggie (\$3,500), James C. Robinson (\$4,000),

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and William D. Rollnick (\$3,000). This Office therefore recommends that the Commission find reason to believe that these four individuals violated 2 U.S.C. § 441a(a)(1)(A).

C. Apparent Excessive Advance

Also included in the referral to this Office was the issue of a possibly excessive advance made to the Committee by an individual, John B. Crosby, in the form of expenditures totaling \$3,555.95. It was determined during the audit process that Mr. Crosby had requested reimbursement on two occasions in 1987. On December 20, 1988, Mr. Crosby signed a debt settlement agreement which cited an outstanding balance of \$3,855.95⁸ and a settlement amount of \$385 which he had already been paid. The Committee then included this debt settlement with a series of settlements for which it requested Commission approval in 1990.

On October 30, 1990, the Commission voted to instruct the Committee to amend its reports to show as contributions the portions of the debts in excess of \$1,000 owed 10 individuals, including Mr. Crosby, which were not for exempt transportation or subsistence expenses, and to repay any contributions in excess of \$1,000. The Committee has not yet produced evidence of any such repayment.

Because Mr. Crosby's expenditures are being addressed in the debt settlement context, this Office recommends that they not be included in the present enforcement matter. Should the debt settlement process not result in necessary payments to certain

8. It was later determined that Mr. Crosby had received a \$300 advance from the Committee.

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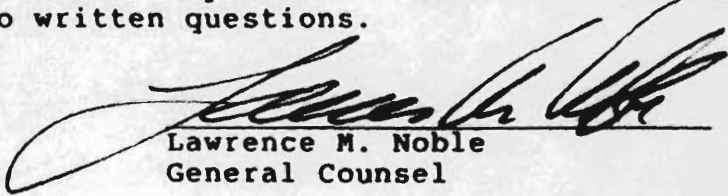
individuals, possibly including Mr. Crosby, further recommendations will be presented to the Commission.

III. RECOMMENDATIONS

1. Find reason to believe that the Gephardt for President Committee, Inc., and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441b and § 441a(f).
2. Find reason to believe that Chippewa First Financial Bank violated 2 U.S.C. § 441b.
3. Find reason to believe that Federal City National Bank violated 2 U.S.C. § 441b.
4. Find reason to believe that Texas Commerce Bank violated 2 U.S.C. § 441b.
5. Find reason to believe that Louis B. Susman, F.P. Blank, Edmund M. Reggie, James C. Robinson, and William D. Rollnick violated 2 U.S.C. § 441a(a)(1)(A).
6. Approve the appropriate letters and the attached Factual and Legal Analyses.
7. Approve the attached subpoenas for documents and orders for answers to written questions.

Date

4/5/91


Lawrence M. Noble
General Counsel

ATTACHMENTS:

1. Referral
2. Demand Note - Chippewa
3. Financing Statement - Chippewa
4. Security Agreement - Chippewa
5. Unlimited Guaranty - Chippewa
6. Susman Letter of March 7, 1989
7. Susman Letter of February 26, 1988
8. Business Loan Application - FCNB
9. Loan Agreement - FCNB
10. Foulon-Tonat Letter of March 3, 1989
11. Blum Letter of August 26, 1987
12. Corley Letter of August 27, 1987
13. Elkins Letter of January 24, 1990
14. Curry Letter of September 30, 1987
15. Loan Agreement - Texas Commerce
16. Security Agreement, Accounts - Texas Commerce
17. Security Agreement, Equipment - Texas Commerce

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18. Williams Letter of February 22, 1988
19. Account History - Texas Commerce
20. Sample reattribution letters
21. Factual and Legal Analyses (9)
22. Subpoenas and Orders (4)

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS *PH*
COMMISSION SECRETARY

DATE: APRIL 10, 1991

SUBJECT: MUR 3111 - FIRST GENERAL COUNSEL'S REPORT
DATED APRIL 5, 1991.

The above-captioned document was circulated to the
Commission on Monday, April 8, 1991 at 11:00 a.m..

Objection(s) have been received from the Commissioner(s)
as indicated by the name(s) checked below:

Commissioner Aikens	<u> </u>
Commissioner Elliott	<u>XXX</u>
Commissioner Josefiak	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner McGarry	<u> </u>
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda
for Tuesday, April 16, 1991.

Please notify us who will represent your Division before the
Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3111
Gephardt for President Committee)
and S. Lee Kling, as treasurer;)
Chippewa First Financial Bank;)
Federal City National Bank;)
Texas Commerce Bank;)
Louis B. Susman;)
F.P. Blank;)
Edmund M. Reggie;)
James C. Robinson;)
William D. Rollnick;)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on April 16,
1991, do hereby certify that the Commission took the
following actions in MUR 3111:

1. Failed in a vote of 3-3 to pass a motion
to find no reason to believe that Chippewa
First Financial Bank violated 2 U.S.C.
§ 441b.

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

(continued)

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2. Decided by a vote of 6-0 to find no reason to believe that Federal City National Bank violated 2 U.S.C. § 441b.

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

3. Decided by a vote of 6-0 to find no reason to believe that Texas Commerce Bank violated 2 U.S.C. § 441b.

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

4. Decided by a vote of 5-1 to find reason to believe that Louis B. Susman violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.

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

(continued)

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5. Decided by a vote of 6-0 to find reason to believe that F.P. Blank, Edmund M. Reggie, James C. Robinson, and William D. Rollnick violated 2 U.S.C. § 441a(a) (1)(A).

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

6. Decided by a vote of 6-0 to find reason to believe that the Gephardt for President Committee, Inc. and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f).

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

7. Decided by a vote of 6-0 to

- a) Close the file with respect to Chippewa First Financial Bank, Federal City National Bank, Texas Commerce Bank, and Louis B. Susman.
- b) Send appropriate letters and appropriate Factual and Legal Analyses pursuant to the actions taken and the meeting discussion of this date.

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

Attest:

4-17-91
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIES

91 APR 25 AM 10:51

SENSITIVE

April 25, 1991

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: Factual and Legal Analysis - Gephardt for President
Committee

On April 16, 1991, the Commission voted to find reason to believe that Louis B. Susman had violated 2 U.S.C. § 441a(a)(1)(A) as the result of his apparent guarantee of a \$100,000 loan obtained by the Gephardt for President Committee ("the Committee") from Chippewa First Financial Bank, but to take no further action and close the file as it pertains to Mr. Susman.

The Commission also found reason to believe that the Committee had violated 2 U.S.C. § 441a(f). This Office believes that this determination included both the acceptance of an excessive contribution from Mr. Susman in the form of the apparent loan guarantee and the acceptance of numerous other excessive contributions from other individuals discussed in the First General Counsel's Report; however, given the possibility of a misinterpretation, we are submitting the attached Factual and Legal Analysis for Commission consideration on a twenty-four hour no objection basis.

Attachment

Factual and Legal Analysis - Committee

Staff Assigned: Anne Weissenborn

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH *DR*
COMMISSION SECRETARY

DATE: APRIL 29, 1991

SUBJECT: MUR 3111 - FACTUAL AND LEGAL ANALYSIS - GEPHARDT
FOR PRESIDENT COMMITTEE. MEMORANDUM
FROM GENERAL COUNSEL DATED APRIL 25,
1991.

The above-captioned document was circulated to the
Commission on THURSDAY, APRIL 25, 1991 at 4:00 p.m..

Objection(s) have been received from the Commissioner(s)
as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____XXX_____
Commissioner Josefiak	_____
Commissioner McDonald	_____XXX_____
Commissioner McGarry	_____
Commissioner Thomas	_____XXX_____

This matter will be placed on the meeting agenda
for TUESDAY, MAY 7, 1991.

Please notify us who will represent your Division before the
Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3111
Gephardt for President Committee, Inc.;)
S. Lee Kling, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of May 7, 1991, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3111:

1. Take no further action with respect to that portion of the reason to believe finding against the Gephardt for President Committee, Inc. involving a loan guarantee from Louis B. Susman.
2. Approve the Factual and Legal Analysis recommended in the General Counsel's memorandum dated April 25, 1991, as modified.

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

Attest:

5-10-91
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 17, 1991

James C. Robinson
1534 E. Amite Street
Jackson, MS 39201

RE: MUR 3111

Dear Mr. Robinson:

On April 16, 1991, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable

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James C. Robinson
page 2

cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

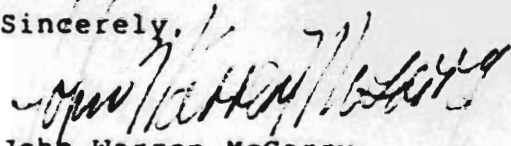
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: James C. Robinson

MUR: 3111

A. BACKGROUND

This matter arose as a result of the Commission's audit of the Gephardt for President Committee, Inc, ("the Committee").

B. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1 limit to \$1,000 the amount which any person may contribute to a candidate for the office of President with respect to any primary or general election. 11 C.F.R. § 103.3(b)(3) provides that contributions which on their face exceed the contribution limitations, and contributions which, when aggregated with other contributions, exceed the limitations, may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. 11 C.F.R. § 110.1(k)(3) permits the reattribution of joint contributions if, within sixty days of receipt, the contributors provide a written reattribution of the contribution signed by each contributor and stating the amount to be attributed to each contributor if an equal attribution is not intended.

James C. Robinson made four contributions totalling \$4,000 to the Committee, including contributions of \$1,000 each received on June 29, 1987, and June 30, 1987, and two contributions of \$1,000

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each received on March 1, 1988. The Committee refunded \$2,000 on February 15, 1990, more than two and one half years after Mr. Robinson first exceeded his contribution limitation. The Committee also received on an unknown date a reattribution of \$1,000 to Elizabeth T. Robinson.

Therefore, there is reason to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee.

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

May 17, 1991

F. P. Blank
241 E. Virginia Street
Tallahassee, FL 32301

RE: MUR 3111

Dear Mr. Blank:

On April 16, 1991, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may

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F. P. Blank
page 2

complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

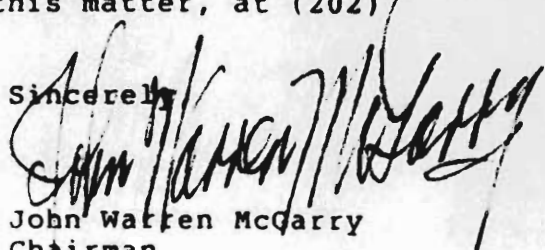
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


John Warren McGarry
Chairman

Enclosures

Factual and Legal Analysis
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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: F.P. Blank

MUR: 3111

A. BACKGROUND

This matter arose as a result of the Commission's audit of the Gephardt for President Committee, Inc, ("the Committee").

B. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1 limit to \$1,000 the amount which any person may contribute to a candidate for the office of President with respect to any primary or general election. 11 C.F.R. § 103.3(b)(3) provides that contributions which on their face exceed the contribution limitations, and contributions which, when aggregated with other contributions, exceed the limitations, may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. 11 C.F.R. § 110.1(k)(3) permits the reattribution of joint contributions if, within sixty days of receipt, the contributors provide a written reattribution of the contribution signed by each contributor and stating the amount to be attributed to each contributor if an equal attribution is not intended.

F.P. Blank made three contributions of \$1,000 each to the Committee which were received on June 29, 1987, November 20, 1987, and February 26, 1988. The Committee refunded \$2,000 on

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February 15, 1990, more than two years after Mr. Blank first exceeded his contribution limitation.

Therefore, there is reason to believe that F.P. Blank violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee.

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

May 17, 1991

Edmund M. Reggie
Reggie Building
Crowley, LA 70526

RE: MUR 3111

Dear Mr. Reggie:

On April 16, 1991, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may

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Edmund M. Reggie
page 2

complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.


Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Edmund M. Reggie

MUR: 3111

A. BACKGROUND

This matter arose as a result of the Commission's audit of the Gephardt for President Committee, Inc, ("the Committee").

B. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1 limit to \$1,000 the amount which any person may contribute to a candidate for the office of President with respect to any primary or general election. 11 C.F.R. § 103.3(b)(3) provides that contributions which on their face exceed the contribution limitations, and contributions which, when aggregated with other contributions, exceed the limitations, may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. 11 C.F.R. § 110.1(k)(3) permits the reattribution of joint contributions if, within sixty days of receipt, the contributors provide a written reattribution of the contribution signed by each contributor and stating the amount to be attributed to each contributor if an equal attribution is not intended.

Edmund M. Reggie made three contributions totalling \$3,500 to the Committee, including \$500 received on June 30, 1987, \$2,000 received on September 30, 1987, and \$1,000 received on November 4,

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1987. Committee refunded \$2,500 on February 15, 1990, more than two years after Mr. Reggie first exceeded his contribution limitation.

Therefore, there is reason to believe that Edmund M. Reggie violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 17, 1991

William D. Rollnick
92 Sutherland Drive
Atherton, CA 94025

RE: MUR 3111

Dear Mr. Rollnick:

On April 16, 1991, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may

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William D. Rollnick
page 2

complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry
John Warren McGarry
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: William D. Rollnick

MUR: 3111

A. BACKGROUND

This matter arose as a result of the Commission's audit of the Gephardt for President Committee, Inc, ("the Committee").

B. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1 limit to \$1,000 the amount which any person may contribute to a candidate for the office of President with respect to any primary or general election. 11 C.F.R. § 103.3(b)(3) provides that contributions which on their face exceed the contribution limitations, and contributions which, when aggregated with other contributions, exceed the limitations, may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. 11 C.F.R. § 110.1(k)(3) permits the reattribution of joint contributions if, within sixty days of receipt, the contributors provide a written reattribution of the contribution signed by each contributor and stating the amount to be attributed to each contributor if an equal attribution is not intended.

William D. Rollnick made two contributions totalling \$3,000 to the Committee, including \$2,000 received on February 29, 1988, and \$1,000 received on March 4, 1988. The Committee refunded \$1,000 on

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February 15, 1990, almost two years after Mr. Rollnick first exceeded his contribution limitation. The Committee also received on an unknown date a reattribution of \$1,000 to Eloise B. Rollnick.

Therefore, there is reason to believe that William D. Rollnick violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 17, 1991

Louis B. Susman, Esquire
Thompson & Mitchell
One Mercantile Center
St. Louis, MO 63101

RE: MUR 3111

Dear Mr. Susman:

On April 16, 1991, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed the file with respect to you. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that your personal guarantee of a bank loan of \$100,000 to a federal campaign committee would be a violation of 2 U.S.C. § 441a(a)(1)(A). You should take immediate steps to insure that this activity does not occur in the future.

The file will be made part of the public record within 30 days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

The confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has

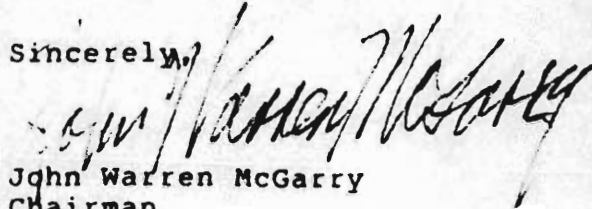
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Louis B. Susman, Esquire
page 2

been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


John Warren McGarry
Chairman

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Louis B. Susman

MUR: 3111

A. BACKGROUND

The issue addressed in this matter arose as a result of the Commission's audit of the Gephardt for President Committee, Inc., ("the Committee").

B. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 per election the amount which any individual may contribute for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i) defines "contribution" to include "any gift, subscription, loan, advance or deposit of money . . . made by any person for the purpose of influencing any election for Federal office" Pursuant to 2 U.S.C. § 431(8)(A)(vii)(I), a loan guarantee is to be considered a loan by each guarantor or endorser "in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." A sole guarantor of a loan would be liable for the entire amount, and thus the amount of his or her contribution would equal the full amount of the loan. Pursuant to 2 U.S.C. § 441a(a)(6), "all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election."

On March 1, 1988, the Gephardt for President Committee received a \$100,000 loan from the Chippewa First Financial Bank of St. Louis, Missouri, ("Chippewa"), a state-chartered bank and

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member of the Federal Deposit Insurance Corporation ("FDIC"). According to the terms of the written loan agreement or Demand Note dated February 29, 1988; the loan was payable on demand but no later than April 1, 1988; interest was not to exceed the prime rate; and the loan was secured by a "Security Agreement, UCC's Personal Guaranty." The Committee's reports show that the interest rate was 8 1/2%.

According to the Financing Statement filed pursuant to the Missouri Uniform Commercial Code, and to the Security Agreement which accompanied the Note, the loan was secured by "receipts from individual donors' campaign contributions." The Security Agreement stated that this was to include "[a]ll proceeds received by Debtor as campaign contributions from individuals, including, without limitation, contributions resulting from a fundraising event to be held in St. Louis, Missouri, Wednesday, March 2nd Gephardt for President Luncheon hosted by Louis B. Sussman [sic]."

The latter language is also found on the Schedule A attached to the Security Agreement. In addition, the Schedule A stated,

In consideration of the matters set forth in this Security Agreement, Debtor agrees to deposit the contributions resulting from the March 2, 1988, fundraising event into a deposit-only account at the Secured Party, and further agrees that the Secured Party may offset and charge such account for all principal and interest payable by Debtor to Secured Party. Debtor agrees that it will not withdraw any funds from such account until all obligations secured hereby have been paid in full. Secured Party agrees to pay the balance of such account to Debtor after all permissible offsets and charges have been made by Secured Party and Secured Party is paid in full for all indebtedness secured hereby.

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The Demand Note, Financing Statement, and Security Agreement were all signed by Louis B. Susman. Each of these documents included the typed words "Louis B. Sussman [sic], Attorney In Fact" beneath Mr. Susman's actual signature. The Demand Note and Security Agreement were both dated February 29, 1988.

Also signed by Mr. Susman on February 29 was an "Unlimited Guaranty" the first paragraph of which read,

To induce Chippewa First Financial Bank (the "Bank") to make loans and advance credit to Gephardt for President Committee, Inc. ("Borrower"), the signer or signers hereof ("Guarantors" or a "Guarantor") jointly and severally, unconditionally guarantee full payment when due of all liabilities (as hereinafter defined) of Borrower to the Bank.

The typed name below Mr. Susman's signature on the guarantee again read, "Louis B. Sussman [sic], Attorney In Fact."

Mr. Susman, in a letter to the general counsel of the Committee dated March 7, 1989, stated that at no time did he ever "agree, intend or implement any personal guarantees for Gephardt for President loan at the Chippewa Bank." He went on to state:

I was requested to act as Attorney In Fact for the Gephardt for President Committee in reference to a loan they were making at the Chippewa Bank. A staff member of the Gephardt for President Committee brought me a number of papers to execute. If I inadvertently signed a personal guarantee, it was a mistake. I have never furnished any financial statements or had any conversations with the Bank regarding my potential personal guarantee.

Despite Mr. Susman's claims of non-intent and mistake, the facts remain that he did sign both the Demand Note, which specified "Personal Guaranty" as one form of security for the \$100,000 loan to the Committee, and a Chippewa First Financial

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Bank form entitled "Unlimited Guaranty" which was related to the same \$100,000 loan. It is also a fact that the typed title below his signatures on these documents was "Attorney In Fact," indicating that he was signing as a representative of the Committee; however, with regard to the Unlimited Guaranty such a signature would have been a legal impossibility since the Committee could not act as a guarantor of its own loan. Thus either Mr. Susman's signature on the Unlimited Guaranty served as his personal guarantee, or the document was without effect.

No information is in hand at present as to the extent to which the Chippewa Bank relied upon a personal guarantee by Mr. Susman in its decision to grant the \$100,000 loan. On February 26, 1988, Mr. Susman wrote to the Chippewa First Financial Bank in response to the bank's request for a description of the role which Mr. Susman would play in meeting the cash flow projections furnished to the bank by the Committee in support of its loan application. In his letter Mr. Susman outlined his prior experience as a fund-raiser, including his success in raising funds for political candidates, explained his involvement as the sponsor of the particular fundraising event to be held on March 2, 1988, stated his estimate that this event would yield \$150,000 in net proceeds, and gave his positive evaluation of the caliber of the Gephardt Committee staff. There is nothing in this letter regarding an intention to personally guarantee the loan being sought by the Committee. Yet such a guarantee appeared on the Demand Note which was signed three days later.

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As stated above, a guarantee of a loan is a contribution to a political committee. A sole guarantor of a loan would be liable for the entire amount. Therefore, if Mr. Susman in fact served as the guarantor of the Committee's loan, he made a contribution of \$100,000 to the Committee.

Mr. Susman had already contributed \$500 to the Committee on or about February 18, 1987, and \$750 on or about June 30, 1987, for a total of \$1,250; \$250 was refunded to him on December 30, 1987. Pursuant to 11 C.F.R. § 103.3(b)(3), contributions which, when aggregated with other contributions, exceed the limitations at 2 U.S.C. § 441a, may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. The excessive portion of Mr. Susman's aggregated contributions in 1987 was not refunded until six months after he exceeded the limitation; the sixty day deadline was not met. He, therefore, had already exceeded his limitation at the time the Chippewa loan was obtained by the Committee.

There is reason to believe that Louis B. Susman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee; however, the Commission has also determined to take no further action in this regard and to close the file with respect to Mr. Susman.

25043643416



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 17, 1991

S. Lee Kling, Treasurer
Gephardt for President Committee
80 F Street, N.W.
8th Floor
Washington, D.C. 20001

RE: MUR 3111

Dear Mr. Kling:

On April 16, 1991, the Federal Election Commission found that there is reason to believe that the Gephardt for President Committee, Inc., and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also determined to take no further action as to one portion of the apparent violation. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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S. Lee Kling, Treasurer
page 2

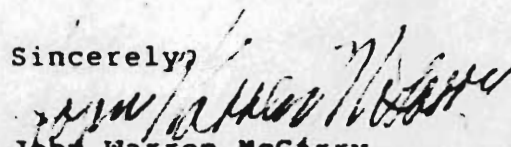
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,


John Warren McGarry
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Gephardt for President
Committee, Inc.
S. Lee Kling, as treasurer

MUR: 3111

A. BACKGROUND

The issues addressed in this matter arose as the result of the Commission's audit of the Gephardt for President Committee, Inc., ("the Committee").

B. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 per election the amount which any individual may contribute for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i) defines "contribution" to include "any gift, subscription, loan, advance or deposit of money . . . made by any person for the purpose of influencing any election for Federal office" 2 U.S.C. § 431(8)(A)(vii)(I) states that a loan guarantee is to be considered a loan by each guarantor or endorser "in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors." Pursuant to 2 U.S.C. § 441a(a)(6), "all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election." 2 U.S.C. § 441a(f) prohibits candidates and political committees from accepting contributions in excess of the limitations established at 2 U.S.C. § 441a(a).

Attachment

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1. Loan Guarantee - Louis B. Susman

On March 1, 1988, the Gephardt for President Committee received a \$100,000 loan from the Chippewa First Financial Bank of St. Louis, Missouri, ("Chippewa"), a state-chartered bank and member of the Federal Deposit Insurance Corporation ("FDIC"). According to the terms of the written loan agreement or Demand Note dated February 29, 1988; the loan was payable on demand but no later than April 1, 1988; interest was not to exceed the prime rate; and the loan was secured by a "Security Agreement, UCC's Personal Guaranty." The Committee's reports show that the interest rate was 8 1/2%.

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According to the Financing Statement filed pursuant to the Missouri Uniform Commercial Code, and to the Security Agreement which accompanied the Note, the loan was secured by "receipts from individual donors' campaign contributions." The Security Agreement stated that this was to include "[a]ll proceeds received by Debtor as campaign contributions from individuals, including, without limitation, contributions resulting from a fundraising event to be held in St. Louis, Missouri, Wednesday, March 2nd Gephardt for President Luncheon hosted by Louis B. Sussman [sic]."

The latter language is also found on the Schedule A attached to the Security Agreement. In addition, the Schedule A stated,

In consideration of the matters set forth in this Security Agreement, Debtor agrees to deposit the contributions resulting from the March 2, 1988, fundraising event into a deposit-only account at the Secured Party, and further agrees that the Secured Party may offset and charge such account for all principal and interest payable by Debtor to Secured Party. Debtor agrees that it will not withdraw any funds from such account until all obligations secured hereby have been paid in

full. Secured Party agrees to pay the balance of such account to Debtor after all permissible offsets and charges have been made by Secured Party and Secured Party is paid in full for all indebtedness secured hereby.

The Demand Note, Financing Statement, and Security Agreement were all signed by Louis B. Susman. All of these documents included the typed words "Louis B. Sussman [sic], Attorney In Fact" beneath Mr. Susman's actual signature.¹ The Demand Note and Security Agreement were both dated February 29, 1988.

Also signed by Mr. Susman on February 29 was an "Unlimited Guaranty" the first paragraph of which read,

To induce Chippewa First Financial Bank (the "Bank") to make loans and advance credit to Gephardt for President Committee, Inc. ("Borrower"), the signer or signers hereof ("Guarantors" or a "Guarantor")

1. An attorney in fact is a legal agent who has power of attorney to act on behalf of another. In response to the Interim Audit Report the Committee furnished copies of a Resolution and of a Certificate from the secretary of the Committee stating that the Resolution is "a true and correct copy of certain actions taken by the Corporation's board of directors" on February 26, 1988. The Resolution itself stated in part:

RESOLVED, that the following individual, herein called "Authorized Person,":

<u>Name</u>	<u>Title</u>
Lewis Sussman [sic]	Attorney-in-fact

is hereby authorized personally, and acting alone on behalf of and as the act and deed of this Corporation, to borrow money or to obtain credit in an amount up to but not to exceed \$100,000, from Chippewa First Financial, St. Louis, Missouri ("Bank") in such amount, for such times, in such forms . . . and upon such terms as may be deemed by such Authorized Persons to be advisable;

There is nothing in the resolution concerning a personal guarantee by Mr. Susman of any loan to be obtained from Chippewa.

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jointly and severally, unconditionally guarantee full payment when due of all liabilities (as hereinafter defined) of Borrower to the Bank.

The typed name below Mr. Susman's signature on the guarantee again read, "Louis B. Sussman [sic], Attorney In Fact."

Mr. Susman, in a letter to the general counsel of the Committee dated March 7, 1989, stated that at no time did he ever "agree, intend or implement any personal guarantees for Gephardt for President loan at the Chippewa Bank." He went on to state:

I was requested to act as Attorney In Fact for the Gephardt for President Committee in reference to a loan they were making at the Chippewa Bank. A staff member of the Gephardt for President Committee brought me a number of papers to execute. If I inadvertently signed a personal guarantee, it was a mistake. I have never furnished any financial statements or had any conversations with the Bank regarding my potential personal guarantee.

Despite Mr. Susman's claims of non-intent and mistake, the facts remain that he did sign both the Demand Note, which specified "Personal Guaranty" as one form of security for the \$100,000 loan to the Committee, and a Chippewa First Financial Bank form entitled "Unlimited Guaranty" which was related to the same \$100,000 loan. It is also a fact that the typed title below his signatures on these documents was "Attorney In Fact," indicating that he was signing as a representative of the Committee; however, with regard to the Unlimited Guaranty such a signature would have been a legal impossibility since the Committee could not act as a guarantor of its own loan. Thus either Mr. Susman's signature on the Unlimited Guaranty served as his personal guarantee, or the document was without effect.

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No information is in hand at present as to the extent to which the Chippewa Bank relied upon a personal guarantee by Mr. Susman in its decision to grant the \$100,000 loan. On February 26, 1988, Mr. Susman wrote to the Chippewa First Financial Bank in response to the bank's request for a description of the role which Mr. Susman would play in meeting the cash flow projections furnished to the bank by the Committee in support of its loan application. In his letter Mr. Susman outlined his prior experience as a fund-raiser, including his success in raising funds for political candidates, explained his involvement as the sponsor of the particular fundraising event to be held on March 2, 1988, stated his estimate that this event would yield \$150,000 in net proceeds, and gave his positive evaluation of the caliber of the Gephardt Committee staff. There is nothing in this letter regarding an intention to personally guarantee the loan being sought by the Committee. Yet such a guarantee appeared on the Demand Note which was signed three days later.

As stated above, a guarantee of a loan is a contribution to a political committee. A sole guarantor of a loan would be liable for the entire amount, and thus the amount of his or her contribution would equal the full amount of the loan. Therefore, if Mr. Susman in fact served as the guarantor of the Committee's loan, he made a contribution of \$100,000 to the Committee.

Mr. Susman had already contributed \$500 on or about February 18, 1987, and \$750 on or about June 30, 1987; \$250 was refunded to him on December 30, 1987. Pursuant to 11 C.F.R. § 103.3(b)(3), contributions which, when aggregated with other contributions,

exceed the limitations at 2 U.S.C. § 441a, may either be deposited into a committee's account or returned to the contributor.

11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request reattribution or redesignation of a portion of the contribution by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. The excessive portion of Mr. Susman's aggregated contributions in 1987 was not refunded until six months after he exceeded the limitation; the sixty day deadline was not met. He, therefore, had already exceeded his limitation at the time the Chippewa loan was obtained by the Committee.

There is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Mr. Susman.

2. Other Apparent Excessive Contributions

As stated above, the Commission's regulations provide committees with opportunities to obtain reattributions or redesignations of the excessive portions of contributions, so long as this is done within sixty days of the contributions' receipt. 11 C.F.R. § 110.1(k)(3) permits the reattribution of joint contributions if, within sixty days of receipt, the contributors provide a written reattribution of the contribution signed by each contributor and stating the amount to be attributed to each contributor if an equal attribution is not intended.

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In the present matter the review by the Audit Division of contributions received by the Committee from individuals indicated that 133 contributors had exceeded their contribution limitation. These contributors, the amounts given, and dates of reattributions and refunds of excessive amounts are as follows:

Contributor	Total Contributions & Date Exceeded Limitation	Reattributed & Date of Reattribution	Refunded & Date of Refund
Anthony R. Abraham	\$1,500 - 2/88	0	\$ 500 - 2/90
R.D. Anacker	2,000 - 12/87	0	1,000 - 2/90
Roland Attenborough	1,500 - 12/87	0	500 - 3/88
John Bachmann	2,000 - 2/88	0	1,000 - 2/90
W.H. Bates	2,000 - 2/88	\$1,000 - ?	0
F.P. Blank	3,000 - 11/87	0	2,000 - 2/90
Robert D. Blitz	2,000 - 2/88	0	1,000 - 2/90
William J. Bogaard	1,100 - 4/88	100 - ?	0
John L. Boland	1,200 - 3/88		200 - 2/90
George Bristol	1,250 - 3/88		250 - 2/90
James E. Brown	1,270 - 2/88	270 - ?	0
Melvin F. Brown	1,250 - 3/88	0	250 - 2/90
David E. Butler	2,000 - 2/88	1,000	0
Georgina Casanova	1,500 - 2/88	0	500 - 2/90
Carol F. Casey	1,025 - 3/88	0	25 - 2/90
Katherine Cassell	1,030 - 3/88	30	0
Gail E. Catlin	2,000 - 2/88	1,000	0
Margaret A. Clawson	1,250 - 6/87	0	250 - 12/87
Nancy L. Cleary	1,100 - 2/88	100	0
Jerry G. Clinton	1,500 - 3/88	0	500 - 2/90
Katy Close	1,250 - 3/88	250	0
Sam Cook	2,000 - 3/88	0	1,000 - 2/90
Milton Cobb	1,070 - 1/88	70	0
Jeptha W. Dalston	1,100 - 2/88	0	100 - 2/90
Janice L. Davis	1,500 - 3/88	500	0
Ernesto Del Valle	1,250 - 3/88	250	0
Ronald E. Dowdy	2,000 - 11/87	0	1,000 - 2/90
James A. Downing	1,500 - 3/88	0	500 - 2/90
Yvette D. Dubinsky	2,000 - 6/87	0	1,000 12/87
Mark A. Elardo	2,000 - 2/88	0	1,000 - 2/90
Clyde C. Farris	1,295 - 2/88	250 - ?	45 - 2/90
Jean A. Findeiss	2,000 - 12/87	0	1,000 - 2/90
Dwight L. Fine	1,025 - 3/88	25 - ?	0
David D. Franklin	1,250 - 12/87	0	250 - 2/90
Jeffrey B. Fuqua	2,000 - 2/88	0	1,000 - 2/90
Harry A. Gampel	1,250 - 2/88	0	250 - 2/90

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Contributor	Total Contributions & Date Exceeded Limitation	Reattributed & Date of Reattribution	Refunded & Date of Refund
Byron H. Gerson	1,250 - 3/88	0	250 - 2/90
Sheila M. Gouraud	1,500 - 10/87	0	500 - 2/90
Martin M. Green	1,025 - 3/88	0	25 - 2/90
W. David Hanks	1,100 - 12/87	0	100 - 3/88
Lisa Wilson Hart	1,300 - 9/87	0	300 - 3/88
Harvey A. Harris	1,250 - 2/88	250 - ?	0
Narcisco Hernandez	1,250 - 2/88	0	250 - 2/90
Allan Hoffman	2,000 - 3/88	1,000 - ?	0
Donald P. Hogg	1,500 - 2/88	0	500 - 2/90
Morris Horn	2,000 - 2/88	1,000 - ?	0
Chris Horty	1,250 - 12/87	250 - ?	0
Charles E. Hurwitz	2,000 - 2/88	0	1,000 - 2/90
Marjorie N. Hyde	1,025 - 1/88	25 - ?	0
Philip Isserman	1,200 - 9/87	200 - ?	0
Bernard G. Johnson	2,000 - 2/88	0	1,000 - 2/90
E.J. Justema	1,500 - 2/88	0	500 - 2/90
Jerold B. Katz	1,650 - 2/88	0	650 - 2/90
Stuart R. Kaufman	1,500 - 11/87	0	500 - 3/88
Chandra S. Kaup	1,150 - 2/88	150 - ?	0
Robert J. Keefe	1,250 - 2/88	250 - ?	0
Leslie Krat	1,500 - 3/88	500 - ?	0
Richard L. Kudlak	2,000 - 2/88	0	1,000 - 2/90
Evertt R. Lerwick	1,150 - 11/87	0	150 - 3/88
John G. Lewis	1,125 - 12/87	0	125 - 3/88
Joseph P. Logan	1,060 - 12/87	0	60 - 3/88
Rene A. Lopez	1,250 - 2/88	0	250 - 2/90
Dorian Luciani	1,100 - 9/87	0	100 - 2/90
E.W. Lynch, Jr.	2,000 - 2/88	1,000 - ?	0
Edward Massey	1,500 - 2/88	500 - ?	0
Charlotte Matthes	1,250 - 10/87	0	250 - 2/90
W.R. McCain	1,250 - 2/88	250 - ?	0
Kathleen McCarthy	1,500 - 2/88	0	500 - 2/90
Michael McCarthy	2,000 - 2/88	0	1,000 - 2/90
George McCleary	2,000 - 2/88	1,000 - ?	0
Flaud McCreary	1,025 - 1/88	0	25 - 2/90
John G. McMillan	2,000 - 9/87	0	1,000 - 3/88
James R. McNab, Jr.	1,250 - 11/87	0	250 - 3/88
John D. Menke	1,750 - 9/87	0	750 - 1/88
Kenneth E. Meyer	1,250 - 3/88	250 - ?	0
Isabel A. Mondavi	1,250 - 4/88	0	250 - 2/90
R.M. Mondavi	1,250 - 4/88	0	250 - 2/90
Rob Mondavi	1,250 - 4/88	0	250 - 2/90
Kathleen B. Moss	1,075 - 6/87	75 - ?	0
Gerald L. Murphy	2,000 - 2/88	1,000 - ?	0
John L. Nau, III	1,250 - 6/87	0	250 - 2/90
Joseph Neill	1,055 - 2/88	0	55 - 2/90
D.J. Nelson	2,000 - 9/87	1,000 - ?	0
Ronald D. Null	1,750 - 2/88	0	750 - 2/90
William L. Patton	1,250 - 12/87	0	250 - 2/90
Michael J. Peretto	2,000 - 1/88	1,000 - ?	0

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<u>Contributor</u>	<u>Total Contributions & Date Exceeded Limitation</u>	<u>Reattributed & Date of Reattribution</u>	<u>Refunded & Date of Refund</u>
Catherine D. Perry	1,500 - 9/87	0	500 - 2/90
Monique J. Pflieger	1,440 - 11/87	0	440 - 2/90
James D. Pitcock, Jr.	1,250 - 11/87	0	250 - 3/88
Brent Platt	1,250 - 2/87	250 - ?	0
Ronald A. Piperi	1,200 - 9/87	0	200 - 3/88
Marta Prado	1,250 - 6/87	0	250 - 1/88
Abdel H. Ragab	1,500 - 5/88	0	500 - 2/90
Audre Rapoport	1,500 - 2/88	0	500 - 2/90
Chester J. Reed	1,500 - 2/88	0	500 - 2/90
Ed Reggie	3,500 - 6/87	0	2,500 - 2/90
Reinald Reinertson	2,000 - 12/87	0	1,000 - 2/90
Richard M. Reizman	2,000 - 2/88	0	1,000 - 2/90
A.W. Rich	1,250 - 2/88	0	250 - 2/90
Janice Ricks	1,050 - 9/87	0	50 - 2/90
James C. Robinson	4,000 - 6/87	1,000 - ?	2,000 - 2/90
Pedro N. Rodriguez	1,500 - 2/88	500 - ?	0
Robert L. Rogers	1,750 - 2/88	250 - ?	500 - 2/90
William D. Rollnick	3,000 - 2/88	1,000 - ?	1,000 - 2/90
Philip Samuels	1,200 - 2/88	0	200 - 2/90
Lorraine Scherrer	1,110 - 3/88	0	110 - 2/90
Barry Shalov	2,000 - 3/88	0	1,000 - 2/90
Douglas Shoreinstein	2,000 - 2/88	0	1,000 - 2/90
Daniel L. Simmons	2,000 - 3/88	1,000 - ?	0
Wayman F. Smith	1,500 - 2/88	0	500 - 2/90
Sondra Spatt	1,500 - 12/87	0	500 - 2/90
C.M. Stockstill	1,025 - 3/88	25 - ?	0
Leon R. Strauss	1,350 - 1/88	0	350 - 2/90
Thomas W. Strauss	2,000 - 2/88	0	1,000 - 2/90
Louis B. Susman	1,250 - 6/87	0	250 - 12/87
Jack C. Taylor	1,750 - 2/88	0	750 - 2/90
David Tessler	1,250 - 11/87	0	250 - 3/88
Mordecai Tessler	1,250 - 11/87	250 - ?	0
Marjorie B. Thomas	1,250 - 2/88	250 - ?	0
William Turner	1,250 - 2/88	250 - ?	0
Donna S. Victory	1,500 - 2/88	400 - ?	100 - 2/90
Lanny S. Vines	2,000 - 8/87	1,000 - ?	0
Floyd C. Warmann	2,000 - 2/88	0	1,000 - 2/90
Andrew J. Weiner	2,000 - 3/88	0	1,000 - 2/90
Howard Weingrow	1,500 - 3/88	0	500 - 2/90
J.T. Wells	1,200 - 1/88	0	200 - 2/90
C.H. Wester	1,900 - 2/88	0	900 - 2/90
Roger J. Wikner	1,500 - 1/88	0	500 - 2/90
William Wilmot	2,000 - 1/88	0	1,000 - 2/90
James Wolfensohn	2,000 - 2/88	1,000 - ?	0
Teresita Yanes	1,250 - 2/88	0	250 - 2/90
Leonard I. Zeid	1,250 - 3/88	250 - ?	0
Joanna M. Zumwalt	2,000 - 3/88	1,000 - ?	0
		\$22,970	\$51,010

Total Excessive Contributions - \$73,980

The Committee has submitted copies of all of the reattribution statements received; these contain the signature of the second persons on the joint accounts involved, but none are dated. Thus it is not possible to ascertain whether the reattributions were obtained within the sixty days permitted by the regulations.

As can be seen from the above chart, all of the refunds of the excessive contributions at issue were made at least three months, and as much as two or more years, after the contribution limitations were exceeded. It is evident that the Committee did not meet the sixty day deadline for refunds of these contributions.

All of the contributions here at issue were excessive. Therefore, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$73,980 in excessive contributions.

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06C 1279

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

May 24, 1991

Anne Weissenborn, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3111 - Gephardt for
President Committee

91 MAY 24 AM 11:45

RECEIVED
FEDERAL ELECTION COMMISSION
COUNSEL

Dear Ms. Weissenborn:

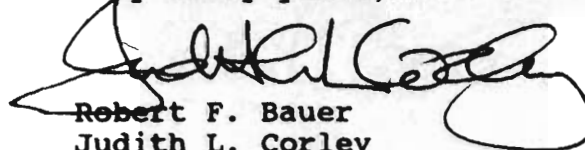
This will confirm our understanding that the Federal Election Commission has on file a designation of counsel for our law firm to represent the Gephardt for President Committee in the above-referenced matter under review, as well as any other MURs that are received or initiated by the Commission.

With respect to MUR 3111, we request an extension of time of 20 days to respond to the Commission's notice of reason to believe. This extension will allow us the time necessary to gather the information relevant to the preparation of a response.

The Commission's notice was received on May 21. A response would be due on June 5. With the 20-day extension, our response will be due no later than June 25.

If you have any questions or need additional information, please do not hesitate to contact the undersigned.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel to Respondents

RFB/JLC:smb

95043643489

WILLIAM ROLLNICK & CO., INC.

2445 FABER PLACE, SUITE 200 • PALO ALTO, CA 94303 • (415) 856-7600

RECEIVED
FEDERAL ELECTION COMMISSION
MAY 24 1991

91 MAY 24 AM 9:25

May 23, 1991

Federal Election Commission
Washington, D.C. 20463
Attn: Anne A. Weissenborn

RE: MUR3111

Dear Ms. Weissenborn:

I am in receipt of your letter of May 17, 1991 regarding my contribution to the Gebhardt for President Committee. The facts are as follows:

On February 11, 1988, while out of town, I overnighted a check for \$1,000.00 to the Committee. A few days later, they called to tell me that the check was lost and could I please send them a replacement. After checking two or three times with my bank, I was reasonably sure it was lost and sent a new check to the Committee for \$2,000. The first \$1,000 was to replace the lost check and the second \$1,000 was from my wife. I had not felt it necessary to put a "stop payment" on the first check. This obviously was a mistake on my part because at the end of March both checks cleared the bank. At that time I phoned the committee and was assured that the \$1,000 refund would be forthcoming. I must admit that I do not remember when I finally received the refund but if you say it was February of 1990, I cannot disagree.

Regarding the "retribution" signed by my wife, Eloise, this was the way we always did this i.e. send in the contribution and sign the document sent back by the committee or candidate. This procedure is changed as of this date. We will send it with the check identifying from whom the money is coming from.

91 MAY 24 AM 10:15

RECEIVED
FEDERAL ELECTION COMMISSION
MAY 24 1991

25043643490

Federal Election Committee

RE: MUR 3111

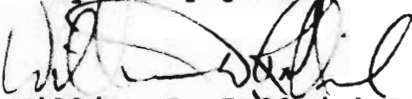
May 23, 1991

Page Two

I feel rather dumb about all of this but it was certainly not my intention to circumvent the law. On the contrary, in spite of my seeming ineptitude, I take all of this very seriously. I am enclosing copies of the checks that I wrote covering these two amounts. I have included copies of checks written before and after each one for your information.

The only thing I can say is it sure won't happen again.

Very truly yours,



William D. Rollnick

WDR/ds
encls.

95043643421

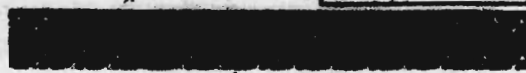
95043643492

Leblanc Bros.
Inc. Montreal

Feb 26 88

CHECK HERE IF TAX DEDUCTIBLE ITEM ☐

BAL FORD	
THIS PAYMENT	<i>2000</i>
BALANCE	
OTHER	
BAL FORD	<i>11 00</i>



NOT NEGOTIABLE

CHECK HERE IF TAX DEDUCTIBLE ITEM ☐

1105

Feb 11 87

My payment for President
One Thousand no 00

BAL FORD	
THIS PAYMENT	1000 00 ⁰⁰
BALANCE	
OTHER	
BAL FORD	

NOT NEGOTIABLE

25043643494

3
CHECK HERE IF TAX DEDUCTIBLE ITEM ☐

July 11 1977

Deposited for President
Dwight D. Eisenhower

BAL FORD	
THIS PAYMENT	1000.00
BALANCE	
OTHER	
BAL FORD	

[REDACTED]

NOT NEGOTIABLE



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 28, 1991

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3111
Gephardt for President
Committee

Dear Mr. Bauer and Ms. Corley:

This is in response to your letter dated May 24, 1991, which we received on May 24, 1991, requesting an extension of twenty days to respond to notification of the Commission's finding of reason to believe in the above-cited matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 25, 1991.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in cursive script, reading "George F. Rishel", is written over the typed name and title.

BY: George F. Rishel
Assistant General Counsel

25043643495



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 31, 1991

James C. Robinson
1534 Hoffner Avenue
Orlando, FL 32809

RE: MUR 3111

Dear Mr. Robinson:

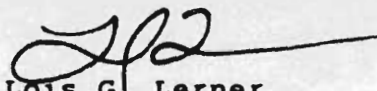
On May 17, 1991, the enclosed letter and documents were mailed to you at the incorrect address shown and subsequently were returned by the Post Office.

Responses to a Commission finding of reason to believe a violation of the Federal Election Campaign Act has occurred are due within 15 days of the date of receipt of the notification. Your response time will thus begin on the date of your receipt of the enclosed information.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures

2504343496

06C1456

REGGIE HARRINGTON AND REGGIE

ATTORNEYS AT LAW
POST OFFICE DRAWER D
CROWLEY, LOUISIANA 70527-6004
(318) 783-1577
TELECOPIER: (318) 783-6801

EDMUND M. REGGIE*
T. BARRETT HARRINGTON
GREGORY F. REGGIE
*ALSO ADMITTED D.C. BAR

May 28, 1991

91 JUN -6 PM 3:33

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF LEGAL COUNSEL

25043643497

Mr. John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: Your MUR 3111

Dear Mr. McGarry:

I am in receipt of your letter of May 17, 1991, concerning my contributions to Gephardt for President Committee.

The analysis of checks written by me to the Committee does not agree with my records. My records indicate that my check No. 3073 issued on June 16, 1987 in the amount of \$500 was to enable Mr. Gephardt to qualify as a candidate for the presidency.

My records further show that I issued Check No. 3146 on September 30, 1987 in the sum of \$2,000 to that Committee.

My records do not indicate any other check being issued by me to the Committee. In your analysis you indicate that a contribution in the sum of \$1,000 was received by the Committee on November 4, 1987. Will you please furnish me with a copy of that contribution, because I frankly think that the Committee's records may have credited a third campaign contribution to me when it was made by some other party.

I did in fact receive a refund check with scant explanation, and I accepted the refund. My records indicate that the refund check was the Committee's Check No. 3069 and was dated February 15, 1990.

I was under the impression that I could contribute the initial \$500 to his campaign to get the campaign started, and that such

Mr. John Warren McGarry
Federal Election Commission
May 28, 1991
Page 2

contribution would not count against any contribution made by me after Mr. Gephardt actually qualified under the FEC.

When I made the \$2,000 contribution, I was told by the solicitor of the contribution that it was legal.

Be assured that I am totally innocent of any deliberate attempt to violate the Federal Election law. I frankly have too many real problems in my life to attempt to violate such a law.

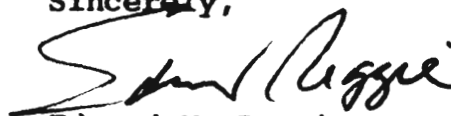
In the past, when I have contributed to candidates, I have always depended on the advice given to me by the recipient concerning the maximum allowed and to whom the checks must be written, etc. I have never had a problem before.

I am not aware of all the campaign finance laws. I have never been a candidate under those laws and, therefore, I really thought that I was following the law when I followed the advice of those who solicited the contributions from me, in the Gephardt case as well as any other election to which I have contributed.

I hope that I am mistakenly listed as making that third contribution of \$1,000. And, at any rate, I trust that I will not be punished in any way for blindly following the instructions of the solicitor of the funds when I made the Gephardt contributions.

Thank you for your kind consideration.

Sincerely,


Edmund M. Reggie

EMR/ski

KEN DAVIS
ATTORNEY AT LAW
1108 NORTH GARDEN STREET
TALLAHASSEE, FLORIDA 32303

06C1450
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 JUN-6 AM 11:04

TELEPHONE (904) 222-6026
TELECOPIER (904) 561-1471

POST OFFICE BOX 37100
TALLAHASSEE, FLORIDA 32316-7100

June 5, 1991

Anne A. Weissenborn
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

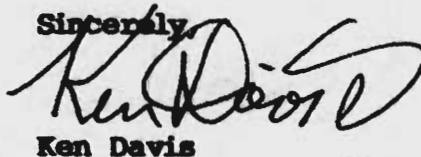
Re: F.P. Blank - MUR 3111

Dear Anne:

Per our phone conversation, enclosed please find:

- a. Mr. Blank's Statement of Designation of Counsel; and
- b. Request for Extension of Time.

Sincerely,



Ken Davis

KD/ml
Enclosure

91 JUN-6 PM 3:32

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

25043643499

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3111

NAME OF COUNSEL: Ken Davis

ADDRESS: Attorney at Law

1102 N. Gadsden Street

Tallahassee, FL 32303

TELEPHONE: (904) 222-6026

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

5.28.91
Date


Signature

RESPONDENT'S NAME: F. P. Blank

ADDRESS: 204-B South Monroe Street

Tallahassee, FL 32301

HOME PHONE: _____

BUSINESS PHONE: 681-6710

25043643500

FEDERAL ELECTIONS COMMISSION

RESPONDENT: F. P. BLANK

MUR 3111

REQUEST FOR EXTENSION OF TIME TO
RESPOND TO FACTUAL AND LEGAL ANALYSIS

Respondent, F.P. Blank, by and through his undersigned attorney requests an additional 17 days within which to respond to the Factual and Legal Analysis received by respondent on May 24, 1991, and as grounds, respondent would show:

1. Respondent needs additional time to investigate the facts and research the applicable law in order to make a proper response to the Commission's Factual and Legal Analysis.
2. The facts giving rise to this matter occurred more than two years ago and involve witnesses not readily available.
3. With the press of other pending matters, the 15 days originally allowed is not adequate to make a proper response.
4. The undersigned has confirmed by phone with Anne A. Weissenborn of the office of the General Counsel, and she has no objection to this request.
5. This request is made in good faith and the interest of justice.

WHEREFORE, respondent requests an extension of 15 days to respond; that is, to and including June 25, 1991.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Anne A. Weissenborn, 999 E Street, N.W., Washington, D.C. 20463 by U.S. Mail, this 5th day of June, 1991.



KEN DAVIS
FLA BAR NO.
P.O. BOX 37190
TALLAHASSEE, FLORIDA 32315
(904) 222-6026

Attorney for Respondent

25043643501



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 10, 1991

Ken Davis, Esquire
1102 North Gadsden Street
Tallahassee, Florida 32303

RE. MUR 3111
F.P. Blank

Dear Mr. Davis:

This is in response to your letter dated June 5, 1991, which we received on June 6, 1991, requesting an extension of 15 days to respond to the Commission's finding of reason to believe in the above-cited matter. After considering the circumstances presented in your request, I have granted the desired extension. Accordingly, your response is due by the close of business on June 25, 1991.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in cursive script, reading "George F. Rishel", is written over the typed name of the Assistant General Counsel.

BY: George F. Rishel
Assistant General Counsel

25043643502

06-1470

GILES, HEDRICK & ROBINSON, P. A.

RECEIVED
FEDERAL ELECTION COMMISSION
MAN ROOM

91 JUN 10 AM 9:19

LE ROY B. GILES (1986-1987)
DAVID W. HEDRICK
JAMES C. ROBINSON
WILLIAM G. MITCHELL
MARLAN TUCK (1988-1989)
EUGENE B. CAWOOD
JOHN J. REID
SUSAN F. MURPHY
STEPHEN F. BROOME
WILLIAM H. DAVIS
E. GIVENS GOODSPEED
JOHN G. DELANCETT
MARVIN E. ROOKS
PAUL D. NEWNUM
ARTHUR J. RANSON, III
PATRICIA W. BOWER
LEE M. KILLINGER
CHRISTINE E. LONG
BARBARA L. NOLTE
PAUL A. KELLEY
KATHY LYNN KUSHNER
FREDERICK C. BARNES

ATTORNEYS AT LAW
THE FIRST, F. A. BUILDING ONE DUPONT CENTRE
390 NORTH ORANGE AVENUE, SUITE 800
P. O. BOX 2831

ORLANDO, FLORIDA 32809

MARINER SQUARE, SUITE 204
88 WILLARD STREET

COCOA, FLORIDA 32922

ORLANDO
AREA CODE 407
TELEPHONE 425-3891
FAX (407) 841-8171

COCOA
AREA CODE 407
TELEPHONE 831-1701
FAX (407) 838-3890

June 5, 1991

IN REPLY REFER TO

Orlando Office

91 JUN 10 AM 10:35

Anne A. Weissenborn, Esquire
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

RE: MUR 3111
James C. & Elizabeth T. Robinson

Dear Ms. Weissenborn:

In accordance with our conversation Tuesday, I am enclosing copies of checks, nos. 2770 and 2771, both dated June 25, 1987, each in the amount of \$1,000.00, payable to the order of "Richard Gephardt Campaign". One check states on its face for Elizabeth T. Robinson (no. 2770) and the other for James C. Robinson (no. 2771). I am also enclosing an excerpt from a running record of our checks written in June, 1987. We keep this record month by month through the end of each year. You will note the checks are referred to in the names outlined.

There are also enclosed copies of two checks, nos. 3176 and 3177, dated February 25, 1988, made payable to the order of "Gephardt for President Committee", each in the amount of \$1,000.00. No. 3176 has James C. underlined and no. 3177 has Elizabeth T. Robinson underlined. Enclosed is an excerpt from the computer check register for February, 1988, which shows the contributions to the "Gephardt for President Committee".

I distinctly remember having told the Gephardt people that in each of the two occasions, one donation was from me personally and one from my wife, Elizabeth T. Robinson. I inquired at the time as to the proper amount of the donation and was informed that this was a legal amount. It may be that at some point, the Committee asked for a reattribution of some sort, but I do not recall it and do not remember being aware that they had not used the donations as had been requested.

25043643503

RECEIVED
FEDERAL ELECTION COMMISSION
MAN ROOM

GILES, HEDRICK & ROBINSON, P. A.

Anne A. Weissenborn, Esquire

Page 2

June 5, 1991

As I told you on the phone yesterday, it is a customary practice that my wife writes checks out of the joint account for matters which might have been incurred jointly and I do the same for her. My wife was aware and consented to the support and was aware that we were making a donation both in her name and in my name. I had no intention of violating any law and felt that these campaign contributions were legally made and accounted for.

Sincerely,

GILES, HEDRICK & ROBINSON, P.A.



James C. Robinson

JCR:lpa
enclosures

25043643504

2770

63-215 215
631

June 25, 19 87

PAY TO THE ORDER OF RICHARD GEPHARDT CAMPAIGN 06 30 87 002 22 0141 301504899
5069 5065 13 07-02-87 233884164

\$ 1,000.00

ONE THOUSAND and NO/100----- DOLLARS

ORL-1- FIDELITY

Sun Bank, N.A.
Downtown Office
Orlando, Florida 32807

Elizabeth T. Robinson
FOR 1534 Hoffner Avenue, Orlando, Fl. 32809

JAMES C. OR ELIZABETH T. ROBINSON 01-54

James C. Robinson

000000000000

JY 87 02
F.S.C.O.
PROCESSED

JY 87 02

F.R.B. BALTIMORE 02 052000828
06-084 SANGCOBABA 0841FRB30880400919
FRB JACKSONVILLE 063000199
5069 5065 13 07-02-87 233884164

054001576
PAY ANY BANK P.E.G.
FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C.
054001576

PAY TO THE ORDER OF
FEDERAL CITY NATIONAL BANK
WASHINGTON, DC
ABA #054001576
FOR DEPOSIT ONLY
GEPHARDT FOR PRESIDENT
01 002015 01

21501818

5043643505

7 5 0 4 3 6 4 3 5 0 6

2771

June 25, 19 87 ⁸³⁻²¹⁵ 215

PAY TO THE ORDER OF RICHARD GEPHARDT CAMPAIGN-222-RR-0141-201432669 \$ 1,000.00

ONE THOUSAND and NO/100 2199 7814 13 07-01-87 174587068 DOLLARS



Sun Bank, N.A.
Downtown Office
Orlando, Florida 32807

JAMES C. OR ELIZABETH T ROBINSON 01-84

FOR James C. Robinson
1534 Hoffner Ave., Orlando, Fl. 32809

James C. Robinson

CEL 7-FLE

0000000000

JY 01

JY 01

7-27 PAY ANY BANK P.E.G. 7-27
F.R.B. BALTIMORE MD 052000278
06-29-87 002 22 0141 201432669
PAY ANY BANK PEG FRB JAX 63-14
FRB JACKSONVILLE 063000199
7149 7814 13 07-01-87 174587068

054001576
PAY ANY BANK P.E.G.
FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C.
054001576

PAY TO THE ORDER OF
FEDERAL CITY NATIONAL B.
WASHINGTON, DC
ABA 054001576
FOR DEPOSIT ONLY
GEPHARDT FOR PRESIDENT
01 002015 01

1143 79565

2 5 0 4 3 6 4 3 5 8 7

3176

Feb. 25, 1988 ⁰³⁻⁰¹⁵ 215

PAY TO THE ORDER OF 5014 5101 13 03-03-88 276737210 Gephart for President Committee \$ 1,000.00

-- One Thousand and 00/100-- -- -- -- -- DOLLARS



Sun Bank, N.A.
Downtown Office
Orlando, Florida 32807

03-01-88 002 22 0140

JAMES SCHMIDT JETH T. ROBINSON 01-84

James P. Robinson

FOR OLND/FL08

⑈0000100000⑈

03 03
S.S.C.O.
ROCESSED

7-27 PAY ANY BANK P.E.G. 7-27
F.R.B. BALTIMORE MD 052000278
03-01-88 002 22 0140 501561227
PAY ANY BANK PEG FRB JAX 63-14
5014 5101 13 03-03-88 276737210

01MAR88 00163876
PAY ANY BANK P.E.G.
FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C.
054001678

PAY TO THE ORDER OF
FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C. 20001
10540015751
FOR DEPOSIT ONLY
⑈0100000000⑈

113449272

2 5 0 4 3 6 4 3 5 0 8

3177

Feb. 25,

19 88

63-215 216

PAY TO THE
ORDER OF

Gephart for President Committee

3014 5101 13 03-03-88 276737211

\$ 1,000.00

--One Thousand and 00/100-- DOLLARS



Sun Bank, N.A.
Downtown Office
Orlando, Florida 32807

02-01-88 002 22 0140

JAMES C. ROBINSON 01-84

FOR

DLND/FLOR

James C. Robinson

#0000100000#

MR '88' 03
S.C.O.
OF '88ED

MR '88' 03

01MAR88 00163876

PAY ANY BANK P.E.G.
FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C.
054001576

7-27 PAY ANY BANK P.E.G. 7-27
F.R.B. BALTIMORE MD 052000278
03-01-88 002 22 0149 501561228
PAY ANY BANK P.E.G. FRB JAX 53-14
03-01-88 002 22 0149 501561228
3014 5101 13 03-03-88 276737211

PAY TO THE ORDER OF
FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C. 20001
1054001576
FOR DEPOSIT ONLY
EX-100 FOR DEPOSIT

113449278

06C 1683

RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION

91 JUN 25 AM 9:14

KEN DAVIS
ATTORNEY AT LAW
1102 NORTH GADSDEN STREET
TALLAHASSEE, FLORIDA 32303

TELEPHONE (904) 222-0026
TELESCOPIER (904) 561-1471

Post Office Box 37190
TALLAHASSEE, FLORIDA 32315-7190

June 24, 1991

VIA FAX AND FEDERAL EXPRESS

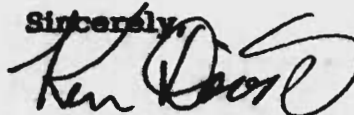
John Warren McGarry, Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: F.P. Blank - MUR 3111

Dear Mr. McGarry:

Enclosed please find Mr. Blank's Request for Conciliation.

Sincerely,



Ken Davis

KD/ml

Enclosure

cc: Anne A. Weissenborn
Phil Blank

91 JUN 26 AM 11:00

RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION

05043643509

FEDERAL ELECTIONS COMMISSION

RESPONDENT: F. P. Blank

MUR 3111

RESPONDENT'S REQUEST FOR CONCILIATION AND STATEMENT IN MITIGATION

Respondent, F. P. Blank, requests conciliation of the matters raised in the Chairman's letter of May 17, 1991.

In mitigation of the matters alleged, F. P. Blank would show:

1. When Mr. Blank was solicited by various members of the Gephardt For President Committee staff in 1987 and 1988, he was led to believe he could properly make a \$1,000 contribution for each election in which Mr. Gephardt was a candidate.

2. Based upon this mistaken understanding, Mr. Blank made contributions on June 23, 1987, November 16, 1987, and February 23, 1988 of \$1,000 each. On each occasion, Mr. Blank was assured that any contributions for elections that Mr. Gephardt was no longer a candidate would be promptly returned.

3. On or about February 22, 1990 the Committee mailed a \$2,000 refund to Mr. Blank. However, the postal authorities returned the Committee's refund check to the Committee because the forwarding period following Mr. Blank's change of address had expired.

4. While it may be argued from a review of the three contribution checks totaling \$3,000 that there has been a violation, such is not necessarily the case.

5. As pointed out in the General Counsel's Factual and Legal Analysis, there are procedures set forth in 11 CFR sections

25043643510

110.1(b)(3) and (5) for campaign committees to follow when excess contributions are received to avoid a violation of 2 U.S.C. section 441(a)(1)(B). Essentially, these procedures entail the committee contacting the contributor and requesting reattribution or redesignation of the contribution, or making a refund, within 60 days of receipt of the excess contribution. Had such been done in this case, any violation could have been avoided.

6. At no time has Mr. Blank intended to make excess contributions to the Gephardt for President Campaign Committee, nor has there been an effort on the part of the Committee to retain excess contributions from Mr. Blank.

7. In short, this case is a matter of the Committee failing to refund the excess contributions, or requesting reattribution or redesignation, within the 60-day time limit as provided in 11 CFR sections 110.1(b)(3) and (5), a technical violation resulting from a lack of promptness on the part of the Committee, as opposed to a substantive violation by Mr. Blank.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Anne A. Weissenborn, 999 E Street, N.W., Washington, D.C. 20463 by U.S. Mail, this 24th day of June, 1991.



KEN DAVIS
FLA BAR NO. 125847
P.O. BOX 37190
TALLAHASSEE, FL 32315-7190
(904) 222-6026

Attorney for Respondent

25043643511

06C 1705

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

June 27, 1991

91 JUN 27 PM 3:07

RECEIVED
FEDERAL ELECTION COMMISSION
GENERAL COUNSEL

Anne A. Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3111 - Gephardt for President Committee

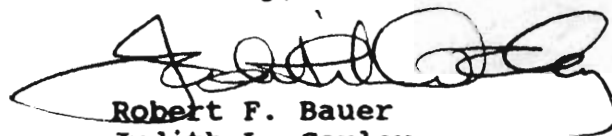
Dear Ms. Weissenborn:

This will confirm our conversation of yesterday in which we discussed the extension of time for Respondents in this matter.

As we discussed, we would like to request an extension of time to respond to MUR 3111 until such time as the Commission has issued to Respondents other matters which Respondents are aware are currently pending in the General Counsel's office. At that time, Respondents would request that all matters be consolidated. This will allow Respondents to prepare a single response and to address all issues raised, some potentially overlapping, at the same time.

Should you have any questions, or need additional information, please do not hesitate to contact one of the undersigned.

Sincerely,



Robert F. Bauer
Judith L. Corley
Counsel to Respondents

25043643512

91 JUL -8 AM 11:35



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

July 8, 1991

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner *LAG*
Associate General Counsel

SUBJECT: MUR 3111
Request for Extension of Time

On April 16, 1991, the Commission found reason to believe in MUR 3111 that the Gephardt for President Committee ("the Committee") violated 2 U.S.C. § 441a(f) by accepting excessive contributions. This determination was the result of a referral to this Office of information obtained during the Commission's audit of the Committee.

Later, on May 14, 1991, the Commission approved the referral to this Office of additional issues identified during the audit. This second referral has been designated MUR 3342.

By letter dated June 27, 1991, counsel for the Committee has requested an extension of time to respond to the Commission's reason to believe determinations in MUR 3111 "until such time as the Commission has issued to Respondents other matters which Respondents are aware are currently pending in the General Counsel's office." (Attachment 1.) The letter explains that such an extension is desirable so that a single response can be prepared which will address at the same time all issues raised.

The Office of the General Counsel recommends that, in order to prevent confusion and inefficiency, the Commission grant an extension of time in MUR 3111 until fifteen days following receipt by the Committee of the notice to respond to Commission findings regarding the issues in MUR 3342. As soon as possible this Office will submit to the Commission a First General Counsel's Report in MUR 3342 which will address the issues referred in May and which will recommend the merger of MUR 3111 and MUR 3342.

25043643513

RECOMMENDATIONS

1. Grant an extension of time to the Gephardt for President Committee to respond to the Commission's finding of reason to believe in MUR 3111 until fifteen days following receipt by the Committee of notice to respond to findings by the Commission regarding issues raised in MUR 3342.
2. Approve the appropriate letter.

Attachment:
Request for Extension

Staff Assigned: Anne A. Weissenborn

25043643514

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3111
Gephardt for President Committee)
("the Committee) - Request for an)
Extension of time)

CERTIFICATION

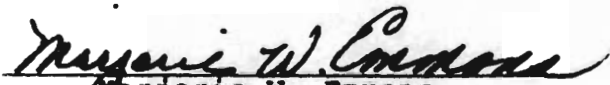
I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 10, 1991, the Commission decided by a vote of 6-0 to take the following actions in MUR 3111:

1. Grant an extension of time to the Gephardt for President Committee to respond to the Commission's finding of reason to believe in MUR 3111 until fifteen days following receipt by the Committee of notice to respond to findings by the Commission regarding issues raised in MUR 3342.
2. Approve the letter, as recommended in the General Counsel's report memorandum dated July 8, 1991.

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

Attest:

7-11-91
Date


Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Monday, July 8, 1991 11:35 a.m.
Circulated to the Commission: Monday, July 8, 1991 4:00 p.m.
Deadline for vote: Wednesday, July 10, 1991 4:00 p.m.

dh



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 18, 1991

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3111
Gephardt for President
Committee

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This is in response to your letter dated June 27, 1991, which we received on June 27, 1991, requesting an extension of time in which to respond to the Commission's determination in MUR 3111 until such time as the Commission has issued to your clients other pending matters. After considering the circumstances presented in your letter, the Federal Election Commission has granted the requested extension. Accordingly, your response is due by the close of business fifteen days following receipt by the Gephardt for President Committee of notice to respond to findings by the Commission regarding issues addressed in any subsequent enforcement matter.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

MUR 3342

AUDIT REFERRAL - MAY 17, 1991

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 17, 1991

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: GEPHARDT FOR PRESIDENT COMMITTEE, INC.
MATTERS REFERABLE TO THE OFFICE OF
GENERAL COUNSEL

On May 14, 1991, the Commission approved the referral of Exhibits A and B to your office. Please find attached said Exhibits.

Should you or your staff wish to review any audit workpapers, or discuss the matters contained in the Exhibits, please contact Tom Nurthen at 376-5320.

Attachments:

Exhibit A: Allocation of Expenditures to the Iowa Spending Limitation.

Exhibit B: Candidate Spending Limitation.

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Use of Funds for Non-Qualified Campaign Expenses

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

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

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

Allocation of Expenditures to the Iowa Spending Limitation

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

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of the candidate for the office of the President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

The Committee's original filings of FEC Form 3P, Page 3 covering activity through March 31, 1988, disclosed \$818,252.29 as allocable to the Iowa expenditure limitation of \$775,217.60. Subsequently, the Committee amended its original filings and disclosed \$729,591.82 (as of March 31, 1988) as allocable to Iowa, a reduction of \$88,660.47. In addition, the Committee allocated

an additional \$19,119.21*/ to Iowa covering activity from April to November 30, 1988. As a result, the Committee has disclosed \$748,711.03 in disbursements as allocable to the Iowa expenditure limitation as of November 30, 1988.

Presented below are categories of costs which are not disclosed by the Committee on FEC Form 3P, page 3, as allocated to Iowa.

1. Twenty-Five Percent National Exemption

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that except for expenditures exempted under 11 C.F.R. §106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable. Further, 11 C.F.R. §106.2(c) describes the various types of activities that are exempted from State allocation.

As previously stated, the Committee has disclosed \$748,711.03 as allocable to the Iowa expenditure limitation as of November 30, 1988. However, while reviewing the general ledger summaries for the Iowa cost center (generated quarterly in 1987 and monthly in 1988) and accompanying Committee worksheets, it was noted that all costs determined by the Committee as allocable to Iowa, with the exception of its media allocation, were reduced by 25 percent. The Committee considers this exemption (25%) as a national allocation. As a result, the amount disclosed as allocable to the Iowa expenditure limitation was understated by \$178,910.11 [(\$991,533.10 (gross amounts chargeable to Iowa) minus \$275,892.77 media allocation) x .25].

A Committee legal representative stated during an interim conference that the Committee did not have the financial support to run both a national and field operation, that much of the work in Iowa had a huge impact on the national campaign and without performing well in Iowa, their national campaign would suffer tremendously. Therefore, it was decided to allocate 25 percent of Iowa expenditures to the national campaign.

Neither the Act nor the Commission's Regulations provide for a "national campaign" exemption as applied by the Committee in arriving at its calculation of the total amount

*/ The amount noted in the interim audit report (\$19,833.55) has been reduced by \$714.34 (\$1,298.80 minus 25% national exemption minus 20% compliance and fundraising exemption) due to an apparent misallocation.

allocated to the Iowa spending limit.

Even though the Committee's contentions that much of the work in Iowa had a high impact on the candidate's national campaign and that a poor showing by the candidate in the Iowa caucus would impact adversely on the national campaign effort may be correct; the same could be said for any state's primary or caucus under a certain set of circumstances. For purposes of allocation, whether a causal relationship exists or not is not determinative, the standard to be applied is were the expenditures incurred for the purpose of influencing voters in a particular state. As a result, the Audit staff has determined that an additional \$178,910.11 should be allocated to Iowa.

In response to the interim audit report, the Committee's Counsel states the following:

"When the law is administered in blindness to experience or in indifference to reality, the result is neither well-made law, nor proper administration. This concern is particularly significant in this audit, in matters involving the Iowa spending limit in presidential primary campaigns. Originally conceived as a control on spending in the pursuit of delegates, Iowa's delegates -- a handful -- are no longer the object of an Iowa primary campaign. The object is the building of a national campaign, the establishment of national credibility, and the resulting ability to compete beyond Iowa for the 98.5 percent additional delegates needed for nomination.

In real terms, the lines between an Iowa 'state' campaign and a 'national' campaign have become for all intents and purposes indistinguishable. Thus, unlike any other primary save New Hampshire's, the Iowa caucus attracts a national audience, is tracked by national and international press, focuses on national issues (often at the expense of parochial ones), and its outcome creates national rather than local repercussions. In these circumstances, it would even be fair to say that most candidates, given the choice, would gladly forgo Iowa's nine delegates if they could nevertheless meet with adequate funds the national challenge and national cost of the Iowa campaign."

"Iowa is not about delegates. No candidate in America has claimed a 16 percent 'victory' in California, New York, Michigan, Texas or other 'major' primary state. None has benefited in any way from such a victory. This is because primaries in these states do not have anything approaching the same "national" component -- or the same

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national-scale cost resulting from that component. As described by one national publication, '[p]residential campaigns will live or die in [the] early [Iowa and New Hampshire] tests, but the candidates are forced to spend amounts that would be inadequate to win some seats in the California state senate.' Shapiro, Take It to the Limit -- and Beyond, Time, Feb. 15, 1988, at 19."

"Iowa's extended reach is a relatively new development in presidential politics, unknown to the crafters of the primary public financing law. It was not fully appreciated until, in 1976, Jimmy Carter was catapulted from a pack of Democratic candidates to a front-runner position by merely placing second to 'undecided' in the Iowa caucuses. See J. Germond and J. Witcover, Whose Broad Stripes and Bright Stars? 244-45 (1989). As noted, Gary Hart burst into contention by placing second in 1984 with 16 percent of the vote. Like many other candidates in 1988 or before, Gephardt could not ignore the teachings of 1976 and 1984. He had no practical choice but to maintain consistent focus on Iowa, if he hoped to survive financially and politically in other states. This need was heightened in the 1988 primary season, which featured a primary 'Super Tuesday,' in which 14 southern and border states chose a full fourth of the Democratic Convention delegates mere weeks after the Iowa caucuses. Iowa took on the dimensions of a national campaign indispensable to nationwide success.

Gary Hart's withdrawal from the race added to Gephardt's circumstances another 'twist,' only too typical of the vicissitudes of Iowa. He became the 'front-runner,' so anointed by press. Although his new position added to the press coverage of his campaign, it also created huge 'expectations.' The new, widely reported consensus was that if Gephardt did not win Iowa by a substantial margin, his campaign would effectively end there.^{2/} This prognostic was borne out by actual events: although Gephardt won Iowa, he did not do so by a sufficient margin, as the press interpreted it, to achieve the full measure of advantage from his victory. Iowa had become a state of ironies, where the numerical winner was the de facto loser."

^{2/} This is not an argument by implication that Gephardt therefore was required to 'do anything to win.' It points up, as later elaborated, the intersection of the national and Iowa dimensions of the campaign.

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"The auditors noted almost immediately upon inspection of the Gephardt campaign's general ledger that it had reduced for state limit purposes, and allocated to the national headquarters 25 percent of all Iowa staff and administrative costs. This was openly reflected in the ledger and fully explained to the auditors. This reduction was taken in precisely those circumstances outlined in the Introduction; much of the spending in Iowa was unrelated to any true Iowa objective but directly related to the requirements of a national campaign.

The Audit staff notes with disapproval that neither the Act nor the Commission's Regulations provide for such an exemption. Thus, it concludes, such an allocation cannot be permitted. It is apparent, however, that the auditors do not understand the nature of this exemption taken by the campaign. In their words, shown from the Interim Audit Report, this exemption was claimed because 'the work in Iowa had a high impact on the candidate's national campaign and that a poor showing by the candidate in the Iowa caucus would impact adversely on the national campaign effort . . . the same could be said for any state's primary or caucus under a certain set of circumstances.' Interim Report at 3-4 (emphasis added).

As should be clear from the Introduction, the Committee does not argue for a national setoff based on "the impact" of the Iowa state campaign nationwide. This suggests, as Gephardt does not, that the campaigns were separable and that the course of one might more or less clearly influence the course of the other. On the contrary, the 25 percent national exemption is appropriate because the national campaign conducted in and through Iowa and the state campaign in Iowa (directed to Iowa delegates and similar objectives) are inextricably intertwined. This is not a theoretical point, as we have attempted to show, but a matter of real consequence in spending and resource allocations within Iowa. When the Iowa state coordinator devotes 50 percent of his time, and the Iowa press secretary devotes even more than that, to national press contacts which will produce limited media in

Iowa, and substantial media nationally, the allocation of their salary and costs to an Iowa spending limit works a huge folly with serious effect on the campaign. The 25 percent exemption was taken to address this undeniable circumstance having profound effects on Gephardt's speech.

To this extent, we agree with the Audit staff's statement that 'the standard to be applied is [whether] the expenditures incurred [were] for the purpose of influencing voters in a particular state.' Interim Report at 4. By the campaign's best estimate, at least 25 percent of the funds spent in Iowa were not 'for the purpose of influencing voters' in Iowa, but were 'for the purpose of influencing voters' nationwide. The exemption is comparable in intent and justification to the exemption for national campaign activity recognized at 11 C.F.R. §106.2(c)(1)(i), which covers expenses of a national headquarters, national advertising and national polls. Each of these exempt costs recognize that in the course of a presidential primary campaign, conducted state-by-state, there occurs also a national campaign. Section 106.2(c)(1), the topical subheading for this section, is entitled 'National Campaign Expenditures,' and what follows in subsections (i) through (iii) are examples which are not exhaustive in character. These are the obvious examples, true at all times of the primary season, but still they fail to address in any meaningful fashion the extraordinary national component of Iowa. Although the Iowa office was not a national campaign headquarters, and the campaign never treated it as such, it plainly was absorbing a huge portion of the costs of the national effort.

Thus, the campaign adopted a blanket setoff to account for this national campaign cost. It was not expected at the outset of the campaign that this would be required, but the experience of the Iowa campaign as it progressed could not be ignored. National expenses were being swept up into the Iowa spending limit, see Affidavit of Stephen G. Murphy, causing severe pressure on Gephardt's speech.

Consideration was given to alternatives for addressing this effect, among them the development of a personal time sheet system for Iowa employees to record 'Iowa' and 'national' work. But this system was evidently unsustainable: the sheer cost of administration would be prohibitive, and the

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reliability of the time sheet entries would be difficult to establish. Moreover, such a system would shift both the burden of legal compliance and legal exposure to employees of the campaign, many of whom were underpaid young men and women in their early 20's who could not fairly be asked to take on this responsibility. Indeed, the idea of requiring a 19-year old who hasn't slept in three days, and is living on junk food, to account for her time when she's paid \$100 by a campaign, borders on the comical.

The campaign therefore chose, in the fall of 1987, to adopt the 25 percent set-aside for national activities in Iowa. The principle, once selected, was uniformly applied throughout the Iowa campaign, with the exception of media disbursements, to which no 25 percent reduction was applied. It could have been set at a considerably higher level, or different percentages could have been applied to different employees. Ms. Laura Nichols, for example, who was the Iowa state press director, devoted approximately 50 percent of her time to the Iowa press and 50 percent to the national press, see Murphy Affidavit, and thus some 50 percent of her salary and attributed to overhead could have been fairly charged to the national limit. This approach was rejected simply because it would have involved the campaign in too many complex judgments on too many employees and the task of documentation was insurmountable. Twenty-five percent was selected across-the-board. This represents 12 hours in a 50-hour work week, three hours in a 12-hour day: to the campaign, far less in fact than the true national cost of its efforts in Iowa.^{1/}

Moreover, this number is no more 'arbitrary' than others chosen by the Commission itself to deal with similar, fundamentally intractable problems in our campaign finance laws. The Commission has selected in the very regulations at issue here 'arbitrary' percentages by which the limit is discounted for overhead and fundraising. The 10 percent figure is plausible, but no more so than other numbers both

^{1/} It is noted that the campaign only applied the regulatory 10 percent exempt compliance cost to 75 percent of our state office payroll and overhead, since a 25 percent national exemption had already been taken on all Iowa spending.

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higher and lower. 11 C.F.R. §106.2(c)(5) and 11 C.F.R. §106.2(b)(2)(iv). In Advisory Opinion 1988-6, the Commission approved a 50 percent allocation of media costs to fundraising, based on a demonstration of some palpable fundraising purpose. It is of interest that in the discussion of this A.O. during the DuPont (sic) audit hearing, the Commissioners noted that this assignment of a percentage was, to some extent, arbitrary, but reasonable under the circumstances. Arbitrariness was inevitable, but not disqualifying.

Finally, in recent times, the Commission has voted to adopt fixed percentages to govern party allocations from federal and nonfederal accounts for a wide range of activities. These, too, are necessarily arbitrary, and different numbers are selected for different election years -- presidential and non-presidential federal election years. Arbitrariness is deemed here necessary to achieve enforcement goals. Is it somehow more unacceptable to accommodate arbitrariness in the service of speech? There is simply no sound reason why fixed percentages should be acceptable to the Commission in order to repress campaign activity, but not to alleviate the burdens on legitimate activity when it is entirely within the Commission's discretion to do so. Like the fundraising and overhead exemptions, the Gephardt campaign is asking only that the Commission interpret the FECA and its regulations in a pragmatic manner grounded in experience and the record."

It remains the Audit staff's opinion that as previously stated, neither the Act nor the Commission's regulations provide for a "national campaign" exemption to be applied to all allocable costs. Therefore, the amount recommended as allocable to the Iowa expenditure limitation (\$178,910.11) remains unchanged.

2. Telephone Related Charges

Section 106.2(b)(2)(iv)(A) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures in a particular State shall be allocated to that State. For the purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intra-state phone calls other than charges related to a special use such as voter registration or get out the vote efforts.

a. Northwestern Bell

The Audit staff has reviewed final bills, totaling \$46,191.21, for 18 telephone service locations in Iowa and determined that \$34,025.63 in regular monthly service charges and intra-state calls require allocation to Iowa. Further examination revealed that the phone company reduced the outstanding balance (\$46,191.21) by applying \$34,795.07 in deposits held (plus interest earned), which when made were allocated as a national expense, and by exercising a \$5,000 letter of credit.

It is the opinion of the Audit staff that the Iowa portion of \$34,025.63 is considered paid by application of the deposits and letter of credit, and that an additional \$34,025.63 should be allocated to Iowa.

In addition, the Audit staff's review of paid phone bills revealed that in 2 instances, the Committee understated its allocation to Iowa by \$969.19 and \$101.64 respectively. In both instances, it appears that the Committee allocated the costs of intra-state calls but did not allocate the applicable monthly service charges associated with the phone bills.

In response to the interim audit report, the Committee states that \$78 in charges for directory assistance relating to interstate calls and \$172.15 in charges for intrastate calls made after the date of the Iowa caucus should not have been allocated to the Iowa expenditure limitation.

The Audit staff agrees with the Committee's position with respect to the directory assistance charges, however, the Committee provided only documentation which demonstrated that \$28.20 in directory assistance charges were inappropriately allocated to Iowa. A reduction of \$28.20 is reflected in the Audit staff's calculation. Regarding the \$172.15, it is our opinion that intra-state calls made after the date of the Iowa caucus require allocation to Iowa.

b. Central Telephone Company

On October 14, 1987, the Committee issued the vendor a check for \$5,124.75, of which \$5,000 represented a deposit on five telephone lines. The Committee allocated the \$5,000 deposit as a national expense. A notation on the reverse side of the Committee expenditure/check request form stated "deposit held at 12% interest at disconnection - deposit will be applied to last bill or a refund will be issued."

The vendor file contained billing statements dated October 25, 1987, November 25, 1987, and December 25, 1987, and a copy of a refund check from the vendor totaling \$2,525.74. Subsequently, the Committee provided copies of three additional

billing statements dated January 25, 1988 (complete bill), February 25, 1988, and March 25, 1988 (summary pages only).

Based on our review of the documentation, it appears that an additional \$2,396.88 should be allocated to Iowa.

In response to the interim audit report, the Committee stated that the Audit staff's calculations of the amounts allocable to Iowa for the months of January and February should be reduced by \$165.51. No documentation was provided with the Committee's response to support its assertion. However, on February 21, 1990, the Committee supplemented its response with billing statements for January, February and March, 1988. As previously stated, the Audit staff's allocation was based, in part, on its review of "summary pages only" for the February 25, 1988 and March 25, 1988 bills.

Based on our review of the documentation provided, the Audit staff agrees with the Committee and has reduced its allocation to Iowa by \$165.51.

c. MCI

The Audit staff reviewed the final bills from this vendor and determined that \$6,044.14 requires allocation to Iowa. Subsequently, the vendor applied the Committee's \$30,000 deposit (allocated as a national expense) to its final bill. As a result, the Audit staff considers the Iowa portion \$6,044.14 to be paid by application of the deposit to the final bill.

In addition, the Audit staff's review of paid phone bills revealed that the Committee understated its allocations to Iowa by \$712.05.

In its response to the interim audit report, the Committee questions the Audit staff's allocation of \$2,625.66 in calls made on an 800 access code number. The Committee stated the following:

"according to MCI, these calls represent the following: Each time Gephardt campaign staff attempted to make a call using a calling card for the MCI system, they were to dial in a special code to access the MCI network, in addition to the phone number called. When, even as a result of using this code, the staffer could not access the network, they could dial in a special 800 access code to complete the call. These calls were indicated on the billing statement in the '800' category. Under MCI's system, calls made using the 800 access code could be identified by the location to which the call was made, which is indicated on the bill, but not where the call originated.

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The Audit staff placed on the Iowa spending limit all such calls to a location in Iowa, even though the call may have been made from a location outside of Iowa into Iowa. This was done not only for the Iowa field office, but also for the national headquarters MCI bill. In the case of the billing statements in question, the bulk of the calls attributed by the Audit staff to Iowa are reflected on the national headquarters MCI bill. It goes without saying that many calls over the period in question were made from the national headquarters to Iowa, and the costs associated with these calls would be exempt from the limit under the interstate call exemption. For some reason, the Audit staff has determined that all of these 800-access code numbers were chargeable to Iowa, only because the bill does not reflect the location from which the call was made, and the auditors prefer to assume that they were all made within Iowa to Iowa. Nothing in the way of an explanation for this approach is provided in the Interim Audit Report.

While neither the Committee nor MCI can demonstrate which calls originated outside of Iowa, some certainly did so originate. A reasonable approach would therefore be to allow at least 50 percent of the 800-access code calls, totaling \$1,222.75, to be removed from the auditors' calculation of limit-allocable spending. This is conservative number, and completely fair in the circumstances.

Any different approach insists on ignoring the factual and documentary context completely. It would constitute an audit strategy of 'piling on' the limit without careful attention to evidence. The campaign surely cannot be asked to maintain 'telephone logs,' a document paralleling the official telephone company records, to establish the location from each and every one of these 800-access code calls were made. Certainly there is no requirement that such extraordinary documentation be maintained anywhere in the law."

The Audit staff has reviewed the billing statements in question and determined that it is true that the vendor cannot determine where the "800 access code" calls originated. However, "800" type calls can be associated with a specific MCI card number and the billing statement is ordered in a fashion that lists, by MCI card number, all calls originating from a specific city (in date order), followed by calls originating from another specific city, etc., and finally all "800" calls relating to the particular MCI card number.

Exhibit A
P 12 of 47

The amounts in question relate to the following MCI card numbers:

#2425447517 - all "800 access code" calls to cities in Iowa were made during the period February 2, 1988 through February 7, 1988. Furthermore, the billing statement indicates that the only other calls made, using this card, were from Cedar Rapids and Davenport, Iowa on February 2, 3, and 4, 1988.

#2425443314 - all "800 access code" calls to cities in Iowa were made during the period January 31, 1988 through February 8, 1988. Furthermore, the billing statement indicates that the only other calls made using this card, during the above period, were from Cedar Rapids and Davenport, Iowa on February 2, 3, and 7, 1988, with the lone exception of one call on February 8, 1988 from Haverhill, New Hampshire to Manchester, New Hampshire.

It is the opinion of the Audit staff that the Committee's assertions and suggested allocation method are not persuasive and that the documentation overwhelmingly indicated that the MCI cards were in the possession of individuals in Iowa during the periods of use in question. As a result, the Audit staff's allocation of \$6,756.19 to the Iowa expenditure limitation remains unchanged.

Based on our review of the documentation presented, the Audit staff determined that an additional \$44,055.82 should be allocated to Iowa (Northwestern Bell - \$35,068.26 (\$35,096.46 - \$28.20), Central Telephone \$2,231.37 (\$2,396.88 - \$165.51), MCI - \$6,756.19).

3. Salaries, Employer FICA, Consulting Fees, and Staff Benefits

Section 106.2(b)(2)(ii) of Title 11 of the Code of Federal Regulations states that except for expenditures exempted under 11 C.F.R. 106.2(c), salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

Section 106.2(c)(5) of Title 11 of the Code of Federal Regulations states, in part, that an amount equal to 10% of campaign workers' salaries in a particular State may be excluded from allocation to that State as an exempt compliance cost. Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing contains other accepted allocation methods for calculating a compliance exemption.

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Chapter I. Section C.2.a.(3) (page 28) of the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing (Application of Fundraising and Legal and Accounting Allocation Methods) states, in part, that each allocable cost group must be allocated by a single method on a consistent basis. A committee may not allocate costs within a particular group by different methods, such as allocating the payroll of some individuals by the standard 10 percent method, and other individuals by a committee developed percentage.

a. Iowa Paid Staff

During our review of the Committee's payroll records and associated allocation worksheets, the Audit staff determined that additional salaries, employer FICA, consulting fees, and staff benefits, totaling \$30,075.40, require allocation to Iowa. Further, the Audit staff determined that the Committee utilized the standard 10 percent method for allocating a portion of the Iowa payroll as an exempt compliance cost.

The Committee did not allocate certain salaries paid to its Iowa staff (\$7,876.64). In instances where the Committee allocated its Iowa staff salaries, it did not allocate the associated Employer FICA (\$12,210.36). Further, the Committee allocated certain salaries and consulting fees paid to its Iowa staff as a 100% exempt compliance cost, even though, as previously stated, the Committee chose the standard 10 percent method for allocating a portion of the Iowa payroll as an exempt compliance cost (\$8,100). Finally, for certain individuals, the Committee paid 50 percent of the cost of health and life insurance but did not allocate this cost to Iowa (\$1,888.40).

In response to the interim audit report, the Committee's Counsel offers the following:

- ° 100% exempt compliance charge - Counsel believes that the Committee is entitled to charge certain Iowa staff salaries to exempt compliance (100%), and for all other Iowa staff salaries charge 10% to exempt compliance. Counsel cites the regulatory language at 11 C.F.R. §106.2(c)(5) and the language contained in the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates. He further states "the reading adopted by the Committee, consistent with the Regulations if perfectly considered, is that the phrase 'each individual working in that state' refers to each individual for which a 'larger compliance exemption' is claimed. This is not a strained reading, but if carefully considered, the only reasonable one." In addition, Counsel states

that one Iowa staff member was transferred to the fundraising staff as of October 1, 1987, and that her salary for the October pay period (\$1,200) should not be allocated to Iowa. In support, Counsel provided a copy of the October payroll register which has "fund-raising" written beside the individual's name, and an employment authorization form showing the effective date of the transfer as 10/1/87, an increase in compensation of \$300 monthly, and an authorization (approval) dated 11/23/87.

- Employer's FICA - Counsel states that "nowhere in the Regulations is it required that FICA be allocated to a state account. Both 11 C.F.R. §106.2 and §9035.1 require a campaign to allocate 'salaries' for state staff but do not require similar allocation of FICA or health and insurance benefits. Only the Compliance Manual imposes such allocation method for FICA." In addition, he states that "while the Gephardt campaign is not attempting to challenge in any way the significance of advice provided in the Campaign Manual, certain inconsistencies between the Regulations and the manual do present material issues."

"The Campaign consulted the Manual for guidance throughout the course of Gephardt's active primary activities...where the Manual departs in significant respect on a fundamental issue from the Regulations, what is produced is not guidance but inconsistency."

"Thus, the inconsistency between the Regulations and the Manual on this point is material, with real impact on campaigns and the management of their spending limits. On these grounds, the Gephardt campaign followed the Regulations to the letter, and believes that any inconsistency between the Regulations and the Manual are a matter for the Commission to address and cannot be fairly charged against the Committee's position in this audit."

- Health and Life Insurance Benefits - Counsel states that neither the Regulations nor Manual require such costs to be allocated to a state limit and, therefore, no such allocation was made.

It is the opinion of the Audit staff that 11 C.F.R. §106.2(c)(5) clearly states that an amount equal to 10 percent of campaign workers salaries in a particular state may be excluded from allocation to that state as an exempt compliance cost and if the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual working in that State. It is the Audit staff's position that campaigns may take the standard 10 percent compliance exemption on all campaign workers' salaries in a particular state or document separate compliance exemption percentages for all campaign workers in a particular state, and under no circumstances may campaigns take a 100 percent compliance exemption on certain individuals and the standard 10 percent compliance exemption on all other campaign workers in a particular state.

Further, the Audit staff disagrees with the committee's position that employer FICA and health and life insurance benefits are not allocable to states. The Committee appears to be attempting to camouflage the issue with their arguments concerning the alleged inconsistencies between the Regulations and the Compliance Manual, when in fact, there are no inconsistencies. The Compliance Manual elaborates in areas where the Regulations may not, in this matter the Compliance Manual specifically states, what is commonly considered to be payroll cost. Specifically, Chapter IV - Designing a System for Achieving Compliance, Section E. - Payroll (page 124) states "the committee is also reminded that amounts withheld from each employee's salary for taxes, social security, insurance, etc., along with the employer's share of such expenses (emphasis added), are allocated to the state and/or overall limitation in the same manner as the net salary."

Finally, as previously stated, the Committee alleges that an Iowa staffer was transferred to the fundraising staff as of October 1, 1987, and that her monthly salary for October (\$1,200) should not be allocated to Iowa.

The Audit staff has reviewed the documentation submitted by the Committee and disagrees with its assertions for the following reasons:

- ° the Committee submitted a copy of its October payroll register for the Iowa cost center. The word "fundraising" is written beside the employee's name. However, during the course of the audit fieldwork, the Audit staff was provided with a copy of the same payroll register, which does not include any reference to fundraising for this individual;
- ° the effective date on the employment authorization form appears to have been altered from 11/1/87 to 10/1/87);

- ° the monthly increase in compensation was, in fact, effective 11/1/87 and not 10/1/87; and,
- ° the authorization (approval) date of 11/23/87 appears more in line with a 11/1/87 transfer date than a 10/1/87 transfer date.

As a result, the Audit staff rejects the Committee's arguments and its allocation of \$30,075.40 in additional salaries, employer FICA, consulting fees, and staff benefits to the Iowa expenditure limitation remains unchanged.

b. National Campaign Staff

The Audit staff's review identified persons who had incurred expenses in Iowa for five or more consecutive days. Their names were traced to payroll records to determine whether the salaries and employer FICA had been allocated to Iowa.

Based on this review, the Audit staff determined that additional salaries and employer FICA, totaling \$6,548.62, require allocation to Iowa. It should be noted that in most instances the five or more consecutive day periods occurred in January and February, 1988, at which time the Committee suspended its payroll, as previously paid staffers were considered volunteers.

The Committee's response was silent with respect to this allocation for the specific periods involved. Further, the Committee's arguments with respect to the Audit staff's allocation of intra-state travel and subsistence expenditures, directly below, which could effect this allocation, are not supported by the Statute, Commission's Regulations or documentation made available.

As a result, the amount allocated to the Iowa expenditure limitation (\$6,548.62) remains unchanged.

4. Intrastate Travel and Subsistence Expenditures

Section 106.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. This same allocation method shall apply to intra-state travel and subsistence expenditures of the candidate and his family or the candidate's representatives.

A review of supporting documentation revealed that expenditures for intra-state travel and subsistence had been incurred by persons working in Iowa for five or more consecutive days.

Based on this review, the Audit staff determined that intra-state travel and subsistence expenditures, totaling \$19,898.59, should be allocated to Iowa.

Counsel for the Committee, in response to the interim audit report, states that \$1,705.88 in intra-state travel and subsistence expenditures should not be allocated to Iowa. He further states that for certain individuals there were only four consecutive days documented in Iowa, but the Audit staff nevertheless attributed a fifth day. All of the staff members for whom a fifth day was attributed without documentation were members of the national campaign staff.

Counsel quotes the Compliance Manual when he states the Commission will generally look to calendar days or any portion thereof, rather than 24-hour periods, when implementing 11 C.F.R. §106.2(b)(2)(ii) and (iii). However, "under this view, a person spending four nights in a state could be said to have spent portions of five calendar days in a state, even though the person could have spent well under four 24-hour periods in the state (if arriving the evening of the first day and leaving in the morning of the last day)." He also states that the Commission's formal regulations are notably silent (and ambiguous) on the point of how to measure a day, and for these four individuals a general calendar-day rule would be inappropriate.* / A more reasonable approach would be to measure days in a state exactly, by actual 24-hour periods, with each day measured beginning from the hour a staff member entered the state, and ending 24 hours later.

Finally, Counsel states in the alternative, these staff expenses should be removed as national expenses, under the reasoning in the Explanation and Justification. At a minimum, in any event, these expenditures should be discounted by 25 percent under the national exemption theory previously discussed, reflecting the true national nature of these staff efforts.

The Audit staff has reviewed all documentation provided by the Committee as well as the documentation contained in its workpapers. In every instance, the documentation verified that each of the four individuals in question were in the state

* / The Audit staff notes that the Explanation and Justification for 11 C.F.R. §106.2(b)(2)(ii) states that "for purposes of determining the length of time an individual remains in a State, the Commission will generally look to the calendar days or any portion thereof, that that person was in a State rather than using 24-hour periods." (Fed. Reg., Vol. 48, No. 25, 2/4/83, p. 5225).

(some portion of) 5 or more consecutive days. The individuals either paid their hotel bill on the fifth day, incurred hotel expenses on the fifth day, or disbursed funds for other subsistence items on the fifth day. In two instances, the Committee indicated that breaks existed during an alleged five day period. The documentation simply refutes this assertion.

Furthermore, the Committee has not provided any documentation which demonstrates that these individuals were in the state to work on national campaign strategy, and the Audit staff rejects the Committee's arguments concerning the 25 percent national exemption.

As a result, the Audit staff's allocation of \$19,898.59 remains unchanged.

5. Car Rentals

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that except for expenditures exempted under 11 C.F.R. 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

The Audit staff identified various vendors from Iowa, Minnesota, South Dakota, and Illinois, from which the Committee rented a number of automobiles for use by campaign workers in Iowa. The contracts reviewed contained notations such as, for use in Iowa, the telephone number of the Des Moines, Iowa field office, additional use - Iowa, etc. These automobiles were rented for various periods of time from November, 1987 to February, 1988, and usually for 30 days. In most instances, the Committee allocated the costs of the rental cars as a national expense (scheduling and advance).

Based on the Audit staff's review, it was determined that an additional \$22,486.08 should be allocated to Iowa.

In his response to the interim audit report, Counsel makes references to questionable or suspicious allocations, harsh injustices on the campaign, the interest of fairplay, shifting the burden of proof to the campaign, and attributions to Iowa solely on inferences made by the Audit staff which are outside the scope of its authority.

Counsel further states that "the Audit staff is convinced that any car rented in a state adjacent to Iowa was destined for Iowa, rented elsewhere solely to avoid limits. This is a fabled 'loophole' in press annals, treated as a common 'trick' of all campaigns. This background noise should not

overwhelm a fair adjudication on this matter, for every car leased, on the facts. Without facts, there is only suspicion, and suspicion cannot establish legal liability."

Of the \$22,486.08 allocated by the Audit staff, the Committee disputes only \$3,780.79 which relates to the following five rentals (\$4,308.65):

- Adam Anthony \$849.95 - The Committee states this individual rented the car in Minnesota from Thrifty Car Rental, and seems to have been attributed to the Iowa spending limit merely because the name of an Iowa staffer was used as additional information and her phone number in Iowa was given as an additional phone number to contact in case of an emergency.
- James Edgar Thomason \$935.21 - The Committee states the individual rented a car from Thrifty Rent-a-Car in Milan, Illinois, that he is not an Iowa staffer, nor is there any indication that the car was ever used in Iowa.
- Courtney Miller \$575.10, Rick Torres \$617.70, Steve Dimunico/Alida De Brauwere \$1,330.69 - The Committee states that according to the Audit staff's own calculation, the individuals were in Iowa for a week or less, nevertheless, the full amount was attributed toward the Iowa spending limit. This is in spite of notations on the rental contracts that the cars were for use in Iowa and other named states.

The Audit staff has reviewed all documentation associated with the five rental cars. Adam Anthony rented the car from Thrifty Car Rental (\$849.95) in Milan, Illinois, not from Minnesota as stated by the Committee. Milan, Illinois is proximate to Davenport, Iowa and Bettendorf, Iowa. Not only was the local contact an Iowa campaign office and an Iowa staffer listed as an additional renter on the contract, but a letter dated December 8, 1987 (same date as the rental contract) on Gephardt for President (Des Moines, Iowa) letterhead authorized Adam Anthony to rent this car "under the Gephardt for President Thrifty contract." The letter was apparently annotated by the vendor, "Spoke to Des Moines- bill to address above - 4 more cars." Finally, Adam Anthony is identified on seven other rental contracts, with rentals periods that overlap the rental in question, the costs of which have been allocated to Iowa by the Audit staff, and apparently are not being contested by the Committee.

James Edgar Thomason rented this car at the same Thrifty Car Rental as Adam Anthony did. The contract contained the same Iowa Campaign phone number, and was acknowledged in the

December 8, 1987 letter, as part of the "4 more cars" annotation. Further, although the contract indicated that the car was to be returned to Moline, Illinois, it was actually returned to Omaha Nebraska. It should be noted that short of driving completely around Iowa, the most direct route between Milan, Illinois and Omaha, Nebraska is directly through Iowa.

With respect to the cars rented by Courtney L. Miller (Thrifty-Minneapolis, MN), Rick Torres (Thrifty-Minneapolis, MN) and Steve Dimunico/Alida De Brauwere (Thrifty-Omaha, NE), the Audit staff agrees that the individuals could not be placed in Iowa for 30 consecutive days (length of rental contract), however, all documentation contained in the audit workpapers, during the period of the three rentals, relates to Iowa.*/ There is no documentation that places the individuals anywhere but Iowa and the Committee has not provided any documentation to the contrary in its response.

As a result, the Committee's arguments are not persuasive and no adjustment to the Audit staff's allocation of \$22,486.08 to the Iowa expenditure limitation is necessary at this time.

6. Polling

Section 106.2(b)(2)(vi) of Title 11 of the Code of Federal Regulations states that expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a nationwide poll, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State.

Kennan Research and Consulting, Inc.

The Committee engaged a New York vendor to conduct a number of surveys in Iowa, as well as in other states. Initially, the vendor's invoices detailed the survey number, a description of the survey (i.e., Iowa Benchmark Survey) and separate charges for the cost of the survey, related consulting fees, and/or travel expenses. Subsequent invoices detailed only the cost of surveys, as travel expenses and consulting fees were billed separately without association to a particular survey.

Based on our review, the Audit staff identified two invoices, totaling \$36,001.38, that require allocation to Iowa. The first invoice, dated April 24, 1987, was annotated as a partial bill for survey number 2133 "Women and

*/ The Audit staff can place Miller 16 days in Iowa, Torres 9 days in Iowa (plus 4 consecutive days prior to the rental period), and Dimunico/De Brauwere 17 days in Iowa.

Politics - Six Focus Group Interviews" and totaled \$32,000 (\$30,000 for the survey and \$2,000 for consulting services). The second invoice, dated July 6, 1987, was annotated as a final bill for survey number 2133 "Iowa Women Focus Group Interviews" and totals \$4,001.38 for travel. The Committee allocated these expenditures as a national expense.

In its response to the interim audit report, the Committee states that a focus group conducted in one state is not a statewide public opinion poll. It is a far more analytic study of public attitudes which is different in character, and conducted and used for different purposes. Where a poll seeks precise quantitative information about a geographic and demographic sample of votes, a focus group survey elicits attitudinal information for use without regard to geographic boundaries. The product of a focus group has broad national application. Ten women participated in the first focus groups and the later groups were composed of both men and women. The research was designed to answer questions about women's perception of politics and also to ascertain if, and to what extent, the presence of men would alter what women said.

The Committee further states that the result was a national campaign message, developed and communicated by the candidate through speeches and issue papers, and delivered throughout the country, on these issues. The message was communicated in Iowa, but this did not contravene the national nature of the initiative any more than the articulation of these issues in Washington, D.C. or San Antonio could be said to have only significance in those cities.

It is the opinion of the Audit staff that the purpose of the Iowa focus group interviews was to influence Iowa voters and that the Committee has not demonstrated that the purpose and/or results of such interview was national in scope. Furthermore, the vendor conducted three additional focus groups in Texas, Florida, and Georgia, the costs of which were allocated to the respective states by the Committee.

However, on April 11, 1991 the Commission determined that such cost was not allocable to Iowa. Consistent with that determination, the Audit staff has excluded the cost of the focus group - \$30,000, travel - \$4,001.38, consulting fee - \$2,000 (\$36,001.48), from the Committee's Iowa expenditure limitation.

Further, the vendor billed the Committee an additional \$93,250 in consulting fees for services rendered through February, 1988, and \$58,626.98 in travel expenses through March 1988. The Audit staff requested, throughout the fieldwork, documentation from the vendor which associates the consulting fees and travel expenses with a particular survey.

On March 6, 1989, the Committee provided copies of certain travel vouchers and two letters it received from the Controller of the polling firm. The travel vouchers were for employees of the polling firm. The letters describe the firm's policy and billing practices with respect to travel and consulting.

Travel Expenses

The Committee states "that virtually none of the travel undertaken by Kennan Research involved time spent in any one State in excess of four consecutive days. As "a person working in a state" on behalf of the campaign, under 11 C.F.R. §106.2(b)(2)(iii), none of the travel expenses are allocable to any state's expenditure limitation."

The travel vouchers submitted on March 6, 1989, which were identified for survey #2004, totaled \$50,761.80 (\$42,301.50 plus 20%*/). Based on our review of the documentation submitted, the Audit staff has calculated that an additional \$18,797.31 should be allocated to Iowa. Further, since the Committee has not submitted documentation for the remaining travel expenses billed as survey number 2004, the Audit staff has allocated an additional \$7,865.18 to Iowa (\$58,626.98 - \$50,761.80).

The Audit staff disagrees with the Committee's interpretation that 11 C.F.R. §106.2(b)(2)(iii) precludes the allocation of travel expenses, incurred by employees of the consulting firm, to a particular State if such individuals were not working in any one State more than four consecutive days. The Commission's Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing, revised April, 1987, at Chapter I, Section C.2.b.(2)(c) (page 32), addresses the five day rule with respect to salary, travel and subsistence expenses, paid to campaign staff persons. It specifically states "when determining whether a campaign staff person worked in a State for more than 4 consecutive days, the Commission will generally look to calendar days or any portion thereof, rather than 24 hour periods (11 C.F.R. §106.2(b)(2)(ii) and (iii))."

In its response to the interim audit report, the Committee continues to assert its previous position that the five day rule applies to all workers in a state, including vendor related services. In addition, the Committee has provided the majority of the documentation that was previously not available and provided evidence that certain expenditures had been counted twice against the Iowa expenditure limitation.

*/ The vendor charged an additional 20% of all travel to cover administrative and handling fees.

It is the opinion of the Audit staff that the five day rule does not apply to vendor services, including vendor related travel, regardless of whether the vendor considers such travel (and consulting) to be a direct charge (chargeable to a specific survey) or an indirect charge (not chargeable to a specific survey).

The Audit staff has reviewed all documentation submitted by the Committee, as well as documentation contained in the audit workpapers. The Audit staff agrees that certain charges were inadvertently counted twice and allocated to Iowa. Duplications were made with respect to survey number 2133 (\$4,001.38) and survey number 2181 (\$1,551.28).

Survey number 2133 - The Committee states that "travel clearly coded 2133 on the expense statements, already charged to the Iowa spending limit as part of the focus group interviews, yet again included in the schedule of 2004 Iowa travel."

It should be noted that five expense statements were referred to by the Committee, four of the five expense vouchers submitted on March 6, 1989, did, in fact, identify survey number 2133. However, the fifth expense statement (Reilly - \$688.96) did not identify a survey. The Audit staff was aware it allocated \$4,001.38 in travel costs associated with survey number 2133, however, since the expense statements did not total \$4,001.38, it was believed that additional travel may have occurred. Furthermore, the expense statement, submitted in response to the interim audit report, for Reilly (\$688.96) did contain the "2133" survey number when in fact the same document submitted by the Committee on March 6, 1989 did not.

Survey number 2181 - The Committee states that travel coded 2181 was also included twice in the Audit staff's calculation. The Audit staff agrees with the Committee's position. The duplication occurred as a result of the vendor billing the Committee for this travel under survey number 2004, even though the travel statements are associated with survey number 2181.

In addition, the Committee has submitted documentation which demonstrates that \$1,821.75 in previously undocumented travel expenses does not require allocation to Iowa. As a result, the Audit staff reduced its allocation of travel expenses by \$7,374.41 (\$5,552.66 + \$1,821.75).

Consulting Fees

The Committee stated that the general consulting fees were for Ed Reilly, the Committee's principal contact with the vendor who served the campaign in a broad range of capacities, as a general strategist and political consultant. According to the Committee, Mr. Reilly was a member of the

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campaign's core management team and traveled frequently to Washington and other locations with the candidate to provide advice and information unrelated to any specific project and, in particular, polling, undertaken by his firm. Fees for these services, unrelated to a particular poll in a particular State, are not properly allocated to Iowa's or any other State's limits.

It is the opinion of the Audit staff that the assertions made by the Committee and by the Controller of the polling firm were informative at best, but not specific enough to determine a reasonable method by which to allocate the consulting fees in question. In lieu of additional documentation from the vendor which specifically breaks down the consulting fees by individual(s), and includes all travel records for such individual(s) as related to Committee activities, all time keeping records for billable hours (both direct and indirect), and all work in process statements for such individual(s) as related to Committee activities, the Audit staff has allocated an additional \$93,250 in consulting fees to Iowa.

In response to the interim audit report, the Committee has stated that \$86,500 of the consulting fees were for services performed by Ed Reilly, and the remainder of the consulting fees, \$6,750, were for services of Ned Kennan.* / The Committee continues to assert that fees for these services, unrelated to a particular poll in a particular State, are not properly allocated to Iowa's or any other State's limits.

To support its assertions, the Committee has submitted an affidavit of William Carrick, National Campaign Manager, which states he worked on a daily basis with Ed Reilly, who was a campaign strategist and a member of the Committee's core management team. An affidavit from Ed Reilly, which states he was a senior advisor and national campaign consultant to the Committee. A letter from Susan Worth, Controller for Kennan Research and Consulting, Inc. stating that Ed Reilly devoted 80% of his time to the Gephardt Campaign and "if we had not anticipated this head over heels involvement by Reilly, we would have not felt justified in charging the Gephardt Committee the substantial additional consulting fees we did over and above the direct fees and expenses we charged for individual surveys." As additional support, the Committee provided a copy of Ed Reilly's travel itinerary for the period in question.

Specifically requested during the Audit fieldwork, at the exit conference, and in the interim audit report was documentation from the vendor for all timekeeping records for billable hours (both direct and indirect) and all work in process statements for such individual(s). The Committee has not provided such documentation.

* / Ned Kennan is Ed Reilly's partner at Kennan Research and Consulting, Inc.

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The Audit staff has never believed the entire \$93,250 in consulting fees was allocable to Iowa. We recognize that 39 percent of the cost of all surveys conducted by this vendor and billed through February, 1988 and 33 percent of all travel expenses billed through Survey #2004 relate to Iowa. We have analyzed Ed Reilly's travel itinerary and respective travel vouchers and determined that 22 percent of his travel days were to Iowa and 19 percent of all travel costs were associated with Reilly and Iowa. However, just as the Audit staff does not believe that Reilly's entire consulting fee is allocable to Iowa, we also do not believe that the entire fee is properly allocable as a national campaign expense.

The Audit staff firmly believes that the vendor can provide documentation for consulting fees paid to Ed Reilly and Ned Kennan, which will provide the basis for a reasonable allocation of such costs. As maintained during this entire process, absent documentation to the contrary, the entire \$93,250 in consulting fees are allocable to the Iowa expenditure limitation.

Based on the above, the Audit staff has allocated an additional \$112,538.08 to Iowa (travel - \$19,288.08 and consulting - \$93,250).

7. Telemarketing Related Services

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

a. Lewis and Associates Telemarketing, Inc.

The Committee paid this vendor \$100,541.75 for telemarketing efforts conducted in and directed towards Iowa. A letter dated February 18, 1988, from the vendor to the Committee's controller stated that "we have calculated that 91% of the cost of our calling on behalf of the Gephardt for President Committee, Inc. consists of actual incurred costs such as labor expense, telephone and long-distance expense and other fixed costs such as rent, utilities, etc." The letter further states that "the remaining 9% can be considered as our profit or fee for services rendered."

With the exception of a \$6,988 charge for calls made to wrong and/or disconnected numbers, the Committee allocated \$85,133.91, or 91%, of cost to Iowa and 9 percent (vendor profit or fee) as a national expense. The above mentioned \$6,988 was also allocated as a national expense.

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It is the opinion of the Audit staff that both the vendor's profit and the costs for calls made to wrong and/or disconnected numbers require allocation to Iowa. As a result, the Audit staff has allocated an additional \$15,407.84 to Iowa.

In response to the interim audit report, Counsel states that the Committee's contract with the vendor originally contemplated the provision of telemarketing services in a wide range of states, including but not limited to Iowa. As it happened, the vendor provided services principally in Iowa. This development overtook the original assessment of the campaign that it could properly allocate 91 percent of the cost to a particular state and treat the 9 percent profit as a multi-state expense which should not require allocation to any one state. Because the original intention of the contract was not fulfilled, and the substantial part of the vendor's services involved Iowa telemarketing, the original theory of allocation cannot stand. The Gephardt campaign acknowledges that with this change of circumstances, the auditors' conclusion is correct.

However, the Committee still disputes the allocability of costs for calls made to wrong or disconnected numbers in Iowa. If a call is not completed, because the phone number is wrong or disconnected, there is clearly no influence on the nominating process.

Regardless of whether the vendor conducted telemarketing in one state or ten states, the costs of such services, including the "profit" are allocable to the state(s). There is no provision in the FECA, its Regulations, or in the Compliance Manual that states "profit" can be considered a consulting fee (one state or multi-state) and, therefore, allocable as a national campaign expense.

Finally, it is the opinion of the Audit staff that the Committee's arguments that the costs of calls to wrong and/or disconnected numbers need not be allocated to Iowa are without merit. Any telephone program or other effort is likely to have some degree of waste or spoilage as an anticipated cost of the program and should be viewed as part of the total cost of the program. As a result, the amount allocable to Iowa (\$15,407.84) remains unchanged.

b. Products of Technology, Ltd., Doing Business as Voter Contact Services ("VCS")

The Committee and VCS entered into a contract, whereas, VCS would provide computerized registered voter file products and services. VCS would produce and ship standard hard-copy voter file products, unburst 3 x 5 canvass cards, gummed and cheshire mailing labels, data tapes, laser print tapes, etc.

The Audit staff reviewed 16 invoices totaling \$33,644.48. Each invoice details services directed towards Iowa,

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such as, Iowa list and consulting fees, Fees and Iowa canvass cards, Fees and Iowa canvass lists, Fees and Iowa diskette order, etc. Of the amount billed, the Committee allocated \$5,132.59 to Iowa and \$28,511.89 as a national expense.

Based on the Audit staff's review of the above mentioned invoices, it was determined that an additional \$28,511.89 (\$33,644.48 - \$5,132.59) should be allocated to Iowa.

Committee officials stated that invoices reviewed by the Audit staff cannot tell the entire story, and that several vendors who provided specific services also "locked in" for the entire campaign. A fee arrangement was used for vendors who were exclusive suppliers of a given service, contracts were negotiated in light of vendors being a "preferred vendor" in all states. Finally, the Committee states its response to the interim audit report will clearly point this out by taking raw data and placing it into proper context.

In response to the interim audit report, Counsel states that fees in the amount of \$11,104.15 should not be allocated to the Iowa spending limit. He further states that VCS did charge for specific products a 100 percent mark-up which related to the contractual intent that VCS would act as a "preferred vendor" for the balance of the campaign. This special relationship served as consideration for VCS to take on the tasks at all and to refuse business, as was required under the Agreement, with other presidential candidates. VCS, like any vendor to presidential campaigns, could not foresee how long the contract would last; therefore, its high mark-up, as the Committee understood it, was meant to recover a profit (and a substantial one) on the commitment that it had made to the Gephardt campaign.*

The Committee understood that it was paying a high price in support of the exclusive arrangement that is sought with VCS. But this was a price that it was prepared to pay for an exclusive national contract, not attributable to one state, including Iowa. It was appropriate therefore, for the Committee to account for a fee intended to secure financial return to VCS for its commitment to a national campaign as national overhead rather than allocate this fee to the Iowa spending limit.

The Committee appears to be saying that in order to obtain exclusive rights to this vendor's services it

*/ It should be noted that Jack Kemp for President Committee utilized the services of VCS with respect to its Iowa and New Hampshire operations. A recent publication states, (VCS) established in California in 1972, the bipartisan company maintains national offices in Honolulu, with representatives in many metro areas. Representatives maintain party affiliations. VCS boasts 12 state party relationships (six of each).

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agreed to pay a higher fee, in this case a 100 percent mark-up on goods and services, than it would have had to pay had it not obtained exclusivity. As a result, its contract with the vendor becomes a national contract and all respective fees are allocable as a national campaign expense.

The Audit staff does not agree with the Committee's position on this matter. The fees involved, as acknowledged by Counsel, are directly associated with the product. Counsel states, "VCS did charge for specific products a 100 percent mark-up." It is our opinion that if the "product" is chargeable to Iowa, likewise, the fee is chargeable to Iowa.

As a result, the amount allocated to the Iowa expenditure limitation (\$28,511.89) remains unchanged.

c. Telephone Contact, Inc.

1. This vendor provided a telemarketing service on behalf of the Committee. A contract, signed and dated July 30, 1987, required the vendor to make approximately 58,000 calls to 1984 Iowa Democratic caucus attendees for the purpose of identifying Gephardt supporters and soliciting contributions to the campaign. According to the contract, the cost of these services was \$13,750, plus the cost of long distance telephone calls, including an 18 percent commission on such calls (the vendor is located in Missouri). The vendor estimated that the long distance fees would be approximately \$12,000 to \$19,000.

The Audit staff has identified \$18,464.11 in charges related to the telemarketing program. Included in this amount was \$4,714.11 in long distance telephone charges incurred through August 25, 1987 (18 percent commission included). The costs were originally allocated 95.5 percent to Iowa and 4.5 percent to fundraising, the Committee subsequently revised its allocation to 50 percent Iowa and 50 percent fundraising (\$9,232.05).

The Committee provided two scripts which were used by the vendor. The first script addressed almost exclusively issues but contained a request for funds at its conclusion. The second script extended an invitation to hear the Candidate speak in Cedar Rapids, Iowa, at the Linn County Democratic Barbecue and Rally. The script does not contain an appeal for funds, therefore, the script is considered political and not fundraising.

For purposes of calculating a dollar value for each script, 50 percent (\$9,232.05) of all identified costs was assigned to each. The Audit staff considers the first script to be fundraising in nature and requires no allocation to Iowa, however, since the second script did not contain an appeal for funds the Audit staff has allocated \$9,232.05 to Iowa. As a

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result, no additional allocation to Iowa is necessary at this time.

The Committee states the following:

"upon checking with the company, it was determined that the same script was used for both series of calls, rather than two separate scripts. For the Linn County Barbecue calls, the caller simply added to the basic fundraising script additional questions and information on the Linn County event. This is reflected in the numbering of the attached script: Questions 1-16 comprising the regular script; Questions 17-26 continuing with the Linn County information."

The Audit staff has again reviewed the two scripts in question. While it is agreed that the scripts are numbered 1-16 (regular) and 17-26 (Linn County), there is no evidence or instruction to the caller that cross references the fundraising appeal, which is instruction number 15 of the first script, to the Linn County script. Conversely, instruction number 16 of the first script instructs the caller to:

- ° say "Thanks a lot. We will send you a card & envelope."
- ° enter 99 to exit.

Finally, the vendor estimated that long distance telephone fees would be approximately \$12,000 to \$19,000, however, known/verified long distance fees through August 25, 1987, totaled only \$4,714.11. The Audit staff is of the opinion that additional long distance telephone fees exist which may require allocation to Iowa.

In response to the interim audit report, Counsel maintains that there was no "second script"; that the Linn County Barbecue script started with the 16 basic questions and continues on to questions 17 through 26, and contrary to the Audit staff's conclusion, the Linn County Barbecue script did include a fundraising solicitation at question #15. Counsel also provided an affidavit of Joyce Aboussie, President of Telephone Contact, Inc., which Counsel states confirms his statement on this matter.*/

Based on the documentation submitted, the Audit staff is not convinced that the Linn County Barbecue script contained a fundraising solicitation. It is our opinion that additional documentation could be made available that would

*/ Joyce Aboussie also served as the Committee's Missouri Campaign Manager and Deputy National Finance Director.

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confirm the nature of this script, i.e., sample schedules of certain successful calls, to include copies of the follow-up solicitations, and copies of the contributor responses, if made available, could be determinative.

However, on May 14, 1991 the Commission determined that the activity conducted by the vendor was fundraising and the associated cost does not require allocation to Iowa. Therefore, the amount the Committee allocated to Iowa has been reduced by \$9,232.05.

2. The Audit staff reviewed five additional invoices from the vendor for which a portion of the services provided were directed to Iowa. The invoices were for list development, programming time, a flat fee for services rendered in January and February, 1988, long distance telephone charges billed for the periods September 26, 1987 through October 25, 1987, and January 26, 1988 through February 25, 1988. As a result, the Audit staff has allocated an additional \$8,946.59 to Iowa.

It should be noted that the Audit staff is not satisfied that it has a clear understanding as to the full nature and total costs of the services performed. Unlike the contract and related invoices reviewed for the telemarketing program noted in c.1. above, it appears that the five invoices relate, in part, to another program(s) with a direct focus to Iowa.

Given the fact that the Committee and the vendor have created a unique relationship, in that the President/Owner of Telephone Contact, Inc. also served as the Committee's Missouri Campaign Manager and Deputy National Finance Director, it should not be difficult to obtain a full accounting of all work performed.

In response to the interim audit report, the Committee submitted adequate documentation from the vendor that demonstrated that \$3,480.71 in charges were not allocable to Iowa as well as providing information relative to all services performed.

As a result, the Audit staff has reduced the amount allocable to the Iowa expenditure limitation to \$5,465.88*/ (\$8,946.59 - \$3,480.71).

*/ Included in this amount is \$1,324.15 relative to Invoice #108-88. In its March 6, 1989 response, the Committee provided documentation which demonstrated that only \$1,324.15 was allocable to Iowa. In its interim audit report response, the Committee states that the entire amount of Invoice #108-88 (\$1,836.09) is allocable to Iowa. The correct allocable amount is \$1,324.15, since the difference (\$511.94) represents charges for calls made to states other than Iowa.

8. Printing Expense

a. Carter Printing Company, Inc.

The vendor supplied print materials, such as, newsletters, position papers, postcards, tickets, envelopes, etc. The vendor is located in Des Moines, Iowa.

From our review of the invoices which include a description of the materials printed, the focus of such materials with respect to State allocations was not always obvious. However, a certain pattern did evolve, in that, certain invoices included a shipping charge, paid by the vendor and billed to the Committee. For example, one invoice for the production of "16,000 speech text" included a charge for shipping 3,000 pieces to Washington, D.C. The Committee allocated the amount of this invoice (when paid) between Washington, DC (national expense) and Iowa, based on the number of pieces each received. In addition, the amounts of certain other invoices which did not include a charge for shipping were allocated to Iowa.

It is the opinion of the Audit staff that, absent evidence to the contrary, invoices which do not include a charge for shipping should be allocated to Iowa, since it appears obvious that the materials printed were picked up by a member(s) of the Iowa staff for use in Iowa.

The Committee has provided copies of a majority of the materials printed and acknowledged their use in Iowa, but now asserts their costs (previously allocated as a national expense) should be reallocated to exempt fundraising.

The Committee has demonstrated that 16,000 "Dear Fellow Demo." letters included an appeal for contributions. The letter stated that a copy of position papers on agriculture was attached and that "over the next several weeks, I'll be sending you a series of in depth, detailed, and specific position papers." The Committee stated that "each time a position paper was distributed, a contribution card was sent as well," however, no evidence of such solicitation was made available for review.

As a result, the Audit staff considers the costs of the 16,000 "Dear Fellow Demo." letters, 16,000 of the 50,000 position papers on agriculture, and 16,000 of the 260,000 envelopes to be exempt fundraising. The Committee also demonstrated that the cost of printing "10,000 newsletters" and "2,500 Each of 2 Rapier Sheets" does not require allocation to Iowa. However, it is the opinion of the Audit staff that the cost of all other printing requires allocation to Iowa.

Based on the above, the Audit staff has determined that an additional \$17,458.41 should be allocated to Iowa.

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In response to the interim audit report, the Committee states that while the Audit staff agreed with the Committee's allocation of 16,000 "Dear Follow Demo" letters, agriculture issue papers, and envelopes to exempt fundraising, they did not allocate the costs to fundraising of the reprint of the speech on "Rural America" which accompanied that mailing or any subsequent position papers sent out in the same manner with precisely the same contribution card.

The Committee further states that the Audit staff allocated to Iowa two additional Carter invoices: Invoice #25035, in the amount of \$1,814.80 (25,000 Labor Newsletters); and Invoice #23350, in the amount of \$189.20 (7,500 Flyers).*/

It should be noted that the Committee allocated these costs as a national expense, which reflected the Committee's position at the time. On March 6, 1989, the Committee, as previously stated in the report, acknowledged their use in Iowa, but now asserts their costs should be reallocated to exempt fundraising. Based on the additional documentation made available, the Audit staff agreed that the costs of certain printed materials were in fact chargeable to exempt fundraising. The documentation clearly indicated that the "Dear Fellow Democrat" letter, sent to residents in Iowa, contained an appeal for contributions, and specifically made reference to the enclosed candidate's position paper on agriculture.

As a result, the cost of 16,000 "Dear Fellow Democrat" letters, 16,000 position papers on Agriculture, and 16,000 envelopes were removed from the Audit staff's allocation of additional costs chargeable to the Iowa expenditure limitation.

As stated in the interim audit report, the Committee has not provided any documentation which supports its position that the cost of the remaining position papers should not be charged to Iowa. The Committee merely states that each time a position paper was sent, it included a solicitation card, that although not all of the scheduled mailings were sent, the original plan called for one mailing each week from October 1987 through the end of the year.

If the recipients of the 16,000 "Dear Fellow Democrat" letters, dated October 21, 1987, were sent a position paper and a solicitation for contributions for the next 11 straight weeks, specific documentation and/or results of fundraising efforts, mailing dates, coded responses, etc., should

*/ The correct amount of the invoice and the amount allocated by the Audit staff to Iowa is \$109.20.

be available for review prior to making any additional fundraising adjustment.*/
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The Committee's assertion that the Audit staff allocated the cost of invoice #25035 (\$1,814.80) to Iowa is simply not true. Invoice #25035 was not on the Audit staff's schedule of additional allocations, which the Committee has in its possession, for this vendor. It should be noted that the Committee response subsequently states "prior to receiving a sample of the labor newsletters, the Committee (emphasis added) allocated the expenditure to Iowa." Further, from our review of the Iowa general ledger, the Audit staff can not determine if the Committee allocated the cost of this invoice to Iowa. Therefore, no adjustment will be made at this time.

Further, the Committee states that invoice #23350 represented printing costs of a flyer promoting Congressman Gephardt's announcement-day activities and that announcement-day activities are not allocable to Iowa, as they represent a one-day swing designed for national media coverage.

The flyers in question relate to the Candidate's announcement in Des Moines, Iowa. It is our opinion that the expenditure was incurred for the purpose of influencing Iowa voters and, therefore, allocable to the Iowa expenditure limitation.

Finally, the cost of 260,000 postcards (\$2,304) has been removed from the Iowa spending limit, since the Committee provided a copy of the postcard and it clearly represents a fundraising cost.

Based on the above, the Audit staff has determined that \$15,154.41 (\$17,458.41 - \$2,304.00) should be allocated to Iowa.

b. Brown, Inc.

The Audit staff noted 3 invoices which required allocation to Iowa. In one instance, the cost of 50 Iowa banners was applied against an existing credit balance the Committee had with the vendor. In two other instances, the vendor revised its original invoices to reflect an increase in cost. Whereas, the Committee allocated the cost of the original invoices to Iowa, it failed to allocate the increased portion of the revised bill. As a result, the Audit staff has allocated an additional \$2,380.59 to Iowa.

*/
 Since the letter and first position paper was dated October 27, 1987, it is also possible that certain position papers and the alleged solicitation may have occurred within 28 days of the caucus, which renders any fundraising allocation moot.

In response to the interim audit report, Counsel states that the cost of shipping 50 banners to Iowa is not allocable, because the campaign received a credit from the vendor for this amount as no freight bill was rendered to Brown, Inc. as of December 31, 1987.

Although the Committee did not provide any documentation that supports the \$135 credit (i.e., the invoice), the Audit staff's workpapers did contain a vendor-prepared billing recap which listed a \$135 credit on January 4, 1988, associated with invoice #8799F. However, the Audit staff notes that the billing recap makes reference to two subsequent invoices: number 8804, \$3,000 on January 14, 1988; and number 8809, \$867.52 on January 17, 1988.

In order to insure that the shipping costs were not re-billed to the Committee and included as part of the aforementioned invoices, documentation should be made available for review prior to allowing any adjustment. As a result, the amount allocable to the Iowa expenditure limitation (\$2,380.59) remains unchanged.

9. Media Expenditures

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

A signed agreement entered into with its media vendor required the Committee to pay a consulting fee of \$120,000 (\$15,000 a month for 8 months) for services rendered in connection with the campaign. In addition, the Committee was to pay a 15 percent agency commission on the first one million dollars of media time buys.

The Audit staff reviewed the Committee's allocation worksheets for Iowa as well as all supporting documentation made available by the media vendor. During this review, it was noted that the Committee allocated the costs of media time buys but did not allocate the 15 percent agency commission.

Upon discussing this matter with Committee officials, they provided an unsigned/undated copy of an amendment^{*/} to its original Agreement. The amendment, in part,

^{*/} On March 6, 1989, the Committee submitted a signed copy of the amendment which was dated January 18, 1988.

requires the Committee to pay an additional consulting fee of \$110,000 and waives the 15 percent agency commission on media time buys for the period December 26, 1987*/ through the date of the Democratic primary in New Hampshire. Committee officials also stated that "at no time did either the Committee or Doak and Shrum consider any of the payments for consulting fees to be a "substitute" for the foregone commissions. Absolutely none of this amount, as a matter of fact, is properly allocable to the Iowa expenditure limitation."

In support of the amendment, the Committee also submitted an affidavit of David Doak, President of Doak and Shrum, the media vendor.

Presented below are certain numbered points contained in David Doak's affidavit that warrant further comments:

5. The principal officers of Doak and Shrum, David Doak and Bob Shrum, routinely participated in the campaign as two of the five or six top-level aides comprising the management "team" for the Gephardt Committee under the direction of Campaign Manager Bill Carrick.

8. The Agreement between Doak and Shrum and the Gephardt Committee was always subject to change in recognition of the unique contractual issues presented by a "dark horse" Presidential campaign. Doak and Shrum undertook this service with full knowledge that the campaign would likely experience chronic cash flow difficulties, and that Doak and Shrum, in turn, would have to monitor and respond quickly to the campaign's fluctuating fortunes and performance under the Agreement to protect against financial loss.

9. Doak and Shrum entered into this Agreement nonetheless as a first venture in Presidential campaign consulting, believing that the visibility of the firm in the campaign would enhance its reputation and attract other clientele and that Richard Gephardt stood an excellent chance of emerging as a contender with genuine prospects for the nomination.

10. Beginning in late 1987, Doak and Shrum became concerned with two concurrent developments: the heavy demands of the Presidential campaign and cash flow problems which resulted in delayed and unpaid performance by the campaign under the original

*/ December 26, 1987 is the earliest date on which media time buys for Iowa were broadcast.

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Agreement. The demands of the campaign interfered with the management of other client accounts and also became sufficiently obvious to the community of potential clients that other accounts for which Doak and Shrum might successfully have competed were lost to firms perceived as more able to devote the time required by those clients.

11. These developments threatened the financial position of Doak and Shrum and raised questions from time-to-time of whether Doak and Shrum could meet its basic operating requirements, including monthly payroll.

12. As a result, in December of 1987, Doak and Shrum advised the Gephardt Committee that it sought to amend the Agreement. The purpose of the Amendment was (1) to focus attention on unpaid fees and disbursements by establishing a timetable for their payment; (2) to increase the fees payable for general consulting services which accounted for the extraordinary demand on Doak and Shrum's time and conflicted with other existing and potential business; and (3) to add a "bonus" for success in the primary campaign by raising commission rates in the general election, if Congressman Gephardt became the Presidential nominee of the Democratic Party.

With respect to items 10, 11, and 12, the affidavit states, "beginning in late 1987, Doak and Shrum became concerned with two concurrent developments: the heavy demands of the Presidential campaign and cash flow problems which resulted in delayed and unpaid performance by the campaign under the original Agreement" and that "these developments threatened the financial position of Doak and Shrum and raised questions from time to time of whether Doak and Shrum could meet its basic operating requirements, including monthly payroll. As a result, in December of 1987, Doak and Shrum advised the Gephardt Committee that it sought to amend the Agreement." the Audit staff offers the following:

- ° The original Agreement was signed August 5, 1987 (by the Committee), and August 11, 1987 (by Doak and Shrum);
- ° during the period August, 1987 through November, 1987, the Committee did not report any debts owed to Doak and Shrum. In December, 1987, the Committee incurred and reported debts totaling \$20,616.91;
- ° through December, 1987, the Committee was current with its monthly consulting fee payment of \$15,000;

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- ° the Committee paid Doak and Shrum in excess of \$600,000 in December, 1987, only to have Doak and Shrum return \$300,000 (at the Committee's request) on December 31, 1987, to the Committee*/;
- ° Iowa media time buys for the period December 26, 1987 to January 1, 1988, totaled only \$91,171 (net);
- ° in a letter to the Committee's controller, dated August 8, 1988, the vendor stated they agreed to return the \$300,000 since the prior advance for media expenditures had not been exhausted (emphasis added) and that Doak and Shrum did not anticipate making any media expenditures during the period December 31, 1987 through January 4, 1988;
- ° in December, 1987, the Committee's established bank line of credit was increased from \$1,000,000 to \$1,400,000;
- ° the Committee received \$1,737,216.22 in matching funds on January 4, 1988; and
- ° finally, during the period January 1, 1988 through March 25, 1988, the Committee paid Doak and Shrum \$1,780,000 (not including the \$300,000 discussed above).

It should be noted that the Audit staff does not question the financial position of Doak and Shrum. However, the affidavit attempts to justify Doak and Shrum's concerns with respect to the Committee's financial state and its affect on Doak and Shrum's own financial position. If such concerns were legitimate, it would not appear likely that Doak and Shrum would return a payment of \$300,000 to the Committee.**/ Furthermore, the above information with respect to the January 4, 1988 matching fund payment, the established line of credit, etc. should have been known to Doak and Shrum, since its principals made up one-third of the Committee's top management team.

It is the opinion of the Audit staff that the sole purpose of the amendment was to circumvent the Iowa state limit by eliminating the 15 percent agency commission on media time buys. As a result, the Audit staff has allocated an additional \$74,235.77 to Iowa, which represents the allocable portion of the 15 percent agency commission on the Iowa media time buys.

*/ The Committee then paid Doak and Shrum \$300,000 on January 4, 1988.

**/ Sufficient funds were available in the Committee's bank account to cover this transaction.

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In response to the interim audit report, Counsel states "in an exercise of perfectly reasonable business judgment, Doak and Shrum requested an amendment in early 1987 [The amendment was actually requested in December 1987, see numbered point 12 of David Doak's affidavit on page 36 of this report.] to (1) bring payment of consulting fees current by establishing a new timetable for payment; (2) increase the payments for consulting services which took up the most substantial part of Doak and Shrum's time and caused the principal conflict with other business; and (3) add a bonus for success in the primary campaign by raising commission rates in the general election if Gephardt succeeded in winning the nomination." Counsel also states that because of perceived weaknesses in the Candidate's performance in a televised debate on December 1, 1987, among Democratic presidential candidates, a loss of momentum existed. As a result, "this, too, caused Doak and Shrum to seek to reorganize its consulting arrangement with the Gephardt campaign, taking into account its very different position at this time. Among the proposed changes was a large payment against risk of future financial losses. Doak and Shrum, not the campaign, sought these changes; for its protection, not the campaign's."

The relevant issue in this matter is what was the true purpose of the amendment. It is the Audit staff's opinion that the amendment deleted an allocable cost, a 15 percent agency commission on media time buys, and substituted a cost which is not normally allocable to states, an additional consulting fee of \$110,000.

Points (1) and (3), above, made by Counsel are not relevant to this issue. The Audit staff has previously stated with respect to point (1) that the original consulting payments (\$15,000 monthly) were current through December, 1987. Counsel did not contest this statement in his response. Point (3) concerns an increase in the commission rate from 7 percent to 8 percent for the general election.

Therefore, point (2) is really the heart of this issue. That for all of Doak and Shrum's concerns, with respect to the viability of the Committee in early December 1987, it sought to increase the payment for consulting services (\$110,000), which according to the Committee represented a payment against risk of future financial losses.

If this was, in fact, true, why then would Doak and Shrum not require the additional consulting fee of \$110,000, its insurance against future financial losses, to be due immediately as opposed to being due March 1, 1988 (but not later than March 10, 1988). This seems to be in direct conflict with Counsel's assertions, especially since Counsel has stated that Gephardt's position in December of 1987 and his standing and fundraising prospects in mid-February were worlds apart." Finally, Counsel states that when the campaign ended (March 28, 1988), it is

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apparent that Doak and Shrum had struck for itself a remarkably good deal.

As a result, the Audit staff's position has not changed and the amount allocable to the Iowa expenditure limitation (\$74,235.77) remains the same.

10. Event Expenditures - Jefferson/Jackson Dinner

Section 106.2(c)(5)(ii) of Title 11 of the Code of Federal Regulations states that exempt fundraising expenditures are those expenses associated with the solicitation of contributions. They include printing and postage for solicitations, airtime for fundraising advertisements, and the cost of meals and beverages for fundraising receptions or dinners.

The Jefferson/Jackson Dinner ("JJ Dinner") was an event hosted by the Iowa Democratic Party on November 7, 1987. All candidates were invited to speak at the event. The Audit staff identified \$27,918.34 in expenditures associated with the event. The expenditures were for buses, tents, banners, caps, food, etc. These costs were allocated 90 percent fundraising and 10 percent Iowa and subsequently changed to 75 percent fundraising and 25 percent Iowa. The Committee could not provide any documentation to support either allocation method.

The Committee stated that they arranged for supporters to be bused to the event to participate in a straw poll and when the Party cancelled the straw poll, the Committee attempted to turn its already considerable efforts and financial expenses into a fundraising effort. The Committee further stated that this was accomplished by the,

"distribution of materials to be used in support of a major nationwide fundraising program conducted in connection with NBC's December 1 presidential candidate debate. The fundraising program involved a series of nationwide house parties, hosted by supporters of Deck Gephardt during the presidential debate. The presence of numerous supporters at the JJ Dinner provided the opportunity to distribute materials to enlist hosts for the house parties, as well as an opportunity to ask those who had already committed to participate in soliciting other individuals to be hosts.

In addition, the JJ Dinner was used by the Gephardt Committee as a means of expanding its fundraising base. Attendee lists obtained at the JJ Dinner were used by the Committee in subsequent fundraising programs, such as its telemarketing and direct mail activities."

It is the opinion of the Audit staff that expenditures for buses, tents, banners, caps, food, etc. were

associated directly with the JJ Dinner, the sole purpose of which was to influence Iowa voters. Further, the JJ Dinner and the house parties commonly referred to as the America First: December First house parties, were two distinctly different efforts in that there was no solicitation of contributions by the Committee at the JJ Dinner and the America First: December First house parties were nationwide fundraising efforts. It is also our opinion that distributing America First: December First house party packets, obtaining lists of JJ Dinner attendees to be used in subsequent fundraising, telemarketing and direct mail efforts does not make the costs associated with the JJ Dinner synonymous with the cost of the house parties.

Based on the above, the Audit staff does not consider the Jefferson/Jackson Dinner a fundraising event and has allocated an additional \$21,156.96 to Iowa (\$27,918.34 -\$6,761.38 amount allocated by Committee).

In response to the interim audit report, Counsel offers the same position with virtually the same reasoning as it did in its response on March 6, 1989.

The Audit staff has considered every aspect of the Committee's response but has not changed its opinion that the purpose of the JJ Dinner was to influence voters and not to solicit contributions from attendees at the event. As a result, the amount allocable to the Iowa expenditure limitation (\$21,156.96) remains unchanged.

11. Other Deposits

The Audit staff identified \$1,752.56 in deposits made to various Iowa utility companies. The Committee allocated these payments as a national expense. A portion of the deposits have been applied to the final bills received from the utilities.

In its response to the interim audit report, the Committee did not contest this matter. As a result, the Audit staff has allocated an additional \$1,752.56 to Iowa.

12. Other Media

The Audit staff identified a payment to Conus Communications in the amount of \$5,635. The payment was for satellite links and associated services for a debate between the candidate and Congressman Kemp. The debate was held on July 20, 1987, in Des Moines, Iowa. The satellite link apparently made the debate and follow-up interviews available to television news directors around the country. In addition, the campaign arranged live five minute interviews via satellite with the participants for twelve stations in Iowa. Included in the above stated amount is a \$250 charge for downlinking the debate to a specific location in Washington, DC for viewing by the local press.

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Committee officials stated that they attempted to expand the debate to a national audience via the satellite hookup, and not merely to Iowa voters.

It is our opinion that the debate was a created news event which was directed towards Iowa voters, and absent evidence to the contrary, the Audit staff has allocated an additional \$5,635 to Iowa.

In response to the interim audit report, Counsel states that it would be hard to imagine circumstances under which a broadcast could be more geared toward the national audience than that of the Gephardt/Kemp debate. A letter from a Conus Satellite Service Representative documents that seven or eight live interacts*/ were done after the debate, in media markets including Atlanta, Georgia; St. Louis, Missouri; and Kansas City, Missouri. He also states in a separate letter that the live audience was made up of 200-250 students at Drake University.

Counsel further states the following:

"...the campaigns could not afford to utilize Conus' reporting/clipping service in order to verify usage after transmission to the satellite. Thus, there is no way to verify exactly how many of the nearly 1,000 stations nationwide offered the debate actually used it."

Finally, he states:

"...any impact on Iowa voters was merely incidental to the national approach of the debate. The Conus invoice itself describes the broadcast as 'national coverage.' The reason the debate was held in Iowa was that Des Moines, for reasons stated at length in the introduction, made an attractive setting for the press around the country."

It should be noted that in 1980, certain costs associated with a live debate in Nassau, New Hampshire among Republican presidential candidates, paid for by Reagan for President, were allocated to the New Hampshire expenditure limitation. That debate was broadcast live to a national audience. Consistent with past Commission action, it is the opinion of the Audit staff that the cost of the Gephardt/Kemp debate in Des Moines, Iowa is allocable to the Iowa expenditure limitation.

However, on September 18, 1990, the Commission determined that such cost was not allocable to Iowa. Consistent

*/ Interacts are live question-and-answer sessions between a candidate and the local TV anchor people.

with that determination, the Audit staff has excluded the cost of the debate (\$5,635) from the Committee's Iowa expenditure limitation.

13. Miscellaneous Expenses

Our review also indicated that expenditures were incurred in Iowa for rents, supplies, shipping, hotels, equipment and other miscellaneous expenses.

Based upon this review, the Audit staff determined that an additional \$28,035.57 should be allocated to Iowa. This amount also includes drafts, totaling \$3,405, that were not sufficiently documented to determine a reasonable allocation, however, such drafts were payable mainly to individuals traveling throughout Iowa.

In response to the interim audit report, Counsel states that the Committee has briefly reviewed the Audit staff's numerous entries under this category and has discovered apparent multiple arithmetic and accounting errors in allocation of these disbursements to the Iowa spending limit. The Committee reserves the opportunity in the immediate future to provide documentation of these errors upon completion of its review.

It is the opinion of the Audit staff, that any such documentation submitted by the Committee will be reviewed as part of the Committee's response to the final audit report. As a result, the amount allocated to Iowa (\$28,035.57) remains unchanged.

14. Committee Adjustments to Previous Iowa Allocations

The Audit staff has reviewed the Committee's general ledger allocations for the Iowa cost center and noted that in twenty-five instances, expenditures originally allocated to Iowa were reversed and subsequently allocated to other cost centers. The expenditures were for equipment rental, supplies, printing, car rental deposits, office equipment, postage, etc.

As a result, it is the opinion of the Audit staff that an additional \$7,498.71 should be allocated to Iowa.

In response to the interim audit report, Counsel states that the Committee has reviewed the above expenditures and determined that disbursements totaling \$4,789.30, should be removed from the Iowa spending limit.

With respect to 4 expenditures, totaling \$2,806.73, the Committee has provided additional documentation that demonstrated that the costs were not allocable to Iowa.

However, 7 expenditures, totaling \$1,803.77, represent costs associated with the Candidate's announcement day

activities in Iowa, and 3 expenditures, totaling \$178.80, represent the costs of equipment and services that the Committee states was properly chargeable to exempt compliance costs.

Both matters have been discussed previously in this report. It is our opinion that the costs of announcement day activities in Iowa are allocable to Iowa, and the Committee can not charge certain payments for services and equipment as an exempt compliance cost at full value when it elected to utilize the 10 percent standard compliance exemption for other similar items.

As a result, the Audit staff has allocated \$4,691.98 (\$7,498.71 - \$2,806.73) to the Iowa expenditure limitation.

15. Accounts Payable

The Audit staff has reviewed all accounts payable as of November 30, 1988, which relate to services rendered in Iowa and determined that an additional \$23,047.59 in expenses are allocable to Iowa.

In response to the interim audit report, the Committee has provided documentation that demonstrates that payables totaling \$2,781.53 do not require allocation to Iowa. In addition, the Audit staff identified an additional \$4,955 in Iowa payables during an update of net outstanding campaign obligations (NOCO). As a result, the revised amount allocable to the Iowa expenditure is \$25,221.06 (\$23,047.59 - 2,781.53 + 4,955).

16. Rental Apartments/Houses

During our review of outstanding accounts payable, the Audit staff noted a number of final bills from various Iowa utilities. The bills identified seven apartments located at 717 4th Street, Des Moines, Iowa. The Committee also rented two houses located at 17 East Dunham Street and 3430 Forrest Avenue. The houses were commonly referred to as the Gephardt staff house and Gephardt advance house. The Audit staff was unable to determine, and the Committee could not provide, a detailed accounting of the costs associated with the rentals. We did note that a draft for \$100, allocated to Iowa by the Committee, was annotated one-sixth rent Gephardt staff house, however, it was not known who paid the remaining five-sixths (\$500) of the monthly rent.

In the interim audit report, the Audit staff recommended that the Committee provide a detailed accounting of all costs associated with the rentals, to include but not be limited to:

- ° the monthly rent due, the monthly rent paid, and the source of all such payments, to include the

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- check/draft number, date, payee, payor, and signor;
- ° all associated costs, including all deposits, utilities, furniture and/or equipment rental, etc. The source of all such payments, to include the check/draft number, date, payee, payor, and signor;
- ° copies of all leases identifying the leases, lessor, and the period of time covered by the lease;
- ° a detailed listing of all known individuals who stayed at the apartments, to include their length of stay and their job titles.

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

"...these apartments were rented by various individuals without coordination with the Gephardt campaign for use as their own personal living accommodations. The rent, utilities, and other expenses incurred in connection with the rental of the apartment were, for the most part, paid by these individuals from their personal funds. As will be shown below, the individuals identified by the auditors as residing in these apartments were, for the most part, in Iowa during periods of January and February immediately preceding the Iowa caucuses. This is also the period when the Gephardt campaign suspended its payroll; formerly paid staffers continued as volunteers.

As a result, many of these individuals did not have large amounts of money available to them and several, upon vacating the apartments after the caucuses, left utility bills unpaid which were forwarded to the Gephardt for President Committee."

The documentation submitted identified 11 apartments which were rented for various periods of time between December 7, 1987, and January 26, 1988 (start dates), through February 15, 1988. The costs of the rentals totaled \$5,032. Two of the rentals (units 52 and 53) were paid by Committee drafts, totaling \$740, and were allocated to Iowa by the Committee.

The Committee stated it was not able to provide any information with respect to the rented houses. In an effort to obtain the necessary information, the Commission ordered the issuance of subpoenas to various Iowa utilities and to a rental agency.

Based on our review of the responses received the Audit staff determined that an additional \$3,079.46 (3430 Forrest

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Avenue - \$2,327.24, 17 East Dunham Street - \$752.22 in utility expenses only) requires allocation to Iowa.

It should be noted that with respect to the 17 East Dunham Street property, neither the Committee nor the responses to the subpoenas produced any information concerning the renters, the total rent paid, and the period of time the house was rented. However, it appears that the this house was rented by Laura Nichols, who was the Committee's Iowa state press director. Further, an article entitled "80 GOP WAR VETS TO RUN IN 1992, GINGRICH PREDICTS" (Monday, March 18, 1991 Roll Call Page 33) includes a quote from a Laura Nichols, whom the article identifies as a spokesperson for the Democratic Congressional Campaign Committee.

It is the opinion of the Audit staff that all costs associated with the rentals are allocable to the Iowa expenditure limitation. Although 11 C.F.R. §100.7(b)(8) provides that any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a [in-kind] contribution, the fact that the Committee "suspended" its payroll for January and February, 1988 did not transform these employees into volunteers who could then avail themselves of the above cited subsistence exemption. Therefore, the Audit staff has allocated an additional \$7,371.46 [apartments \$4,292 (\$5,032 - \$740), houses \$3,079.46] to Iowa.

17. Exempt Compliance and Fundraising Expenditures

Section 106.2(c)(5) of Title 11 of the Code of Federal Regulations states, in part, that an amount equal to 10% of campaign workers salaries and overhead expenditures in a particular State may be excluded from allocation to that state as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of the primary election.

Section 106.2(b)(2)(iv) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

With respect to its payroll and overhead expenditures of its Iowa state offices, the Committee utilized the exemptions provided by 11 C.F.R. §106.2(c)(5). However, it should be noted that the Committee only applied this exemption to 75 percent of its state office payroll and overhead, as it had previously exempted 25 percent of all Iowa allocations (except for Iowa media) as a national exemption. Further, the Committee's pool of overhead expenditures included numerous items which are not defined as "overhead" pursuant to 11 C.F.R. §106.2(b)(2)(iv).

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Exhibit A
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For example, these items included equipment and furniture rental for the Candidate's apartment, equipment rental, supplies, and printing, all associated with specific events, the cost of utilities for the Candidate's apartment and the Gephardt staff house, gasoline, food, and certain expenditures associated with the Jefferson/Jackson Dinner, etc.

As a result, the Audit staff has reviewed all payroll and overhead expenditures associated with the Iowa state offices, including payroll and overhead expenditures not allocated by the Committee and determined that the Committee is entitled to an additional compliance and fundraising exemption of \$19,447.86.

In response to the interim audit report, Counsel states that its original compliance and fundraising exemption should stand based on its assertions previously made with respect to the 25 percent national exemption.

As previously stated, the Audit staff rejected the Committee's arguments with respect to the 25 percent national exemption. However, based on adjustments made as a result of the Committee's response concerning telephone related charges, the additional compliance and fundraising exemption has been reduced to \$19,191.90.

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Exhibit A
P 47 of 47

Recap of Iowa Allocations

Presented below is a recap of Iowa allocations. Copies of workpapers and supporting documentation for the Audit staff's allocations have been provided to the Committee.

Amount Allocated by Committee	\$739,478.98
Additional Allocations by Audit Staff	
Twenty-Five Percent National Exemption	\$178,910.11
Telephone Related Charges	44,055.82
Salaries, Employer FICA, Consulting Fees and Staff Benefits	36,624.02
Intra-State Travel and Subsistence	19,898.59
Car Rentals	22,486.08
Polling	112,538.08
Telemarketing Related Services	49,385.61
Printing	17,535.00
Media	74,235.77
Jefferson/Jackson Dinner	21,156.96
Other Deposits	1,752.56
Miscellaneous	28,035.57
Adjustments to Previous Iowa Allocations	4,691.98
Accounts Payable	25,221.06
Rental Apartments/Houses	7,371.46
Exempt Compliance and Fundraising Expenditures	<u>(19,191.90)</u>
Total Allocations by Audit Staff	<u>\$624,706.77</u>
Total Allocable Amount	\$1,364,185.75
Less Iowa Expenditure Limitation	<u>775,217.60</u>
Amount in Excess of the Iowa Expenditure Limitation	<u>\$ 588,968.15</u>

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Candidate Spending Limitation

Section 9035.2 (a)(1) and (2) of Title 11 of the Code of Federal Regulations state, in part, that no candidate who has accepted matching funds shall knowingly make expenditures from his personal funds in connection with his campaign for nomination for election to the office of President which exceeds \$50,000. Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

The Committee made available certain American Express receipts and associated documentation for campaign related expenses charged on the Candidate's personal American Express card. However, billing statements requested during the audit fieldwork for the period October 1986 through December 31, 1988, were not made available for review. Based on the documentation made available it appears that the Candidate has exceeded the limitation at 11 C.F.R. § 9035.2(a).

Our review indicated that on February 5, 1988, the Candidate made a direct contribution to the Committee of \$50,000 and as of February 5, 1988, had outstanding charges for qualified campaign expenses on his personal American Express card totaling \$16,309.21, of which \$13,981 was incurred in October, 1987. As a result, it appears that the Candidate exceeded his spending limitation by \$16,309.21 (\$66,309.21 - 50,000).

Additionally, outstanding American Express charges as of March 10, 1988, totaled \$20,853.29 (with certain charges being outstanding since October, 1987). The next Committee payment did not occur until May 23, 1988. Again, it appears that the limitation has been exceeded.

The Audit staff realizes and made it known to the Committee at the exit conference that without the benefit of reviewing billing statements, a determination cannot be made as to whether a particular charge counts against the limitation, since it is not known if such charge was or was not paid within 60 days of the closing date of the billing statement on which the charge first appeared.

At the exit conference a Committee official stated he is extremely reluctant to provide the billing statements requested because of privacy considerations of the Candidate. He further stated that the Committee will be able, and it's their desire to address our request without compromising the Candidate's privacy.

On March 6, 1989 the Committee restated its desire to protect the privacy of the Candidate since his American Express card was used for the congressional campaign, presidential campaign, and for official and personal travel. Further, the Committee did its own analysis with respect to the American Express charges in question and determined that the charges were paid between 33 and 129 days after they appeared on the billing statement. The Committee also appears to be stating that they consider all payments timely since it may be 60 days before the Committee receives the billing statements from the congressional office. According to the Committee, the billing statements were received at the congressional office in St. Louis. The bills were examined and appropriate charges were allocated (to the congressional campaign, presidential campaign, etc.). The statement, with the presidential charges identified, was sent to the presidential committee for payment.

The Audit staff does not consider the Committee's analysis to be complete since it appears limited to those American Express charges made available to the Audit staff during the audit fieldwork. Further, the Committee's analysis appears to refute its own conclusion that all payments should be considered timely since 60 days had past before the billings statements were received from the congressional office.

According to its analysis, on February 17, 1988, the Committee made a partial payment towards the January 15, 1988 billing statement. Subsequently on May 23, 1988, 96 days after the February 17, 1988 payment, the Committee made another payment to American Express, part of which was applied to charges on the January 15, 1988, billing statement.

It is our opinion that the Committee's analysis indicates that the Committee was in possession of the January 15, 1988, billing statement well within the 60 day time frame (since it made a payment on February 17, 1988), and that certain charges contained on the January 15, 1988, billing statement were outstanding until May 23, 1988, or 129 days from when first appearing of the billing statement.

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It is also our opinion, that in order to insure that a comprehensive review is conducted with respect to the limitation at 11 C.F.R. § 9035.2(a), all billing statements and supporting documentation for the period October, 1986 through December 31, 1988 should be made available for review, since it is apparent that the limitation has been exceeded.

In the interim audit report, the Audit staff recommended that the Committee provide billing statements and supporting documentation for all charges on the Candidate's American Express Card for the period October 1986 through December 31, 1988.

In response to the interim audit report, Counsel states that the Committee was unaware that such an extensive request had been made. Rather, until these dates appeared in the interim audit report, it was the Committee's understanding that the auditors had requested only those records relating to the period January 1, 1988 through the end of the campaign in March, 1988. The Committee still maintains that the privacy concerns related to these credit card expenses are significant. Yet, in an effort to cooperate with the Commission's request, the Committee produced, for the entire period requested, "billing statements and supporting documentation that relate to charges incurred by and paid by the Gephardt for President Committee." Counsel further states that those expenses on the American Express statements that were incurred for other purposes have been redacted and for periods when billing statements are not submitted, there were no expenditures or payments by the Committee reflected on the billing statements.*/
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It should be noted that the audit workpapers, the exit conference summary, and an outline of the topics to be discussed during the exit conference, given to the Committee (and Counsel) immediately before the exit conference, all document the request to be for the period October, 1986 through December, 1988.

Further, it is our opinion that the Committee has still not complied with the recommendation. It did not provide certain statements and for other statements, certain information has been redacted.

On August 14, 1990, the Commission ordered the issuance of subpoenas to the Candidate, the Committee, and American Express for the production of certain billing statements and supporting documentation. On September 19 and September 21, 1990, the Audit Division received the above mentioned documents from the Office of General Counsel.

*/ An inference could also be drawn that charges incurred by the Gephardt for President Committee, Inc. but paid by some other person/entity were not produced.

Based on our review of the documentation received, it is our opinion that the Candidate exceeded the contribution limitation by \$104,935.11*/. The excessive amounts occurred as follows, \$13,794.95 on March 16, 1988; \$1,874.75 on April 14, 1988; \$19,424.65 on May 14, 1988; \$63,128.46 on June 15, 1988; and, \$2,662 on July 15, 1988. See Attachment I to Exhibit B. The Committee made payments relative to the above American Express charges totaling \$78,983.89, leaving an unresolved amount of \$25,995.53 as of January 15, 1989.

It should be noted that the Candidate made additional contributions via use of his American Express credit card as follows:

8/14/87	\$2,331.68
10/13/87	5,803.40
11/14/87	527.26
12/14/87	808.02
1/14/87	1,078.37

However, the above charges were repaid by the Committee prior to the Candidate exceeding the \$50,000 limitation and therefore, not considered applicable to the above limitation analysis.

Recommendation #R-2

The Audit staff recommends that this matter be referred to the Commission's Office of General Counsel.

*/ Includes finance charges of \$4,050.30 accrued through January 15, 1989.

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Schedule of Contributions
Made by Congressman Richard Gephardt

Contributions Made as of*/	Direct Contributions	American Express Charges**/ (New charges)	Total Contributions	Aggregate Amount in Excess of Limitation
02/05/88	\$50,000.00	\$ -0-	\$ 50,000.00	\$ -0-
03/16/88		13,794.95	63,794.95	13,794.95
04/14/88		1,874.75	65,669.70	15,669.70
05/14/88		19,424.65	85,094.35	35,094.35
06/15/88		63,128.46	148,222.81	98,222.81
07/15/88		2,662.00	150,884.81	100,884.81
Finance Charges through 1/15/89		4,050.30	154,935.11	104,935.11
Limitation at 26 U.S.C. §9035(a)			\$ 50,000.00	
Amount in Excess of Limitation				<u>104,935.11</u>
Amount in Excess of Limitation			\$ 104,935.11	
Less: Committee payments relative to the above Amer. Express charges				<u>78,983.89</u>
Unresolved amount as of 1/15/89			\$ 25,951.22	

*/ (American Express charges only) - Represents the 60th day from the closing date of the billing statement, on which the outstanding American Express charges first appeared.

**/ Outstanding 60 days from the closing date of billing statement on which the charges first appeared.

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR # 3342

STAFF MEMBER Anne Weissenborn

SOURCE: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS:

Gephardt for President Committee
S. Lee Kling, as treasurer
Richard A. Gephardt

RELEVANT STATUTES:

2 U.S.C. § 441a(b)(1)(A)
2 U.S.C. § 441a(c)
26 U.S.C. § 9035(a)
11 C.F.R. § 106.2(b)(2)
11 C.F.R. § 106.2(c)
11 C.F.R. § 9035.2(a)(2)

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of the Gephardt for President Committee, Inc., ("the Committee") pursuant to 26 U.S.C. § 9038(a) to determine whether there had been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and of the Presidential Primary Matching Payment Account Act ("Matching Payment Act"). On May 14, 1991, the Commission voted to refer certain issues arising from the audit to the Office of the General Counsel for enforcement purposes. These issues are in addition to those previously referred in MUR 3111.

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II. FACTUAL AND LEGAL ANALYSIS

A. Excessive State Expenditures - Iowa

1. Statutory and Regulatory Provisions

For purposes of the Act and the Matching Payment Act, an expenditure includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office" 2 U.S.C. § 431(9)(A)(i). No candidate for the office of President of the United States, who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury, may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000.00, as adjusted by changes in the Consumer Price Index. 26 U.S.C. § 9035 and 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c). Except for expenditures exempted under 11 C.F.R. § 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular state shall be allocated to that state. 11 C.F.R. § 106.2(a)(1).

Salaries paid individuals working in a particular state for five consecutive days, including advance personnel, are to be allocated to that state in proportion to the amount of time spent there during a payroll period. 11 C.F.R. § 106.2(b)(2)(ii). Also allocable are intrastate travel and subsistence expenses for persons working in a state for five consecutive days or more. 11 C.F.R. § 106.2(b)(2)(iii). Expenses for a public opinion poll

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covering only one state must be allocated to that state.

11 C.F.R. § 106.2(b)(2)(vi).

Expenditures for administrative and overhead costs at a national headquarters need not be allocated to any state. The same is true of costs for inter-state telephone calls, national advertising costs, media production costs, expenditures for transportation and services made available to the media, and inter-state travel costs. 11 C.F.R. § 106.2(b)(2)(v) and § 106.2(c)(1),(2) and (4). Overhead expenditures for committee offices in a particular state are to be allocated to that state. Such overhead expenditures include but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. 11 C.F.R. § 106.2(b)(2)(iv).

An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular state may be excluded from allocation to that state as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular state may be excluded from allocation to that state as exempt fundraising expenditures, but this exemption does not apply within 28 calendar days of the primary election. If a candidate wishes to claim a larger fundraising exemption for any person, that candidate must establish allocation percentages for each person working in that state and provide detailed records to support the derivation of such percentages. 11 C.F.R. § 106.2(c)(5). Exempt fundraising expenditures include the costs of the solicitation of contributions such as those for printing and postage, airtime for fundraising advertisements, and

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meals and beverages at fundraising dinners or receptions.

11 C.F.R. § 106.2(c)(5)(ii).

Expenditures for placement of radio, television and other similar types of advertisements that cover more than one state are allocable to each such state in proportion to the estimated audience. 11 C.F.R. § 106.2(b)(2)(i)(B). Consulting fees related to media production, like media production costs themselves, are exempt from allocation; however, consulting fees related to media placement are not exempt. The Commission has disallowed the classification of consulting fees as exempt if they seem to be a substitute for an allocable commission. See Statement of Reasons, Reagan for President Committee, May 26, 1983, pp. 4-7.

2. Audit Determinations

For the 1988 presidential primary elections, the expenditure limitation for the State of Iowa was \$775,217.60. According to the Committee's original filings of FEC Form 3P covering activity through March 31, 1988, the Committee had allocated \$818,252.29 in expenditures to Iowa. Later, the Committee amended its reports to disclose expenditures allocable to Iowa totaling \$729,591.82 as of March 31, 1988, a reduction of \$88,660.47. The Committee also reported an additional \$19,833.55, a figure later reduced to \$19,119.21 in the Interim Audit Report, to cover activity between April 1, 1988 and November 30, 1988. Thus, the Committee had disclosed a total of \$748,711.03 in expenditures allocable to Iowa as of November 30, 1988.

In its response to the Interim Audit Report, the Committee did not disagree with additional allocations to Iowa totaling

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\$42,611.12 for telephone charges (\$34,846.32 paid Northwestern Bell, \$2,231.37 paid Central Telephone, and \$5,533.44 paid MCI); \$13,225.26 in salaries paid to national staff who worked in Iowa for five consecutive days or longer (\$6,548.62) and in salaries paid to Iowa staff (\$6,676.64); \$18,192.71 in intrastate travel and subsistence expenses; \$18,705.29 in car rentals; \$8,419.84 in telemarketing costs paid Lewis and Associates and \$17,407.74 paid Voter Contact; \$2,245.59 in printing costs paid Brown, Inc.; \$1,752.56 in deposits paid Iowa utility companies; and \$2,709.41 in payments originally allocated by the Committee to Iowa but later allocated to other cost centers. Thus, the original allocations to Iowa reported by the Committee, a figure reduced to \$739,478.98 in the Final Audit Report, plus the additional allocations totaling \$125,269.52 agreed to by the Committee in response to the Interim Audit Report, resulted in the Committee's having apparently exceeded the Iowa expenditure limitation by at least \$89,530.90 (\$739,478.98 plus \$125,269.52 minus \$775,217.60).

The Committee at the Interim Audit Report stage continued to take issue with other allocations to Iowa. During its considerations of the Final Audit Report on May 14 and June 10, 1991, the Commission agreed to adjustments which reduced allocations to Iowa by approximately \$78,000, leaving in dispute \$425,379.15 in allocations minus \$19,191.90 in mutually agreed upon exempt compliance and fundraising expenditures, for a total of \$406,187.25 in still disputed allocations. These disputed allocations came within the following categories:

Committee's 25% "National Allocation"	\$178,910.11
Telephone Related Charges	
Northwestern Bell	221.95
MCI	1,222.15
Salaries, Employer FICA, Consulting Fees, and Staff Benefits	
Iowa Staff Salaries and Consulting Fees	9,300.00
Iowa Staff Employer FICA	12,210.36
Health and Life Insurance	1,888.40
Intrastate Travel and Subsistence	1,705.88
Car Rentals	3,780.79
Polling	
Travel Expenses - Kennan Research	19,288.08
Telemarketing	
Lewis and Associates	6,988.00
Voter Contact	11,104.15
Telephone Contact	5,464.88
Printing	
Carter Printing	15,154.51
Brown	135.00
Media - Doak & Shrum	74,235.77
Event - Jefferson/Jackson Day	21,156.96
Miscellaneous	28,035.57
Committee Adjustments	1,982.57
Accounts Payable	25,221.06
House and Apartment Rentals	7,371.46

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The Final Audit Report contained an initial determination that the Committee must repay to the United States Treasury the sum of \$126,383.37, this amount representing \$480,848.63¹ in expenditures in excess of the Iowa expenditure limitation times the repayment ratio of 26.2834 percent.

In his response to the Commission's initial repayment determination, counsel for the Committee has requested a hearing at which the Committee intends to oppose inclusion of the following items cited above: (1) the Committee's 25% "national exemption;" (2) telephone charges paid Northwestern and MCI; (3) salaries, employee FICA, consulting fees and staff benefits; (4)

1. This amount equals \$495,718.15 in excessive Iowa expenditures minus \$14,869.52 in outstanding accounts payable as of October 25, 1989.

intrastate travel and subsistence; (5) telemarketing services; (6) media expenses; and (7) event expenses.² The Committee also has

2. These disputed expenditures total \$305,095.31 and include:

a. Committee's 25% "national allocation"

During the audit of the Committee's records it was noted that all costs which the Committee had determined were allocable to Iowa, except media allocations, had been reduced by 25%. The Committee asserted that this 25% constituted a national allocation, based upon the concept that much of the work undertaken in Iowa, as the state with the first primary election, had a large impact on the national campaign and that if the campaign did not perform well in Iowa the national campaign would suffer.

The Commission's Interim Audit Report allocated an additional \$178,910.11 to Iowa which represented the 25% of non-media Iowa expenditures deemed by the Committee to be national expenses. In response the Committee argued that the "national campaign conducted in and through Iowa and the state campaign in Iowa (directed to Iowa delegates and similar objectives) are inextricably intertwined." It was argued that "at least 25 percent of the funds spent in Iowa were not 'for the purpose of influencing voters' in Iowa, but were 'for the purpose of influencing voters' nationwide." (Emphasis in original.)

b. Telephone Related Charges

1. Northwestern Bell

In its response to the Interim Audit Report the Committee disputed the inclusion of \$78 in directory assistance charges related to interstate calls and \$172.14 in intrastate charges for calls made after the date of the Iowa caucuses on February 8, 1988. In the second regard the Committee argued that there was "no . . . election-influencing effect since the entire transaction, the telephone call, took place after the date of the election." In the Final Audit Report the Commission agreed that the \$78 should not be included, but retained the \$172.14 as still allocable to Iowa.

2. MCI

The Committee has argued that \$1,222.75 in calls made using an 800 access code number should not be allocated because of lack of information showing that they were made to and from cities within Iowa. The Audit Division, however, has noted that all of the 800 access code calls in question relate to one of two card numbers, and that all other calls using these numbers were made from two cities in Iowa to other points in that state, with the exception of one call made within New Hampshire.

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provided documentation with respect to its initial allocations to

(Footnote 2 continued from previous page)

c. Salaries, Employer FICA, Consulting Fees, and Staff Benefits

1. Iowa Staff Salaries and Consulting Fees

The Committee did not allocate to Iowa \$15,976.64 in salaries and consulting fees paid to Iowa staff, of which \$8,100 was deemed by the Committee to be entitled to 100% exemption as compliance costs. In the latter regard the Committee has argued that it is entitled to claim a 100% exemption for some salaries and the standard 10% compliance exemption for others on the basis of the language at 11 C.F.R. § 106.2(c)(5) which states that if a candidate desires a higher exemption for any person, allocation percentages must be established for each person working in the state in question. The Committee apparently reads this regulatory language as referring to each individual for whom a larger exemption is claimed. The Committee also has asserted that one staff member in Iowa was transferred to the fundraising staff as of October 1, 1987, and that her \$1,200 salary for October thus should not be allocated to Iowa.

2. Employer FICA - Iowa Staff

The Committee also failed to allocate to Iowa \$12,210.36 in Employer FICA payments and has subsequently argued that, while such an allocation is imposed by the Commission's Campaign Manual for presidential candidates, the regulations do not address this allocation.

3. Health and Life Insurance

For certain individuals the Committee has failed to allocate to Iowa health and life insurance payments totaling \$1,888.40 which it made for certain individuals, asserting that such allocations are not required by either the regulations or the Compliance Manual. It has also asserted that the cost of these benefits does not have a direct relationship to the campaign's activities.

d. Intrastate Travel and Subsistence Expenditures

The Committee did not allocate to Iowa \$19,898.59 in expenditures for intrastate travel and subsistence incurred by persons who worked in that state for five consecutive days or more. In response to the Interim Audit Report the Committee stated that \$1,705.88 should not be allocated to Iowa, arguing that four individuals, all assertedly "national campaign staffers," were there for only four consecutive days if one counts in twenty-four hour periods. The Committee also asserted in the alternative that the work performed by these individuals while in Iowa "was more akin to the 'national strategy meetings' listed as an example of a national expenses [sic] in the Explanation and

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Iowa and to certain of the disputed allocations which appear to

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Justification than they are to tasks for the purpose of influencing voters in Iowa." Finally, the Committee reiterated its position that all activities in Iowa should be accorded a 25% national exemption.

e. Telemarketing Related Services

1. Lewis and Associates Telemarketing, Inc.

The Committee paid Lewis and Associates Telemarketing, Inc., \$100,541.75 for telemarketing programs conducted in and directed toward Iowa. From this amount the Committee deducted \$6,988 in charges for calls to wrong and/or disconnected numbers and \$8,419.84 (9% of \$100,541.75 - \$6,988) which the vendor calculated as its profit and which the Committee deemed allocable to the national campaign.

The Committee disputes the allocation to Iowa of the \$6,988 for wrong or disconnected numbers, arguing that if a call is not completed there is no influence on the nominating process.

2. Voter Contact Services

The Committee paid a total of \$33,644.48 to Voter Contact Services for voter file products and services. The Committee originally allocated \$5,132.59 of this amount to Iowa and the remaining \$28,511.89 as a national expenses. On the basis of the invoices submitted to the Committee by the vendor, the Audit Division allocated the entire \$33,644.48 to Iowa.

In response to the Interim Audit Report the Committee reduced its allocation to the national campaign to \$11,104.15. In support of this allocation the Committee argued that this amount represented a 100% mark-up on certain products which the Committee agreed to pay in exchange for the vendor's agreement not to accept business with other presidential campaign committees. The Committee asserted that because this additional fee was intended to secure an exclusive national contract, it was not attributable to any one state.

3. Telephone Contact, Inc.

Initially the Audit Division allocated \$8,946.49 to Iowa which represented payments to Telephone Contact, Inc., for a variety of telemarketing services. In response to the Interim Audit Report the Committee provided documentation which showed that \$3,480.71 of this amount was not allocable to Iowa.

Although it is possible that portions of the remaining \$5,465.88 are also not allocable to Iowa, the absence of adequate documentation for these expenditures makes it impossible at present to determine the appropriate allocations.

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permit reductions totaling \$4,781.51 in the amount allocable to that state. Further adjustments to the figures involved in the present matter will be made pursuant to later Commission determinations within the audit context.

As noted above, based upon the Committee's own figures for allocations to Iowa (originally \$748,711.03 as of November 30, 1988, but reduced to \$739,478.98 in the Final Audit Report), plus the addition of \$125,269.52 in allocations by the Commission no longer disputed by the Committee as of the Final Audit Report, it

(Footnote 2 continued from previous page)

f. Media Expenditures - Doak and Shrum

In August, 1987, the Committee entered into a contract with Doak and Shrum for the placement of advertisements. The original contract provided for a consulting fee of \$120,000 payable in monthly installments of \$15,000 for eight months, and a 15% agency commission on the first \$1,000,000 in media time buys. On January 18, 1988, an amendment to the contract was signed which provided for the payment of an additional consulting fee of \$110,000 and which waived the 15% agency commission for the period from December 26, 1987, the date of the first Gephardt time buy broadcasts for Iowa, through the Democratic primary in New Hampshire. The additional consulting fee was to be due on March 1, 1988.

The Committee disputes the Commission's allocation of \$74,235.77 of the second \$110,000 consulting fee to Iowa, the first of these figures representing the allocable portion of the 15% agency commission on Iowa media time buys which the Committee would have paid pursuant to the original contract.

g. Event Expenditures - Jefferson/Jackson Dinner

The Committee made \$27,918.34 in expenditures in connection with the Jefferson/Jackson Dinner held by the Iowa Democratic Party in November, 1987. The expenditures were for buses, tents, banners, caps, food, etc. The Committee allocated only 10% of this amount, or \$6,761.38, to Iowa, asserting that the remaining \$21,156.96 constituted exempt fundraising expenditures because the dinner had a twofold purpose for the Gephardt campaign: 1) to recruit hosts for a later fundraising house party event through the distribution of host information packets, and 2) to expand its lists of potential contributors by use of lists of those attending the dinner.

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appears that the Committee exceeded the \$775,217.60 limitation for Iowa by at least \$89,530.90. When the \$401,405.74 in allocations either still disputed or not explicitly accepted by the Committee are added in (\$406,187.25 minus \$4,781.51), the potential amount of excessive expenditures rises to \$490,936.64. Therefore, this Office recommends that the Commission find reason to believe that the Committee has violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A).

B. Candidate Spending Limitation

1. Statutory and Regulatory Provisions

26 U.S.C. § 9035(a) and 11 C.F.R. § 9035.2(a)(1) require that a candidate for nomination to the office of President, who elects to accept public matching fund payments pursuant to 26 U.S.C. § 9034, not knowingly make expenditures from personal funds or from the personal funds of his immediate family in connection with his campaign for nomination in excess of \$50,000.

Pursuant to 11 C.F.R. § 9035.2(a)(2), expenditures made using a credit card for which the candidate is jointly or solely liable will count against the \$50,000 limitation to the extent that the full amount due, including any finance charge, is not paid by the candidate's authorized committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this latter provision, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on the billing statement.

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2. Use of Candidate's Credit Card

On February 5, 1988, the candidate made a direct contribution to his campaign of \$50,000. Documents examined during the audit of the Committee showed that as of February 5 the candidate also had outstanding charges for qualified campaign expenses on his personal American Express card totaling \$16,309.21, of which \$13,981 had been incurred in October 1987 and thus more than 60 days prior to the date of the candidate's direct contribution.

On the basis of the above information, more documentation, including billing statements for the candidate's American Express card, was sought and obtained. The Audit Division's review of this more recently received documentation has resulted in the following schedule of candidate contributions, in addition to his direct contribution of \$50,000, made by means of American Express charges:

Contributions as of ³	New Charges	Total Aggregate Credit Card Contributions	Aggregate Amount in excess of Limitation
3/16/88	\$13,794.95	\$13,794.95	\$13,794.95
4/14/88	1,874.75	15,669.70	15.669/70
5/14/88	19,424.65	35,094.35	35,094.35
6/15/88	63,128.46	98,222.81	98,222.81
7/15/88	2,662.00	100,884.81	100,884.81
Finance charges	4,050.30	104,935.11	104,935.11

3. Date given is 60th day after closing date of billing statement on which the outstanding charges first appear.

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Thus, by July 15, 1988, Mr. Gephardt had accumulated \$104,935.11 in credit card charges which had not been paid within 60 days of the closing dates on the respective billing statements. By January 15, 1989, the Committee had paid all but \$25,951.22 of the amount then owed. The charges were reduced to \$-0- by September 30, 1989.

As a result of these credit card charges Mr. Gephardt exceeded his \$50,000 personal expenditure limitation by as much as \$100,884.81 (not including finance charges). Therefore, this Office recommends that the Commission find reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).

III. MERGER

On April 16, 1991, the Commission addressed other issues arising from the audit of the Gephardt for President Committee in the context of MUR 3111 and found reason to believe that the Committee violated 2 U.S.C. § 441a(f). Because the present matter and MUR 3111 have originated from the same audit process, this Office recommends that these two matters be merged.⁴

4. On October 30, 1990, the Commission addressed Debt Settlement Request 90-16 which involved numerous debts owed by the Gephardt for President Committee to individuals and business entities. The Commission approved many of the debt settlements, requested additional information as to others, and instructed the Committee to amend its reports to show as contributions the debts, or portions thereof, owed specific individuals and committees which did not represent exempt transportation or subsistence costs. The Committee was also instructed to repay any contributions in excess of the statutory contribution limitations and to supply evidence of such repayments to the Commission.

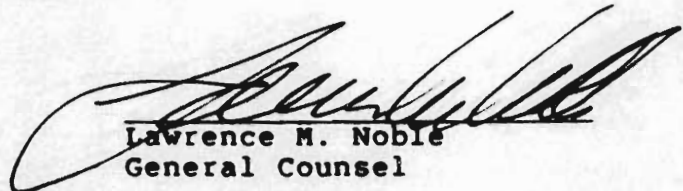
Having received no response to these instructions, this Office made telephone inquiries and sent a written reminder to the Committee on June 19, 1991. The Committee has also been contacted by the Reports Analysis Division ("RAD") in this regard. No responses have been received as a result of any of these

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IV. RECOMMENDATIONS

1. Find reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A).
2. Find reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).
3. Merge MUR 3342 with MUR 3111.
4. Approve the attached factual and legal analyses.
5. Approve the appropriate letters.

9/12/91
Date


Lawrence M. Noble
General Counsel

Attachments

1. Referral
2. Factual and Legal Analyses (2)

(Footnote 4 continued from previous page)
communications beyond statements that the information would be provided.

RAD is in the process of sending a written notification to the Committee regarding the missing information and amended reports. Should the Committee fail in the near future to respond to this notification, this Office may make recommendations to the Commission concerning resultant apparent violations of the Federal Election Campaign Act.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3342
Gephardt for President Committee;)
S. Lee Kling, as treasurer;)
Richard A. Gephardt.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 1, 1991, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3342:

1. Find reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A).
2. Find reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).
3. Merge MUR 3342 with MUR 3111.
4. Approve the factual and legal analyses as recommended in the General Counsel's report dated September 18, 1991

(continued)

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Federal Election Commission
Certification for MUR 3342
October 1, 1991

Page 2

5. Approve the appropriate letters as recommended in the General Counsel's report dated September 18, 1991.

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

Attest:

10-2-91
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 7, 1991

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3342
Gephardt for President Committee
S. Lee Kling, as treasurer
Richard A. Gephardt

Dear Mr. Bauer and Ms. Corley:

On October 1, 1991, the Federal Election Commission found that there is reason to believe the Gephardt for President Committee ("the Committee") and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and of Chapter 96 of Title 26, U.S. Code. The Commission also found reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a). Factual and Legal Analyses, which formed the bases for the Commission's findings, are attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, together with any response you wish to make to the Commission's determinations of April 16, 1991, in MUR 3111, within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

The Commission on October 1, 1991, also voted to merge MUR 3342 with MUR 3111. This combined matter will be designated MUR 3342.

In the absence of any additional information demonstrating that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending

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Robert F. Bauer, Esquire
Judith L. Corley, Esquire
page 2

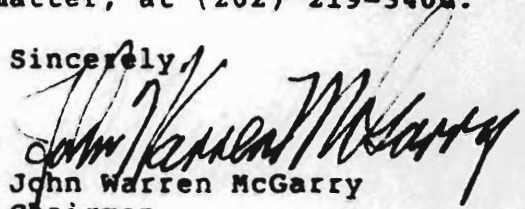
declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,


John Warren McGarry
Chairman

Enclosures
Factual and Legal Analyses (2)

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Gephardt for President Committee
S. Lee Kling, as treasurer

I. GENERATION OF MATTER

This matter was generated by an audit of the Gephardt for President Committee, Inc., ("the Committee") pursuant to 26 U.S.C. § 9038(a) to determine whether there had been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and of the Presidential Primary Matching Payment Account Act ("Matching Payment Act"). On May 14, 1991, the Commission voted to refer certain issues arising from the audit to the Office of the General Counsel for enforcement purposes.

II. FACTUAL AND LEGAL ANALYSIS

A. Excessive State Expenditures - Iowa

1. Statutory and Regulatory Provisions

For purposes of the Act and the Matching Payment Act, an expenditure includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office" 2 U.S.C. § 431(9)(A)(i). No candidate for the office of President of the United States, who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury, may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000.00, as adjusted by changes in

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the Consumer Price Index. 26 U.S.C. § 9035 and 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c). Except for expenditures exempted under 11 C.F.R. § 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular state shall be allocated to that state. 11 C.F.R. § 106.2(a)(1).

Salaries paid individuals working in a particular state for five consecutive days, including advance personnel, are to be allocated to that state in proportion to the amount of time spent there during a payroll period. 11 C.F.R. § 106.2(b)(2)(ii). Also allocable are intrastate travel and subsistence expenses for persons working in a state for five consecutive days or more. 11 C.F.R. § 106.2(b)(2)(iii). Expenses for a public opinion poll covering only one state must be allocated to that state. 11 C.F.R. § 106.2(b)(2)(vi).

Expenditures for administrative and overhead costs at a national headquarters need not be allocated to any state. The same is true of costs for inter-state telephone calls, national advertising costs, media production costs, expenditures for transportation and services made available to the media, and inter-state travel costs. 11 C.F.R. § 106.2(b)(2)(v) and § 106.2(c)(1), (2) and (4). Overhead expenditures for committee offices in a particular state are to be allocated to that state. Such overhead expenditures include but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. 11 C.F.R. § 106.2(b)(2)(iv).

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An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular state may be excluded from allocation to that state as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular state may be excluded from allocation to that state as exempt fundraising expenditures, but this exemption does not apply within 28 calendar days of the primary election. If a candidate wishes to claim a larger fundraising exemption for any person, that candidate must establish allocation percentages for each person working in that state and provide detailed records to support the derivation of such percentages. 11 C.F.R. § 106.2(c)(5). Exempt fundraising expenditures include the costs of the solicitation of contributions such as those for printing and postage, airtime for fundraising advertisements, and meals and beverages at fundraising dinners or receptions. 11 C.F.R. § 106.2(c)(5)(ii).

Expenditures for placement of radio, television and other similar types of advertisements that cover more than one state are allocable to each such state in proportion to the estimated audience. 11 C.F.R. § 106.2(b)(2)(i)(B). Consulting fees related to media production, like media production costs themselves, are exempt from allocation; however, consulting fees related to media placement are not exempt. The Commission has disallowed the classification of consulting fees as exempt if they seem to be a substitute for an allocable commission. See Statement of Reasons, Reagan for President Committee, May 26, 1983, pp. 4-7.

2. Audit Determinations

For the 1988 presidential primary elections, the expenditure limitation for the State of Iowa was \$775,217.60. According to the Committee's original filings of FEC Form 3P covering activity through March 31, 1988, the Committee had allocated \$818,252.29 in expenditures to Iowa. Later, the Committee amended its reports to disclose expenditures allocable to Iowa totaling \$729,591.82 as of March 31, 1988, a reduction of \$88,660.47. The Committee also reported an additional \$19,833.55, a figure later reduced to \$19,119.21 in the Interim Audit Report, to cover activity between April 1, 1988 and November 30, 1988. Thus, the Committee had disclosed a total of \$748,711.03 in expenditures allocable to Iowa as of November 30, 1988.

In its response to the Interim Audit Report, the Committee did not disagree with additional allocations to Iowa totaling \$42,611.12 for telephone charges (\$34,846.32 paid Northwestern Bell, \$2,231.37 paid Central Telephone, and \$5,533.44 paid MCI); \$13,225.26 in salaries paid to national staff who worked in Iowa for five consecutive days or longer (\$6,548.62) and in salaries paid to Iowa staff (\$6,676.64); \$18,192.71 in intrastate travel and subsistence expenses; \$18,705.29 in car rentals; \$8,419.84 in telemarketing costs paid Lewis and Associates and \$17,407.74 paid Voter Contact; \$2,245.59 in printing costs paid Brown, Inc.; \$1,752.56 in deposits paid Iowa utility companies; and \$2,709.41 in payments originally allocated by the Committee to Iowa but later allocated to other cost centers. Thus, the original allocations to Iowa reported by the Committee, a figure reduced to

\$739,478.98 in the Final Audit Report, plus the additional allocations totaling \$125,269.52 agreed to by the Committee in response to the Interim Audit Report, resulted in the Committee's having apparently exceeded the Iowa expenditure limitation by at least \$89,530.90 (\$739,478.98 plus \$125,269.52 minus \$775,217.60).

The Committee at the Interim Audit Report stage continued to take issue with other allocations to Iowa. During its considerations of the Final Audit Report on May 14, May 23 and June 10, 1991, the Commission agreed to adjustments which reduced allocations to Iowa by approximately \$157,000, leaving in dispute approximately \$420,000 in allocations minus \$19,191.90 in exempt compliance and fundraising expenditures, for a total of approximately \$400,800 in still disputed allocations. These disputed allocations came within the following categories:

Committee's 25% "National Allocation"	\$178,910.11
Telephone Related Charges	
Northwestern Bell	221.95
MCI	1,222.15
Salaries, Employer FICA, Consulting Fees, and Staff Benefits	
Iowa Staff Salaries and Consulting Fees	9,300.00
Iowa Staff Employer FICA	12,210.36
Health and Life Insurance	1,888.40
Intrastate Travel and Subsistence	1,705.88
Car Rentals	3,780.79
Polling	
Travel Expenses - Kennan Research	19,288.08
Telemarketing	
Lewis and Associates	6,988.00
Voter Contact	11,104.15
Printing	
Carter Printing	15,154.51
Brown	135.00
Media - Doak & Shrum	74,235.77
Event - Jefferson/Jackson Day	21,156.96
Miscellaneous	28,035.57
Committee Adjustments	1,982.57
Accounts Payable	25,221.06
House and Apartment Rentals	7,371.46

The Final Audit Report contained an initial determination that the Committee must repay to the United States Treasury the sum of \$126,383.37, this amount representing \$480,848.63¹ in expenditures in excess of the Iowa expenditure limitation times the repayment ratio of 26.2834 percent.

In his response to the Commission's initial repayment determination, counsel for the Committee has requested a hearing at which the Committee intends to oppose inclusion of the following items cited above: (1) the Committee's 25% "national exemption;" (2) telephone charges paid Northwestern and MCI; (3) salaries, employee FICA, consulting fees and staff benefits; (4) intrastate travel and subsistence; (5) telemarketing services; (6) media expenses; and (7) event expenses.² The Committee also has

1. This amount equals \$495,718.15 in excessive Iowa expenditures minus \$14,869.52 in outstanding accounts payable as of October 25, 1989.

2. These disputed expenditures total \$305,095.31 and include:

a. Committee's 25% "national allocation"

During the audit of the Committee's records it was noted that all costs which the Committee had determined were allocable to Iowa, except media allocations, had been reduced by 25%. The Committee asserted that this 25% constituted a national allocation, based upon the concept that much of the work undertaken in Iowa, as the state with the first primary election, had a large impact on the national campaign and that if the campaign did not perform well in Iowa the national campaign would suffer.

The Commission's Interim Audit Report allocated an additional \$178,910.11 to Iowa which represented the 25% of non-media Iowa expenditures deemed by the Committee to be national expenses. In response the Committee argued that the "national campaign conducted in and through Iowa and the state campaign in Iowa (directed to Iowa delegates and similar objectives) are inextricably intertwined." It was argued that "at least 25 percent of the funds spent in Iowa were not 'for the purpose of influencing voters' in Iowa, but were 'for the purpose of

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provided documentation with respect to its initial allocations to

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influencing voters' nationwide." (Emphasis in original.)

b. Telephone Related Charges

1. Northwestern Bell

In its response to the Interim Audit Report the Committee disputed the inclusion of \$78 in directory assistance charges related to interstate calls and \$172.14 in intrastate charges for calls made after the date of the Iowa caucuses on February 8, 1988. In the second regard the Committee argued that there was "no . . . election-influencing effect since the entire transaction, the telephone call, took place after the date of the election." In the Final Audit Report the Commission agreed that the \$28.20 of the \$78 should not be included, but retained the \$172.14 as still allocable to Iowa.

2. MCI

The Committee has argued that \$1,222.75 in calls made using an 800 access code number should not be allocated because of lack of information showing that they were made to and from cities within Iowa. The Audit Division, however, has noted that all of the 800 access code calls in question relate to one of two card numbers, and that all other calls using these numbers were made from two cities in Iowa to other points in that state, with the exception of one call made within New Hampshire.

c. Salaries, Employer FICA, Consulting Fees, and Staff Benefits

1. Iowa Staff Salaries and Consulting Fees

The Committee did not allocate to Iowa \$15,976.64 in salaries and consulting fees paid to Iowa staff, of which \$8,100 was deemed by the Committee to be entitled to 100% exemption as compliance costs. In the latter regard the Committee has argued that it is entitled to claim a 100% exemption for some salaries and the standard 10% compliance exemption for others on the basis of the language at 11 C.F.R. § 106.2(c)(5) which states that if a candidate desires a higher exemption for any person, allocation percentages must be established for each person working in the state in question. The Committee apparently reads this regulatory language as referring to each individual for whom a larger exemption is claimed. The Committee also has asserted that one staff member in Iowa was transferred to the fundraising staff as of October 1, 1987, and that her \$1,200 salary for October thus should not be allocated to Iowa.

2. Employer FICA - Iowa Staff

The Committee also failed to allocate to Iowa \$12,210.36 in Employer FICA payments and has subsequently argued that, while

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Iowa and to certain of the disputed allocations which appear to

(Footnote 2 continued from previous page)

such an allocation is imposed by the Commission's Campaign Manual for presidential candidates, the regulations do not address this allocation.

3. Health and Life Insurance

For certain individuals the Committee has failed to allocate to Iowa health and life insurance payments totaling \$1,888.40 which it made for certain individuals, asserting that such allocations are not required by either the regulations or the Compliance Manual. It has also asserted that the cost of these benefits does not have a direct relationship to the campaign's activities.

d. Intrastate Travel and Subsistence Expenditures

The Committee did not allocate to Iowa \$19,898.59 in expenditures for intrastate travel and subsistence incurred by persons who worked in that state for five consecutive days or more. In response to the Interim Audit Report the Committee stated that \$1,705.88 should not be allocated to Iowa, arguing that four individuals, all assertedly "national campaign staffers," were there for only four consecutive days if one counts in twenty-four hour periods. The Committee also asserted in the alternative that the work performed by these individuals while in Iowa "was more akin to the 'national strategy meetings' listed as an example of a national expenses [sic] in the Explanation and Justification than they are to tasks for the purpose of influencing voters in Iowa." Finally, the Committee reiterated its position that all activities in Iowa should be accorded a 25% national exemption.

e. Telemarketing Related Services

1. Lewis and Associates Telemarketing, Inc.

The Committee paid Lewis and Associates Telemarketing, Inc., \$100,541.75 for telemarketing programs conducted in and directed toward Iowa. From this amount the Committee deducted \$6,988 in charges for calls to wrong and/or disconnected numbers and \$8,419.84 (9% of \$100,541.75 - \$6,988) which the vendor calculated as its profit and which the Committee deemed allocable to the national campaign.

The Committee disputes the allocation to Iowa of the \$6,988 for wrong or disconnected numbers, arguing that if a call is not completed there is no influence on the nominating process.

2. Voter Contact Services

The Committee paid a total of \$33,644.48 to Voter Contact Services for voter file products and services. The Committee originally allocated \$5,132/59 of this amount to Iowa and the

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permit reductions totaling \$4,781.51 in the amount allocable to

(Footnote 2 continued from previous page)
remaining \$28,511.89 as a national expenses. On the basis of the invoices submitted to the Committee by the vendor, the Audit Division allocated the entire \$33,644.48 to Iowa.

In response to the Interim Audit Report the Committee reduced its allocation to the national campaign to \$11,104.15. In support of this allocation the Committee argued that this amount represented a 100% mark-up on certain products which the Committee agreed to pay in exchange for the vendor's agreement not to accept business with other presidential campaign committees. The Committee asserted that because this additional fee was intended to secure an exclusive national contract, it was not attributable to any one state.

3. Telephone Contact, Inc.

Initially the Audit Division allocated \$8,946.49 to Iowa which represented payments to Telephone Contact, Inc., for a variety of telemarketing services. In response to the Interim Audit Report the Committee provided documentation which showed that \$3,480.71 of this amount was not allocable to Iowa.

Although it is possible that portions of the remaining \$5,465.88 are also not allocable to Iowa, the absence of adequate documentation for these expenditures makes it impossible at present to determine the appropriate allocations.

f. Media Expenditures - Doak and Shrum

In August, 1987, the Committee entered into a contract with Doak and Shrum for the placement of advertisements. The original contract provided for a consulting fee of \$120,000 payable in monthly installments of \$15,000 for eight months, and a 15% agency commission on the first \$1,000,000 in media time buys. On January 18, 1988, an amendment to the contract was signed which provided for the payment of an additional consulting fee of \$110,000 and which waived the 15% agency commission for the period from December 26, 1987, the date of the first Gephardt time buy broadcasts for Iowa, through the Democratic primary in New Hampshire. The additional consulting fee was to be due on March 1, 1988.

The Committee disputes the Commission's allocation of \$74,235.77 of the second \$110,000 consulting fee to Iowa, the first of these figures representing the allocable portion of the 15% agency commission on Iowa media time buys which the Committee would have paid pursuant to the original contract.

g. Event Expenditures - Jefferson/Jackson Dinner

The Committee made \$27,918.34 in expenditures in connection with the Jefferson/Jackson Dinner held by the Iowa Democratic Party in November, 1987. The expenditures were for buses, tents,

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that state. Further adjustments to the figures involved in the present matter will be made pursuant to later Commission determinations within the audit context.

As noted above, based upon the Committee's own figures for allocations to Iowa (originally \$748,711.03 as of November 30, 1988, but reduced to \$739,478.98 in the Final Audit Report), plus the addition of \$125,269.52 in allocations by the Commission no longer disputed by the Committee as of the Final Audit Report, it appears that the Committee exceeded the \$775,217.60 limitation for Iowa by at least \$89,530.90. When the approximately \$396,000 in allocations either still disputed or not explicitly accepted by the Committee are added (\$400,800 minus \$4,781.51), the potential amount of excessive expenditures rises to over \$485,000. Therefore, there is reason to believe that the Committee has violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A).

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banners, caps, food, etc. The Committee allocated approximately 25% of this amount, or \$6,761.38, to Iowa, asserting that the remaining \$21,156.96 constituted exempt fundraising expenditures because the dinner had a twofold purpose for the Gephardt campaign: 1) to recruit hosts for a later fundraising house party event through the distribution of host information packets, and 2) to expand its lists of potential contributors by use of lists of those attending the dinner.

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Richard A. Gephardt

I. GENERATION OF MATTER

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This matter was generated by an audit of the Gephardt for President Committee, Inc., ("the Committee") pursuant to 26 U.S.C. § 9038(a) to determine whether there had been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and of the Presidential Primary Matching Payment Account Act ("Matching Payment Act"). On May 14, 1991, the Commission voted to refer certain issues arising from the audit to the Office of the General Counsel for enforcement purposes.

II. FACTUAL AND LEGAL ANALYSIS

1. Statutory and Regulatory Provisions

26 U.S.C. § 9035(a) and 11 C.F.R. § 9035.2(a)(1) require that a candidate for nomination to the office of President, who elects to accept public matching fund payments pursuant to 26 U.S.C. § 9034, not knowingly make expenditures from personal funds or from the personal funds of his immediate family in connection with his campaign for nomination in excess of \$50,000.

Pursuant to 11 C.F.R. § 9035.2(a)(2), expenditures made using a credit card for which the candidate is jointly or solely liable will count against the \$50,000 limitation to the extent that the full amount due, including any finance charge, is not paid by the candidate's authorized committee within 60 days after the closing

date of the billing statement on which the charges first appear. For purposes of this latter provision, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on the billing statement.

2. Use of Candidate's Credit Card

On February 5, 1988, Richard A. Gephardt made a direct contribution to his campaign of \$50,000. Documents examined during the audit of the Committee showed that as of February 5 the candidate also had outstanding charges for qualified campaign expenses on his personal American Express card totaling \$16,309.21, of which \$13,981 had been incurred in October 1987 and thus more than 60 days prior to the date of the candidate's direct contribution.

On the basis of the above information, more documentation, including billing statements for the candidate's American Express card, was sought and obtained. The Audit Division's review of this more recently received documentation has resulted in the following schedule of candidate contributions, in addition to his direct contribution of \$50,000, made by means of American Express charges:

<u>Contributions as of</u>	<u>New Charges</u>	<u>Total Aggregate Credit Card Contributions</u>	<u>Aggregate Amount in excess of Limitation</u>
3/16/88	\$13,794.95	\$13,794.95	\$13,794.95
4/14/88	1,874.75	15,669.70	15.669/70

1. Date given is 60th day after closing date of billing statement on which the outstanding charges first appear.

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Contributions as of	New Charges	Total Aggregate Credit Card Contributions	Aggregate Amount in excess of Limitation
<u>5/14/88</u>	<u>19,424.65</u>	<u>35,094.35</u>	<u>35,094.35</u>
6/15/88	63,128.46	98,222.81	98,222.81
7/15/88	2,662.00	100,884.81	100,884.81
Finance charges	4,050.30	104,935.11	104,935.11

Thus, by July 15, 1988, Mr. Gephardt had accumulated \$104,935.11 in credit card charges which had not been paid within 60 days of the closing dates on the respective billing statements. By January 15, 1989, the Committee had paid all but \$25,951.22 of the amount then owed. The charges were reduced to \$-0- by September 30, 1989.

As a result of these credit card charges Mr. Gephardt exceeded his \$50,000 personal expenditure limitation by as much as \$100,884.81 (not including finance charges). Therefore, there is reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE SERVICES BRANCH

OCT 11 PM 1:08

October 11, 1991

Anne A. Weissenborn
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

OCT 11 PM 3:38

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Re: MUR 3342 - Gephardt for President Committee, Inc.
and S. Lee Kling, as Treasurer

Dear Ms. Weissenborn:

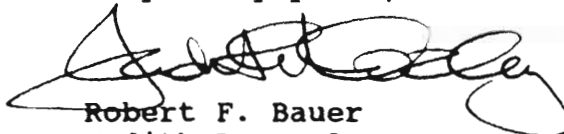
This is to request an extension of time to respond to the Commission's finding of reason to believe in the above-referenced Matter Under Review.

On November 6, 1991, the Gephardt for President Committee will be making an oral presentation to the Commission in connection with the Final Audit Report of the Committee. Many of the issues that will be addressed in the oral presentation are the same as those raised in MUR 3342. It is the Committee's belief that as a result of the oral presentation many of the findings of the Final Audit Report will be changed. This would, of course, substantially affect the response of the Committee to the findings in MUR 3342.

We propose, therefore, that the Committee be given an extension of time to respond to MUR 3342 until 10 days after the Commission announces its determinations in connection with the oral presentation on the Final Audit Report.

If you have any questions or need additional information, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel to Respondents

[-/DA912840.023]



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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SECRETARIAT

91 OCT 16 PM 12:45

October 16, 1991

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner *LP*
Associate General Counsel

SUBJECT: MUR 3342
Request for Extension of Time

On October 1, 1991, the Commission found reason to believe that the Gephardt for President Committee ("the Committee") and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a), and that Richard A. Gephardt violated 26 U.S.C. § 9035(a). The Commission also voted to merge MUR 3342 with MUR 3111, the latter involving apparent violations of 2 U.S.C. § 441a(f).

Counsel for the respondents were notified of the Commission's October 1 determinations. In response this Office has received a request from counsel for an extension of time to respond to the Commission's determinations in MUR 3342 until 10 days after announcement of the Commission's determinations in response to the oral presentation to be made on behalf of the Committee on November 6, 1991, with regard to the Final Audit Report of the Committee. Counsel argues that findings in the Final Audit Report may be changed as a result of the oral presentation, with corresponding effect upon the Committee's response to the Commission's determinations in the enforcement matter.

Given the overlapping of issues in MUR 3342 with those to be addressed during the November 6 hearing, this Office recommends that the Commission approve the extension of time requested on behalf of the Committee.

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RECOMMENDATIONS

1. Approve an extension of time to respond to the Commission's findings in MUR 3342 until 10 days after notification of the Commission's determinations resulting from the hearing to be held on November 6, 1991, on the Final Audit Report of the Committee.
2. Approve the sending of the appropriate letter.

Attachment
Letter from counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Gephardt for President Committee)
and S. Lee Kling, as treasurer.) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 18, 1991, the Commission decided by a vote of 4-0 to take the following actions in MUR 3342:

1. Approve an extension of time to respond to the Commission's findings in MUR 3342 until 10 days after notification of the Commission's determinations resulting from the hearing to be held on November 6, 1991, on the Final Audit Report on the Committee, as recommended in the General Counsel's Memorandum dated October 16, 1991.
2. Approve the sending of the appropriate letter, as recommended in the General Counsel's Memorandum dated October 16, 1991.

Commissioners Aikens, Elliott, McDonald, and Thomas voted affirmatively for the decision; Commissioners Josefiak and McGarry did not cast votes.

Attest:

10-21-91
Date

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

Received in the Secretariat: Wed., Oct. 16, 1991 12:45 p.m.
Circulated to the Commission: Wed., Oct. 16, 1991 4:00 p.m.
Deadline for vote: Fri., Oct. 18, 1991 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 28, 1991

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3342
Gephardt for President
Committee
S. Lee Kling, as treasurer

Dear Mr. Bauer and Ms. Corley:

This is in response to your letter of October 11, 1991, in which you requested an extension of time in which to respond in MUR 3342 until 10 days after the Commission announces its determinations following the oral presentation to be made on behalf of the Gephardt for President Committee on November 6, 1991.

The Commission has considered your request and has approved an extension of time to respond until 10 days after notification of the Commission's determinations following the November 6 hearing on the Final Audit Report of the Committee.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

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MUR 3342

ISSUES RAISED VIA DSR 90-16

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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FEB 14 PM 12:07

February 14, 1992

MEMORANDUM

SENSITIVE

TO: The Commission

FROM: Lawrence M. Noble
General Counsel *[Signature]*

SUBJECT: DSR 90-16 and MUR 3342: Additional Information and Recommendations regarding Debt Settlement Requests submitted by Gephardt for President Committee, Inc.

I. Introduction

On October 30, 1990, the Commission made a series of determinations with regard to the request by the Gephardt for President Committee, Inc. ("the Committee") for approval of 298 debt settlements with 296 companies, individuals and political committees. The Commission determined that the great majority of the settlements would not result in violations of the Federal Election Campaign Act ("the Act") or the Commission's regulations, but did approve the submission of questions to the Committee about the exact nature of the services reflected in debts owed by the Committee to five law firms. In addition, the Commission instructed the Committee to amend its reports to show as contributions all or portions of debts owed twenty-two named individuals and five political committees which did not arise from activities exempt from the definition of contribution, and to refund any amounts of such non-exempt debts in excess of \$1,000. No recommendations were made at that time that the Commission find reason to believe excessive or corporate contributions had been received.

On December 11, 1991, counsel for the Committee submitted a response to the Commission's requests and determinations together with certain supporting documentation. (Attachment 1). The following is a discussion of this response plus recommendations for further Commission determinations. As of the date of this memorandum, the Committee has neither filed amendments to its reports showing contributions resulting from its partial repayments of the creditors here involved, nor continued to report the remaining debts at issue. The Committee has indicated, in an attachment to its response, its intention to refund certain

1. The Reports Analysis Division has sent the Committee two RFAI's containing reminders of the need to continue reporting the debts at issue.

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excessive contributions; however, no information has been furnished, as yet, indicating that such refunds have in fact been made.

This Office makes a series of recommendations below which include rejection of certain debt settlement agreements and requirements that certain apparent contributions be reported. The Committee will be notified by letter about such determinations. In addition, this Office recommends that the receipt by the Committee of certain excessive in-kind contributions and corporate contributions resulting from non-payments of creditors be added to the violations presently being addressed in MUR 3342. These recommendations involve apparent violations by the Committee of 2 U.S.C. § 441a(f) and § 441b, violations by certain law firms, and violations by three individuals and two authorized committees. These violations are addressed in the attached proposed Factual and Legal Analyses.

II. LEGAL ANALYSIS

a. Debts Owed Five Law Firms

As stated above, the Commission approved questioning the Committee about the services provided by five creditor law firms with which the Committee had entered into debt settlement agreements. The purpose of the questions was to determine the exact nature of these services in order to determine whether these services had been provided in the ordinary course of the law firms' businesses and whether the debts were thus subject to settlement.

2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. The Commission's regulations provide that corporate vendors may extend credit to political committees without such credit being considered an advance, and thus a contribution, provided they do so in the ordinary course of business. Corporations may also settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4. At the time the debt settlements here at issue were submitted for approval, it was Commission policy to extend such possibilities for advances and settlement or forgiveness of debt to non-corporate vendors as well; this policy is now reflected in the Commission's regulations at 11 C.F.R. § 116.4(a).²

Committees are required to report in-kind contributions as both receipts and expenditures. 11 C.F.R. § 104.13.

2. The analysis of the debts here at issue applies the debt settlement regulations in effect at the time the debt settlement agreements were submitted for Commission review, i.e., those in effect as of March 30, 1990.

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1. John A. Moag/Patton, Boggs & Blow - Washington, D.C.

John A. Moag is a partner in the law firm of Patton, Boggs & Blow, an unincorporated partnership. The Committee has submitted documentation for a \$320 debt owed the partnership for its rental of a bus used for a trip to Columbia, Baltimore, and Annapolis, Maryland. (Attachment 1, page 4). The Committee also submitted a rental agreement and credit card receipt related to the rental, apparently in Baltimore, of a car for \$64.90 in the name of William S. Mashek. (Attachment 1, pages 5-6). This latter rental was included in the total debt of \$384.49 addressed in the debt settlement agreement with Patton, Boggs and Blow. (Attachment 1, page 3). The Committee repaid \$38.49 to the firm, leaving \$346.41 not repaid.

The Committee has not provided information indicating that the bus and car rentals were related to any legal services which may have been provided by this law firm. Therefore, the total unreimbursed costs of \$346.41 apparently constituted reportable advances, and thus contributions, by the firm which are not subject to debt settlement.

This Office recommends that the Commission reject the Committee's debt settlement agreement with Patton, Boggs & Blow because the debt is not subject to debt settlement, and require the Committee to report the resulting in-kind contributions and expenditures.

2. Heard, Goggan, Blair & Williams - Austin, Texas

Heard, Goggan, Blair & Williams is a partnership. The debt settlement agreement signed on behalf of this firm stated that the purpose of the obligation was "Various Campaign Expenses." The outstanding balance was \$21,677.84, of which the firm agreed to accept \$2,167.78, or 10%, in settlement. (Attachment 1, pages 7-8). Thus \$19,510.05 has not been repaid.

The information recently supplied by the Committee indicates that the \$21,677.84 involved the following services (Attachment 1, page 8):

Flight charges	-	\$11,271.34
Party	-	2,000.00
Receptions	-	3,415.60
Stationery	-	973.42
Stamps	-	90.42
Invitations	-	180.13
Planning meeting	-	1,126.67
Accommodations	-	1,794.88
(Hotels)		
Shipments	-	47.75
TV news taping	-	618.97
Mileage reimb.	-	158.66
		<u>\$21,677.84</u>

Because these kinds of services do not appear to have been related to the provision of legal services or to have been within the scope of services ordinarily provided by law firms, the total amount of the debt still owed, or \$19,510.06, was made up of advances and thus contributions to the Committee which should have been reported as such. This Office recommends that the Commission reject the Committee's debt settlement agreement with Heard, Goggan, Blair & Williams because the debt is not subject to debt settlement, and require that the resulting in-kind contribution and expenditure be reported.

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person may make a contribution to a candidate committee in excess of \$1,000 per election. 2 U.S.C. § 431(11) defines "person" to include a partnership. 2 U.S.C. § 441a(f) prohibits committees from accepting contributions in excess of the limitations established by this section. Thus, this Office recommends that the Commission also find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions totaling \$18,510.06 from Heard, Goggan, Blair and Williams, find reason to believe that Heard, Goggan, Blair and Williams violated 2 U.S.C. § 441a(a)(1)(A), and add these violations to those already at issue in MUR 3342.

3. Katz, Kutter, Haigler, Alderman, Eaton & Davis, now
Katz, Kutter, Haigler, Alderman, Davis, Marks &
Rutledge - Tallahassee, Florida

Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge is an incorporated entity. The Committee reported debts owed this firm of \$5,454.63. According to the debt settlement agreement entered into by the Committee and the firm, the Committee paid \$717.54 of this debt, leaving \$4,737.09 not repaid.

According to information recently supplied by the Committee, Katz, Kutter billed Swann & Haddock, another Florida law firm, on December 9, 1987, January 15, 1988, and February 3, 1988, for a total of \$5,454.63 in costs incurred on behalf of the Gephardt campaign. (Attachment 1, pages 9-14). These costs were for the following services:

Political meetings	-	\$1,383.00
Miami and Orlando		
Federal Express	-	131.36
Photocopies	-	394.15
Telephone	-	2,405.08
Postage	-	570.33
Hotel	-	210.90
Rental car	-	365.41
Travel	-	267.00
Envelopes	-	41.70
Courier	-	30.20
Word processing	-	65.00
Office equipment	-	8.35

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Telefax & Telecopying	-	42.30	
Sales tax	-	127.85	
		<u>\$6,042.63</u>	
Payments		-348.00	(1/5/88)
		<u>\$5,694.63</u>	
Airline Credits		-240.00	
		<u>\$5,454.63</u>	

It is not known at this time why these bills were initially submitted to Swann & Haddock. It appears from the debt settlement agreement with Katz, Kutter that the Committee considered itself indebted to that firm for these particular expenditures. (Attachment 1, page 9).

Certain of the services involved in this debt, in particular the \$1,383 for "political meetings," appear to have been extended in connection with political activities, not in relationship to the provision of legal or other professional services. Thus, they do not appear to have been within the scope of services ordinarily provided by law firms, resulting in all or some of the remaining debt owed Katz, Kutter having constituted a contribution to the Committee. Thus, this Office recommends that the Commission reject the Committee's debt settlement agreement with Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge because the debt is apparently not subject to debt settlement.

Pursuant to 2 U.S.C. § 441b, no corporation may make a contribution to a political committee. Thus, this Office also recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b by making and accepting corporate contributions from Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge, find reason to believe that Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge violated 2 U.S.C. § 441b, and add these violations to those at issue in MUR 3342.

4. Swann & Haddock - Tallahassee, Florida

Swann & Haddock is also an incorporated entity. The information provided by the Committee indicates that the \$2,930.04 debt owed this law firm was for the following (Attachment 1, pages 15-21):

Air Travel (two tickets)	-	\$ 230.00
Federal Express	-	382.50
Meetings	-	287.59
Hotel	-	97.05
Mileage	-	28.50
Telephone charges	-	403.04
Postage	-	551.26
Courier	-	15.00

Photocopies	-	489.60
Breakfasts (75)	-	356.25
Buffet (15)	-	89.25
		<u>\$2,930.04</u>

The Committee paid \$293.04, leaving \$2,637.40 as remaining debt.

According to Attachment 1, page 18, Swann & Haddock permitted the Committee to use its postage meter in order to send out a mailing to convention delegates. It appears from Attachment 1, page 21, that the breakfasts and buffet were procured through a club to which Edward Haddock belonged, but were billed to the law firm. Again, many of these expenditures, in particular those involving the postage expenditures, breakfasts and buffet, appear to have been political in nature rather than having been provided in connection with the provision of legal or other professional services. Thus this Office recommends that the Commission reject the Committee's debt settlement agreement with Swann & Haddock because the debt is apparently not subject to debt settlement.

At least a portion of the remaining \$2,637.40 debt appears to constitute an in-kind contribution from an incorporated entity. This Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b, find reason to believe that Swann & Haddock violated 2 U.S.C. § 441b, and add these violations to those at issue in MUR 3342.

5. McAuliffe, Kelly, Furlong, Aldrich, & Siemens, now
McAuliffe, Kelly, Raffaelli & Siemens -
Washington, D.C.

McAuliffe, Kelly, Raffaelli and Siemens is a partnership. According to a memorandum apparently from Terance McAuliffe, representatives of the Committee made telephone calls to other parts of the country from the firm's offices totaling \$53.62 which were subject to reimbursement. (Attachment 1, page 23). The Committee reimbursed \$5.36, leaving \$48.26 outstanding.

Because these calls appear to have been campaign related, they constituted advances and thus contributions by the firm to the Committee and are not subject to debt settlement. This Office recommends that the Commission reject the Committee's debt agreement with McAuliffe, Kelly, Raffaelli and Siemens because the debt is not subject to debt settlement, and require that the resulting in-kind contribution be included by the Committee among its unitemized receipts and expenditures.

b. Individuals

The Committee's response concerning the twenty-one debts owed individuals which were cited in the Commission's October, 1990, determinations consists of a chart (Attachment 1, page 27) and other supporting documentation (Attachment 1, pages 28-136). The chart shows the purposes of the expenditures making up each debt,

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the amounts paid by the Committee, the portions of the expenditures which result in contributions by the individuals involved, any previous contributions received from the same person, and the amounts to be refunded.

1. Those Owed \$1,000 or less

The Commission identified five individuals owed \$1,000 or less in original debt for "travel reimbursement" or "travel expenses." As staff members, these five would have been entitled to the transportation exemption but not to the subsistence cost exemption provided at former 11 C.F.R. 100.7(b)(8); i.e., any advances they made for their own subsistence costs would have resulted in contributions.

The Committee has confirmed that all five, Denise Gaumer, Deborah Johns, Judy Lavoie, Linda Sinoway, and Kathleen Steele were in fact staff members. As can be seen on the Committee's chart (Attachment 1, page 27), portions of each of the debts owed these individuals were for exempt transportation costs. In only one instance did the amount owed for expenses other than transportation exceed the amount ultimately paid by the Committee to the individual as settlement of the debt. (See also Attachment 1, pages 28-60). Therefore, as to the debts owed Denise Gaumer, Judy Lavoie, Linda Sinoway, and Kathleen Steele, this Office recommends that the Commission find that no in-kind contributions resulted from the non-payments at issue. With regard to the debt owed Deborah Johns, this Office recommends that the Commission require that the amount of Ms. Johns' resulting in-kind contribution to the Committee, or \$64.45, be added to the Committee's reported unitemized contributions.

Three other individuals made expenditures and thus advances which were not covered by either the transportation or the subsistence exemption. Joyce Aboussie, a staff member, made outlays for "lodging, meals and supplies" totaling \$452.43, while volunteer Chip Fagadau purchased "postage" for \$220 and volunteer Samuel Tennebaum was owed \$309.30 for "Special Event/Food & Beverages." After subtracting the Committee's repayments, these individuals were still owed \$407.19, \$198.00 and \$278.37 respectively. This Office recommends that the Commission require that the Committee report the first and third amounts as itemized in-kind contributions and expenditures, and add the second to the amount of unitemized contributions and expenditures received and made. Because Samuel Tennebaum also made a \$1,000 direct contribution to the Committee, his total contributions reached \$1,278.37. Therefore, this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting an excessive contribution from Mr. Tennebaum, and add this violation to those at issue in MUR 3342.

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2. Those Owed More Than \$1,000

a. Staff Members

Five of the individuals owed more than \$1,000 were paid staff members who were thus not entitled to the exemption for subsistence expenditures. These were Donna Bazile, William Fleming, Randy L. Howey, Michele Mandell, and Robert Stoltz. (Attachment 1, pages 61-86).

Of the \$1,795.89 owed Donna Bazile, \$133.25 was for exempt transportation and the rest for "lodging, meals." The Committee's \$897.95 payment left \$764.69 outstanding. This Office recommends that the Commission find that the outstanding debt owed Ms. Bazile must be reported as an in-kind contribution and expenditure.

In the case of William Fleming, the original debt of \$3,676.36 included \$141.08 in exempt transportation. The Committee paid Mr. Fleming \$1,838.18, leaving \$1,697.10 in non-exempt expenditures unrepaid. According to the proposed debt settlement agreement, the debt involved "Operational Expenses/Travel." This Office recommends that the Commission find that the outstanding debt owed Mr. Fleming must be reported as an in-kind contribution and expenditure. In addition, because Mr. Fleming also made a \$25.00 direct contribution and another \$900 in in-kind contributions, bringing his total to \$2,622.10, this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting this excessive contribution, find reason to believe that William Fleming violated 2 U.S.C. § 441a(a)(1)(A), and add these violations to those already at issue in MUR 3342.

According to the debt settlement agreement submitted by the Committee, Randy L. Howey was owed \$6,349.04 for "Misc. Campaign Expenses." The Committee has more recently stated that \$136.53 of this amount was for exempt transportation while \$6,000 was for "Voluntary Services Rendered," and \$212.51 was for "Other Expenses." (See Attachment 1, page 27). The Committee repaid \$3,500 in October, 1989, with the reported purposes of the disbursement being "Services Rendered, Travel, Office Supplies, Postage."

As stated above, Mr. Howey was a paid Committee staff member. The only indication of any acceptance of a change in employment status as to part of the debt owed is his signature on the debt settlement agreement.

Pursuant to 11 C.F.R. § 100.7(b)(3), "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution." Thus, the issue arises as to whether, under the regulations in force at the time the debt settlement request was submitted by the Committee, the Committee could have changed the status of a paid staff person to that of a volunteer and thereby

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avoided having non-payment of a portion of salary owed become a contribution from the staff person involved.

The Commission earlier addressed this issue in DSR 86-20 which included requested approval of the settlement of a debt owed by Americans for Hart to a staff member for "salary." While considering that request, the Commission posed a series of questions to the Hart committee concerning the employee's job title and duties, and whether or not she had ever served without salary. That committee responded that employment arrangements between itself and its employees had included the "mutual understanding" that employees would be paid subject to "the availability of funds." The Commission accepted this explanation and permitted the unpaid services to be considered volunteer activity and not a contribution, pursuant to 11 C.F.R. § 100.7(b)(3). See also DSR 87-3.

In the present situation it is not known whether the Gephardt committee had a similar arrangement with its staff members relating salary payments to availability of funds. Because only one settlement with one staff person is involved here, this Office does not recommend that the issue be further pursued. This Office does recommend that the Commission determine that there is no longer a debt owed Randy L. Howey.

Michele Mandell was owed \$1,451.90. The Committee states that \$335.16 of this amount was for exempt transportation costs and the remaining \$1,116.74 for "Other Expenses." The Committee's payment to her of \$1,000 leaves \$116.74 outstanding. This Office recommends that the Commission determine that the amount outstanding results in a contribution to be added to the Committee's unitemized receipts and expenditures.

Finally, Robert Stoltz was owed \$1,481, none of which was for exempt transportation. According to the proposed debt settlement agreement, Mr. Stoltz made payments for "Food, Auto, Lodging, Supplies, Postage and Delivery." The Committee repaid \$1,200, leaving \$281 still unrepaid. This Office recommends that the Commission require that the resulting in-kind contribution and expenditure be reported.

b. Volunteers

The seven volunteers in this category are Mack E. Barham, William F. Beuck, II, John B. Crosby, Ron Fried, Richard Hughes, Richard Moe and Jody Severson.

3. Pursuant to the present regulations, such a change is permissible provided that the committee produces a written statement from the individual stating his or her willingness to be considered a volunteer. 11 C.F.R. § 116.6(a).

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Mack E. Barham was owed \$1,164.22, none of which was for exempt transportation or subsistence. According to the debt settlement agreement which he signed on September 6, 1988, Mr. Barham's expenditures were for "Luncheon Meeting, Telephones." (Attachment 1, page 86a). The Committee repaid \$116.42 of this amount. This Office recommends that the Commission require that the resulting in-kind contribution and expenditure of \$1,047.80 be reported. Mr. Barham also made another, direct \$1,000.00 contribution to the Committee, bringing his total to \$2,047.80. Thus, this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$1,047.80 in excessive contributions from Mr. Barham, find reason to believe that Mark E. Barham violated 2 U.S.C. § 441a(a)(1)(A), and add these violations to those at issue in MUR 3342.

The debt owed William F. Beuck totaled \$2,337.00. According to the Committee's chart, none of this amount was for exempt transportation or subsistence, although, according to the proposed debt settlement, the expenditures were for "air travel." The Committee repaid \$1,168.50, leaving an equal amount unreimbursed. This Office recommends that the Commission require that the resulting in-kind contribution and expenditure of \$1,168.50 be reported. This Office also recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$168.50 in excessive contributions from Mr. Beuck, and that this violation be added to those at issue in MUR 3342.

The amount owed John B. Crosby was \$3,555.95. (Attachment 1, pages 87-110). The proposed debt settlement agreement stated that the debt involved "Travel Expenses." The Committee has since indicated on its chart at that \$1,087.18 of this sum was for exempt transportation and \$625.70 for exempt subsistence, leaving \$1,843.07 in "Other Expenses." The Committee's payment of \$385 leaves \$1,458.07 not reimbursed. This Office recommends that the Commission require that the resulting in-kind contribution and expenditure be reported. This Office also recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting the excessive amount of \$458.07 from Mr. Crosby, and that this violation be added to the excessive contributions being addressed in MUR 3342.

The debt settlement agreement submitted by the Committee with regard to the debt owed Ron Fried showed a total of \$1,671.27. (Attachment 1, pages 111-114). More recently the Committee has stated that \$1,204.30 of this amount represented a duplicate invoice, reducing the amount owed to \$466.97. (Attachment 1, page 27, footnote). According to the Committee's chart, all of this amount was for exempt subsistence; however, the receipts attached show \$267.00 for what, in Mr. Fried's case, would be exempt transportation. Either way, no reportable and/or excessive contribution apparently resulted. Therefore, this Office recommends that the Commission determine that no in-kind contribution results from the non-payment at issue.

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The debt settlement agreement submitted with regard to the debt owed Richard Hughes showed a total of \$3,807.54 for "Air Travel." (Attachment 1, page 114a). The chart submitted by the Committee more recently lists the entire \$3,807.54 under "Other Expenses." The \$380.75 paid by the Committee leaves \$3,426.79 not repaid. This Office recommends that the Commission require that the resulting in-kind contribution and expenditure be reported. Mr. Hughes also made another \$100 contribution to the Committee, bringing his total to \$3,526.79. This Office thus recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$2,526.79 in excessive contributions from Mr. Hughes, find reason to believe that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A), and add these violations to those already at issue in MUR 3342.

The amount reported as owed Richard Moe was \$2,698.95. (Attachment 1, pages 115-130). The purpose shown in the debt settlement agreement was "Travel Reimbursements." More recently, the Committee's chart shows that \$1,088.06 was for exempt transportation costs and \$1,309.48 for exempt subsistence, with \$301.41 having been used for other expenses. The Committee's repayment of \$269.90 leaves \$31.51 not reimbursed. This Office recommends that the Commission require that the resulting in-kind contribution and expenditure of \$31.51 be reported by the Committee.

The debt settlement agreement submitted with regard to the debt owed Jody Severson showed a total of \$9,805.99 for "Campaign Materials." (Attachment 1, page 131). The Committee's chart now shows that \$304.11 of this amount was for exempt transportation, \$4,500 for "Voluntary Services Rendered," and "\$5,001.88 for "Other Expenses." Two invoices totaling \$2,329.11 for "Consulting Fees - National Labor Brochure," and "Outside Cost Invoice - Version #1 - National Labor Brochure," have also been supplied. (Attachment 1, pages 132-133.) The Committee has paid \$5,900 of the amount owed.

The chart prepared by the Committee indicates that Jody Severson was not a staff member; this individual apparently served both as a consultant with regard, inter alia, to the preparation of brochures and as a volunteer. If the \$304.11 in exempt transportation and \$4,500 assertedly related to volunteer services are subtracted from the debt owed, the remaining \$5,001.88 cited as being for other expenses is more than covered by the Committee's \$5,900 payment. This Office recommends that the Commission determine that no contribution results from the non-payment at issue.

3. Debt Owed The Hon. Tom Daschle

The Committee's debt settlement request also included a debt settlement agreement apparently signed by a representative of Congressman Tom Daschle's own authorized committee. (Attachment 1, page 134). The debt totaled \$300.13 and was for "travel/lodging." Because of uncertainty as to the actual creditor involved, the

Commission requested that the Committee provide detailed information regarding the nature of this debt, including clarification of whether it was owed Mr. Daschle as an individual or his committee.

Information provided by the Committee states that the charges making up this debt were on Mr. Daschle's personal credit card. (Attachment 1, page 27 (footnote), and pages 135-136.) They included \$209.00 in exempt transportation costs and \$91.13 in exempt subsistence. The Committee paid \$30.01 of the debt. This Office recommends that the Committee find that no in-kind contribution results from the non-payment of the remaining debt.

c. Debt Owed Trammel Crow

The Committee included in its original debt settlement request a debt owed Trammel Crow in the amount of \$3,936.00 for "Air Travel." (Attachment 1, page 137). This debt was originally included by this Office among those owed individuals; however, it now appears that the Trammel Crow here at issue is in fact a business. Trammel Crow was apparently a partnership at the time the expenditures at issue were made and as of the dates on the debt settlement agreement; according to the Texas Corporations Division, an entity at the same address and registered under the name of Trammel Crow Company was incorporated on December 28, 1990. The debt settlement agreement submitted by the Committee was signed on August 28, 1989, by the "Managing Partner."

According to documentation recently provided by the Committee, the amount owed Trammel Crow was for a plane trip from Dallas, Texas to Minneapolis, Minnesota on February 19, 1988, by the candidate and five other individuals. (Attachment 1, pages 138-139). The amount was based upon first class quotes of \$656 per passenger. The Committee repaid \$393.60 of this amount, leaving \$3,542.40 still unreimbursed.

There is no indication that Trammel Crow was in the business of providing air transportation. Thus this Office recommends that the Commission reject the Committee's proposed debt settlement agreement with this creditor because the debt is not subject to settlement. Further, the amount of the debt less the Committee's payment became a reportable contribution to the Committee by the partnership of \$3,542.40, and resulted in an excessive contribution of \$2,542.40. Therefore this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f), find reason to believe that Trammel Crow violated 2 U.S.C. § 441a(a)(1)(A), and add these violations to those at issue in MUR 3342.

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d. Political Committees

1. Candidate Committees

As stated above, 2 U.S.C. § 441(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate or his or her authorized committee per election. U.S.C. § 431(11) includes a committee in its definition of "person." 2 U.S.C. § 441a(a)(2)(A) permits multicandidate committees to contribute up to \$5,000 to a candidate or his or her committee per election; however, pursuant to 2 U.S.C. § 432(e)(3)(A), no multicandidate committee may be designated as an authorized committee of a candidate, and it thus follows that no authorized candidate committee may become a multicandidate committee. 2 U.S.C. § 432(e)(3)(B) does permit authorized committees to make contributions of no more than \$1,000 to other authorized committees.

The Committee submitted three debt settlement agreements with authorized committees, these being the Anthony Campaign Committee, Levin for Congress, and Slattery for Congress. There was no evidence that these debts had been incurred in the ordinary course of business. The Commission instructed the Committee to amend its reports to show the full amount of these debts as contributions and to repay any amounts in excess of the statutory limitations.

According to a second chart supplied by the Committee and to Committee reports, (Attachment 1, page 140), the total amount of debt owed the Anthony Campaign Committee, a/k/a Beryl Anthony for Congress Campaign Committee, was \$4,105.25. The debt settlement agreement stated that this was for "Printing/Postage." The Committee paid \$410.53, leaving \$3,694.72. This Office recommends that the Commission require that the resulting in-kind contribution and expenditure be reported by the Committee. In addition, because the Anthony Campaign Committee had already made a \$1,000 contribution to the Committee, its total contributions reached \$4,694.72, resulting in excessive contributions of \$3,694.72. This Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting this excessive contribution, find reason to believe that the Anthony Campaign Committee and Joseph Hickey, as treasurer, violated 2 U.S.C. § 441a(A)(1)(A), and add these violations to those at issue in MUR 3342.

The amount of debt owed Levin for Congress was \$613.65 for "Telephones." The Committee paid \$61.37 thereby reducing the outstanding debt to \$552.28. This Office recommends that the Commission require that the Committee report the remaining debt as an in-kind contribution and expenditure. Because the Levin committee also made a direct contribution of \$1,000 to the Committee, the aggregated contributions reached \$1,552.28, resulting in an excessive amount of \$552.28. This Office thus also recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting this

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excessive contribution and add this violation to those at issue in MUR 3342. A refund of \$552.28 is due.

Slattery for Congress was owed \$4,804.63 for "Postage and supplies." The Committee paid \$480.46, leaving \$4,324.17 as the outstanding debt. This Office recommends that the Commission require the Committee to report the remaining \$4,324.17 as an in-kind contribution and expenditure. This amount exceeds the Slattery committee's contribution limitation by \$3,324.17; thus, this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting this excessive contribution, find reason to believe that Slattery for Congress and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and add this violation to those at issue in MUR 3342.

2. Party Committees

The Committee also submitted two debt settlement agreements with state party committees, the Vermont Democratic State Committee and the Wyoming Democratic Party, both of which are multicandidate committees. The amount owed the Vermont committee was \$150, and the Committee paid \$100, leaving a \$50 outstanding debt. The Wyoming committee was owed \$1,625 and the Committee paid \$300, leaving \$1,325 owing. This Office recommends that the Commission require the Committee to report the resulting in-kind contributions and expenditures.

III. RECOMMENDATIONS

1. Reject the Gephardt for President Committee's proposed debt settlement agreements with Patton, Boggs & Blow; Heard, Goggan, Blair and Williams; Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge; Swann & Haddock; and McAuliffe, Kelly, Raffaelli and Siemens.
2. Require the Gephardt for President Committee to report the resulting in-kind contributions and expenditures from Patton, Boggs & Blow; Heard, Goggan, Blair and Williams; and McAuliffe, Kelly, Raffaelli and Siemens.
3. Find reason to believe that the Gephardt for President Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Heard, Goggan, Blair and Williams, Samuel Tennebaum, William Fleming, Mack E. Barham, William F. Beuck, John B. Crosby, Richard Hughes, Trammel Crow, the Anthony Campaign Committee, the Levin for Congress Committee, and the Slattery for Congress Committee, and add these violations to those at issue in MUR 3342.
4. Find reason to believe that Heard, Goggan, Blair and Williams violated 2 U.S.C. § 441a(a)(1)(A), and add this violation to those at issue in MUR 3342.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50

5. Find reason to believe that Mack E. Barham, William Fleming, and Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A) and add these violations to those at issue in MUR 3342.

6. Find reason to believe that Trammel Crow violated 2 U.S.C. § 441a(a)(1)(A) and add this violation to those at issue in MUR 3342.

7. Find reason to believe that the Beryl Anthony for Congress Campaign Committee and Joseph Hickey, as treasurer, and the Slattery for Congress Committee, and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and add these violations to those at issue in MUR 3342.

8. Find reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441b by accepting contributions from Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge and from Swann & Haddock, and add these violations to those at issue in MUR 3342.

9. Find reason to believe that Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge and Swann & Haddock violated 2 U.S.C. § 441b and add these violations to those at issue in MUR 3342.

10. Determine that no in-kind contributions resulted from the Gephardt for President Committee's failure to repay in full expenditures made by Denise Gaumer, Judy Lavoie, Linda Sinoway, and Kathleen Steele.

11. Require the Gephardt for President Committee to report as unitemized contributions the unreimbursed portions of expenditures made by Deborah Johns and Chip Fagadau which do not qualify as exempt transportation or subsistence expenditures.

12. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of the expenditures made by Joyce Aboussie and Samuel Tennebaum.

13. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of the non-exempt expenditures made by staff members Donna Bazile, William Fleming, Michele Mandell, and Robert Stoltz.

14. Determine that there is no longer a debt owed Randy L. Howey.

15. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of non-exempt expenditures made by volunteers Mack E. Barham, William F. Beuck, John B. Crosby, Richard Hughes, and Richard Moe.

16. Determine that no in-kind contributions resulted from the Committee's failure to repay in full expenditures made by Ron Fried and Jody Severson.

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16. Determine that no in-kind contribution resulted from the Committee's failure to repay in full expenditures made by the Hon. Tom Daschle.

17. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portion of expenditures made by Trammel Crow.

18. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of expenditures made by the Anthony Campaign Committee, the Levin for Congress Committee and the Slattery for Congress Committee.

19. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of expenditures made by the Vermont Democratic State Committee and the Wyoming Democratic Party.

20. Approve the appropriate letters and the attached Factual and Legal Analyses.

21. Close the file in DSR 90-16.

Attachments

1. Committee Response and Attachments
2. Factual and Legal Analyses (10)

Staff Assigned: Anne Weissenborn

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) DSR 90-16
) and
Gephardt for President Committee, Inc.) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 25, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to the above-captioned matters:

1. Reject the Gephardt for President Committee's proposed debt settlement agreements with Patton, Boggs & Blow; Heard, Goggan, Blair and Williams; Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge; Swann & Haddock; and and McAuliffe, Kelly, Raffaelli and Siemens.
2. Find reason to believe that the Gephardt for President Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Heard, Goggan, Blair and Williams, Samuel Tennebaum, William Fleming, Mack E. Barham, William F. Beuck, John B. Crosby, Richard Hughes, Trammel Crow Company, the Anthony Campaign Committee, the Levin for Congress Committee, and the Slattey for Congress Committee, and add these violations to those at issue in MUR 3342.

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3. Find reason to believe that Heard, Goggan, Blair and Williams violated 2 U.S.C. § 441a(a)(1)(A), and add this violation to those at issue in MUR 3342.
4. Find reason to believe that Mack E. Barham, William Fleming, and Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A) and add these violations to those at issue in MUR 3342.
5. Find reason to believe that Trammel Crow Company violated 2 U.S.C. § 441a(a)(1)(A) and add this violation to those at issue in MUR 3342.
6. Find reason to believe that the Beryl Anthony for Congress Campaign Committee and Joseph Hickey, as treasurer, and the Slattery for Congress Committee, and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and add these violations to those at issue in MUR 3342.
7. Find reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441b by accepting contributions from Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge and from Swann & Haddock, and add these violations to those at issue in MUR 3342.

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8. Find reason to believe that Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge and Swann & Haddock violated 2 U.S.C. § 441b and add these violations to those at issue in MUR 3342.
9. Determine that no in-kind contributions resulted from the Gephardt for President Committee's failure to repay in full expenditures made by Denise Gaumer, Judy Lavoie, Linda Sinoway, and Kathleen Steele.
10. Require the Gephardt for President Committee to report as unitemized contributions the unreimbursed portions of expenditures made by Deborah Johns and Chip Fagadau which do not qualify as exempt transportation or subsistence expenditures.
11. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of the expenditures made by Joyce Aboussie.
12. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of the non-exempt expenditures made by staff members Donna Bazile, Michele Mandell, and Robert Stoltz.
13. Determine that there is no longer a debt owed Randy L. Howey.

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14. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of non-exempt expenditures made by volunteer Richard Moe.
15. Determine that no in-kind contributions resulted from the Committee's failure to repay in full expenditures made by Ron Fried and Jody Severson.
16. Determine that no in-kind contribution resulted from the Committee's failure to repay in full expenditures made by the Hon. Tom Daschle.
17. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of expenditures made by the Levin for Congress Committee.
18. Require the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of expenditures made by the Vermont Democratic State Committee and the Wyoming Democratic Party.
19. Approve the appropriate letters and Factual and Legal Analyses.

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Federal Election Commission
Certification for DSR 90-16
and MUR 3342
February 25, 1992

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20. Close the file in DSR 90-16.

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

Attest:

2-28-92
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 10, 1992

Robert T. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

Re: DSR 90-16 and MUR 3342
Gephardt for President
Committee
S. Lee King, as treasurer

Dear Mr. Bauer and Ms. Corley:

On February 25, 1992, the Commission considered the information which you submitted on December 11, 1991, in connection with Debt Settlement Request 90-16, and took the following actions:

1. Rejected the Gephardt for President Committee's proposed debt settlement agreements with Patton, Boggs & Blow; Heard, Goggan, Blair and Williams; Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge; Swann & Haddock; and McAuliffe, Kelly, Raffaelli and Siemens.
2. Found reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Heard, Goggan, Blair and Williams, Samuel Tennebaum, William Fleming, Mack E. Barham, William F. Beuck, John B. Crosby, Richard Hughes, Trammel Crow Company, the Anthony Campaign Committee, the Levin for Congress Committee, and the Slattery for Congress Committee, and added these violations to those at issue in MUR 3342.
3. Found reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441b by accepting contributions from Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge and from Swann & Haddock, and added these violations to those at issue in MUR 3342.
4. Determined that no in-kind contributions resulted from the Gephardt for President Committee's failure to repay in full expenditures made by Denise Gaumer, Judy Lavoie, Linda Sinoway, and Kathleen Steele.
5. Required the Gephardt for President Committee to report as unitemized contributions the unreimbursed portions of

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expenditures made by Deborah Johns and Chip Fagadau which do not qualify as exempt transportation or subsistence expenditures.

6. Required the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portion of the expenditures made by Joyce Aboussie.

7. Required the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of the non-exempt expenditures made by staff members Donna Bazile, Michele Mandell and Robert Stoltz.

8. Determined that there is no longer a debt owed Randy L. Howey.

9. Required the Gephardt for President Committee to report as an in-kind contribution and expenditure the unreimbursed portions of non-exempt expenditures made by volunteer Richard Moe.

10. Determined that no in-kind contributions resulted from the Committee's failure to repay in full expenditures made by Ron Fried and Jody Severson.

11. Determined that no in-kind contribution resulted from the Committee's failure to repay in full expenditures made by the Hon. Tom Daschle.

12. Required the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of expenditures made by the Levin for Congress Committee.

13. Required the Gephardt for President Committee to report as in-kind contributions and expenditures the unreimbursed portions of expenditures made by the Vermont Democratic State Committee and the Wyoming Democratic Party.

14. Closed the file in DSR 90-16.

The Factual and Legal Analysis, which formed a basis for the Commission's determinations in MUR 3342, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your clients, the

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Robert T. Bauer, Esquire
page 3

Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION-

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gephardt for President Committee
S. Lee Kling, as treasurer

MUR: 3342

I. GENERATION OF MATTER

On October 30, 1990, the Commission made a series of determinations with regard to the request by the Gephardt for President Committee, Inc. ("the Committee") for approval of 298 debt settlements with 296 companies, individuals and political committees. See Debt Settlement Request 90-16. The Commission determined that the great majority of the settlements would not result in violations of the Federal Election Campaign Act ("the Act") or the Commission's regulations. The Commission did, however, approve the submission of questions to the Committee about the exact nature of the services reflected in debts owed by the Committee to certain law firms. In addition, the Commission instructed the Committee to amend its reports to show as contributions all or portions of debts owed twenty-two named individuals and five political committees which did not arise from activities exempt from the definition of contribution, and to refund any amounts of such non-exempt debts in excess of \$1,000. No determinations were made at that time regarding excessive or corporate contributions.

On December 11, 1991, counsel for the Committee submitted a response to the Commission's requests and determinations together with certain supporting documentation. The Committee has indicated, in an attachment to its response, its intention to

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refund certain excessive contributions; however, no information has been furnished, as yet, indicating that such refunds have in fact been made.

II. FACTUAL AND LEGAL ANALYSIS

a. Debts Owed Law Firms

As stated above, the Commission approved questioning the Committee about the services provided by certain creditor law firms with which the Committee had entered into debt settlement agreements. The purpose of the questions was to determine the exact nature of these services in order to ascertain whether these services had been provided in the ordinary course of the law firms' businesses and whether the debts were thus subject to settlement.

2 U.S.C. § 431(8) and (9) and 2 U.S.C. § 441b define "contribution" and "expenditure" to include any loan or advance made for purposes of influencing, or in connection with, a federal election. The Commission's regulations provide that corporate vendors may extend credit to political committees without such credit being considered an advance, and thus a contribution, provided they do so in the ordinary course of business.

Corporations may also settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4. At the time the debt settlements here at issue were submitted for approval, it was Commission policy to extend such possibilities for advances and settlement or forgiveness of debt to non-corporate vendors as well; this policy

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is now reflected in the Commission's regulations at 11 C.F.R.
§ 116.4(a).¹

1. Heard, Goggan, Blair & Williams - Austin, Texas

Heard, Goggan, Blair & Williams is a partnership. The debt settlement agreement signed on behalf of this firm stated that the purpose of the obligation was "Various Campaign Expenses." The outstanding balance was \$21,677.84, of which the firm agreed to accept \$2,167.78, or 10%, in settlement. Thus \$19,510.05 was not to be repaid.

The information recently supplied by the Committee indicates that the \$21,677.84 involved the following services:

Flight charges	-	\$11,271.34
Party	-	2,000.00
Receptions	-	3,415.60
Stationery	-	973.42
Stamps	-	90.42
Invitations	-	180.13
Planning meeting	-	1,126.67
Accommodations	-	1,794.88
(Hotels)		
Shipments	-	47.75
TV news taping	-	618.97
Mileage reimb.	-	158.66
		<u>\$21,677.84</u>

Because these kinds of services do not appear to have been related to the provision of legal services or to have been within the scope of services ordinarily provided by law firms, the total amount of the debt owed, or \$21,677.84, was apparently made up of advances and thus contributions to the Committee.

1. The analysis of the debts here at issue applies the debt settlement regulations in effect at the time the debt settlement agreements were submitted for Commission review, i.e., those in effect as of March 30, 1990.

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person may make a contribution to a candidate committee in excess of \$1,000 per election. 2 U.S.C. § 431(11) defines "person" to include a partnership. 2 U.S.C. § 441a(f) prohibits committees from accepting contributions in excess of the limitations established by this section. Thus, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Heard, Goggan, Blair and Williams.

2. Katz, Kutter, Haigler, Alderman, Eaton & Davis, now
Katz, Kutter, Haigler, Alderman, Davis, Marks &
Rutledge - Tallahassee, Florida

Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge is an incorporated entity. The Committee reported debts owed this firm of \$5,454.63. According to the debt settlement agreement entered into by the Committee and the firm, the Committee paid \$717.54 of this debt, leaving \$4,737.09 owing.

Information recently supplied by the Committee shows that Katz, Kutter billed Swann & Haddock, another Florida law firm, on December 9, 1987, January 15, 1988, and February 3, 1988, for a total of \$5,454.63 in costs incurred on behalf of the Gephardt campaign. These costs were for the following services:

Political meetings	-	\$1,383.00
Federal Express	-	131.36
Photocopies	-	394.15
Telephone	-	2,405.08
Postage	-	570.33
Hotel	-	210.90
Rental car	-	365.41
Travel	-	267.00
Envelopes	-	41.70
Courier	-	30.20
Word processing	-	65.00
Office equipment	-	8.35

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Telefax & Telecopying	-	42.30	
Sales tax	-	127.85	
		<u>\$6,042.63</u>	
Payments		-348.00	(1/5/88)
		<u>\$5,694.63</u>	
Airline Credits		-240.00	
		<u>\$5,454.63</u>	

It is not known at this time why these bills were initially submitted to Swann & Haddock. It appears from the debt settlement agreement with Katz, Kutter that the Committee considered itself indebted to that firm for these particular expenditures.

The services involved in this debt, in particular those for "political meetings," appear to have been extended in connection with political activities, not in relationship to the provision of legal or other professional services. Thus, they do not appear to have been within the scope of services ordinarily provided by law firms, which results in all or part of the remaining debt owed having constituted a contribution to the Committee.

Pursuant to 2 U.S.C. § 441b, political committees may not accept contributions from corporations. Thus, there is reason to believe that the Committee violated 2 U.S.C. § 441b by accepting corporate contributions from Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge.

3. Swann & Haddock - Tallahassee, Florida

Swann & Haddock is also an incorporated entity. The information provided by the Committee indicates that the \$2,930.04 debt owed this law firm was for the following:

Air Travel (two tickets)	-	\$ 230.00
Federal Express	-	382.50
Meetings	-	287.59
Hotel	-	97.05
Mileage	-	28.50
Telephone charges	-	403.04

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Postage	-	551.26
Courier	-	15.00
Photocopies	-	489.60
Breakfasts (75)	-	356.25
Buffet (15)	-	89.25
		<u>\$2,930.04</u>

The Committee paid \$293.04, leaving \$2,637.40 remaining.

According to information supplied recently by the Committee, Swann & Haddock permitted the Committee to use its postage meter in order to send out a mailing to convention delegates. It also appears that the breakfasts and buffet were procured through a club to which Edward Haddock belonged, but were billed to the law firm. Again, many of these expenditures, in particular those for postage, breakfasts and the buffet, appear to have been political in nature rather than having been provided in connection with the provision of legal or other professional services. Thus, the debt constituted an in-kind contribution from an incorporated entity. There is reason to believe that the Committee violated 2 U.S.C. § 441b as to this contribution.

b. Individuals

The Committee's recent response concerning twenty-one debts owed individuals cited in the Commission's October, 1990, determinations consists of a chart (Attachment 1) and other supporting documentation. The chart shows the purposes of the expenditures making up each debt, the amounts paid by the Committee, the asserted portions of the expenditures which result in contributions by the individuals involved, any previous contributions received from the same person, and the amounts to be refunded. Pursuant to former 11 C.F.R. § 100.7(b)(8), unreimbursed

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expenditures made by volunteers for their own transportation up to \$1,000 and for their own subsistence costs were exempt from the definition of "contribution," as were \$1,000 or less in unreimbursed expenditures by staff members for their own transportation. Advances become contributions at the time they are made.

1. Individual Owed Less Than \$1,000

Volunteer Samuel Tennebaum was owed \$309.30 for "Special Event/Food & Beverages." After subtracting the Committee's repayment, this individual was still owed \$278.37. Because Samuel Tennebaum also made a \$1,000 direct contribution to the Committee, his contributions totaled \$1,309.30. Therefore, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting an excessive contribution from Mr. Tennebaum.

2. Those Owed More Than \$1,000

a. Staff Member

William Fleming was owed an original debt of \$3,676.36 which included \$141.08 in exempt transportation. The Committee paid Mr. Fleming \$1,838.18, leaving \$1,697.10 in non-exempt expenditures still owing. According to the proposed debt settlement agreement, the debt involved "Operational Expenses/Travel." Because Mr. Fleming also made a \$25 direct contribution and another \$900 in in-kind contributions, bringing his total contributions, including the original advances, to \$4,460.28, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Mr. Fleming totaling \$3,460.28.

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b. Volunteers

Mack E. Barham was owed \$1,164.22, none of which was for exempt transportation or subsistence. According to the proposed debt settlement agreement, Mr. Barham's expenditures were for "Luncheon Meeting, Telephones." The Committee repaid \$116.42 of this amount. Mr. Barham also made another, direct, \$1,000 contribution to the Committee, bringing his total contributions, including the original advances, to \$2,164.22. Thus, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$1,164.22 in excessive contributions from Mr. Barham.

The debt owed William F. Beuck totaled \$2,337. According to the Committee's chart, none of this amount was for exempt transportation or subsistence, although, according to the proposed debt settlement, the expenditures were for "air travel." The Committee repaid \$1,168.50, leaving an equal amount still owing. There is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$1,337 in excessive contributions from Mr. Beuck.

The amount owed John B. Crosby was \$3,555.95. The proposed debt settlement agreement stated that the debt involved "Travel Expenses." The Committee has since indicated on its chart that \$1,087.18 of this sum was for exempt transportation and \$625.70 for exempt subsistence, leaving \$1,843.07 in "Other Expenses." The Committee's payment of \$385 leaves \$1,458.07 outstanding. There is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting the excessive amount of \$843.07 from Mr. Crosby.

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The debt settlement agreement submitted with regard to the debt owed Richard Hughes showed a total of \$3,807.54 for "Air Travel." The chart submitted by the Committee more recently lists the entire \$3,807.54 under "Other Expenses." The \$380.75 paid by the Committee leaves \$3,426.79 still owing. Mr. Hughes also made another \$100 contribution to the Committee, bringing his total to \$3,907.54. Thus, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting \$2,907.54 in excessive contributions from Mr. Hughes.

c. Debt Owed Trammel Crow

The Committee included in its original debt settlement request a debt owed Trammel Crow in the amount of \$3,936.00 for "Air Travel." This debt was originally included by this Office among those owed individuals; however, it appears that the Trammel Crow here at issue is in fact a business. Trammel Crow was apparently a partnership at the time the expenditures at issue were made and as of the dates on the debt settlement agreement; according to the Texas Corporations Division, an entity at the same address and registered under the name of Trammel Crow Company was incorporated on December 28, 1990. The debt settlement agreement submitted by the Committee was signed on August 28, 1989, by the "Managing Partner."

According to documentation recently provided by the Committee, the amount owed the Trammel Crow Company was for a plane trip from Dallas, Texas to Minneapolis, Minnesota on February 19, 1988, by the candidate and five other individuals. The amount was based upon first class quotes of \$656 per

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passenger. The Committee repaid \$393.60 of this amount, leaving \$3,542.40 still owed.

There is no indication that the Trammel Crow Company was in the air transportation business in 1988. Thus, the original amount of the debt became a reportable contribution of \$3,936 to the Committee by the partnership, and resulted in an excessive contribution of \$2,936. There is reason to believe that the Committee violated 2 U.S.C. § 441a(f) in this regard.

d. Political Committees

As stated above, 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate or his or her authorized committee per election. U.S.C. § 431(11) includes a committee in its definition of "person." 2 U.S.C. § 441a(a)(2)(A) permits multicandidate committees to contribute up to \$5,000 to a candidate or his or her committee per election; however, pursuant to 2 U.S.C. § 432(e)(3)(A), no multicandidate committee may be designated as an authorized committee of a candidate, and it thus follows that no authorized candidate committee may become a multicandidate committee. 2 U.S.C. § 432(e)(3)(B) does permit authorized committees to make contributions of no more than \$1,000 to other authorized committees.

The Committee submitted three debt settlement agreements with authorized committees, these being the Anthony Campaign Committee, Levin for Congress, and Slattery for Congress. There was no evidence that these debts had been incurred in the ordinary course of business.

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According to a second chart supplied by the Committee (Attachment 2) and to Committee reports, the total amount of debt owed the Anthony Campaign Committee was \$4,105.25 for "Printing/Postage." The Committee paid \$410.53, leaving \$3,694.72 due. Because the Anthony committee had already made a \$1,000 contribution to the Committee, its total contributions reached \$5,105.25, resulting in excessive contributions of \$4,105.25. There is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting this excessive contribution.

The amount of debt owed Levin for Congress was \$613.65 for "Telephones." The Committee paid \$61.37 thereby reducing the outstanding debt to \$552.28. Because the Levin committee also made a direct contribution of \$1,000 to the Committee, the aggregated contributions, including the original advance, reached \$1,613.65, resulting in an excessive amount of \$613.65. Thus, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting this excessive contribution.

Slattery for Congress was owed \$4,804.63 for "Postage and supplies." The Committee paid \$480.46, leaving \$4,324.17 as the outstanding debt. The original advance exceeded the contribution limitation by \$3,804.63; thus, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting this excessive contribution.

Attachments

1. Chart of debts owed individuals
2. Chart of debts owed political committees

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**GEPHARDT FOR PRESIDENT COMMITTEE, INC.
DEBT SETTLEMENTS**

Staff	Individuals	Total Amount of Debt	Exempt Transportation	Exempt Subsistence	Voluntary Services Rendered	Other Expenses	Amount Paid By Committee	Amount Applied to Contribution Limitation	Amount Previously Contributed CASH	Amount Previously Contributed IN-KIND	Amount To Be Refunded
Yes	Denise Garner	\$691.46	\$464.36			\$227.10	\$345.73	\$0.00	\$0.00	\$0.00	\$0.00
Yes	Deborah Johns	\$199.40	\$35.25			\$164.15	\$99.70	\$84.45	\$0.00	\$0.00	\$0.00
Yes	Judy Levois	\$940.42	\$602.85			\$337.77	\$470.21	\$0.00	\$0.00	\$0.00	\$0.00
Yes	Linda Sinoway	\$295.60	\$295.60			\$0.00	\$147.80	\$0.00	\$0.00	\$0.00	\$0.00
Yes	Kathleen Steele	\$909.40	\$866.16			\$43.24	\$90.84	\$0.00	\$100.00	\$900.00	\$0.00
Yes	Joyce Aboussie	\$452.43	\$0.00			\$452.43	\$45.24	\$407.19	\$0.00	\$0.00	\$0.00
No	Chip Fagedu	\$220.00	\$0.00	\$0.00		\$220.00	\$22.00	\$198.00	\$0.00	\$0.00	\$0.00
No	Samuel Tennebaum	\$309.30	\$0.00	\$0.00		\$309.30	\$30.93	\$278.37	\$1,000.00	\$0.00	\$278.37
Yes	Donna Brazile	\$1,795.89	\$133.25			\$1,662.64	\$897.95	\$764.89	\$100.00	\$0.00	\$0.00
Yes	William Fleming	\$3,676.36	\$141.08			\$3,535.28	\$1,838.18	\$1,697.10	\$25.00	\$900.00	\$1,622.10
Yes	Randy L. Howey	\$6,349.04	\$136.53	\$0.00	\$6,000.00	\$212.51	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00
Yes	Michèle Mandell	\$1,451.90	\$335.16	\$0.00		\$1,116.74	\$1,000.00	\$116.74	\$0.00	\$0.00	\$0.00
Yes	Robert Stoltz	\$1,481.00	\$0.00			\$1,481.00	\$1,200.00	\$281.00	\$0.00	\$0.00	\$0.00
No	Meck E. Berham	\$1,164.22	\$0.00	\$0.00		\$1,164.22	\$116.42	\$1,047.80	\$1,000.00	\$0.00	\$1,047.80
No	William F. Beuck	\$2,337.00	\$0.00	\$0.00		\$2,337.00	\$1,168.50	\$1,168.50	\$0.00	\$0.00	\$1,168.50
No	John B. Crosby	\$3,555.95	\$1,087.18	\$625.70		\$1,843.07	\$385.00	\$1,458.07	\$0.00	\$0.00	\$458.07
No	Ron Fried	466.97*	\$0.00	\$466.97		\$0.00	\$167.13	\$0.00	\$1,000.00	\$0.00	\$0.00
No	Richard Hughes	\$3,807.54	\$0.00	\$0.00		\$3,807.54	\$380.75	\$3,426.79	\$100.00	\$0.00	\$2,526.79
No	Richard Moe	\$2,698.95	\$1,088.06	\$1,309.48		\$301.41	\$289.90	\$31.51	\$750.00	\$0.00	\$0.00
No	Jody Severson	\$9,805.99	\$304.11	\$0.00	\$4,500.00	\$5,001.88	\$5,900.00	\$0.00	\$0.00	\$0.00	\$0.00
No	Hon. Tom Deschle**	\$300.13	\$209.00	\$91.13		\$0.00	\$30.01	\$0.00	\$0.00	\$0.00	\$0.00
	TOTAL:										\$6,101.63

*\$1,672.27 - \$1,204.30 = \$466.97 (\$1,204.30 = Duplicate Invoices).

**Personal American Express Card.

**GEPHARDT FOR PRESIDENT COMMITTEE, INC.
DEBT SETTLEMENTS**

Committees	Total Amount of Debt	Amount Paid By Committee	Amount Applied to Contribution Limitation	Amount Previously Contributed CASH	Amount Previously Contributed IN-KIND	Amount To Be Refunded
Anthony Campaign Committee	\$4,105.25	\$410.53	\$3,694.72	\$1,000.00	\$0.00	\$3,694.72
Levin for Congress	\$613.65	\$61.37	\$552.28	\$1,000.00	\$0.00	\$552.28
Slattery for Congress	\$4,804.63	\$480.46	\$4,324.17	\$0.00	\$0.00	\$3,324.17
Vermont Democratic State Committee	\$150.00	\$100.00	\$50.00	\$0.00	\$0.00	\$0.00
Wyoming Democratic Party	\$1,625.00	\$300.00	\$1,325.00	\$0.00	\$0.00	\$0.00
TOTAL:						\$7,571.17

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 10, 1992

Oliver S. Heard, Jr., Esquire
Heard, Goggan, Blair & Williams
1019 Tower Life Bldg.
San Antonio, TX 78205

RE: MUR 3342
Heard, Goggan, Blair &
Williams

Dear Mr. Heard:

On February 25, 1992, the Federal Election Commission found that there is reason to believe Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your firm. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your firm, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days

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Oliver S. Heard, Jr., Esquire
Page 2

prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form

5043643646

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Heard, Goggan, Blair and Williams

MUR: 3342

15043647
The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on November 28, 1989, on behalf of Heard, Goggan, Blair and Williams, a partnership, with regard to \$21,677.84 in debts owed by the Committee to this law firm. The debt settlement agreement stated that the purpose of the obligation was "Various Campaign Expenses." Pursuant to the agreement the firm agreed to accept \$2,167.78, or 10% of the outstanding balance, in settlement. Thus, \$19,510.05 was not to be repaid.

2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. The Commission's regulations provide that corporate vendors may extend credit to political committees without such credit being considered an advance, and thus a contribution, provided they do so in the ordinary course of business. Corporations may also settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4. At the time the debt settlement here at issue was submitted for approval, it was Commission policy to extend such possibilities for advances and for settlement or forgiveness of debt to non-corporate

vendors as well; this policy is now reflected in the Commission's regulations at 11 C.F.R. § 116.4(a).¹

Information recently supplied by the Committee indicates that the \$21,677.84 owed involved the following services:

Flight charges	-	\$11,271.34
Party	-	2,000.00
Receptions	-	3,415.60
Stationery	-	973.42
Stamps	-	90.42
Invitations	-	180.13
Planning meeting	-	1,126.67
Accommodations	-	1,794.88
(Hotels)		
Shipments	-	47.75
TV news taping	-	618.97
Mileage reimb.	-	158.66
		<u>\$21,677.84</u>

Because these kinds of services do not appear to have been related to the provision of legal services or to have been within the scope of services ordinarily provided by law firms, the debt owed Heard, Goggan, Blair & Williams was not subject to debt settlement. As a result, the total amount of the debt owed, or \$21,677.84, was a contribution to the Committee.

2 U.S.C. § 441a(a)(1)(A), no person may make a contribution to a candidate committee in excess of \$1,000 per election.

2 U.S.C. § 431(11) defines "person" to include a partnership.

2 U.S.C. § 441a(f) prohibits committees from accepting contributions in excess of the limitations established by this

1. The analysis of the debts here at issue applies the debt settlement regulations in effect at the time the debt settlement agreements were submitted for Commission review, i.e., those in effect as of March 30, 1990.

section. Thus, there is reason to believe that Heard, Goggan, Blair and Williams violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

President
Trammel Crow Company
3500 LTV Tower
2001 Ross Avenue
Dallas, Texas 75201

RE: MUR 3342
Trammel Crow Company

Dear Sir:

On February 25, 1992, the Federal Election Commission found that there is reason to believe the Trammel Crow Company violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your company. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your company, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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President
Trammel Crow Company
Page 2

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Trammel Crow Company

MUR: 3342

5043652
The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on August 28, 1989, on behalf of Trammel Crow Company, a partnership, with regard to \$3,936 in debts owed by the Committee to this firm. The debt settlement agreement stated that the purpose of the obligation was "Air Travel." Pursuant to the agreement, the firm agreed to accept \$393.60, or 10% of the outstanding balance, in settlement. Thus, \$3,542.40 was not to be repaid.

2 U.S.C. § 441a(a)(1)(A), no person may make a contribution to a candidate committee in excess of \$1,000 per election.

2 U.S.C. § 431(11) defines "person" to include a partnership.

2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. The Commission's regulations provide that corporate vendors may extend credit to political committees without such credit being considered an advance, and thus a contribution, provided they do so in the ordinary course of business.

Corporations may also settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4. At the time the debt settlement here at issue was submitted for approval, it was

Commission policy to extend such possibilities for advances and for settlement or forgiveness of debt to non-corporate vendors as well; this policy is now reflected in the Commission's regulations at 11 C.F.R. § 116.4(a).¹

According to documentation recently provided by the Committee, the amount owed Trammel Crow was for a plane trip from Dallas, Texas to Minneapolis, Minnesota on February 19, 1988, by the candidate and five other individuals. The amount was based upon first class quotes of \$656 per passenger.

There is no indication that Trammel Crow was in the business of providing air transportation in 1988. Thus, the original amount of the debt of \$3,936 became a contribution to the Committee by the partnership, and resulted in an excessive contribution of \$2,936. There is reason to believe that Trammel Crow Company violated 2 U.S.C. § 441a(a)(1)(A).

1. The analysis of the debts here at issue applies the debt settlement regulations in effect at the time the debt settlement agreements were submitted for Commission review, i.e., those in effect as of March 30, 1990.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

Edward E. Haddock, Jr., Esquire
Swann & Haddock
390 N. Orange Avenue
Orlando, Florida 32802

RE: MUR 3342
Swann & Haddock

Dear Mr. Haddock:

On February 25, 1992, the Federal Election Commission found that there is reason to believe Swann & Haddock violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your firm. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your firm, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause

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Edward E. Haddock, Jr., Esquire
Page 2

must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form

5043655

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Swann & Haddock

MUR: 3342

The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on January 10, 1989, on behalf of Swann and Haddock, an incorporated entity, with regard to \$2,930.44 in debts owed by the Committee to this law firm. The debt settlement agreement stated that the purposes of the obligation were "Air Travel/Postage/Delivery." Pursuant to the agreement the firm agreed to accept \$293.04, or 10% of the outstanding balance, in settlement. Thus, \$2,637.40 was not to be repaid.

2 U.S.C. § 441b(a) prohibits any corporation from making a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(b)(1) defines "contribution" and "expenditure" to include any loan or advance made in connection with a federal election.

The Commission's regulations provide that corporate vendors may extend credit to political committees without such credit being considered an advance, and thus a contribution or expenditure, provided they do so in the ordinary course of business. Corporations may also settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4.

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Information recently supplied by the Committee indicates that the \$2,930.44 owed involved the following services:

Air Travel (two tickets)	-	\$ 230.00
Federal Express	-	382.50
Meetings	-	287.59
Hotel	-	97.05
Mileage	-	28.50
Telephone charges	-	403.04
Postage	-	551.26
Courier	-	15.00
Photocopies	-	489.60
Breakfasts (75)	-	356.25
Buffet (15)	-	89.25
		<u>\$2,930.04</u>

According to information provided by the Committee, Swann & Haddock permitted the Committee to use its postage meter in order to send out a mailing to convention delegates. It also appears that the breakfasts and buffet were procured through a club to which Edward Haddock belonged, but were billed to the law firm. Many of these expenditures, in particular those involving the postage expenditures, breakfasts and buffet, appear to have been political in nature rather than having been provided in connection with the provision of legal or other professional services.

At least a portion of the \$2,637.40 debt owed Swann & Haddock apparently constituted an in-kind contribution from an incorporated entity. Thus, there is reason to believe that Swann & Haddock violated 2 U.S.C. § 441b.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

Andrew Keller, Esquire
Katz, Kutter, Haigler, Alderman,
Davis, Marks & Rutledge
106 East College, Suite 2100
Tallahassee, Florida 32301

RE: MUR 3342
Katz, Kutter, Haigler,
Alderman, Davis, Marks
& Rutledge

Dear Mr. Keller:

On February 25, 1992, the Federal Election Commission found that there is reason to believe Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your firm. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your firm, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Andrew Keller, Esquire
Page 2

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
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15043643659

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Katz, Kutter, Haigler, Alderman,
Davis, Marks & Rutledge

MUR: 3342

15043643660

The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on June 15, 1989, on behalf of Katz, Kutter, Haigler, Alderman, Eaton & Davis, now Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge, a incorporated entity, with regard to \$5,454.63 in debts owed by the Committee to this law firm. The debt settlement agreement stated that the purposes of the obligation were "Telephones, Meetings, Delivery, Supplies." Pursuant to the agreement the firm agreed to accept \$717.54, or 13% of the outstanding balance, in settlement. Thus, \$4,737.09 was not to be repaid.

2 U.S.C. § 441b(a) prohibits any corporation from making a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(b)(1) defines "contribution" and "expenditure" to include any loan or advance made in connection with a federal election.

The Commission's regulations provide that corporate vendors may extend credit to political committees without such credit being considered an advance, and thus a contribution, provided they do so in the ordinary course of business. Corporations may also settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is

that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4.

According to information supplied by the Committee, Katz, Kutter billed Swann & Haddock, another Florida law firm, on December 9, 1987, January 15, 1988, and February 3, 1988, for a total of \$5,454.63 in costs incurred on behalf of the Gephardt campaign. These costs were for the following services:

Political meetings	-	\$1,383.00	
Miami and Orlando			
Federal Express	-	131.36	
Photocopies	-	394.15	
Telephone	-	2,405.08	
Postage	-	570.33	
Hotel	-	210.90	
Rental car	-	365.41	
Travel	-	267.00	
Envelopes	-	41.70	
Courier	-	30.20	
Word processing	-	65.00	
Office equipment	-	8.35	
Telefax & Telecopying	-	42.30	
Sales tax	-	127.85	
		<u>\$6,042.63</u>	
Payments		-348.00	(1/5/88)
		<u>\$5,694.63</u>	
Airline Credits		-240.00	
		<u>\$5,454.63</u>	

It is not known at this time why these bills were initially submitted to Swann & Haddock. It appears from the debt settlement agreement with Katz, Kutter that the Committee considered itself indebted to that firm for these particular expenditures.

Certain of the services involved in this debt, in particular the \$1,383.00 for "political meetings," appear to have been provided in connection with political activities, not in relationship to the provision of legal or other professional

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services. Thus, they do not appear to have been within the scope of activities ordinarily provided by law firms, resulting in all or part of the remaining debt owed having constituted a contribution to the Committee. There is reason to believe that Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge violated 2 U.S.C. §441b.

5043643602



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

Richard Hughes
4524 East 67th Street
P.O. Box 35887
Tulsa, Oklahoma 74135

RE: MUR 3342
Richard Hughes

Dear Mr. Hughes:

On February 25, 1992, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause

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Richard Hughes
Page 2

must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

Factual and Legal Analysis
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5043643664

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Richard Hughes

MUR: 3342

5043643665
The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on March 9, 1990, by Richard Hughes, a Committee volunteer, with regard to \$3,807.54 in debts owed Mr. Hughes by the Committee. The debt settlement agreement stated that the purposes of the obligation were "Air Travel." More recently, the Committee has listed the full amount under "Other Expenses." Pursuant to the debt settlement agreement, Mr. Hughes agreed to accept \$380.75, or 10% of the outstanding balance, in settlement. Thus \$3,425.79 was not to be repaid.

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a federal candidate and his or her political committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. Pursuant to former 11 C.F.R. 100.7(b)(8), which was in effect at the time of the submission of the debt settlement agreement, any unreimbursed payment not in excess of \$1,000 for transportation incurred by an individual on behalf of a candidate was not a contribution, nor was an unlimited amount spent by an individual for his or her own subsistence costs.

In the case of Richard Hughes, the original debt of \$3,807.54 apparently did not include an amount for exempt transportation or subsistence. The Committee paid Mr. Hughes \$380.75, leaving

\$3,426.79 in non-exempt expenditures still owing. Mr. Hughes also made a \$100.00 direct contribution to the Committee, bringing his total, including the original advances, to \$3,907.54. Therefore, there is reason to believe that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A).

25043643666



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

Joseph Hickey, Treasurer
Beryl Anthony for Congress
Campaign Committee
P.O. Box 1871
El Dorado, Arizona 71731

RE: MUR 3342
Beryl Anthony for
Congress Campaign
Committee

Dear Mr. Hickey:

On February 25, 1992, the Federal Election Commission found reason to believe that the Beryl Anthony for Congress Campaign Committee and Joseph Hickey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Joseph Hickey, Treasurer
Page 2

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

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5043643668

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Beryl Anthony for Congress
Campaign Committee
Joseph Hickey, as treasurer

MUR: 3342

5043643669
The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on behalf of the Beryl Anthony for Congress Campaign Committee with regard to \$4,105.25 in debts owed the Anthony campaign by the Committee. The debt settlement agreement stated that the purposes of the obligation were "Printing/Postage." Pursuant to the agreement, the Anthony campaign agreed to accept \$410.53, or 10% of the outstanding balance, in settlement. Thus, \$3,694.72 was not to be repaid.

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a federal candidate and his or her political committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. 2 U.S.C. § 431(11) defines "person" to include a committee.

2 U.S.C. § 441a(a)(2)(A) permits multicandidate committees to contribute up to \$5,000 to a candidate or his or her committee per election; however, pursuant to 2 U.S.C. § 432(e)(3)(A), no multicandidate committee may be designated as an authorized committee of a candidate, and it thus follows that no authorized candidate committee may become a multicandidate committee.

2 U.S.C. § 432(e)(3)(B) does permit authorized committees to make

contributions of no more than \$1,000 to other authorized committees.

There was no evidence that the debts owed the Anthony committee, an authorized committee, were incurred in the ordinary course of business. Thus, the original advance, or \$4,105.25, became an in-kind contribution. In addition, because the Anthony campaign had already made a \$1,000 contribution to the Committee, its total contributions reached \$5,105.25, resulting in excessive contributions of \$4,105.25. Thus, there is reason to believe that the Beryl Anthony for Congress Campaign Committee, and Joseph Hickey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

Mike Van Dyke, Treasurer
Slattery for Congress Committee
444 Southeast Quincy
Suite 280
Lopeka, Kansas 66683

RE: MUR 3342
Slattery for Congress
Committee

Dear Mr. Van Dyke:

On February 25, 1992, the Federal Election Commission found that there is reason to believe the Slattery for Congress Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

5043643671

Mike Van Dyke, Treasurer
Page 2

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

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5043643672

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Slattery for Congress
Mike Van Dyke, as treasurer

MUR: 3342

25043643673
The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on behalf of the Slattery for Congress Committee with regard to \$4,804.63 in debts owed the Slattery campaign by the Committee. The debt settlement agreement stated that the purposes of the obligation were "Postage and supplies". Pursuant to the agreement, the Anthony campaign agreed to accept \$480.46, or 10% of the outstanding balance, in settlement. Thus, \$4,324.17 was not to be repaid.

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a federal candidate and his or her political committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. 2 U.S.C. § 431(11) defines "person" to include a committee.

2 U.S.C. § 441a(a)(2)(A) permits multicandidate committees to contribute up to \$5,000 to a candidate or his or her committee per election; however, pursuant to 2 U.S.C. § 432(e)(3)(A), no multicandidate committee may be designated as an authorized committee of a candidate, and it thus follows that no authorized candidate committee may become a multicandidate committee. 2 U.S.C. § 432(e)(3)(B) does permit authorized committees to make contributions of no more than \$1,000 to other authorized

committees.

There was no evidence that the debts owed the Slattery committee, an authorized committee, were incurred in the ordinary course of business. Thus, the original advance, or \$4,804.63, became an in-kind contribution. This amount exceeded the Anthony committee's limitation by \$3,804.63. Thus, there is reason to believe that Slattery for Congress and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

William J. Fleming
311 Rosedale Avenue
St. Louis, Missouri 70124

RE: MUR 3342
William J. Fleming

Dear Mr. Fleming:

On February 25, 1992, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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William J. Fleming
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

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05043643676

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: William Fleming

MUR: 3342

25043677
The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on May 6, 1989, by William Fleming, a Committee staff member, with regard to \$3,676.36 in debts owed Mr. Fleming by the Committee. The debt settlement agreement stated that the purposes of the obligation were "Operational Expenses/Travel." Pursuant to the agreement, Mr. Fleming agreed to accept \$1,838.18 or 50% of the outstanding balance, in settlement. Thus, \$1,838.18 was not to be repaid.

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a federal candidate and his or her political committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. Pursuant to former 11 C.F.R. 100.7(b)(8), which was in effect at the time of the submission of the debt settlement agreement, any unreimbursed payment not in excess of \$1,000 for transportation incurred by an individual on behalf of a candidate is not a contribution.

In the case of William Fleming, the original debt of \$3,676.36 included \$141.08 in exempt transportation. The Committee paid Mr. Fleming \$1,838.18, leaving \$1,697.10 in non-exempt expenditures still owing. Because Mr. Fleming also made a \$25.00 direct contribution and another \$900.00 in in-kind contributions to the Committee, bringing his total contributions,

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including the original advances, to \$4,460.28, there is reason to believe that William Fleming violated 2 U.S.C. § 441a(a)(1)(A).

05043643678



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 10, 1992

Mack E. Barham, Esquire
5837 Bel Air Drive
New Orleans, Louisiana 70124

RE: MUR 3342
Mack E. Barham

Dear Mr. Barham:

On February 25, 1992, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended "the Act". The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

5043643619

Mack E. Barham, Esquire
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

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Designation of Counsel Form

05043643600

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mack E. Barham

MUR: 3342

The Gephardt for President Committee ("the Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on September 6, 1988, by Mack E. Barham, a Committee volunteer, with regard to \$1,164.22 in debts owed Mr. Barham by the Committee. The debt settlement agreement stated that the purposes of the obligation were "Luncheon Meeting, Telephones." According to the agreement, Mr. Barham agreed to accept \$116.42, or 10% of the outstanding balance, in settlement. Thus, \$1,047.80 was not to be repaid.

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a federal candidate and his or her political committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. Pursuant to former 11 C.F.R. 100.7(b)(8), which was in effect at the time of the submission of the debt settlement agreement, any unreimbursed payment not in excess of \$1,000 for transportation incurred by an individual on behalf of a candidate was not a contribution, nor was any amount incurred by volunteers for their own subsistence.

In the case of Mack E. Barham, the original debt of \$1,164.22 apparently included no amounts for exempt transportation or subsistence. The Committee paid \$116.42, leaving \$1,047.80 non-exempt expenditures unreimbursed. Mr. Barham also made a direct \$1,000 contribution to the Committee, bringing his total

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--2--

contributions, including the original advances, to \$2,164.22.
Thus, there is reason to believe that Mack E. Barham violated
2 U.S.C. § 441a(a)(1)(A).

5043643682

OGC 4492

HEARD, GOGGAN, BLAIR & WILLIAMS

ATTORNEYS AT LAW

TOWER LIFE BUILDING

TENTH FLOOR

SAN ANTONIO, TEXAS 78205

(512) 225-6763

FAX (512) 225-6410

March 20, 1992

OLIVER S. HEARD, SR.
(1915-1977)

OLIVER S. HEARD, JR.

THOMAS S. GOGGAN, III

STEPHEN S. BLAIR

JIM BLAIR

LESLIE H. WILLIAMS, JR.

BENNETT J. ROBERTS, JR.

HAROLD D. PUTMAN, JR.

LUPE ZAMARRIPA

ALBERT W. HARTMAN, III

CLAYTON E. MAYFIELD

STEPHEN T. MEEKS

OLIVERO E. CANALES

JOYCE A. LANGENEGGER

SYDNA H. GORDON

DEMETRIS A. SAMPSON

WILLIAM E. KING

CLIFTON F. DOUGLASS, III

CHRISTOPHER L. PHILLIPPE

REBECCA P. BUSTAMANTE

MICHAEL W. DEEDS

RICHARD A. STRIEBER

KARL E. HAYS

LEAH L. BISK

OF COUNSEL

RICHARD R. ORSINGER

**Honorable Joan D. Aikens
Chairman
Federal Election Commission
Washington, D.C. 20463**

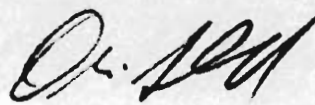
**RE: MUR 3342
Heard, Goggan, Blair & Williams**

Dear Ms. Aikens:

**Enclosed please find this law firm's Statement of Designation of Counsel, designating
R. Laurence Macon as our attorney in the above-referenced matter.**

Kindest personal regards.

Sincerely,



OLIVER S. HEARD, JR.

OSH:jas

Enclosure

**cc: Mr. R. Laurence Macon
Mr. Thomas S. Goggan, III
Mr. Stephen S. Blair**

HOUSTON
3000 CITICORP CENTER
HOUSTON, TEXAS 77002
(713) 655-9191
FAX (713) 655-0905

DALLAS
ALLIANZ FINANCIAL CENTRE
2323 BRYAN ST.
DALLAS, TEXAS 75201
(214) 880-0089
FAX (214) 754-7167

AUSTIN
500 LITTLEFIELD BLD.
AUSTIN, TEXAS 78701
(512) 478-7727
FAX (512) 478-8150

FORT WORTH
OIL & GAS BLD., SUITE 1414
309 W. 7TH ST.
FORT WORTH, TEXAS 76102
(817) 877-4589
FAX (817) 877-0601

BROWNSVILLE
3505 BOCA CHICA
SUITE 160
BROWNSVILLE, TEXAS 77821
(512) 544-2661
FAX (512) 544-3319

92 MAR 24 PM 12:08

RECEIVED
FEDERAL ELECTION COMMISSION
MAR 24 1992

1504364363

STATEMENT OF DESIGNATION OF COUNSEL

NUR 3342

NAME OF COUNSEL: R. Laurence Macon

ADDRESS: Akin, Gump, Strauss, Hauer & Feld

300 Convent Street, St. 1500

San Antonio, Texas 78205

TELEPHONE: (512) 270-0800

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

HEARD, GOGGAN, BLAIR & WILLIAMS
BY:

March 20, 1992
Date

[Signature]
Signature

RESPONDENT'S NAME: Heard, Goggan, Blair & Williams

ADDRESS: Tower Life Building, 10th Floor

310 S. St. Mary's

San Antonio, Texas 78205

HOME PHONE: _____

BUSINESS PHONE: (512) 225-6763

5043643684

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

March 25, 1992

Anne A. Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

92 MAR 25 AM 11:23

RECEIVED
FEDERAL ELECTION COMMISSION
MAR 25 1992

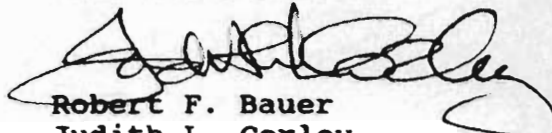
Re: DSR 90-16 and MUR 3342 - Gephardt for President
Committee and S. Lee Kling, as Treasurer

Dear Ms. Weissenborn:

As we discussed on the telephone, the Gephardt for President Committee seeks the identity of the persons against whom the Commission found reason to believe a violation of the Act had occurred as a result of a debt settlement entered into with the Committee.

If you have any questions or need additional information, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel for Respondent

OGC 4527



March 25, 1992

VIA FEDERAL EXPRESS

Ms. Joan D. Aikens
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

92 MAR 26 PM 4:07

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK
WASHINGTON, D.C. 20463

Re: MUR3342 Beryl Anthony For Congress Campaign Committee

Dear Ms. Aikens:

I received your March 10 letter on March 17. Pursuant to that letter, you have asked for my response by April 1, 1992.

Would you please grant me a twenty (20) day extension in order to respond to the letter. The matter about which you are inquiring is several years old. It will take me sometime to locate the pertinent information and review it. I would like to have the opportunity to discuss it with Congressman Anthony before sending a formal response and I will not be able to do that within the fifteen day period. I also would like to consider the advisability of employing an attorney to assist me in my response.

If you need any further information to consider my request for an extension of time, please contact me and I will be glad to provide it.

I would appreciate it if you would let me know your decision on granting this request as soon as possible so that if you decide not to grant it, I will be able to respond to you, to the extent possible, by the April 1 deadline.

Thanks.

Yours truly,

Joseph Hickey

JH/cb

pc: Anne A. Weissenborn
Congressman Beryl F. Anthony, Jr.

Paid for by Anthony for Congress Committee
P.O. Box 1871 • El Dorado, AR 71731 • (501) 862-0992

5043643686



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 27, 1992

Joseph Hickey, Treasurer
Anthony for Congress Committee
P.O. Box 1871
El Dorado, AR 71731

RE: MUR 3342

Dear Mr. Hickey:

This is in response to your letter addressed to Chairman Joan D. Aikens and dated March 25, 1992, which we received on March 26, 1992, requesting an extension of twenty days to respond to the Commission's reason to believe determination. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on April 21, 1992.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

15043643687

KATZ, KUTTER, HAIGLER, ALDERMAN, DAVIS, MARKS & RUTLEDGE

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

SILVIA MORELL ALDERMAN
DANIEL C. BROWN
DIANA L. DAVIS
MARGUERITE H. "DITTI" DAVIS
MARTIN R. DIX
STEPHEN A. ECENIA
PAUL R. EZATOFF, JR.
WILLIAM H. FURLOW
C. TIMOTHY GRAY
MITCHELL B. HAIGLER
EDWARD S. JAFFRY
ALLAN J. KATZ
EDWARD L. KUTTER
RICHARD P. LEE
JOHN C. LOVETT
JOHN R. MARKS, III
BRIAN M. NUGENT
R. DAVID PRESCOTT

POST OFFICE BOX 1877 32302-1877
HIGHPOINT CENTER
106 EAST COLLEGE AVENUE, SUITE 1200
TALLAHASSEE, FLORIDA 32301
TELEPHONE (904) 224-9634
TELECOPIER (904) 222-0103
TELECOPIER (904) 224-0781

THE 110 TOWER
110 S. E. 6TH STREET, SUITE 1880
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE (305) 786-6840
TELECOPIER (305) 786-6879

REPLY TO: TALLAHASSEE

March 27, 1992

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK
92 MAR 30 PM 5:13
GARY R. RUTLEDGE
RAFAEL SUAREZ RIVAS
GARY P. TIMI
R. MICHAEL UNDERWOOD
J. LARRY WILLIAMS
DAVID A. VON
PAUL A. ZEIGER

OF COUNSEL:
PATRICK R. MARONEY
HAROLD F. K. PURNELL
GOVERNMENTAL CONSULTANTS
MONICA A. LASSETER
WILLIAM D. RUBIN
GERALD C. WESTER

(NOT AN ATTORNEY)

Anne A. Weissenborn
Office of General Counsel
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

RE: MUR 3342

Dear Ms. Weissenborn:

Pursuant to our telephone conversation of March 24, 1992, I wish to respond to the letter received by this office on March 16, 1992.

Prior to November 1, 1987, this law firm as a separate entity did not exist. Some of us who are members of this firm, were at that time members of the law firm of Swann & Haddock. We were part of the Tallahassee office of that firm and the expenses included in your factual and legal analysis were, to the best of my knowledge, incurred by that firm on behalf of the Gephardt campaign, prior to November 1, 1987.

On November 1, 1987 those of us in the Tallahassee office created our own firm originally known as Katz, Kutter, Haigler, Alderman, Eaton, Davis & Marks, P.A. We purchased the assets and assumed certain obligations of the Tallahassee office of Swann and Haddock. When bills from vendors and others arrived at the new firm, they sometimes included expenses incurred by the old firm. We billed Swann and Haddock for these disbursements when expenses like that occurred. However, the creation of the new firm caused the relationship with the old firm to become strained and these billings were not paid.

Since we were unable to collect on these obligations from Swann & Haddock, we choose to send the bill on to the Gephardt campaign. We treated them as any other debtor and ultimately

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FEDERAL ELECTION COMMISSION
MAIL ROOM
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Anne A. Weissenborn

March 27, 1992

Page 2

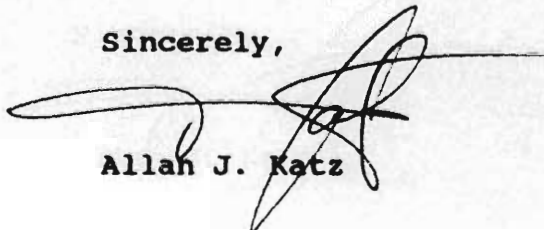
choose to accept a settlement in the ordinary course of business on terms which were substantially to those made with other debtors.

Consequently, we were left with a debt incurred by our old firm. The "contribution" if any, was by another corporate entity which only because of timing became ours to deal with. It is my hope that this explanation will suffice in giving you the necessary information to conclude that this firm is in no way responsible for making any corporate contribution to the Gephardt campaign.

There was clearly no way for you to be aware of the changing of firms. As I mentioned to you on the phone, sometime in 1990 Swann & Haddock went out of business. Consequently, I have no way of providing you with any additional information on this matter.

Please let me know if you would like to discuss this matter further. I look forward to hearing from you regarding the disposition of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Allan J. Katz', with a long horizontal flourish extending to the right.

Allan J. Katz

AJK:df

5043643639

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3342

NAME OF COUNSEL: Jones, Day, Reavis & Pogue

ADDRESS: Attn: Todd Johnson
Metropolitan Square
1450 G Street, N.W.
Washington, D.C. 20005-2088

TELEPHONE: 202-874-4640

92 MAR 30 PM 6:00

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

3-27-92
 Date

T.B. Green
 Signature

RESPONDENT'S NAME: Thomas B. Green, General Counsel

ADDRESS: Trammell Crow Company
3500 Trammell Crow Center
2001 Ross Avenue, Dallas, TX 75201

HOME PHONE: _____

BUSINESS PHONE: 214-979-6043

5043643690

OGC 4554

AKIN, GUMP, HAUER & FELD, L.L.P.

ATTORNEYS AT LAW

1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 887-4000

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

1500 NATIONS BANK PLAZA

300 CONVENT STREET

SAN ANTONIO, TEXAS 78205

(512) 270-0800

FAX (512) 224-2035

4100 FIRST CITY CENTER
1700 PACIFIC AVENUE
DALLAS, TEXAS 75201-4618
(214) 969-2800

2100 FRANKLIN PLAZA
III CONGRESS AVENUE
AUSTIN, TEXAS 78701
(512) 499-6200

1900 PENNZOIL PLACE-SOUTH TOWER
711 LOUISIANA STREET
HOUSTON, TEXAS 77002
(713) 220-5800

WRITER'S DIRECT DIAL NUMBER (512) 270-

March 30, 1992

Ms. Joan D. Aikens, Chairman
Federal Election Commission
Washington, D.C. 20463

VIA FEDERAL EXPRESS

Ms. Anne A. Weissenborn
Federal Election Commission
Washington, D.C. 20463

VIA FEDERAL EXPRESS

Re: MUR 3342 Heard, Goggan, Blair & Williams

Dear Ms. Aikens and Ms. Weissenborn:

Heard, Goggan, Blair & Williams entered into the debt settlement agreement with the Gephardt For President Committee (the "Committee"), agreeing to accept \$2,167.78, or 10% of the outstanding balance of the debt due in settlement of the debt for the simple reason that Heard, Goggan, Blair & Williams was informed by the Committee that it had no more money than that amount to pay the debt. There was no alternative open to Heard, Goggan, Blair & Williams, who, at the time simply made a business decision to prevent further business losses. This decision was made in the ordinary course of business of Heard, Goggan, Blair & Williams, and treated as all debts to the firm are treated. When it would do nothing more than incur further business losses to spend time and money pursuing a debt where the debtor is insolvent, it is common for Heard, Goggan, Blair & Williams to make such a business decision to prevent further business losses. The debt incurred by the Committee to Heard, Goggan, Blair & Williams was made in the ordinary course of business. The services provided were intended to meet the client's needs at the time, including services and functions arranged by our office. Please contact me at the address and telephone number listed above if you have any questions or if we may furnish any further information.

Sincerely,

R. Laurence Macon

R. LAURENCE MACON

MCF/sly

92 MAR 31
10:52 AM
10-52-50A

5043643691

RECEIVED
F.E.C.
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

92 MAR 30 PM 12:27

SENSITIVE

In the Matter of)

MUR 3342

Gephardt for President Committee)
S. Lee Kling, as treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 25, 1992, the Commission made a series of reason to believe determinations involving a number of individuals, law firms and authorized committees, plus a partnership, which had apparently made excessive or prohibited contributions to the Gephardt for President Committee ("the Committee") in the form of advances outside the ordinary course of business. These determinations arose in the context of DSR 90-16. The respondents at issue are as follows:

Heard, Goggan, Blair & Williams
of San Antonio, Texas
Katz, Kutter, Haigler, Alderman, Davis,
Marks and Rutledge of Tallahassee, Florida
Swann & Haddock of Orlando, Florida
Mack E. Barham
William Fleming
Richard Hughes
Trammel Crow Company
Beryl Anthony for Congress Committee
and Joseph Hickey, as treasurer
Slattery for Congress Committee
and Mike Van Dyke, as treasurer

On March 25, 1992, this Office received from the Committee's counsel a request for the names of these respondents. (Attachment 1). Although the Federal Election

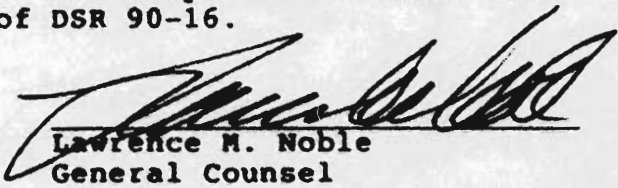
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Campaign Act requires that the names of all respondents remain confidential, and it has thus been the policy of the Commission not to reveal the names of respondents in the same matter to each other, there seems no basis for denying the Committee this information. All of the above respondents, along with certain other creditors, are cited in the various reason to believe determinations made by the Commission against the Committee in this matter, and it is the Committee's desire to sort out which of the creditors are respondents in possible need of assistance and which are not.

II. RECOMMENDATION

Approve the disclosure to the Gephardt for President Committee of the names of all respondents in MUR 3342 identified as a result of DSR 90-16.

3/30/92
Date


Lawrence M. Noble
General Counsel

Attachment

Counsel's letter dated March 25, 1992

Staff Assigned: Anne Weissenborn

15043643693



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS *[Signature]*
COMMISSION SECRETARY

DATE: APRIL 2, 1992

SUBJECT: MUR 3342 - GENERAL COUNSEL'S REPORT
DATED MARCH 30, 1992.

The above-captioned document was circulated to the
Commission on Monday, MARCH 30, 1992 at 4:00 p.m..

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	XXX
Commissioner Thomas	_____

This matter will be placed on the meeting agenda
for Tuesday, April 7, 1992.

Please notify us who will represent your Division before
the Commission on this matter.

5043643694

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Gephardt for President Committee;
S. Lee Kling, as treasurer.

)
)
)
)

MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on April 7, 1992, do hereby certify that the Commission decided by a vote of 6-0 to approve the disclosure to the Gephardt for President Committee of the names of all respondents in MUR 3342 identified as a result of DSR 90-16.

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

Attest:

4-8-92
Date

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

5043643695



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 9, 1992

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President Committee
S. Lee Kling, as treasurer

Dear Mr. Bauer and Ms. Corley:

On April 7, 1992, the Federal Election Commission considered and approved your request for the identities of persons who have been made respondents in MUR 3342 as a result of DSR 90-16. These persons are as follows:

Heard, Goggan, Blair & Williams
of San Antonio, Texas
Katz, Kutter, Haigler, Alderman, Davis,
Marks and Rutledge of Tallahassee, Florida
Swann & Haddock of Orlando, Florida
Mack E. Barham
William Fleming
Richard Hughes
Trammel Crow Company
Beryl Anthony for Congress Committee
and Joseph Hickey, as treasurer
Slattery for Congress Committee
and Mike Van Dyke, as treasurer

If you have any additional questions, please contact me at
(202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over the typed name.

Anne A. Weissenborn
Senior Attorney

5043643696

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

OGC
4728

JONES, DAY, REAVIS & POGUE

92 APR 17 PM 2:34

ATLANTA IRVINE
AUSTIN LONDON
BRUSSELS LOS ANGELES
CHICAGO NEW YORK
CLEVELAND PARIS
COLUMBUS PITTSBURGH
DALLAS RIYADH
FRANKFURT TAIPEI
GENEVA
HONG KONG TOKYO

METROPOLITAN SQUARE
1450 G STREET, N.W.
WASHINGTON, D.C. 20005-2088

TELEPHONE 202-879-3830
TELEX DOMESTIC 802410
TELEX INTERNATIONAL 64363
CABLE ATTORNEYS WASHINGTON
FACSIMILE 202-737-2832
WRITER'S DIRECT NUMBER

(202) 879-4640

April 17, 1992

HAND DELIVERED

Anne A. Weissenborn, Esq.
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463

Re: MUR 3342

Dear Ms. Weissenborn:

This letter constitutes the response of Trammell Crow Asset Company (formerly known as Trammell Crow Company), a Texas corporation ("Trammell Crow" or the "Company"), to the referenced Matter Under Review initiated by the Federal Election Commission (the "Commission" or "FEC") by letter dated March 10, 1992 and received by the Company on March 27, 1992.

In its letter, the FEC alleges that Trammell Crow violated 2 U.S.C. § 441a(a)(1)(A) by making a contribution of \$3,936 -- in excess of applicable limits. Specifically, the Commission asserts that by providing use of its aircraft to a candidate for federal office without being reimbursed in advance, and by later agreeing to forgive a portion of that debt, Trammell Crow made a contribution to that candidate in excess of statutory limits.* /

* / Because Trammell Crow is a Texas corporation and not a partnership as stated in the FEC's March 10, 1992 letter, the alleged violation does not fall within the ambit of 2 U.S.C. § 441a(a)(1)(A), which prohibits contributions exceeding \$1,000 per candidate. Rather, Trammell Crow's activities are restricted by 2 U.S.C. § 441b, which prohibits any contributions or expenditures by a corporation in connection with a federal election.

5043643697

Facts

In early 1988, the Gephardt for President Committee (the "Committee") requested that Trammell Crow permit use of its corporate aircraft by Committee officials for campaign purposes. Trammell Crow -- relying upon the advice of Committee staff -- agreed to provide transportation to the candidate and five other individuals using Trammell Crow's aircraft for a February 19, 1988 trip from Dallas, Texas to Marshall, Texas and then to Minneapolis, Minnesota. The Committee calculated the price of the air fare based on first-class quotes of \$656 per passenger and advised Trammell Crow to submit to the Committee a bill for \$3,936.00 for reimbursement as payment in full for the Committee's use of the aircraft. At all times, Trammell Crow believed its actions were proper, based upon the advice of Committee staff.

Congressman Gephardt withdrew from the Presidential race later that spring. Trammell Crow made several unsuccessful attempts to obtain repayment, but by early 1989 it became evident that the Committee would be unable to repay the debt owing to Trammell Crow for the February 1988 trip. After it became apparent that any debt owed by the Committee might have to be written off entirely by the Company, Trammell Crow and the Committee entered into debt settlement discussions pursuant to 11 CFR 114.10 (1989). In a debt settlement agreement executed by the Company on August 28, 1989, Trammell Crow agreed to accept \$393.60, or 10% of the outstanding balance owing. Based upon the knowledge and belief of officials at Trammell Crow, the FEC was informed promptly by the Committee of the terms of this settlement.

ANALYSIS

At the time the aircraft was offered for use by the Committee, a corporation was free to extend credit to a candidate, political committee, or other person in connection with a federal election provided that the credit was extended in the ordinary course of the corporation's business and the terms were substantially similar to extensions of credit to nonpolitical debtors. 11 CFR § 114.10 (1989). The law has remained constant with respect to the use of corporate aircraft by a candidate for federal office: A candidate must in advance reimburse the corporation when it uses an airplane owned or leased by a corporation other than one licensed to offer commercial services for travel in connection with a federal election. 11 CFR § 114.9(e)(1).

Because Trammell Crow was neither licensed to offer commercial services for travel nor extending credit in the

15043643693

ordinary course of its business, we understand that the Commission staff may consider the Company's advance of aircraft use (and subsequent forgiveness of 90% of the outstanding indebtedness) as a prohibited corporate contribution. The Company has requested that the Committee refund the \$2,542.40 forgiven, but because the Company understands that the Committee is currently without the means to comply with this request, Trammell Crow hereby requests the opportunity to engage in informal methods of conciliation with the FEC prior to a probable cause determination by the Commission pursuant to 2 U.S.C. § 437g(a)(4)(A)(i). We understand that conciliation discussions in the Matter Under Review noted above may continue for a period of not more than 90 days.

We would appreciate your prompt consideration of our request. If you desire any further information or have questions concerning this request, please contact me at the number above.

Sincerely,

R. Todd Johnson / D.Y.
R. Todd Johnson

15043643692

DANIEL L. WATKINS
ATTORNEY AT LAW
211 EAST 8TH STREET, SUITE C
LAWRENCE, KANSAS 66044

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

APR 20 10 07 AM '92

April 15, 1992

TELEPHONE:
(913) 843-0181

The Honorable Joan D. Aikens
Federal Election Commission Chair
c/o Anne A. Weissenborn, Office of General Counsel
999 E Street, NW
Washington, DC 20463

RE: MUR 3342

Dear Ms. Aikens:

I am writing on behalf of The Slattery for Congress Committee to respectfully request pre-probable cause conciliation of the above referenced matter.

The Slattery for Congress Committee did pay the postage for a pre caucus mailing in 1988 to some Kansas Democrats in which Rep. Slattery announced his support of Rep. Gephardt for the Democratic nomination for President and encouraged Kansas Democrats to participate in the Kansas caucus.

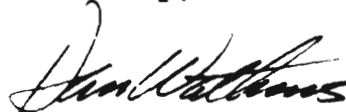
The Slattery for Congress Committee did not intend to violate Federal election laws and requests the opportunity to conciliate this matter. As Assistant Treasurer, I will be the contact for any notifications and other communications at the address and phone number on this correspondence.

Attached is the documentation I currently have regarding this expenditure and settlement. As noted above, this does evidence a mailing in 1988 and a subsequent settlement of any amounts owed by the Gephardt Committee. I will search our campaign files to see if additional information on this expenditure and settlement exists.

The Committee would appreciate the opportunity for pre-probable cause conciliation of this matter so that an agreement in settlement of the matter could be proposed to the Commission.

Thank you for your consideration.

Sincerely,



Dan Watkins
Assistant Treasurer
Slattery for Congress Committee

DW:sjr

92 APR 20 AM 3:17

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

15043643700

DEBT SETTLEMENT AGREEMENT

The Gephardt for President Committee, Inc. (the "Committee") has entered into a Debt Settlement Agreement with Slattery For Congress Committee (the "Vendor").

The Debt Settlement Agreement covers the following obligation:

- * Purpose of Obligation: Postage and supplies
- * Initial Terms of Credit: Payable Upon Receipt
- * Outstanding Balance: \$4,804.63
- * Settlement Agreement Amount: \$480.46

In entering into this Debt Settlement Agreement, the Committee and the Vendor agree that:

- * the initial extension of credit to the Committee was made in a commercially reasonable manner;
- * the Committee has undertaken all reasonable efforts to satisfy the outstanding obligation but has been unable to do so; and
- * the Vendor has taken all commercially reasonable steps to collect the full amount but has been unable to do so.

For the Vendor:

Don Watkins
Name

Asst Treasurer
Title

10/3/88
Date

For the Committee:

Jacqueline M. Forte
Name

Controller
Title

9/15/88
Date

5043643701

THE GEPHARDT COMMITTEE

555 NEW JERSEY AVENUE N.W., SUITE 265
WASHINGTON, D.C. 20001 (202) 628-3337

September 15, 1988

Mr. Dan Watkins
Assistant Treasurer
Slattery For Congress Committee
444 Southeast Quincy
Topeka, KS 66683

Dear Mr. Watkins:

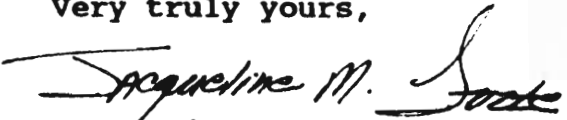
This letter is in reference to the obligations owed to you by the Gephardt for President Committee, Inc. (the "Committee") in the amount of \$4,804.63.

As you may know, when Congressman Gephardt withdrew from the presidential race at the end of March, the campaign ended with a debt of approximately \$2 million. Through fundraising efforts, the Committee has been attempting to reduce that debt. It does not appear, however, that the Committee will be able to raise sufficient funds to retire all its debts in full. You have agreed, therefore, that the obligation owed to you will be settled in full for the amount of \$480.46.

Under federal regulations, the Committee must submit a notice of this debt settlement to the Federal Election Commission for their review. In order to facilitate this submission, would you please execute the enclosed form and return it to the Committee in the enclosed postage-paid envelope. This form contains the information required by the FEC for debt settlements. You should keep a copy of the executed form for your records.

If you have any questions, please do not hesitate to contact the undersigned at (202) 628-3337.

Very truly yours,


Jacqueline M. Forte

SEP 27 1988

15043643702

SEP 20 1988

BATTERY FOR CONGRESS COMMITTEE

P. O. BOX 1978
TOPEKA, KS 66601

3284

Mar 8 88

44-112/1011

PAY TO THE
ORDER OF

Postnet Service

\$7,804.63

Four thousand eight hundred four and 63/100

DOLLARS



**Highland Park
Bank & Trust**

bulk mailing

W. L. Anderson

101101138 33-133x3 3284

0000480463

5043643703



FOR DEPOSIT ONLY
USPS POSTAL SERVICE
TOPEKA, KS 66603-9999
ACCT. #50-008-7

1. POSTAL CUSTOMER KNOWN
2. UNKNOWN CUSTOMER

NAME _____
ADDRESS _____

PHONE # _____
IDENTIFICATION (2) AND SIGNATURE _____
TYPE _____

NO. _____
TITLE _____

3. WELL-KNOWN FIRM
4. REPRESENTATIVE KNOWN
5. UNKNOWN FIRM-POSTMASTER
6. ST. REP. KNOWN

DATE _____

10405526

10405526

GEPHARDT FOR PRESIDENT COMMITTEE INC.
504 PENNSYLVANIA AVE. SE
WASHINGTON, D.C. 20003

FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C.
18-157/540

CHECK NO. 000595

DATE
09/14/88

CHECK NO.
000595

NET AMOUNT
****480.46****

PAY *****four hundred eighty dollars and 46/100*****

TO THE ORDER OF
Station for Congress Committee
444 Southeast Quincy
Suite 200
Arlington, VA 22203

Bob R.
Signature

⑈000595⑈ ⑆054001576⑆ ⑈01 002015 01⑈

OCT 17 1988

No letter needed

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MUR 3342

AUDIT REFERRAL - APRIL 24, 1992

5043643705



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AR-92-27

April 24, 1992

MEMORANDUM

TO: LARRY NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: GEPHARDT FOR PRESIDENT INC. MATTERS REFERABLE

On April 21, 1992 the Commission approved for referral to your office two matters:

Transfer Received from the Gephardt in Congress Committee

Use of Funds for Non-qualified Campaign Expenses

If you have any questions or wish to review any additional workpapers, please contact Tom Nurthen.

Attachments:

- EXHIBIT A Transfer Received From the Gephardt in Congress Committee
- EXHIBIT B Use of Funds for Non-Qualified Campaign Expenses

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MH002472

Transfer Received From The Gephardt In Congress
Committee

Section 113.1(e) of Title 11 of the Code of Federal Regulations*/ defines excess campaign funds as amounts received by a candidate as contributions which he or she determines are in excess of any amounts necessary to defray his or her campaign expenditures.

Section 110.3(a)(2)(v)(A) of Title 11 of the Code of Federal Regulations states, in part, that this section shall not limit transfers between the principal campaign committee of a candidate seeking nomination or election to more than one Federal office, as long as the transfer is made when the candidate is not actively seeking nomination or election to more than one office. For purposes of this paragraph, "not actively seeking" means a principal campaign committee has filed a termination report with the Commission, or has notified the Commission that the candidate and authorized committees will make no further expenditures, except in connection with the retirement of debts outstanding at the time of the notification.

Section 110.3(a)(2)(v)(C) of Title 11 of the Code of Federal Regulations states that this section shall not limit transfers between the principal campaign committee of a candidate seeking nomination or election to more than one Federal office, as long as the candidate has not received funds under 26 U.S.C. 9006 or 9037.

On March 28, 1989, the Gephardt in Congress Committee ("Congressional Committee") notified the Office of the Clerk, U.S. House of Representatives, that it "declared a surplus of funds in its congressional re-election from 1988" and transferred \$50,000 to the Gephardt for President Committee, Inc. on December 12, 1988.

It is the opinion of the Audit Staff that the regulations at 11 C.F.R. §110.3(a)(2)(v)(C) prohibit such a transfer since the Candidate/Committee received matching funds under 26 U.S.C. §9037. Therefore, funds of the Congressional Committee cannot be transferred to the Presidential Committee.

This matter was not included in the interim audit report, thus the Committee was not afforded an opportunity to respond.

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

The interim addendum to the final audit report recommended that the Committee provide evidence which demonstrates that the transfer was permissible, or refund \$50,000 to the Congressional Committee and provide evidence of such refund.

In response, Counsel for the Committee states that

"The Audit Division misapprehends the law applicable to the matter. The regulation cited by the Auditors addresses transfers by a principal campaign committee of 'a candidate seeking nomination of election to more than federal office' during the same election cycle. This does not capture the circumstances under which the transfer at issue in the Audit Report was made. The GICC [Gephardt In Congress Committee] transfer was made under the provisions of 2 U.S.C. § 439(a), that is, by a declaration of 'surplus funds' accumulated by the congressional committee before the 1988 general election. By the time the transfer was made, however, on December 12, 1988, the 1988 congressional committee had completed its work and the election in connection with which it had operated was over. Congressman Gephardt was already a candidate at this time for reelection in the 1990 election, as demonstrated by the filing on December 15, 1988 (within 15 days of becoming a candidate) of his amended Statement of Candidacy designating GICC as his principal campaign committee for the 1990 election.

The relevant section of the regulations is not, therefore, § 110.3(a)(2)(v), but rather §110.3(a)(2)(iv). This section holds that transfers are unlimited between:

(iv) A candidate's previous campaign committee and his or her currently registered principal campaign committee or other authorized committee, as long as none of the funds transferred contain contributions which would be in violation of the Act;...

This provision captures the essential point: that the transfer in question was not made in the same election cycle, but between the candidate's previous campaign committee [GPC] and his currently registered campaign committee [GICC]. Further support can be found in the Commission's 1989 amendment to these regulations, made to clarify the very provisions at question here. In the revised

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transfer regulations, the Commission defined the term 'previous Federal campaign committee' as 'a principal campaign committee that was organized to further the candidate's campaign in a Federal election that has already been held.' 11 C.F.R. § 110.3(c)(4)(i). This definition clearly fits GICC in December 1988.

For these reasons, it was a permissible transfer of funds and any question raised about this transfer in the course of the audit process should be considered to have been resolved."

Counsel for the Committee appears to be saying that the excess funds were accumulated before the 1988 election and that by the time the transfer was made, on December 12, 1988, the 1988 Congressional Committee had completed its work and the election in connection with which it had operated was over. He also states that Congressman Gephardt was already a candidate at this time for re-election in the 1990 election, as demonstrated by the filing on December 15, 1988 (within 15 days of becoming a candidate) of his amended Statement of Candidacy designating GICC as his principal campaign committee for the 1990 election. He appears to conclude that even though the 1988 Congressional Committee declared a surplus of funds, such funds were actually funds of the 1990 Congressional Committee and the 1990 Congressional Committee transferred these excess funds to the Presidential Committee pursuant to 11 CFR §110.3(a)(2)(iv). This sections permits unlimited transfers between a candidate's previous campaign committee and his currently registered principal campaign committee, as long as none of the funds transferred contain contributions which would be in violation of the Act.

If this is in fact Counsel's position, the Audit staff believes that there are several defects in his reasoning, specifically with respect to the actions of the 1988 Congressional Committee, the Candidate's status on December 15, 1988 as suggested by the amended Statement of Candidacy, the permissibility of the funds transferred, as well as the application the above mentioned Regulation.

With respect to the 1988 Congressional Committee, it is the Audit staff's opinion that Counsel is incorrect in stating

"By the time the transfer was made, however, on December 12, 1988, the 1988 congressional committee had completed its work"

It should be noted that the 1988 Congressional Committee reported making general election expenditures, totaling \$53,168.10, during the period 12/12/88 to 12/31/88, the obligations for which

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apparently existed on or before the date of the transfer (12/12/88) and more likely on or before the date of the 1988 general election (11/8/88). For example, the 1988 Congressional Committee reported making a \$34,000 general election expenditure on 12/20/88 to its media firm for "consulting", and two \$5,000 general election expenditures on 12/19 and 12/20/88 respectively for phone bank services. Further, the Congressional Committee did not report any debts owed for the periods 10/1/88 through 10/19/88, 10/20/88 through 11/28/88, and 11/29/88 through 12/31/88.

With respect to Counsel's assertion, that

"Congressman Gephardt was already a candidate at this time for reelection in the 1990 election, as demonstrated by the filing on December 15, 1988 (within 15 days of becoming a candidate) of his amended Statement of Candidacy designating GICC as his principal campaign committee for the 1990 election" (Emphasis not in original),

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it should be noted that Commission records appear to offer a somewhat different scenario. The date on the Candidate's Statement of Candidacy form appears to have been altered. The date does in fact now read 12/15/88, however, it is our opinion that this date at one time read 1/15/89. Further, the Statement of Candidacy form was mailed to the Office of the Clerk, U.S. House of Representatives on February 2, 1989, and received by the Office of the Clerk on February 10, 1989. In addition, the date on the 1990 Congressional Committee's Statement of Organization also appears to have been altered from 1/15/89 to 12/15/88, this statement was also mailed to the Clerk's Office on February 2, 1989 and received on February 10, 1989. A January 15, 1989 date, in our opinion, is more consistent with a mailing date of February 2, 1989, than that of a December 15, 1988 date.

Further, Counsel contends that the relevant section of the regulations is not section 110.3(a)(2)(v), but rather section 110.3(a)(2)(iv), which permits unlimited transfers between a candidate's previous campaign committee (the Presidential Committee) and his currently registered principal campaign committee (the 1990 Congressional Committee) or other authorized committee, as long as none of the funds transferred contain contributions which would be in violation of the Act.

It is our opinion, that the reports filed by the 1988 Congressional Committee demonstrate that on December 12, 1988, (date of transfer) it had not completed its work as evidenced by it making general election expenditures, totaling \$53,168.10, during the period 12/12/88 through 12/31/88. Further, the filings of the Candidate and the 1990 Congressional Committee apparently

originally dated January 15, 1989 demonstrate that the 1988 Congressional Committee was the Candidate's principal campaign committee through December 1988. Therefore, the transfer of \$50,000 on December 12, 1988, was made by the Candidate's 1988 Congressional Committee and prohibited by 11 CFR §110.3(a)(2)(v)(C), since the Candidate/Presidential Committee received matching funds under 26 U.S.C. §9037.

Finally, even if the governing regulation is 11 C.F.R. §110.3(a)(2)(iv) as Counsel suggests, it is the opinion of the Audit staff that no portion of the 1988 Congressional Committee's funds can be transferred to the Presidential Committee. The Congressional Committee received \$10,000 on November 8, 1988 and \$40,000 on December 2, 1988 from the Gephardt Committee (the joint fundraising committee). These funds represented either contributions designated by the contributors to the Congressional Committee or contributions which by law (and by the joint fundraising agreement)*/ could not have been accepted by the Presidential Committee, since the contributors already contributed up to the legal limit of \$1,000. Further, absent review of bank records (statements, deposits tickets, etc.) of the Congressional Committee, it appears that the amount transferred to the Presidential Committee (\$50,000) included all of the \$10,000 and possibly some portion of the \$40,000 the Congressional Committee received from the joint fundraising committee. As a result, the transfer could not have been made pursuant to 11 C.F.R. §110.3(a)(2)(iv), as the funds transferred contained contributions which would be in violation of the Act.

It is the opinion of the Audit staff that the Committee has not demonstrated that the transfer was permissible nor has it refunded \$50,000 to the Congressional Committee.

Recommendation

Based on the above the Audit staff recommends that this matter be referred to the Commission's Office of General Counsel.

*/ The joint fundraising agreement provides that all contributions received by the joint fundraising committee, except those which are specifically designated by the contributor for the Congressional Committee, will go to the Gephardt for President Committee, Inc., unless the contribution, when aggregated with other contributions made directly by the contributor, exceed his/her limitation.

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MH002798

Use of Funds for Non-Qualified Campaign Expenses

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

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

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

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

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

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

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

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

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

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

In response, Counsel for the Committee states that

"The Committee has attempted to develop information about this mailing list. Its review is not complete, but if additional information becomes available it will, of course, provide it to the Commission.

To date, the Committee has determined the following circumstances surrounding this mailing list: It appears that the Iowa Democratic Party offered its mailing list to a number of candidates in return for their agreement to help the Party with its fundraising efforts. Among the candidates offered the list on this basis was Congressman Gephardt. The Iowa Democratic Party apparently intended on one basis or the other to make the information contained in this list available to all candidates so long as they reciprocated with some measure of fundraising assistance to the Party. A review of relevant news reports for the period in question will find numerous suggestions that the Iowa Democratic Party sought to maximize its advantage in fundraising with a broader array of presidential candidates whose interest in the fortunes of the Party was heightened by the pending Democratic presidential caucuses.

Nonetheless, the Committee does not take this to be a complete account of the matter. At this point, a number of the employees who might have recollections of the matter are no longer with the Committee and attempts to contact them and interview them about the matter have been unavailing. Should the

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Commission chance upon any information which would be useful to the Committee in its review, it would be most helpful to have this information so the Committee can act upon it."

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

Recommendation

Based on the above the Audit staff recommends that this matter be referred to the Commission's Office of General Counsel. Further, this matter should be considered in conjunction with the referral made on May 17, 1991 concerning expenditures in excess of the Iowa state limit (MUR 3342).

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FOR DISCUSSION OF THE ISSUES RAISED IN THIS REFERRAL,
SEE GENERAL COUNSEL'S REPORT DATED JUNE 7, 1993

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

APR 27 12 40 PM '92

April 21, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Joan D. Aikens
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 3342
Beryl Anthony For Congress Campaign Committee

Dear Ms. Aikens:

This is in response to your inquiry dated March 10, 1992. That inquiry asked for a response within fifteen days from the date I received it. You granted me an extension until April 21.

Your inquiry stems from advances made by the Anthony For Congress Campaign Committee (AFCCC) on behalf of the Gephardt for President Committee (GFPC) in 1988.

In the Fall of 1987, Mr. Gephardt was a candidate for the Democratic Nomination for President of the United States. Congressman Anthony invited Mr. Gephardt to Little Rock, Arkansas for a fundraiser dinner on behalf of Mr. Gephardt's Presidential Campaign. The expenses incurred in putting on the dinner were:

\$ 178.45	10/23/87	Standard Printing & Stationery 110 East Elm Street El Dorado, AR. 71730
139.26	10/23/87	U. S. Postmaster El Dorado, AR. 71730
2451.89	10/27/87	Excelsior Hotel 3 State House Plaza Little Rock, AR. 72207
690.00	11/18/87	Arkansas Aircraft, Inc. Suite C Lindberg Drive Jonesboro, AR. 72401

\$3459.60

TOTAL

Paid for by Anthony for Congress Committee
P.O. Box 1871 • El Dorado, AR 71731 • (501) 862-0992

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April 21, 1992
Page 2

The Gephardt campaign organization committed to prompt reimbursement for the expenses.

After the fundraiser dinner, a long time friend of Congressman Anthony, Barbara McBryde, worked in the Gephardt for President Campaign office in North Little Rock, Arkansas. GFPC did not reimburse her for the rent of \$500 for the campaign headquarters, and \$145.65 for telephone service at the campaign headquarters office, for a total of \$645.65. AFCCC reimbursed Ms. McBryde the \$645.65 on December 8, 1987 and December 18, 1987.

After preparing the FEC Report for the period ending December 31, 1987, I wrote GFPC on January 6, 1988 asking that AFCCC be reimbursed for the expenses incurred at the fundraiser dinner and the campaign headquarters. When I did not immediately receive payment in response to my January 6, 1988 letter, I contacted Robert F. Bauer, Esquire, to find out how long GFPC had to pay this bill before being in violation of any federal election laws. Mr. Bauer advised me in writing dated January 26, 1988 that as long as it was paid within a "commercially reasonable time", there should not be a violation of the federal election laws.

On February 3, 1988, Mr. Bauer told me that he had spoken to GFPC and he was assured that it would make payment immediately. Payment was not made, however.

After preparing the FEC report for the period ending June 30, 1988, I once again inquired into the status of the payment by GFPC. On September 2, 1988, I spoke to Boyd Lewis at GFPC who offered to pay ten cents on the dollar in full satisfaction of the debt. He represented that campaign counsel would provide an opinion that the compromise of this debt by AFCCC would not constitute an illegal contribution by AFCCC to GFPC. I wrote Congressman Anthony on September 7, 1988, to relate this information to him. Congressman Anthony approved the compromise in reliance of the representation of GFPC that the compromise would not violate any federal election laws. I then notified GFPC that the compromise would be acceptable. We never received the opinion of campaign counsel that Mr. Lewis promised he would provide us.

The \$410.53 payment was received on or about January 20, 1989. The receipt of the payment was reported on the FEC Report for the period ending July 31, 1989.

On or about November 23, 1990, the FEC notified AFCCC that it had instructed the GFPC to repay the full debt owed to AFCCC. After receiving that letter, we contacted GFPC and it told us it was broke.

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April 21, 1992
Page 3

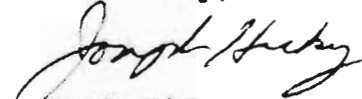
Under the circumstances, the advances made for the dinner fundraiser were incurred in the ordinary course of business. The guests at the dinner were long time friends and supporters of Congressman Anthony. The money was advanced with the express understanding of Congressman Anthony and Mr. Gephardt that the money would be quickly reimbursed from the proceeds of the fundraiser. The hotel required that the money be paid at the time of the event and would not allow it to be paid at a later date. Everything that could possibly be done to collect the money was done after it was discovered that it wasn't repaid as quickly as promised.

There is no requirement that goods and services be paid for in advance. The FEC regulations provide only that "the extension of credit by any person for a length of time beyond normal business or trade practice is a contribution." 11 C.F.R. Sec. 100.7(a)(4).

There was never any intent by AFCCC to make a contribution to GFPC.

Based upon the foregoing, I respectfully request that no action be taken against The Beryl Anthony For Congress Campaign Committee or the undersigned as its Treasurer.

Yours truly,


Joseph Hickey

JH/cb

pc: The Honorable Beryl Anthony

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RECEIVED
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SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

92 MAY 21 PM 3:59

SENSITIVE

In the Matter of)

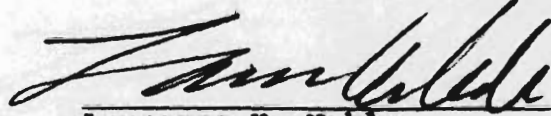
Edmund M. Reggie)
James C. Robinson)
William D. Rollnick)

MUR 3342

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to Edmund M. Reggie, James C. Robinson, and William D. Rollnick based on the assessment of the information presently available.

5/21/92
Date


Lawrence M. Noble
General Counsel

5043643719



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

May 28, 1992

Edmund M. Reggie
c/o Reggie Harrington and Reggie
Post Office Drawer D
Crowley, LA 70527-6004

RE: MUR 3342
(formerly MUR 3111)

Dear Mr. Reggie:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on April 16, 1991, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in this matter. At that time this matter was designated MUR 3111. Since then MUR 3111 has been merged with MUR 3342 and now bears the latter designation.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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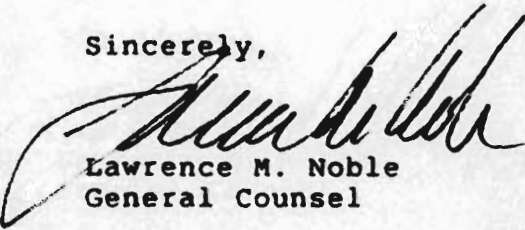
Edmund M. Reggie
page 2

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

5043643721

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Edmund M. Reggie

)
)
)

MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On April 16, 1991, the Commission found reason to believe that Edmund M. Reggie had violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee ("the Committee"). Mr. Reggie was notified of the Commission's determination and has submitted a response. (Attachment 1).

II. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his or her authorized committee with respect to any election for Federal office. 11 C.F.R. § 103.3(b)(3) provides that contributions which, when aggregated with other contributions, exceed the statutory limitations may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt.

During the Commission's audit of the Committee's records, it appeared that Edmund M. Reggie had made three contributions to the

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Committee totaling \$3,500, including \$500 received on June 30, 1987, \$2,000 received on September 30, 1987, and \$1,000 received on November 4, 1987. The Committee refunded \$2,500 on February 15, 1990.

In his response to the Commission's finding of reason to believe, Mr. Reggie acknowledged the June, 1987 and September, 1987, contributions, but questioned whether he had made the third contribution of \$1,000 in November of that year. (Attachment 1). He stated further,

I was under the impression that I could contribute the initial \$500 to his campaign to get the campaign started, and that such contribution would not count against any contribution made by me after Mr. Gephardt actually qualified under the FEC.

When I made the \$2,000 contribution, I was told by the solicitor of the contribution that it was legal.

The \$1,000 contribution in November questioned by Mr. Reggie was written on a First City Bank of New Orleans account, not on an account with the Louisiana Bank and Trust Company of Crowley, Louisiana, as were the earlier two checks. The First City Bank account was in the name of Ed Michael Reggie, not Edmund M. Reggie, the name on the first two checks. During a recent telephone conversation with Mr. Reggie, he stated that Ed Michael Reggie is his son.

Thus, it seems clear that Edmund Reggie was responsible for only \$2,500 of the contributions to the Committee cited above; however, he still exceeded his contribution limitation by \$1,500. The Committee has refunded more than the full amount of the

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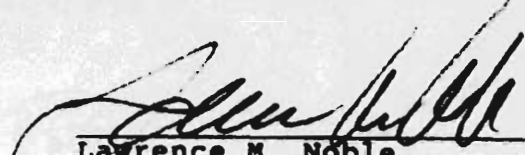
excessive portion of the aggregated contribution, but did not do so until after the sixty day period provided by regulation.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Edmund M. Reggie violated 2 U.S.C. § 441a(a)(1)(A).

Date

5/28/92


Lawrence M. Noble
General Counsel

5043643724



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 28, 1992

William D. Rollnick
c/o William Rollnick & Co., Inc.
2445 Faber Place
Suite 200
Palo Alto, CA 94303

RE: MUR 3342
(formerly MUR 3111)

Dear Mr. Rollnick:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on April 16, 1991, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in this matter. At that time this matter was designated MUR 3111. Since then MUR 3111 has been merged with MUR 3342 and now bears the latter designation.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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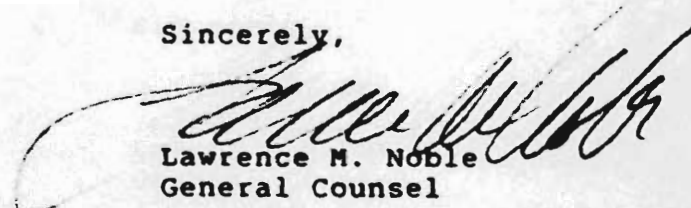
William D Rollnick
page 2

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

5043643/26

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
William D. Rollnick

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MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On April 16, 1991, the Commission found reason to believe that William D. Rollnick had violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee ("the Committee"). Mr. Rollnick was notified of the Commission's determination and has submitted a response. (Attachment 1).

II. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his or her authorized committee with respect to any election for Federal office. 11 C.F.R. § 103.3(b)(3) provides that contributions which, when aggregated with other contributions, exceed the statutory limitations may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt.

11 C.F.R. § 110.1(k)(1) requires that contributions made by more than one person include the signature of each person on the

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check, money order or other negotiable instrument, or in a separate writing.

William Rollnick made two contributions totaling \$3,000 to the Committee, including \$2,000 which was received on February 29, 1988, and \$1,000 received on March 4, 1988. The checks were signed only by himself. The Committee refunded \$1,000 on February 15, 1990. The Committee also received a reattribution of \$1,000 to Eloise B. Rollnick on an unknown later date.

In his response, Mr. Rollnick has stated that a few days after sending a check for \$1,000 to the Committee in February, 1988, he was told by a Committee representative that the check had not been received.

After checking two or three times with my bank, I was reasonably sure it was lost and sent a new check to the Committee for \$2,000. The first \$1,000 was to replace the lost check and the second \$1,000 was from my wife. I had not felt it necessary to put a "stop payment" on the first check. This obviously was a mistake on my part because at the end of March both checks cleared the bank. At that time I phoned the committee and was assured that the \$1,000 refund would be forthcoming. I must admit I do not remember when I finally received the refund but if you say it was February 1990, I cannot disagree.

Regarding the 'reattribution' signed by my wife, Eloise, this was the way we always did this i.e. send in the contribution and sign the document sent back by the committee or candidate. This procedure is changed as of this date. We will send it with the check identifying from whom the money is coming from.

Mr. Rollnick does not deny having sent checks totaling \$3,000 to the Committee, but asserts that half of the \$2,000 contribution was intended to replace an earlier \$1,000 contribution which had apparently been lost and that the second \$1,000 of the \$2,000

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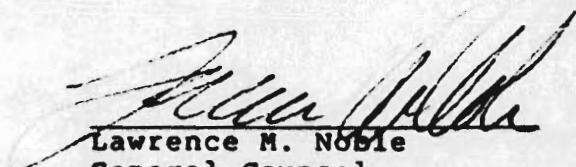
contribution was intended as a contribution from Mrs. Rollnick. He admits that he should have stopped payment on his first \$1,000 check and acknowledges the need for his wife's signature at the time of any contribution. The Committee did not refund or apparently seek reattribution of portions of the contributions until after the sixty day period provided by regulation.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that William D. Rollnick violated 2 U.S.C. § 441a(a)(1)(A).

Date

5/28/92


Lawrence M. Noble
General Counsel

5043643729



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 28, 1992

James C. Robinson
c/o Giles, Hedrick & Robinson, P.A.
One DuPont Centre
390 North Orange Avenue, Suite 800
Orlando, FL 82802

RE: MUR 3342
(formerly MUR 3111)

Dear Mr. Robinson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on April 16, 1991, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in this matter. At that time this matter was designated MUR 3111. Since then MUR 3111 has been merged with MUR 3342 and now bears the latter designation.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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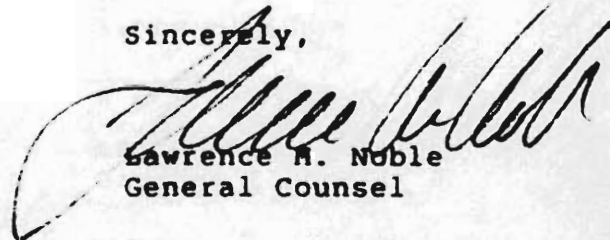
James C. Robinson
page 2

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

5043643731

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
James C. Robinson

)
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)

MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On April 16, 1991, the Commission found reason to believe that James C. Robinson had violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee ("the Committee"). Mr. Robinson was notified of the Commission's determination and has submitted a response. (Attachment 1).

II. ANALYSIS

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his or her authorized committee with respect to any election for Federal office. 11 C.F.R. § 103.3(b)(3) provides that contributions which, when aggregated with other contributions, exceed the statutory limitations may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt.

11 C.F.R. § 110.1(k)(1) requires that contributions made by more than one person include the signature of each person on the check, money order or other negotiable instrument, or in a

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separate writing.

James C. Robinson made four contributions to the Committee totaling \$4,000, two of \$1,000 each on June 29, 1987 and June 30, 1987, and two of \$1,000 each which were received on March 1, 1988. The Committee refunded \$2,000 on February 15, 1990, and obtained a reattribution of \$1,000 to Elizabeth T. Robinson.

With his response to the Commission's reason to believe determination, Mr. Robinson enclosed copies of the four checks used to make the above-listed contributions. All of the checks, written on an apparently joint account, are signed James C. Robinson, but one dated June 25, 1987, contains on the memo line the name and address of Elizabeth T. Robinson, and a second dated February 25, 1988, shows the printed name of Elizabeth T. Robinson underlined above the signature line.

Mr. Robinson states,

I distinctly remember having told the Gephardt people that in each of the two occasions, one donation was from me personally and one from my wife, Elizabeth T. Robinson. I inquired at the time as to the proper amount of the donation and was informed that this was a legal amount.

. . .

[I]t is a customary practice that my wife writes checks out of the joint account for matters which might have been incurred jointly and I do the same for her. My wife was aware and consented to the support and was aware that we were making a donation both in her name and in my name.

It appears that Mr. Robinson initially attempted, albeit unsuccessfully, to have half of the \$4,000 in contributions attributed to his wife, a procedure which would still have resulted in excessive contributions from both. Because Mrs.

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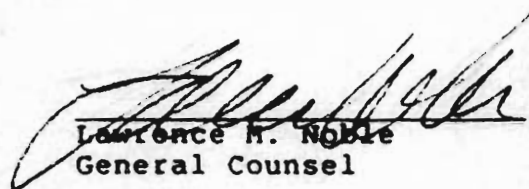
Robinson's signature did not appear on the contribution checks or on accompanying statements, the entire \$4,000 was attributable to Mr. Robinson. The Committee did not refund or seek reattribution of portions of the \$4,000 until long after the sixty day period provided by regulation.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A).

Date

5/28/92


Lawrence H. Noble
General Counsel

5043643734

RECEIVED
F.E.C.
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

92 MAY 21 PM 3:58

In the Matter of

F.P. Blank

MUR 3342

GENERAL COUNSEL'S REPORT

SENSITIVE

I. BACKGROUND

On April 16, 1991, the Commission found reason to believe that F.P. Blank had violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee, Inc., ("the Committee").¹ Counsel for Mr. Blank has requested pre-probable cause conciliation. (Attachments 1 and 2).

II. ANALYSIS

During the audit of the Committee it was noted that the Committee had received \$1,000 contributions from F.P. Blank on June 29, 1987, November 20, 1987, and February 26, 1988, for a total of \$3,000. The Committee refunded \$2,000 on February 15, 1990.

Mr. Blank does not dispute these dates and figures. In a "Statement in Mitigation" (Attachment 2) counsel has explained

1. This reason to believe determination was made in the context of MUR 3111. On October 1, 1991, the Commission voted to merge MUR 3111 with MUR 3342.

On February 25, 1992, the Commission made a series of additional reason to believe determinations which arose from debt settlement requests submitted by the Committee. These determinations included apparent violations of 2 U.S.C. § 441a(a)(1)(A) by certain individuals. This Office believes that, in the interest of fairness, the Commission need not postpone consideration of the situation involving Mr. Blank which is addressed in the present report until such time as all responses are received with regard to the more recent Commission reason to believe determinations.

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that Mr. Blank was solicited in 1987 and 1988 by "various members of the Gephardt for President Committee" and "was led to believe he could properly make a \$1,000 contribution for each election in which Mr. Gephardt was a candidate." Counsel continues,

2. Based upon this mistaken understanding, Mr. Blank made contributions on June 23, 1987, November 16, 1987, and February 23, 1988 of \$1,000 each. On each occasion, Mr. Blank was assured that any contributions for elections that Mr. Gephardt was no longer a candidate would be promptly returned.

. . .

5. As pointed out in the General Counsel's Factual and Legal Analysis, there are procedures set forth in 11 CFR sections 110.1(b)(3) and (5) for campaign committees to follow when excess contributions received to avoid a violation of 2 U.S.C. section 441a(a)(1)(B) [sic]. Essentially, these procedures entail the committee contacting the contributor and requesting reattribution or redesignation of the contribution, or making a refund, within 60 days of receipt of the excess contribution. Had such been done in this case, any violation could have been avoided.

Mr. Blank does not deny making \$3,000 in contributions. It does appear that the information which he received from the Committee regarding his contribution limitations was at the least unclear and possibly inaccurate. In addition, Committee did not make its refund to Mr. Blank until long after the contributions were received. However, the Committee's role should serve only as a mitigating factor during conciliation negotiations.

This Office recommends that the Commission agree to enter into conciliation with F.P. Blank prior to a finding of probable cause to believe and approve the attached proposed conciliation agreement.

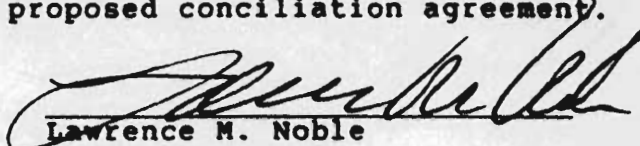
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III. Recommendations

1. Enter into conciliation with F.P. Blank prior to a finding of probable cause to believe.
2. Approve the attached proposed conciliation agreement.

Date

5/21/92


Lawrence M. Noble
General Counsel

Attachments

1. Letter
2. Request for conciliation and Statement in Mitigation
3. Proposed conciliation agreement

Staff member assigned: Anne Weissenborn

5043643737



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS *[Signature]*
COMMISSION SECRETARY

DATE: MAY 26, 1992

SUBJECT: MUR 3342 - GENERAL COUNSEL'S REPORT
DATED MAY 21, 1992.

The above-captioned document was circulated to the
Commission on Friday, May 22, 1992 at 12:00 p.m..

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	_____
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda
for Tuesday, June 2, 1992.

Please notify us who will represent your Division before
the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

F.P. Blank

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)

MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of June 2, 1992, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3342:

1. Enter into conciliation with F.P. Blank prior to a finding of probable cause to believe.
2. Approve the proposed conciliation agreement recommended in the General Counsel's report dated May 21, 1992

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

Attest:

6-4-92
Date

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

5043643739



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 11, 1992

Ken Davis, Esquire
1102 North Gadsden Street
Tallahassee, FL 32303

RE: MUR 3342
(formerly MUR 3111)
F.P. Blank

Dear Mr. Davis:

On April 16, 1991, the Federal Election Commission found reason to believe that your client, Mr. F.P. Blank, had violated 2 U.S.C. § 441a(a)(1)(A). At your request, on June 2, 1992, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne A. Weissenborn", is written over a horizontal line.

Anne A. Weissenborn
Senior Attorney

Enclosure
Conciliation Agreement

5043643710

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

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REGGIE HARRINGTON AND REGGIE

ATTORNEYS AT LAW

526 NORTH PARKERSON AVENUE

REPLY TO

POST OFFICE DRAWER D

CROWLEY, LOUISIANA 70527-6004

FAX (318) 783-6801

TELEPHONE (318) 783-1577

LAFAYETTE, LOUISIANA OFFICE
100 EAST VERMILION STREET
SUITE 303
LAFAYETTE, LOUISIANA 70501
FAX (318) 232-1118
TELEPHONE (318) 264-1577

June 4, 1992

EDMUND M. REGGIE*
BARRETT HARRINGTON
GREGORY F. REGGIE
*ALSO ADMITTED D.C. BAR

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
Washington, D. C. 20463

Re: MUR 3342
(Formerly MUR 3111)

Dear Mr. Noble:


Regarding the above referenced matter, I wish to make an observation concerning contributions to the Gephardt campaign in 1988.

The \$2,000 contributed after the initial \$500 to qualify for funds, came from the Louisiana Bank and Trust Account which was a community property account and therefore represented a \$2,000 contribution from Mrs. Reggie and myself.

I hope you will recognize my good faith in belief that I was wholly within the legal limits in making my contributions. My mens rea, if you will, should be considered. I did not mean to violate any law, and I hope you will give that fact consideration.

Thank you.

Sincerely,



Edmund M. Reggie

EMR/ski

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OFFICE OF THE
GENERAL COUNSEL
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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

June 15, 1992

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK
92 JUN 15 PM 4:41

Lawrence R. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Attn: Anne Weissenborn

Re: MUR 3342 Gephardt for President
Committee - S. Lee Kling as treasurer

Dear Mr. Noble:

Debt settlements submitted by the Gephardt for President Committee, Inc. ("the Committee") have resulted in this Matter Under Review, with the Commission raising issues about the settlement of debts owed to individuals, law firms and political committees.

INTRODUCTION

The Commission concludes, overall, that the "extensions of credit" giving rise in these debts were not provided in the creditors' "ordinary course of business."¹ This results in a finding that the debts, improperly incurred, cannot be settled and must be treated as contributions. Certain of these "contributions," if treated as such, exceed lawful limits or are unlawful by source.

The General Counsel's Office has reached its interpretation under the debt settlement regulations in effect at the time of the settlement.² It holds that political committees and law firms providing goods and services to candidates, with full expectation of reimbursement, are acting outside the "ordinary course" of their business. By "ordinary course",

¹ The Committee does not dispute the Commission's findings on debts owed to individuals and herewith requests preprobable cause conciliation.

² This is conceded at p.3, n.1, of the General Counsel's Report.

Lawrence R. Noble, Esq.
June 15, 1992
Page 2

the General Counsel means the ordinary course of these committees' and firms' business. Political committees, the General Counsel argues, function only in the political, not the commercial sphere, and law firms are limited to offering only legal services. Extensions of credit provided to the Committee, for meeting expenses, telephones and other expenses, cannot in this view, have been made in the "ordinary course".

RELEVANT LAW: LAW FIRMS

As the General Counsel's Office notes, the 1990 "debt settlement" regulations do not govern these 1988 transactions. There remains one additional point about the applicable law, overlooked by the General Counsel and critical to the interpretation of the 1988 debt settlement regulations governing incorporated and unincorporated entities such as the law firms. All of these firms did not "extend credit" in the commercial sense at all. Their involvement arose instead out of volunteer activity by employees and partners, fully allowed under § 114.9 of the Commission regulations.³

These regulations do not apply an "ordinary course" requirement to the types of goods or services provided. Their premise is in opposition to any such notion. The focus is on the purpose of the volunteer, a concededly political purpose, which may be pursued by use of the facilities of the corporation with which he or she is associated.

There is an "ordinary course" requirement grounded in commercial practice, but it relates to the management of the debt, not its origination. Both §§ 114.9(a) and (c) require reimbursement for the use of facilities at a commercially reasonable rate, within a commercially reasonable time. The General Counsel's analysis approaches the question from the wrong end.

The question raised in this matter is the proper course the Committee should have taken when resources ran out and

³ Section 114.9(a) governs generally the use of corporate facilities by volunteers, while § 114.9(c) treats specifically the use of corporate facilities by "any person" -- not only volunteers -- to produce campaign-related materials.

Lawrence R. Noble, Esq.
June 15, 1992
Page 3

timely reimbursement could not be made.⁴ At this point, the Committee considered itself bound by the debt settlement regulations in effect. Since its obligation was controlled by commercial practice under § 114.9 -- reimbursement within a commercially reasonable time -- the resolution of the unpaid debt was also appropriately managed by reference to reasonable commercial practice. This reference to commercial practice shapes the debt settlement regulations of the Commission, then as now.⁵

By the analysis which is appropriate under the law, the Committee must be judged by the standards of § 114.9, not § 114.10. The Committee, like any other terminating after an unsuccessful election effort, could not easily raise funds. Its efforts to do so were consistent and energetic. All outstanding obligations were tallied, and as funds were raised, debt retirement plans were prepared to guide the distribution of available funds among the outstanding debts. The Committee displayed at all times a commitment in good faith to raise all funds possible toward the retirement of these debts.

The law firm creditors took these debts no less seriously. Volunteers connected to these firms had lawfully incurred these debts, and while the firms did not object to their political efforts, none intended to incur unreimbursed costs, much less legal liability.

The Commission is urged to take into account the legal position logically and properly assumed by both the Committee and these law firm creditors. The regulations would appear to support this position, or at least to support this position as any much, if not more, than any other, including that asserted by the Office of General Counsel. Should the Commission proceed with that Office's position, and reject that position,

⁴ There are no grounds for objection to the expected rate of reimbursement.

⁵ Revision of the current regulations has not completely clarified the course for political committees in circumstances such as these. Failure to make timely reimbursement, in the case of terminating committees, can still present the need for some settlement, in fairness to the creditor and in keeping with the regulations' insistence on reasonable commercial practice.

Lawrence R. Noble, Esq.
June 15, 1992
Page 4

reasonably presented by the Committee, the issue will be resolved in a way which penalizes legitimate voluntary activity for developments -- an unsuccessful campaign and a shortage of funds -- beyond the control of the Committee or its creditors.

Finally, the General Counsel's argument is questionable even if the terms in which it is argued were accepted. While law firms frequently incur expenses on behalf of clients, related to their legal representation, American law firms have never limited their scope of public activity in the manner described by the General Counsel. Law firms in this country support a wide variety of public service and political activities. Some do so in expectation of greater community visibility and reputation, others out of a sense of obligation, and still others because they count among their partners and employees individuals who keenly appreciate the kinship in the United States of law and politics, lawyers and politicians. The firms in question here, supporting individual volunteer activity and anticipating no economic loss, conducted themselves squarely within this tradition.⁶ A cramped emphasis on the "ordinary course" of their fee-generating activities entirely misses this fact of American law firm life.

The Commission should decline the proceed further in the matter of the debt settlements reached by the Committee with law firms.

THE POLITICAL COMMITTEES

By the same reasoning applied to law firms, the political committees are treated by having made "contributions" in the form of extensions of credit outside the "ordinary course" of their activities. All of these committees also expected market rate reimbursement within a commercially reasonable period of time. This expectation failed, in the same way that it failed, and for the same reasons, in the case of the law

⁶ One is reminded of the long life of this tradition by this often - cited observation of DeTocqueville that "lawyers form the political upper class" in America, "called on to fill most public functions." Democracy in America (Harper and Row 1969) at pp. 268, 269.

Lawrence R. Noble, Esq.
June 15, 1992
Page 5

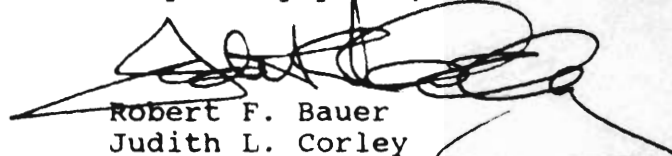
firms and other creditors. The campaign closed down, ran out of money and had trouble in the wake of defeat raising more.

Failure in the end does not invalidate the good faith on both sides at the beginning. Nor does it stand to reason that political committees should enjoy lesser right in this regard than law firms or other corporations which may extend credit under § 114.9. The law imposes an absolute prohibition on corporate election-influencing activity, yet still makes room for extensions of credit for the use of facilities to produce materials and for other purposes. Political committees, far less restricted than corporations in all other material respects, cannot sensibly be disfavored in this one.

Further, it could be argued that the political committees were acting in their ordinary course by paying for events featuring Congressman Gephardt. While the principal purpose of the activity was to benefit the Committee, the political committees also received benefit from the ability to invite their donors and contacts to meet Congressman Gephardt, potentially the next president of the United States. Such an event could also attract a wider base of potential contributors than would otherwise appear at an event only for the political committee.

The Commission should decline to proceed on the debt settlements reached by the Committee with political committees.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel for Respondents

RFB:JLC:smb

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GILES, HEDRICK & ROBINSON, P. A.

LE ROY B. GILES (1886-1963)
DAVID W. HEDRICK
JAMES C. ROBINSON
WILLIAM G. MITCHELL
HARLAN TUCK (1925-1989)
EUGENE S. CAWOOD
JOHN J. REID
SUSAN F. MURPHY
STEPHEN F. BROOME
WILLIAM H. DAVIS
E. GIVENS GOODSPEED
JOHN G. DELANCETT
PAUL D. NEWNUM
PATRICIA W. BOWER
LEE M. KILLINGER
BARBARA L. NOLTE
FREDERICK C. BARNES

ATTORNEYS AT LAW
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TELEPHONE 428-3881
FAX (407) 841-8171

IN REPLY REFER TO:

June 16, 1992

Anne A. Weissenborn, Esquire
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3342

Dear Ms. Weissenborn:

I received the letter of Lawrence M. Nobel relating to the above Matter Under Review. It is dated May 28th and I received it several days later.

The account out of which the checks to the Gephardt for President Committee were written is a joint account which has been in existence for over forty years. The terms of the written instrument which created it in effect serves as approval by my wife, in writing, of any checks I write on the account and, by the same token, as an approval by me, in writing, of any checks which she may write. We have operated under this understanding with respect to this account for the forty years it has been in existence.

We assumed, therefore, that my wife had already approved, in writing, any checks, such as the ones I wrote on her behalf to the Gephardt campaign. She is willing to sign a sworn affidavit that she knew and approved of the making of the contributions on her behalf to the Gephardt campaign at the time the contributions were made. We were unaware of the requirements of the federal campaign laws that both parties to a joint account must sign a contribution from such a joint account in order for it to be attributed to both.

Despite our lack of knowledge of the federal campaign laws, I would have assumed that had there been a problem with the contributions made by my wife and myself, the Gephardt Committee would have notified us of this fact. We received no such notice until the contributions were refunded. These refunds, I now understand, were not made in a timely fashion. The ability to

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GILES, HEDRICK & ROBINSON, P. A.

Anne S. Weissenborn

Page 2

June 16, 1992

make the refunds, however, was entirely within the control of the Gephardt committee.

As I have noted, I did not have any knowledge of the requirements of the campaign laws with respect to joint account contributions. It seems that the Commission's rules run counter to the commonly accepted understanding of the operation of a joint checking account, where one partner does not need the approval of the other to make expenditures. Nonetheless, I had no intention of circumventing or violating these laws and am distressed to learn of your recommendation in this case some five years after the fact. I would ask that the Commission take no further action in this matter.

Yours very truly,



James C. Robinson

JCR/dbc

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PAUL, HASTINGS, JANOFSKY & WALKER

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June 25, 1992

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WRITER'S DIRECT DIAL NUMBER

OUR FILE NO

RE: MUR 3342

Anne A. Weissenborn, Esquire
General Counsel's Office
Federal Election Commission
Washington, D.C. 20463

Dear Ms. Weissenborn:

Thank you for taking my call today in connection with the letter which Lawrence M. Noble, General Counsel, sent to Mr. William D. Rollnick.

I have just come into possession of that letter, and am now assembling the documents necessary to review the matter from a legal standpoint.

I appreciate your willingness to grant us a brief extension of time in which to respond, and would ask that our response be due on July 15, 1992. If this is not a convenient time, please let me know.

Many thanks and best regards.

Sincerely,

Judith Richards Hope
Judith Richards Hope

cc: William D. Rollnick

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OFFICE OF GENERAL COUNSEL

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 30, 1992

Judith Richards Hope, Esquire
Paul, Hastings, Janofsky & Walker
1050 Connecticut Avenue, NW
Washington, DC 20036-5331

RE: MUR 3342
William D. Rollnick

Dear Ms. Hope:

This is in response to your letter dated June 25, 1992, which we received on June 29, 1992, requesting an extension until July 15, 1992, to respond to the General Counsel's Brief in the above-cited matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on July 15, 1992.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

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July 6, 1992

Anne A. Weissenborn, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matters Under Review
MURs 3111, 3342

Dear Ms. Weissenborn:

As I stated to you on the telephone today, the Gephardt for President Committee will request preprobable cause conciliation in MURs 3111 and 3342.

The Committee recognizes that the Commission has already adopted its position on the questions of legal liability presented in these MURs. These are questions of expenditures exceeding the Iowa State limit, the candidate's extensions of credit exceeding his personal limitation; and excessive contributions received from other persons. Each has been raised by the Audit Division, then reviewed by the General Counsel's Office before presentation to the Commission along with its recommendations. The Commission passed twice on these questions, in approving an interim report and then again in issuing a final one. Certain issues were addressed again in the course of the hearing requested by the Committee.

The Committee does not therefore expect to relitigate these underlying liability questions. There are, however, legal issues which it will raise in the course of preprobable cause conciliation which, in its view, should shape the form of an acceptable settlement. One issue of significance which it will address, is the applicable standard for determining liability for enforcement purposes, as distinguished from the

The Committee notes the "no further action" determination related to the loan guarantee executed by Mr. Sussman as attorney-in-fact for the Committee in February of 1988, and obviously takes no exception to that result.

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Anne A. Weissenborn, Esq.
July 6, 1992
Page 2

standard appropriate in determining repayment under the public financing statute. This is an issue of some significance where there are presented ambiguities and other interpretative difficulties in the law and regulations related to the conduct of publicly financed Presidential campaigns.

Very truly yours,

Robert F. Bauer

Robert F. Bauer
Counsel to Gephardt for
President Committee, Inc.

RFB:smb

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MUR 3347

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July 10, 1992

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ROBERT P. HASTINGS
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CHARLES M. WALKER

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WRITER'S DIRECT DIAL NUMBER

OUR FILE NO.

202-457-9490

Anne A. Weissenborn, Esq.
General Counsel's Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Weissenborn:

This is to confirm our conversation of Friday, July 10, 1992, in which I requested that you grant an extension of time to file a response in the matter of William D. Rollnick. As I mentioned, an extension would be greatly appreciated because Judith Richards Hope, who is serving as counsel to Mr. Rollnick, was recently hospitalized.

As we discussed, a response will be filed on or before August 3, 1992. If that date proves inconvenient, please let me know.

Many thanks for your assistance.

Sincerely,

Mary T. Boyle
Mary T. Boyle

for PAUL, HASTINGS, JANOFSKY & WALKER

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1992

Mary T. Boyle, Esquire
Paul, Hastings, Janofsky & Walker
1050 Connecticut Avenue, NW
Washington, DC 20036-5331

RE: MUR 3342
William D. Rollnick

Dear Ms. Boyle:

We have received your letter of July 10, 1992, confirming our telephone conversation that same day during which you informed this Office of the illness of Judith Richards Hope, who is serving as counsel for William D. Rollnick. You asked if a further extension of time in which to reply to the brief in the above-cited matter could be granted in light of Ms. Hope's illness.

We have considered your request, and in light of the circumstances, have granted the additional extension of time. Thus, the response on behalf of Mr. Rollnick will be due by close of business on August 3, 1992.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over the typed name.

Anne A. Weissenborn
Senior Attorney

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August 3, 1992

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WRITER'S DIRECT DIAL NUMBER

202-457-9440

OUR FILE NO

HAND DELIVERY

Ms. Marjorie Emmons
Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: William D. Rollnick, MUR 3342

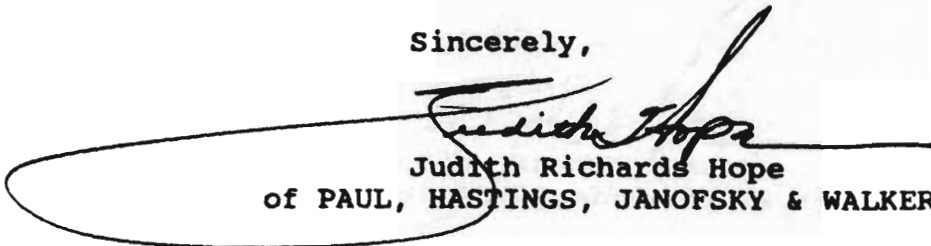
Dear Ms. Emmons:

I am submitting ten copies of the enclosed brief in response to the General Counsel's brief filed on May 28, 1992 in the above referenced matter. Pursuant to the Commission's regulations, I am also submitting three copies of this Response to the General Counsel.

As part of the brief, Mr. Rollnick is submitting an Affidavit that describes the steps he took to comply with the Commission's regulations. Unfortunately, I was unable to secure an Affidavit of his then wife, Eloise Rollnick, due to the fact that Mr. and Mrs. Rollnick were divorced effective July, 1992. I am sure you can understand the delicate nature of this situation and, under the circumstances, it was simply impossible to obtain an Affidavit from her.

I appreciate your sympathetic consideration of this matter. Should you have any questions, please contact me.

Sincerely,


Judith Richards Hope
of PAUL, HASTINGS, JANOFSKY & WALKER

cc: Lawrence M. Noble, Esq.

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OFFICE OF THE GENERAL COUNSEL

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**BEFORE THE
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463**

In the Matter of
William D. Rollnick

)
)
)

MUR 3342

TO: Secretary, Federal Election Commission

**RESPONSE TO THE GENERAL COUNSEL'S BRIEF
IN THE MATTER OF WILLIAM D. ROLLNICK**

William D. Rollnick, by his attorneys and pursuant to Section 111.16(c) of the Commission's rules, hereby responds to the General Counsel's Brief, filed in this matter on May 28, 1992, in which the General Counsel found there was probable cause to believe that Mr. Rollnick violated the prohibition against excessive campaign contributions codified under 2 U.S.C. § 441a(a)(1)(A).^{1/}

**I.
SUMMARY**

This case is about a lot of things. It is about a presidential primary campaign committee that lost \$1000 checks, then found them and cashed them. It might even be about a campaign strapped for cash that was intentionally delaying refund checks. It most certainly is not, as the General Counsel would like to paint it, about someone who admits making excessive contributions in violation of the law.

William Rollnick gave financial support to a presidential hopeful. Each step he took in responding to the candidate's campaign disorganization was reasonable. In fact, he played by the rules, as the Commission itself has written

^{1/} By letters dated June 25, 1992, and July 10, 1992 counsel confirmed an extension to file this response on August 3, 1992.

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OFFICE OF GENERAL COUNSEL

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them. Any violation that may have resulted is because the campaign committee, not Mr. Rollnick, failed to meet its legal obligations.

II. STATEMENT OF FACTS

During the 1988 presidential primary season, William Rollnick and his then wife, Eloise, contributed funds to the campaign effort of Richard Gephardt. On or about February 11, 1988, Mr. Rollnick sent a check, in the amount of \$1000, to the Gephardt for President Campaign Committee ("the Committee" or the "Gephardt Committee"). (A copy of the check stub recording that contribution is attached to the Rollnick Affidavit^{2/} under Tab A.). Several days later, however, a representative of the Committee informed Mr. Rollnick that the check had not been received. Mr. Rollnick promptly contacted his bank to determine whether the check had been lost. He checked several more times. Rollnick Affidavit at ¶ 4.

Once he was satisfied that it was indeed lost, Mr. Rollnick sent a replacement check to the Committee. (A copy of the replacement check is attached to the Rollnick Affidavit under Tab B). The second check was a joint contribution from Mr. Rollnick and his wife, in the amount of \$2000, drawn on a joint checking account containing personal funds of each of them. The check itself listed both of their names. Mr. and Mrs. Rollnick agreed at that time that this contribution was made on behalf of both of them. Rollnick Affidavit at ¶ 5.

Although Mrs. Rollnick's signature was not included on this check, the Rollnicks received a reattribution form from the Gephardt Committee in

^{2/} The Rollnick Affidavit is attached hereto under Exhibit A.

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approximately March 1988. Rollnick Affidavit at ¶ 6. Mrs. Rollnick immediately signed the reattribution form, certifying that she intended to have half of the \$2000 check attributed to her. Rollnick Affidavit at ¶ 7. (A copy of the signed reattribution form is attached to the Rollnick Affidavit under Tab C). The Rollnicks promptly returned the reattribution form to the Gephardt Committee, almost certainly within 30 days or less of their initial contribution. Rollnick Affidavit at ¶ 7.

When Mr. Rollnick received his bank statement in March of 1988, he discovered that both the original check he had written for \$1000 and the replacement check for \$2000 had been cashed. He immediately contacted the Committee to inform them of this error and requested that they issue a refund for the \$1000 check that had been mistakenly cashed. The Committee assured him that the mistake would be corrected and that he would receive a refund. Rollnick Affidavit at ¶ 9.

Mr. Rollnick received a refund check from the Committee, but does not recall precisely when. When the Commission staff commenced this proceeding, counsel for Mr. Rollnick contacted the Committee and asked them to search their records to determine when the refund was sent. The Committee forwarded a copy of a \$1000 refund check, dated February 15, 1990. (A copy of the check is attached to the Rollnick Affidavit under Tab D).

III. ARGUMENT

Mr. Rollnick complied fully with both the letter and the spirit of the law and the General Counsel has failed to establish otherwise. Mr. Rollnick contributed only \$1000 to the Committee, sending a replacement check only after being assured his original check had been lost. He and his wife furnished written

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attribution of their joint contribution, consistent with Commission regulations. Finally, upon discovering that his first check had been mistakenly cashed, Mr. Rollnick promptly requested a refund and in fact received that refund. His actions are in stark contrast to those of the Committee, which (1) misplaced a \$1000 check, (2) sought a replacement, (3) cashed both checks when their own accounting records should have informed them that to do so would appear to involve excessive contributions, and (4) failed, despite promises to Mr. Rollnick and the requirements of law, to refund the amount wrongfully deposited in a timely manner.

Inexplicably, Mr. Rollnick, not the Committee, now stands before the Commission accused of wrongdoing. Laws and regulations may indeed have been violated, but not by Mr. Rollnick.

A. **Mr. Rollnick Complied Fully With the Law By
Securing a Reattribution of the \$2000
Replacement Check He Sent to the Committee.**

Commission rules specify that, in the event of a joint contribution, the signature of each contributor be placed on the check or in a separate writing. 11 C.F.R. § 110.1(k)(1). Failure to do so, however, does not *ipso facto* justify Commission sanctions. It is commonplace for joint contributions to be made through a joint checking account. By 1987, the Commission had recognized the common failure of contributors to include both signatures when making a contribution from a joint account and by rule established a routine mechanism to deal with such errors. According to the Commission's regulations:

If a contribution to a candidate or political committee . . . exceeds the limitations on contributions . . . the treasurer of the recipient political committee may ask the

contributor whether the contribution was intended as a joint contribution by more than one person.

11 C.F.R. § 110.1(k)(3)(i). After such a request is made, a contribution that exceeds the statutory limits will be deemed reattributed to another contributor if, within 60 days of the treasurer's receipt of the contribution, the contributors provide a written reattribution signed by each contributor. 11 C.F.R. § 110.1(k)(3)(ii)(B).

The Commission's own procedures thus permit a contributor and recipient committee to avoid a possible violation of law by securing an after-the-fact reattribution of a facially excessive contribution. If Mr. Rollnick's failure to include his wife's signature resulted in an automatic violation of law, not curable by reattribution, these regulations would be surplusage. In fact, the published Explanation and Justification of these regulations states explicitly that "the Commission has included in the regulations for the first time specific regulatory language *permitting* after the fact reattributions of contributions to other contributors." *See Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees*, 52 Fed. Reg. 760, 765 (Jan. 9, 1987) (emphasis supplied).

An apparently excessive contribution, coupled with a failure to subsequently reattribute in accordance with the Commission's guidelines, constitutes a violation of law. However, where a contribution is made and attributed in compliance with the rules, no violation occurs. The Commission's own reattribution procedures dictate this result.

By providing a reattribution form signed by his wife indicating that she intended to have half of the \$2000 contribution attributed to her, Mr. Rollnick did

precisely what the regulations allow. What is more, he did so in a timely manner. As indicated in Mr. Rollnick's Affidavit, he and his wife, to the best of his recollection, received this form from the Gephardt Committee in March of 1988 and returned it promptly, almost certainly within 30 days or less of making their initial contribution. This was well within the 60 day time frame mandated by the regulations. Mr. Rollnick followed the Commission's own procedures by securing a timely reattribution and, accordingly, acted in full compliance with the spirit and the letter of the law.

The General Counsel provides no evidence that would rebut Mr. Rollnick's recollection that the reattribution occurred promptly, well within the 60 days permitted. The General Counsel merely offers an unsupported statement that the Committee "apparently [did not] seek reattribution of portions of the contributions until after the sixty day period provided by regulation." General Counsel's Brief at 3. A finding that the law has been violated is simply not supported by the facts.

B. By Requesting a Refund Upon Discovering the Overpayment, Mr. Rollnick Satisfied Completely His Legal Obligation.

Mr. Rollnick's other alleged violation stems from his providing a replacement check for what any reasonable person would have assumed was a lost one. When Mr. Rollnick was notified by the Committee that his original check had been lost, he did what any reasonable person would have done under the circumstances. Before sending a replacement check to the Committee, he contacted his bank a number of times and verified that the check had not been cashed. Only upon receiving these assurances did he send the second check to the Committee.

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The General Counsel appears to place great weight on Mr. Rollnick's failure to order a "stop payment" on the first check. It would be both unnecessary and unreasonable for this Commission to impose such a requirement, causing contributors to incur sometimes substantial bank charges (and causing some committees likewise to incur charges if they mistakenly deposit such a check). Nobody but the Committee may legally cash a check drawn to its order. The Committee had assured Mr. Rollnick that the check was lost. Any reasonable person would have assumed that even if the Committee found it, the check would not be cashed because the law limits receipt as well as the making of excessive contributions. The Commission would be placing an unnecessary burden on contributors to require the extraordinary measures the General Counsel appears to find necessary to avoid liability.

The salient facts are that the Committee, not Mr. Rollnick, failed to meet its obligations. Mr. Rollnick took swift and appropriate action as soon as he discovered that both checks had been mistakenly cashed. He immediately contacted the Gephardt Committee upon receiving his bank statement indicating that both checks had cleared. He requested a refund and was assured he would receive one. Rollnick Affidavit at ¶ 9.

Once Mr. Rollnick notified the Committee that he wished to secure a refund, it was then incumbent upon the Committee to refund the \$1000 in a manner that complied with the Commission's regulations. These regulations provide that, if a redesignation or reattribution is not obtained for an excessive contribution, the treasurer of the political committee "shall, within sixty days of the treasurer's receipt

of the contribution, refund the contribution to the contributor." 11 C.F.R.

§ 103.3(3).

The burden to comply with the Commission's 60 day time frame thus lay squarely with the Gephardt Committee. Mr. Rollnick notified the Committee of the error in March 1988, well within the prescribed 60 day period provided for in the regulations. The failure to meet this deadline (and any appropriate legal consequences) is the Gephardt Committee's, not Mr. Rollnick's. Mr. Rollnick never made an excessive contribution. He sent a check to replace one he was assured was lost. When the Committee subsequently chose to deposit both the "lost" and the replacement checks, the Gephardt Committee was required, by regulation (and its promise to Mr. Rollnick), to refund the duplicate funds in a timely manner.

The record is clear that Mr. Rollnick attempted, however unsuccessfully, to secure a refund in a timely manner. The record is devoid of facts that would explain what prompted the Gephardt Committee to shirk its responsibility. Whatever the reason -- administrative error or cash flow concerns -- any violation is the Committee's, not the contributor's.

The General Counsel cites the fact that Mr. Rollnick did not receive the refund within this 60 day period as evidence that he violated the law. General Counsel's Brief at p. 3. This conclusion simply defies the facts: Mr. Rollnick notified the Committee of the error in a timely manner. And it defies the law: the obligation to satisfy the Commission's deadline rested solely with the Gephardt Committee and not with Mr. Rollnick.

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C. **Although Mr. Rollnick "Admits" to Sending Checks To the Gephardt Committee Totaling \$3000, He Does Not Admit that He Made Contributions in Excess of the Statutory Limit.**

The General Counsel's Brief emphasizes the fact Mr. Rollnick "does not deny having sent checks totaling \$3000 to the Committee. . . ." General Counsel's Brief at p. 2. Mr. Rollnick does indeed admit that he *sent* two checks, totalling \$3000, to the Committee, but in no way admits that he made contributions in excess of the statutory limits. Furthermore, he strongly denies that these checks were sent in an effort to circumvent limitations on campaign contributions.

As indicated above, Mr. Rollnick sent a second check to the Committee only after being informed by the Committee that the original check for \$1000 had not been received. The second check in the amount of \$2000 represented a joint contribution from his wife and him. Each was entitled under law to contribute \$1000, the maximum amount allowable. 2 U.S.C. § 441a(a)(1)(A). That was accomplished through a joint contribution, written on a joint account and verified through a reattribution signed by Mrs. Rollnick.

Mr. Rollnick's subsequent request and receipt of a refund in the amount of \$1000 confirms that excess contributions were *not* made. Therefore, while he admits sending checks in the amount of \$3000, this figure does not accurately reflect the amount of money he actually contributed. Rather, he contributed only one-third of that amount, or \$1000, to the Committee. The second third represented a contribution by Mrs. Rollnick and the final third was refunded to him after it was discovered that the original check had not in fact been lost.

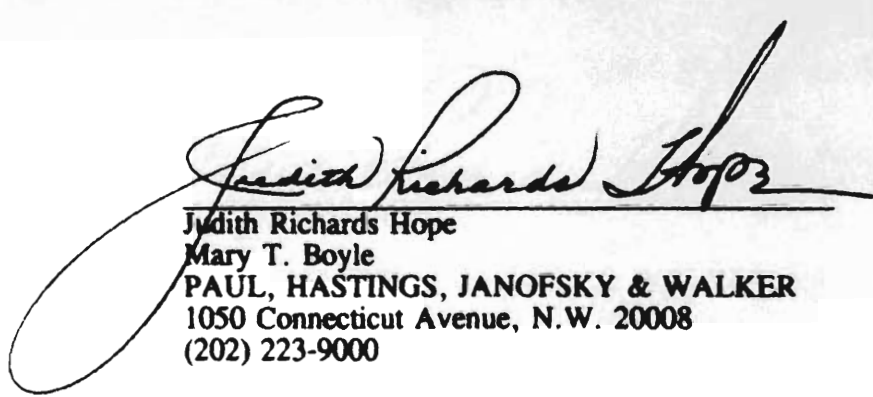
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The General Counsel's emphasis on the fact that Mr. Rollnick admitted to sending checks totaling \$3000 is misplaced. It ignores the facts and fails to take into account that Mr. Rollnick's *actual* contribution was limited to the \$1000 maximum.

IV. CONCLUSION

Based on the foregoing, it is clear that the General Counsel's finding of probable cause is not supported by either the facts of this case or by the Commission's own regulatory procedures. At all times, Mr. Rollnick acted in good faith and in compliance with the Commission's regulations. He contributed the maximum amount allowable, furnished an appropriate attribution of the \$2000 check as permitted by Commission rule, and asked for and received a refund for the \$1000 check that had been mistakenly deposited. Accordingly, Mr. Rollnick requests that the Commission set aside this recommendation, find that he acted in compliance with the law and terminate further proceedings in this matter.

Respectfully submitted this 3rd Day of August, 1992.



Judith Richards Hope
Mary T. Boyle
PAUL, HASTINGS, JANOFSKY & WALKER
1050 Connecticut Avenue, N.W. 20008
(202) 223-9000

COUNSEL FOR WILLIAM D. ROLLNICK

AFFIDAVIT OF WILLIAM D. ROLLNICK

State of New York)
)
County of New York) ss:

I, William D. Rollnick, being duly sworn, depose and state as follows:

1. I make this Affidavit in support of my Response to the General Counsel's Brief filed herewith. Matters as stated herein are based upon my own personal knowledge.

2. To the best of my knowledge and belief, I sent a check, in the amount of \$1000, to the Gephardt for President Campaign Committee ("the Committee") on or about February 11, 1988. Although I have searched, I have not located the canceled check. I previously submitted a true and correct copy of a check stub I wrote recording that contribution and I am attaching a copy of that stub to this Affidavit under Tab A.

3. After I sent the check, I was notified by the Committee that this check had been lost by the Committee.

4. I made a good faith effort to locate this check by contacting my bank to determine whether it had been

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cashed. After verifying with my bank that the check had not been cashed, I sent a replacement check to the Committee on February 26, 1988. I am attaching to this Affidavit under Tab B a true and correct copy of that replacement check.

5. The replacement check was in the amount of \$2000. It was intended to be a joint contribution from my then wife, Eloise, and me and, as indicated by the printing at the top of the check, was written on an account held jointly by us. My wife's name appeared on this check and the account contained personal funds from each of us. She and I agreed that this contribution was made on behalf of both of us.

6. After I sent the replacement check, my wife and I received a reattribution form from the Gephardt Committee. To the best of my recollection, we received this form from the Committee in March 1988.

7. To the best of my knowledge, my wife signed the form as soon as it was received and returned it to the Gephardt Committee within a very short period of time. I am virtually certain that we sent the signed separate authorization for my wife back to the Committee within 30 days or less of our initial contribution. We were advised that such an after-the-fact designation was a lawful and

routine method of handling a joint contribution written on a joint account.

8. I did not retain a copy of the reattribution form, but my attorneys contacted the Gephardt Committee and requested that they search their records in an effort to locate a copy. The Gephardt Committee forwarded a copy of the reattribution form and I am attaching to this Affidavit under Tab C a true and correct copy of the document signed by my wife certifying that she intended that \$1000 of the \$2000 check be attributed to her.

9. In March 1988, I received my bank statement and discovered that both the original check for \$1000 and the replacement check had been cashed. I immediately notified the Committee of the error and requested that they return the \$1000 from the check that had been mistakenly cashed. I was told I would receive a refund.

10. I received a refund from the Committee, but do not recall precisely when. I have diligently searched my files, but do not have a record of the refund. My attorneys contacted the Gephardt Committee and asked them to search their records to determine when the refund was sent. The Committee forwarded a copy of the refund check, dated February 15, 1990, in the amount of \$1000. I received and

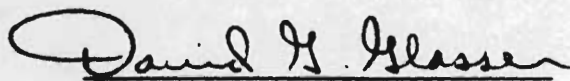
deposited this check. I am attaching to this Affidavit under Tab D a copy of that refund check.

11. I have reviewed the information and statements contained in my Response to the General Counsel's Brief in this matter. The Response is true and correct to the best of my knowledge and belief and is submitted in good faith.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 31, 1992.


William D. Rollnick

Sworn to and subscribed before me this 31st day of July, 1992.


NOTARY PUBLIC

DAVID H. GLASSER
Notary Public, State of New York
No. 31-4027016
Qualified in New York County
Commission Expires July 31, 1994 94

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EXHIBIT A

5043643710

5043643771

		1105	
		CHECK HERE IF TAX DEDUCTIBLE ITEM <input type="checkbox"/>	
Feb 11		87	
Mythraat for President		BAL. FORD	
One Thousand no 00		THIS PAYMENT	1000
		BALANCE	
		OTHER	
		BAL. FORD	
NOT NEGOTIABLE			

EXHIBIT B

5043643772


WILLIAM B. ROLLNICK
ELOISE A. ROLLNICK
22 SUTHERLAND DR.
ATHENTON, CA 94828

1123

Feb 24 1988 11-28/1210

PAY TO THE
ORDER OF

Leahaytt for Les
Two thousand \$2000.00

 Bank of America
PO Box 150
Palo Alto, CA 94331

Supp/CA18

William B. Rollnick

5043643773

EXHIBIT C

5043643774

According to Federal Election Law (Chapter 96 of Title 26, United States Code), presidential primary candidates are entitled to receive federal funds from the Presidential Primary Matching Payment Account in an amount up to \$250 from an individual contributor.

To ensure that only contributions which qualify as such are matched, the Federal Election Commission requires additional documentation regarding contributions which are submitted for matching drawn on written instruments not bearing the signature of the contributor.

Your portion of the contribution of 2,000⁰⁰ dated 2/26/88 check # 1123
of the joint account identified as William D. Rollnick
Eloise B. Rollnick

will qualify for matching only if the following statement set forth below is true and, if so, confirmed by your signature.

If you cannot verify the statement below because of its inaccuracy, please provide a short explanation in order that the proper attribution of the contribution may be made.

Thank you very much for your attention to this matter.

Sincerely,

Jacqueline M. Forte
Controller

This is to certify that a contribution of \$1,000.00, effected on the written instrument described above, should be attributed to me. The account contains my personal funds and my signature appears below.

Name: Mrs. Eloise B. Rollnick

Address: 92 Sutherland Drive
Atherton, California 94025

Your Signature:

Eloise B. Rollnick
Mrs. Eloise B. Rollnick
(Please do not Print)

Please complete this form and return it as soon as possible to Gephardt for President Committee, Inc., 911 2nd Street, N.E., Washington, D. C. 20002. A stamped, self-addressed envelope is enclosed for your convenience.

GEPA19/880229

8

23 OKA19FEB24

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EXHIBIT D

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CEPHARDY FOR PRESIDENT
COMMITTEE INC.
807 STREET NW 3RD FLOOR
WASHINGTON, D.C. 20003

3060

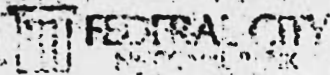
February 15

90

William Rollnick

1,000.00

One thousand and 00/100



contribution refund

NOT NEGOTIABLE

#003060# 009400157EC 001 002015 01P

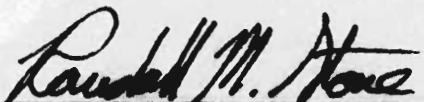
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CERTIFICATE OF SERVICE

I do hereby certify that on this 3rd day of August, 1992, I caused true and correct copies of the foregoing Response to the General Counsel's Brief in the Matter of William D. Rollnick, to be hand delivered upon the following:

Marjorie Emmons
Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463



Randall M. Stone

504364378

BEFORE THE FEDERAL ELECTION COMMISSION SEP 18 PM 1:43

In the Matter of

SENSITIVE

MUR 3342

F.P. Blank

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by F.P. Blank.

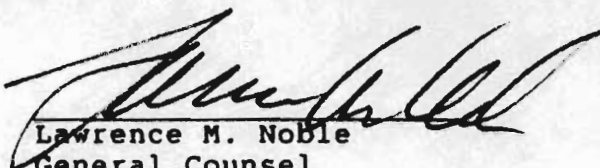
The attached agreement contains no changes from the agreement approved by the Commission on August 19, 1992. A check for the civil penalty has been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with F.P. Blank.
2. Close the file as to this respondent.
3. Approve the appropriate letter.

Date

9/18/92


Lawrence M. Noble
General Counsel

Attachments

1. Conciliation Agreement
2. Photocopy of civil penalty check

Staff Assigned: Anne Weissenborn

5043643779

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
F.P. Blank.

)
)
) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 23, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Accept the conciliation agreement with F.P. Blank, as recommended in the General Counsel's Report dated September 18, 1992.
2. Close the file as to this respondent.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated September 18, 1992.

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

Attest:

9-23-92
Date

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

Received in the Secretariat: Fri., Sept. 18, 1992 1:43 p.m.
Circulated to the Commission: Fri., Sept. 18, 1992 4:00 p.m.
Deadline for vote: Wed., Sept. 23, 1992 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 28, 1992

Ken Davis, Esquire
1102 North Gadsden Street
Tallahassee, FL 32303

Re: MUR 3342
F.P. Blank

Dear Mr. Davis:

On September 23, 1992, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to your client.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

Enclosure

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

F.P. Blank

)
)
)

MUR 3342

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that F.P. Blank ("Respondent") violated 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Gephardt for President Committee ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4).

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2. Respondent made \$1,000 contributions to the Committee on June 29, 1987, November 20, 1987, and February 26, 1988, for a total of \$3,000.

3. The Committee refunded \$2,000 to Respondent on July 1, 1991.

4. 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his authorized committee with respect to any election for Federal office.

5. 11 C.F.R. § 110.1(j)(1) states that the "limitations on contributions . . . shall apply separately with respect to each election . . ., except that all elections held in a calendar year for the office of President of the United States (except a general election for that office) shall be considered to be one election."

V. Respondent made contributions to the Gephardt for President Committee totaling \$3,000 in violation of 2 U.S.C. § 441a(a)(1)(A). Respondent contends that he was unaware that his aggregated contributions would violate this provision.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Five Hundred Dollars (\$500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

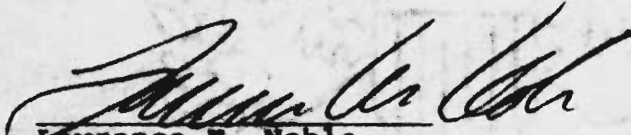
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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

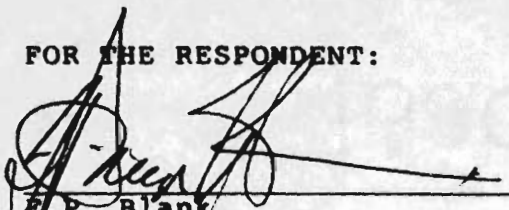
X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

Date 7/28/92

FOR THE RESPONDENT:


F.P. Blank
Respondent

Date 9.8.92

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RECEIVED
FEDERAL ELECTIONS COMMISSION

92 JUL 14 PM 4: 18

BLANK, RIGSBY & MEENAN, P.A.
204 - B SOUTH MONROE STREET
POST OFFICE BOX 11088
TALLAHASSEE, FLORIDA 32302-3088
TELEPHONE (904) 881-6710

FIRST FIRST FLORIDA BANK, N.A.
TALLAHASSEE, FLORIDA 32314
63-68-631

0013052

DATE	CONTROL NO.	AMOUNT
06/22/92	13052	*****500.00

*** FIVE HUNDRED & 00/100 DOLLARS

Federal Elections Commission

OPERATING ACCOUNT

AUTHORIZED SIGNATURE

5043643785

PAY
TO THE
ORDER OF

RECEIVED
F.E.C.
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION 92 DEC 29 AM 11:20

In the Matter of
William D. Rollnick

)
) MUR 3342
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 16, 1991, the Commission found reason to believe that William D. Rollnick violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee ("the Committee"). Following receipt of Mr. Rollnick's response to this determination, the Office of the General Counsel prepared a brief recommending that the Commission find probable cause to believe that a violation had occurred. Counsel for Mr. Rollnick have submitted a responsive brief accompanied by an affidavit signed by their client. (Attachment 1).

II. ANALYSIS

The General Counsel's Brief in this matter relied upon the following facts. Mr. Rollick made a contribution of \$1,000 to the Committee sometime in February, 1988, which was eventually reported as having been received on March 4, 1988. Because he had been told by the Committee later in February that his check had not been received, he sent a second, \$2,000 check that month written on a joint account but signed only by himself. At the end of March he learned that both checks had been deposited into the Committee's account. He requested a refund of the \$1,000, but such refund was not made until February, 1990. The Committee requested a reattribution of \$1,000 of the second, \$2,000 check to

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Mr. Rollnick's wife, but no information was provided as to when this reattribution was obtained.

In his affidavit submitted with the responsive brief, Mr. Rollick provides a more detailed explanation. According to the check stub related to his first contribution, he made the \$1,000 contribution on February 11, 1988. After being notified by the Committee that his check had been lost, he assertedly verified with his bank that the check had not been cashed and wrote a second one on February 26, 1988. Mr. Rollnick argues, as he has in the past, that this replacement check was intended to be a joint contribution from himself and his wife, Eloise. His more recent assertion is that they received a reattribution form from the Committee in March, 1988. Mr. Rollnick states, "To the best of my knowledge, my wife signed the form as soon as it was received and returned it to the Gephardt Committee within a very short period of time. I am virtually certain that we sent the signed separate authorization for my wife back to the Committee within 30 days or less of our initial contribution." A copy of the undated reattribution form is attached to the affidavit.

Mr. Rollnick also asserts in his affidavit that in March, 1988, after receiving his bank statement and learning that both of his checks had been cashed, he "immediately notified the Committee of the error and requested that they return the \$1000 from the check that had been mistakenly cashed. I was told I would receive a refund." Also attached to his affidavit is a copy of the

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Committee's check refunding the \$1,000 contribution; this check is dated February 15, 1990.

It appears from the information now in hand that at no time did Mr. Rollnick intend the Committee to receive more than \$2,000 in contributions; the amount rose to \$3,000 only as a result of a Committee error which he sought at once to correct. It further appears that \$1,000 of the second, \$2,000 check was intended to be a contribution from Mrs. Rollnick and became officially so, assertedly within the 60 days required by 11 C.F.R.

§ 110.1(k)(3)(B), by means of her signature on a reattribution statement supplied by the Committee. Although this reattribution statement is not dated, it should be noted that the Committee's request for her signature is made in the context of preparing the Rollnicks' contributions for submission for public matching funds, a circumstance which lends credence to the argument that the reattribution was requested shortly after the assertedly joint contribution was received.

Given the additional information supplied by Mr. Rollnick, it appears that, while he technically had \$2,000 in contributions to the Committee outstanding for more than 60 days, this was due to circumstances beyond his control in that the Committee did not respond to his request for a refund of his \$1,000 check in a timely fashion. Therefore, this Office recommends that the Commission take no further action with regard to a violation by Mr. Rollnick and close the file as it applies to him.

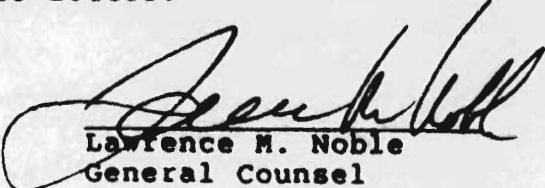
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III. RECOMMENDATIONS

1. Take no further action against William D. Rollnick.
2. Close the file as it pertains to him.
3. Approve the appropriate letter.

Date

12/22/92


Lawrence M. Noble
General Counsel

Attachment

Response to General Counsel's Brief

5043643789

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
William D. Rollnick.

)
)
) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 6, 1993, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Take no further action against William D. Rollnick.
2. Close the file as it pertains to him.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated December 29, 1992.

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

Attest:

1-6-93
Date

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

Received in the Secretariat:
Circulated to the Commission:
Deadline for vote:

Tues., Dec. 29, 1992 11:20 a.m.
Tues., Dec. 29, 1992 4:00 p.m.
Wed., Jan. 6, 1993 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 14, 1993

Judith Richards Hope, Esquire
Mary T. Boyle, Esquire
Paul, Hastings, Janofsky & Walker
1050 Connecticut Avenue, NW
Washington, DC 20008

RE: MUR 3342
William D. Rollnick

Dear Ms. Hope and Ms. Boyle:

On May 17, 1991, your client, William D. Rollnick, was notified that the Federal Election Commission had found reason to believe that he had violated 2 U.S.C. § 441a(a)(1)(A). On May 23, 1991, Mr. Rollnick submitted a response to the Commission's reason to believe finding. Later, on May 28, 1992, and August 3, 1992, briefs were exchanged.

After considering the circumstances of the matter, the Commission determined on January 6, 1993, to take no further action against Mr. Rollnick, and closed the file as it pertains to him. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

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FEDERAL ELECTION COMMISSION

LAW OFFICES
COMPTON, PREWETT, THOMAS & HICKEY, P.A.
423 NORTH WASHINGTON
P. O. DRAWER 1917
EL DORADO, ARKANSAS 71731
(501) 862-3478
FAX (501) 862-7228

93 APR 30 AM 10:53

ROBERT C. COMPTON
WM. I. PREWETT
FLOYD M. THOMAS, JR.
JOSEPH HICKEY*
CATHERINE V. COMPTON
SCOTT A. ELLINGTON

H. Y. ROWE - OF COUNSEL
JERRI L. AGERTON - PARALEGAL

*BOARD RECOGNIZED
SPECIALIST IN TAX LAW

April 23, 1993

VIA CERTIFIED MAIL

Ms. Joan D. Aikens
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

Re: MUR3342
Beryl Anthony For Congress Campaign Committee

Dear Ms. Aikens:

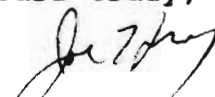
Enclosed is a copy of the April 21, 1992 correspondence I sent to you regarding the above referenced matter.

Recently, I have talked to Anne A. Weissenborn regarding entering into pre-probable cause conciliation.

Congressman Anthony lost his bid for re-election in 1992. We would like to get the campaign committee closed down, but are unable to do that while this matter is pending. Accordingly, we would like to enter into negotiations with the FEC to try to get this matter resolved.

Please advise me of what we need to do to resolve this matter.

Yours truly,


Joseph Hickey

JH/cb
Enclosure: Letter

pc: Ann Weissenborn
Beryl Anthony

5043643792



RECEIVED
FEDERAL ELECTION COMMISSION

93 APR 30 AM 10:53

April 21, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Joan D. Aikens
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 3342
Beryl Anthony For Congress Campaign Committee

Dear Ms. Aikens:

This is in response to your inquiry dated March 10, 1992. That inquiry asked for a response within fifteen days from the date I received it. You granted me an extension until April 21.

Your inquiry stems from advances made by the Anthony For Congress Campaign Committee (AFCCC) on behalf of the Gephardt for President Committee (GFPC) in 1988.

In the Fall of 1987, Mr. Gephardt was a candidate for the Democratic Nomination for President of the United States. Congressman Anthony invited Mr. Gephardt to Little Rock, Arkansas for a fundraiser dinner on behalf of Mr. Gephardt's Presidential Campaign. The expenses incurred in putting on the dinner were:

\$ 178.45	10/23/87	Standard Printing & Stationery 110 East Elm Street El Dorado, AR. 71730
139.26	10/23/87	U. S. Postmaster El Dorado, AR. 71730
2451.89	10/27/87	Excelsior Hotel 3 State House Plaza Little Rock, AR. 72207
690.00	11/18/87	Arkansas Aircraft, Inc. Suite C Lindberg Drive Jonesboro, AR. 72401

\$3459.60

TOTAL

Paid for by Anthony for Congress Committee
P.O. Box 1871 • El Dorado, AR 71731 • (501) 862-0992

5043643793

April 21, 1992

Page 2

The Gephardt campaign organization committed to prompt reimbursement for the expenses.

After the fundraiser dinner, a long time friend of Congressman Anthony, Barbara McBryde, worked in the Gephardt for President Campaign office in North Little Rock, Arkansas. GFPC did not reimburse her for the rent of \$500 for the campaign headquarters, and \$145.65 for telephone service at the campaign headquarters office, for a total of \$645.65. AFCCC reimbursed Ms. McBryde the \$645.65 on December 8, 1987 and December 18, 1987.

After preparing the FEC Report for the period ending December 31, 1987, I wrote GFPC on January 6, 1988 asking that AFCCC be reimbursed for the expenses incurred at the fundraiser dinner and the campaign headquarters. When I did not immediately receive payment in response to my January 6, 1988 letter, I contacted Robert F. Bauer, Esquire, to find out how long GFPC had to pay this bill before being in violation of any federal election laws. Mr. Bauer advised me in writing dated January 26, 1988 that as long as it was paid within a "commercially reasonable time", there should not be a violation of the federal election laws.

On February 3, 1988, Mr. Bauer told me that he had spoken to GFPC and he was assured that it would make payment immediately. Payment was not made, however.

After preparing the FEC report for the period ending June 30, 1988, I once again inquired into the status of the payment by GFPC. On September 2, 1988, I spoke to Boyd Lewis at GFPC who offered to pay ten cents on the dollar in full satisfaction of the debt. He represented that campaign counsel would provide an opinion that the compromise of this debt by AFCCC would not constitute an illegal contribution by AFCCC to GFPC. I wrote Congressman Anthony on September 7, 1988, to relate this information to him. Congressman Anthony approved the compromise in reliance of the representation of GFPC that the compromise would not violate any federal election laws. I then notified GFPC that the compromise would be acceptable. We never received the opinion of campaign counsel that Mr. Lewis promised he would provide us.

The \$410.53 payment was received on or about January 20, 1989. The receipt of the payment was reported on the FEC Report for the period ending July 31, 1989.

On or about November 23, 1990, the FEC notified AFCCC that it had instructed the GFPC to repay the full debt owed to AFCCC. After receiving that letter, we contacted GFPC and it told us it was broke.

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April 21, 1992
Page 3

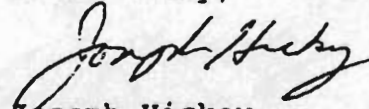
Under the circumstances, the advances made for the dinner fundraiser were incurred in the ordinary course of business. The guests at the dinner were long time friends and supporters of Congressman Anthony. The money was advanced with the express understanding of Congressman Anthony and Mr. Gephardt that the money would be quickly reimbursed from the proceeds of the fundraiser. The hotel required that the money be paid at the time of the event and would not allow it to be paid at a later date. Everything that could possibly be done to collect the money was done after it was discovered that it wasn't repaid as quickly as promised.

There is no requirement that goods and services be paid for in advance. The FEC regulations provide only that "the extension of credit by any person for a length of time beyond normal business or trade practice is a contribution." 11 C.F.R. Sec. 100.7(a)(4).

There was never any intent by AFCCC to make a contribution to GFPC:

Based upon the foregoing, I respectfully request that no action be taken against The Beryl Anthony For Congress Campaign Committee or the undersigned as its Treasurer.

Yours truly,


Joseph Hickey

JH/cb

pc: The Honorable Beryl Anthony

5043643795



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mack E. Barham, Esq.
5837 Bel Air Drive
New Orleans, Louisiana 70124

RE: MUR 3342
Mack E. Barham

Dear Mr. Barham:

On March 10, 1992, you were notified that the Federal Election Commission, on February 25, 1992, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A). Enclosed are copies of the material that was sent to you at that time. Under the Federal Election Campaign Act of 1971, as amended, and Commission regulations, you have an opportunity to demonstrate that no action should be taken against you.

A review of our files indicates that to date you have not responded to the Commission's findings. Unless we receive a response from you within 15 days, this matter will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Anne Weissenborn or Mary Taksar, the attorneys assigned to this matter, at (202) 219-3400.

Sincerely,

Abigail Shaine

Abigail Shaine
Assistant General Counsel

5043643796



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard Hughes
4524 East 67th Street
P.O. Box 35887
Tulsa, Oklahoma 74135

RE: MUR 3342
Richard Hughes

Dear Mr. Hughes:

On March 10, 1992, you were notified that the Federal Election Commission, on February 25, 1992, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A). Enclosed are copies of the material that was sent to you at that time. Under the Federal Election Campaign Act of 1971, as amended, and Commission regulations, you have an opportunity to demonstrate that no action should be taken against you.

A review of our files indicates that to date you have not responded to the Commission's findings. Unless we receive a response from you within 15 days, this matter will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Anne Weissenborn or Mary Taksar, the attorneys assigned to this matter, at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, appearing to read "Abigail Shaine".

Abigail Shaine
Assistant General Counsel

5043643797



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William J. Fleming
1451 West 31st Street
Minneapolis, MN 55405

RE: MUR 3342
William Fleming

Dear Mr. Fleming:

On April 3, 1992, you were notified that the Federal Election Commission, on February 25, 1992, found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A). Enclosed are copies of the material that was sent to you at that time. Under the Federal Election Campaign Act of 1971, as amended, and Commission regulations, you have an opportunity to demonstrate that no action should be taken against you.

A review of our files indicates that to date you have not responded to the Commission's findings. Unless we receive a response from you within 15 days, this matter will proceed to the next stage of the enforcement process.

Should you have any questions, please contact Anne Weissenborn or Mary Taksar, the attorneys assigned to this matter, at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Abigail Shaine", is written over a horizontal line.

Abigail Shaine
Assistant General Counsel

5043643798

OAC 9212

JUN 22 8 20 AM '93

A PROFESSIONAL LAW CORPORATION

BARHAM & ARCENEUX

POYDRAS CENTER SUITE 2700

650 POYDRAS STREET

NEW ORLEANS, LOUISIANA 70130-6101

TELEPHONE (504) 525-4400

FAX (504) 525-6378

MACK E. BARHAM
ROBERT E. ARCENEUX
GAIL N. WISE
MATTHEW K. BROWN
ANITA M. WARNER
HERVIN A. GUIDRY
KATHY S. AUSTIN
ALSO ADMITTED IN VIRGINIA

June 21, 1993

VIA FEDERAL EXPRESS

The Honorable Abigail Shaine
Assistant General Counsel
Federal Election Committee
999 E. Street, N.W., Room 657
Washington, D.C. 20463

Attention: Anne Weissenborn, Esq.
Mary Taksar, Esq.

Re: MUR 3342
Mack E. Barham

Dear Ms. Shaine:

This is in response to your letter of June 8, 1993, referencing a previous letter of March 10, 1992, both addressed to the writer. I am enclosing the Statement of Designation of Counsel on which I have designated Gail N. Wise as my counsel. Ms. Wise is an attorney in my office here in New Orleans.

Upon receipt of the March 10th letter, I contacted Majority Leader Richard Gephardt and additionally talked with various representatives of the Congressman regarding that notice. I was finally told by Congressman Gephardt's representatives that this matter had been settled and that I should not have any further concern. After that assurance from his representatives, who included staff counsel and one of his election committee counsel, I thought that there was no need to further communicate with the Federal Election Commission.

As is set forth in the Factual and Legal Analysis attached to the Federal Election Commission's letter of March 10, 1992, the Gephardt for President Committee (the "Committee") owed monies to me for expenditures that were incurred from the last of several fund raising events. As I remember, the checks that were received for this particular fund raising event were collected by the Committee, but there were not enough monies

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JUN 22 1993

BARHAM & ARCENEUX

The Honorable Abigail Shaine

June 21, 1993

Page - 2 -

collected locally to pay for the expenditures of the event. I repeatedly billed the Committee by mail and by telephone to obtain the funds with which to pay the telephone charges and the food and beverage costs which were incurred as a result of the luncheon meeting. These bills were never paid by the Committee. Since my personal financial standing and my law firm's financial standing depended upon payment to local businesses, I eventually was forced to pay the telephone bill to keep my firm's telephone service and to discharge the invoice for the luncheon. I did not loan the Committee anything; I simply paid obligations of credit which was extended to the Committee upon my representation. I continued to bill the Committee in an attempt to recoup this money.

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I received the enclosed correspondence dated August 30, 1988, from the Committee through Boyd B. Lewis, the Finance Director, after numerous conversations with him by telephone. Mr. Lewis, who represented Dick Gephardt and the Committee, advised me that they were unable to pay this outstanding balance, but that they would like to settle with me for 10% on the dollar as they were doing with all other persons to whom money was owed. I questioned the legality of such a settlement and was assured that legal counsel for the Committee had cleared this matter with the Federal Election Commission and that I needed merely to accept the 10%, or \$116.42, and sign the Debt Settlement Agreement ("Agreement"), and that the Federal Election Commission would make a pro forma review of the "Agreement," a copy of which is enclosed. Throughout all of the conversations with Mr. Lewis and the other staff members of the Committee, I was assured and reassured that this was not only the proper way, but the only way, to settle this matter. As of the date of the 1988 settlement, I was no longer interested in donating to the already lost Presidential campaign of Congressman Gephardt, nor did I intend the "Agreement" to constitute a donation. Moreover, neither the act of clearing debts which local vendors attributed to my contract with them for services nor the "Agreement" was intended to, nor could it have, influenced the election. It was over! I would today like to have the remainder of the \$1,164.22 which I expended to protect my own credit, financial standing, and personal honor, having obtained the credit for the Committee and not for myself.

Unfortunately, I did not carefully read the "Agreement," nor did I attach any particular strict meaning to the word "vendor" in the "Agreement." I did know that the initial extension of credit was made by the telephone company and the caterers as a typical and usual commercial credit transaction, and I had exhausted every means at my disposal as an individual and as an attorney to have the Committee pay its debt. I was assured that I was acting on good legal advice when I executed the "Agreement." The Committee had adequate counsel with the knowledge to give sound legal advice concerning federal election

BARHAM & ARCENEUX

The Honorable Abigail Shaine

June 21, 1993

Page - 3 -

regulations. Although I am a lawyer, I was not personally familiar with the campaign finances rules with any degree of expertise. The Gephardt Committee, Congressman Gephardt, and Boyd Lewis all knew that I was a former Justice of the Louisiana Supreme Court and that at the time of the "Agreement" I was the founder and manager of a law firm here in New Orleans, Louisiana. They all knew that I had not catered a luncheon and that I had not supplied telephone service. They also knew that I had not loaned money to the Committee, nor had I intended to donate additional funds.

While the amount involved is small, the personal reaction which I have to any finding of a violation of the Federal Election Campaign Act is not of little consequence to me, intellectually or emotionally. If there is a violation, it appears to me that it was perpetrated by someone other than myself and someone in a far better position to have knowledge of the question of a violation than I.

I would also ask that, as an attorney, you note that the "Agreement" was executed in September of 1988 and that the first notice that I had of any violation occurred with receipt of the Commission's letter of March 10, 1992. This is more than three and one-half years after the act upon which the Commission's "analysis" is made. I would hope that the statute of limitations which governs the act, 2 U.S.C. Section 455, would protect me at this point. I urge you to consider that plea at this time.

In summation, the amount which is involved is small. This was certainly not a reoccurring act, not one of a series of acts, not an act that had ever occurred before and certainly not an act that did or could affect an election. I participated in this campaign as a public service in what I thought were the best interests of myself and the people of the State of Louisiana and of this country. The settlement was suggested by able counsel and a most knowledgeable Committee and was not an act initiated by me. More certainly, it was not an intended offense. Additionally, the act occurred only with the best of legal advice and the encouragement of those that I respected. I hope that these factors and the time which elapsed between the act and the first notice to me give you sufficient reason to pursue this matter no further.

I consider this letter and my designation of counsel to be a proper response within the fifteen day deadline from June 8, 1993. I have tried to talk with Anne Weissenborn and Mary Taksar by telephone and will continue to attempt to contact them.

BARHAM & ARCENEUX

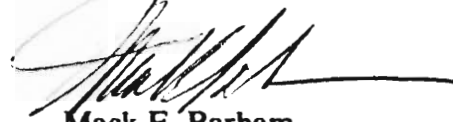
The Honorable Abigail Shaine

June 21, 1993

Page - 4 -

I apologize for the long dissertation, and I do sincerely hope that it satisfies you as counsel to the Federal Election Commission that there is no reason to further pursue the initial analysis that was made. I await your response.

Yours sincerely,



Mack E. Barham

MEB/yb

Enclosures

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3342

NAME OF COUNSEL: Gail N. Wise

ADDRESS: Barham & Arceneaux

650 Poydras Street, Suite 2700

New Orleans, LA 70130-6101

TELEPHONE: 504-525-4400

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

June 18, 1993

Date



Signature

RESPONDENT'S NAME: Mack E. Barham

ADDRESS: Barham & Arceneaux

650 Poydras Street, Suite 2700

New Orleans, LA 70130-6101

HOME PHONE:

BUSINESS PHONE: 504-525-4400

93 JUN 22 11:10:20

5043643803

THE GEPHARDT COMMITTEE

555 NEW JERSEY AVENUE N.W., SUITE 265
WASHINGTON, D.C. 20001 (202) 628-3337

August 30, 1988

Judge Mack E. Barham
5837 Bel Air Drive
New Orleans, LA 70124

Dear Judge Barham:

This letter is in reference to the obligations owed to you by the Gephardt for President Committee, Inc. (the "Committee") in the amount of \$1,164.22.

As you may know, when Congressman Gephardt withdrew from the presidential race at the end of March, the campaign ended with a debt of approximately \$2 million. Through fundraising efforts, the Committee has been attempting to reduce that debt. It does not appear, however, that the Committee will be able to raise sufficient funds to retire all its debts in full. You have agreed, therefore, that the obligation owed to you will be settled in full for the amount of \$116.42.

Under federal regulations, the Committee must submit a notice of this debt settlement to the Federal Election Commission for their review. In order to facilitate this submission, would you please execute the enclosed form and return it to the Committee in the enclosed postage-paid envelope. This form contains the information required by the FEC for debt settlements. You should keep a copy of the executed form for your records.

If you have any questions, please do not hesitate to contact the undersigned at (202) 628-3337.

Very truly yours,



Boyd B. Lewis

DEBT SETTLEMENT AGREEMENT

The Gephardt for President Committee, Inc. (the "Committee") has entered into a Debt Settlement Agreement with Judge Mack E. Barham (the "Vendor").

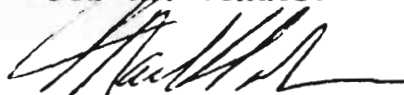
The Debt Settlement Agreement covers the following obligation:

- * Purpose of Obligation: Luncheon Meeting, Telephones
- * Initial Terms of Credit: Payable upon receipt of receipts
- * Outstanding Balance: \$1,164.22
- * Settlement Agreement Amount: \$116.42

In entering into this Debt Settlement Agreement, the Committee and the Vendor agree that:

- * the initial extension of credit to the Committee was made in a commercially reasonable manner;
- * the Committee has undertaken all reasonable efforts to satisfy the outstanding obligation but has been unable to do so; and
- * the Vendor has taken all commercially reasonable steps to collect the full amount but has been unable to do so.

For the Vendor:



Name

Attorney at Law

Title

September 6, 1988

Date

For the Committee:

ROYD LEWIS

Name

FINANCE DIRECTOR

Title

AUGUST 30, 1988

Date

5043643305

DEBT SETTLEMENT AGREEMENT

The Gephardt for President Committee, Inc. (the "Committee") has entered into a Debt Settlement Agreement with Barham & Churchill (the "Vendor").

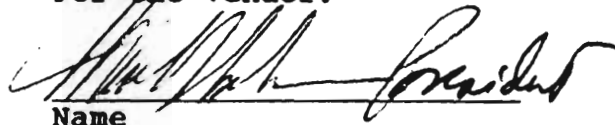
The Debt Settlement Agreement covers the following obligation:

- * Purpose of Obligation: Copies, Telephones, Delivery, Lodging, Postage, Supplies
- * Initial Terms of Credit: Payable upon receipt of invoice
- * Outstanding Balance: \$2,956.95
- * Settlement Agreement Amount: \$229.70

In entering into this Debt Settlement Agreement, the Committee and the Vendor agree that:

- * the initial extension of credit to the Committee was made in a commercially reasonable manner;
- * the Committee has undertaken all reasonable efforts to satisfy the outstanding obligation but has been unable to do so; and
- * the Vendor has taken all commercially reasonable steps to collect the full amount but has been unable to do so.

For the Vendor:


Name

BARHAM + CHURCHILL
Title

September 6, 1988
Date

For the Committee:

BOB LEWIS
Name

FINANCE COMMITTEE
Title

AUGUST 30, 1988
Date

5043643806

BEFORE THE FEDERAL ELECTION COMMISSION 93 JUN -8 AM 10:00

In the Matter of

SENSITIVE

Gephardt for President, Inc.)
S. Lee Kling, as treasurer)
Gephardt in Congress Committee)
John T. Tumbarello, as treasurer)
Iowa Democratic Party (Federal Division))
Mary Maloney, as treasurer)
Richard A. Gephardt)

MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 21, 1992, the Commission referred to the Office of the General Counsel two additional issues which arose during the course of the audit of the Gephardt for President Committee, Inc. (Attachment 1). These issues are being addressed by this Office within the context of the ongoing, audit-generated matter, MUR 3342, in which the Gephardt for President Committee, Inc. and its treasurer, S. Lee Kling, are respondents.¹

1. On April 18, 1991, the Commission found reason to believe in MUR 3111 that the Committee had violated 2 U.S.C. § 441a(f) by knowingly accepting \$73,980 in excessive contributions from individuals. On October 1, 1991, the Commission found reason to believe in MUR 3342 that the Committee had violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a) by exceeding the state expenditure limitation in Iowa, and that Richard A. Gephardt had violated 26 U.S.C. § 9035(a) by exceeding his personal \$50,000 expenditure limitation. The Commission also voted on October 1, 1991, to merge MUR 3342 with MUR 3111, with the combined matter to be designated MUR 3342.

On February 25, 1992, the Commission considered information received in the context of Debt Settlement Request 90-16 and found reason to believe that the Committee had violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions from certain partnerships, individuals, and political committees, and 2 U.S.C. § 441b by knowingly accepting contributions from certain incorporated law firms. These violations were added to those at

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II. ANALYSIS

A. Transfer from the Gephardt in Congress Committee

Generally, transfers of funds between candidate committees are subject to the \$1,000 limitation on contributions set forth at 2 U.S.C. § 441a(a)(1)(A) and in the Commission's regulations at 11 C.F.R. §§ 110.1 and 110.2. The making and knowing acceptance of transfers in excess of these limitations result in violations of 2 U.S.C. § 441a(a)(1)(A) and § 441a(f) respectively.

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In 1988-89 the Commission's regulations did not, nor do they presently, limit the transfer of funds between a candidate's previous federal campaign committee and his or her current federal campaign committee, provided that the funds did not include contributions which would violate the Federal Election Campaign Act ("the Act"). 11 C.F.R. § 110.3(a)(2)(iv)(1988); 11 C.F.R. § 110.3(c)(4)(1992). Nor did they limit transfers between the principal campaign committees of a candidate for two federal offices in the same election cycle as long as: such a transfer was not made while the candidate was actively seeking election to more than one office; the limitations on contributions were not exceeded; and the candidate had not received funds under Title 26. 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(A)-(C) (1988); 11 C.F.R. § 110.3(c)(5)(i), (ii) and (iii)(1992).

The Gephardt in Congress Committee ("the Congressional Committee") was the candidate's principal campaign committee for

(Footnote 1 continued from previous page)
issue in MUR 3342.

his 1988 campaign for re-election to the United States House of Representatives; later, the same committee was designated his principal campaign committee for the 1990 congressional campaign. The Gephardt for President Committee, Inc. ("the Presidential Committee") was the candidate's authorized committee for his 1988 campaign for the office of President. The Gephardt Committee was established by the Presidential Committee and the Congressional Committee in 1988 as a joint fundraising committee.

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The 1988 general election was held on November 8. On December 12, 1988, the Congressional Committee declared a surplus of funds and transferred \$50,000 to the Presidential Committee. In response to the Interim Addendum Audit Report sent to the Presidential Committee by the Commission on August 6, 1991, counsel for the Presidential Committee argued that the \$50,000 transfer was not made between campaign committees of a candidate seeking election to more than one federal office in the same election cycle. Rather, counsel contended, the transfer was made between Congressman Gephardt's then current congressional committee for the 1989-90 election cycle and his previous presidential committee. On this basis the Presidential Committee concluded that the regulation governing this transfer was 11 C.F.R. § 110.3(a)(2)(iv), not 11 C.F.R. § 110.3(a)(2)(v).

1. Application of 11 C.F.R. § 110.3(a)(2)(iv)(1988)

Two issues arise with regard to the application of 11 C.F.R. § 110.3(a)(2)(iv) to the transfer from the Congressional Committee to the Presidential Committee. These are (1) whether it was the candidate's 1988 or his 1990 congressional committee which was the

actual source of the transfer, i.e., whether the transfer was in fact between a then current committee and a previous committee, and (2) whether the funds transferred were permissible under the Act.

a. Identity of Transferring Committee

The Presidential Committee has argued that, by the time the funds were transferred on December 12, 1988, the Congressional Committee had completed its work with respect to the 1988 general election and was concerned with the next election. On this basis counsel has asserted that the transfer was made by the candidate's then current, 1990 campaign to his previous presidential campaign committee, not by his previous, 1988 congressional campaign committee to the presidential committee. In support of this argument, the Presidential Committee asserts that Congressman Gephardt was officially a candidate for the 1990 congressional election at the time of the transfer.²

It has been the position of the Audit Division and this Office that the decisive issue with regard to the transfer by the Congressional Committee to the Presidential Committee is whether the Congressional Committee was, as of December 12, 1988, still active in the 1988 general election cycle, not whether the 1990

2. Counsel also has pointed to the present definition of "previous Federal campaign committee" at 11 C.F.R. § 110.3(c)(4)(i)(1992) as a committee "organized to further the candidate's campaign in a Federal election which has already been held," arguing that this definition "clearly fits the Congressional Committee in December 1988." This argument seems to contradict the position that the Congressional Committee was by that time working on the 1990 campaign.

campaign committee had come into existence.³ The fact that the 1988 general election had been held did not preclude the Congressional Committee from engaging in financial activity related to that election. See 11 C.F.R. § 110.1(b)(3)(i). Further, Congressman

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3. Counsel asserts that Congressman Gephardt had filed his amended Statement of Candidacy on December 15, 1988, designating the Congressional Committee as his principal campaign committee for the 1990 election. This Office, however, continues to question, as it did, together with the Audit Division, during the audit, whether Congressman Gephardt was a candidate for the 1990 congressional election at the time of the transfer. Generally, an individual does not become a candidate until he receives contributions or makes expenditures aggregating in excess of \$5,000.00. 11 C.F.R. § 100.3(a)(1). These contributions and expenditures are aggregated on an election cycle basis. 11 C.F.R. § 100.3(b). The election cycle begins on the first day following the previous general election, or, in the case of contributions or expenditures designated for another election, when an individual or committee first receives contributions or makes expenditures for the designated election. Id. The Congressional Committee's 1988 Year End Report, covering the period from November 29, 1988, to December 31, 1988, reveals that it did not designate any expenditures or receipts for the 1990 primary election during this time. Therefore, Congressman Gephardt did not become a candidate for the 1990 primary election until sometime after December 31, 1988 when he received contributions or made expenditures aggregating in excess of \$5,000.00.

Furthermore, contrary to the Presidential Committee's assertion, the candidate did not file his Statement of Candidacy on December 15, 1988. At most the candidate merely signed his Statement of Candidacy on December 15, 1988. It was deposited in regular mail on February 2, 1989. The Office of the Clerk did not receive the Statement of Candidacy until February 10, 1989. A document is considered filed on the date it is deposited in registered or certified mail. 11 C.F.R. § 100.19(b). Reports and statements sent by regular mail are filed on the date they are received. Therefore, the Statement of Candidacy was not filed until February 10, 1989. See 11 C.F.R. § 100.19(b).

It appears that the dates on Congressman Gephardt's Statement of Candidacy and on the Congressional Committee's Statement of Organization for the 1990 election were changed at some point from January 15, 1989 to December 15, 1988. The date of January 15, 1989, would have been more consistent with the February 2, 1988 date on which the statements apparently were mailed to the Office of the Clerk of the House.

Gephardt's status as a candidate for the 1990 primary election would not have prevented the Congressional Committee from engaging in financial activity related to the 1988 general election in December, 1988, and later. If the Congressional Committee had net debts outstanding from the 1988 general election, it could have continued to receive contributions designated for that election, and to make expenditures after the election had taken place.

11 C.F.R. § 110.1(b)(3)(i).

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In fact, the Congressional Committee made \$53,168.10 in disbursements between December 12, 1988, the date of the second transfer here at issue, and December 31, 1988, to satisfy obligations apparently incurred in connection with the 1988 general election. All of these disbursements, as well as others earlier in December, were itemized on the Committee's 1988 Year End Report as being for the general election. The \$53,168.10 included \$34,000 paid on December 20 to Doak, Shrum & Associates for "consulting services," and two \$5,000 payments on December 19 and December 20 to Telephone Contact Inc. for "phone bank services"; these three expenditures were thus made after the date of the transfer to the Presidential Committee. Although the Congressional Committee had not reported debts owed on its 1988 Pre-General and Post-General Reports, the natures of the three expenditures cited above indicate that they were related to obligations which existed before the general election and thus well before the date of the transfer to the Presidential Committee. "[F]unds raised after an election to retire election campaign debts are just as much for the purpose of influencing an election and in connection with the election as are

those contributions received before the election." Advisory Opinion 1983-2. See also Advisory Opinion 1981-22 and FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988).

It thus remains the position of this Office that the Congressional Committee's financial activity through December 31, 1988, was within the purview of the 1988 general election cycle, resulting in the transfer to the Presidential Committee having been made by the candidate's 1988, and thus previous, Congressional committee, not by his 1990 committee. Therefore, the 11 C.F.R. § 110.3(a)(2)(iv)(1988) is not the applicable provision. Rather, the transfer must be examined in light of the requirements of 11 C.F.R. § 110.3(a)(2)(v)(1988) which governs transfers between the principal campaign committees of a candidate seeking more than one Federal office within the same election cycle. (See discussion beginning on page 9 below.)

b. Source of Funds

Even if the funds were determined to have come from the then current, 1990 Gephardt Congressional Committee, it appears that the funds transferred by the Congressional Committee to the Presidential Committee contained impermissible contributions which would have placed the transfer in violation of 11 C.F.R. § 110.3(a)(2)(iv)(1988). The Commission's audit of the Presidential Committee determined that one of the sources of the transferred funds was all or part of two earlier transfers made to the Congressional Committee by the candidate's joint fundraising committee, the Gephardt Committee, which had been established by the Presidential Committee and the Congressional Committee in

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May, 1988. The transfers from the joint-fundraising committee to the Congressional Committee included one of \$10,000 made on November 8, 1988, and one of \$40,000 made on December 2, 1988. These transfers were reported by the Congressional Committee as being for the general election.

The allocation formula in the joint fundraising agreement required that, unless a contributor specifically designated his or her contribution to the Congressional Committee, the contribution would be allocated to the Presidential Committee to the extent of the contributor's limitation under the Act. Any amounts in excess of the statutory limits were allocable to the Congressional Committee. In addition, contributors could specifically designate contributions to the Congressional Committee.

Absent review of the bank records of the Congressional Committee, it has been the opinion of the Audit Division that the transfer by the Congressional Committee to the Presidential Committee contained all of the \$10,000 received from the joint fundraising committee on November 8, 1988 and possibly some portion of the \$40,000 received on December 2, 1988.⁴ By the terms of the joint fundraising agreement, the \$50,000 in transfers to the Congressional Committee necessarily contained funds which

4. The auditors began with the Congressional Committee's reported ending cash balance as of November 28, 1988, and determined the reported receipts that made up this balance. Applying a first in, first out analysis based on reported activity from November 28, 1988 to December 12, 1988, the Audit staff determined that the Congressional Committee's transfer of \$50,000 to the Presidential Committee on December 12, 1988 included all of the \$10,000 from the joint fundraising committee.

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were in excess of the amounts individual contributors could have given to the Presidential Committee under the Act, and which had therefore been allocated to the Congressional Committee, as well as funds which had been specifically designated to the Congressional Committee. Thus, the transfer by the Congressional Committee to the Presidential Committee would have been comprised, at least in part, of funds which would have been excessive if contributed directly to the latter committee.

2. Application of 11 C.F.R. § 110.3(a)(2)(v)(1988)

11 C.F.R. § 110.3(a)(2)(v)(1988) permitted transfers between the committees of a candidate seeking election to more than one Federal office provided that the transfer did not occur while the candidate was actively seeking both offices, the limitations on contributions were not exceeded, and the candidate had not received funds under Title 26. In the present matter the transfer from the 1988 Congressional Committee to the Presidential Committee fails two of these tests.

a. Source of Funds

As discussed above, at least a portion of the funds used for the transfer to the Presidential Committee originally came from \$50,000 in contributions made to the candidate's joint fundraising committee. This portion represented contributions which had either exceeded the contributor's limitations with regard to the Presidential Committee or which had been specifically designated for the Congressional Committee. Thus, the transfer apparently contained funds which resulted in the knowing receipt of excessive

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contributions from individual contributors in violation of the Act.

b. Receipt of Funds under Title 26

Richard Gephardt in 1988 received presidential primary matching funds, pursuant to 26 U.S.C. § 9037. Therefore, the transfer of funds by the Congressional Committee to the Presidential Committee was impermissible, pursuant to 11 C.F.R. § 110.3(a)(v)(C).⁵

This Office recommends that the Commission find reason to believe that the Gephardt in Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and that the Gephardt for President Committee and S. Lee Kling, as

5. The third prong of the transfer test set out at 11 C.F.R. § 110.3(a)(2)(v)(1988) was that the candidate not be actively seeking nomination or election to more than one Federal office at the time of a transfer. As is discussed above, the transfer here at issue apparently came from the candidate's 1988 congressional committee, not from his 1990 committee. The issue then arises as to whether he was "actively seeking" two Federal offices as of the date of the transfer. In 1988 "not actively seeking" was defined as meaning the "principal campaign committee had filed a termination report with the Commission or had notified the Commission that the candidate and his authorized committees will make no further expenditure, except in connection with the retirement of debts outstanding at the time of the notification." 11 C.F.R. § 110.3(a)(2)(v)(A)(1988). Richard Gephardt withdrew as a candidate for the office of President on March 28, 1988, that date becoming his date of ineligibility, pursuant to 11 C.F.R. § 9033.5. In addition, by the time of the transfer to the Presidential Committee both the primary and general elections had taken place. Questions arise as to whether "not actively seeking" is equivalent either to a presidential candidate's date of ineligibility to receive public funds or to the date of an election. Because the transfer here at issue fails two other tests, it is not necessary in this present matter to make a determination as to whether the candidate was not actively seeking election to two offices at the time of the transfer.

treasurer, violated 2 U.S.C. § 441a(f) by making and knowingly accepting an excessive transfer.

B. Iowa Democratic Party List

1. Excessive State Expenditures - Iowa

On October 1, 1991, the Commission found reason to believe that the Presidential Committee had violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A) by making expenditures in excess of the 1987-88 \$775,217.60 expenditure limitation for the state of Iowa. This determination was based upon the potentiality of excessive expenditures totaling \$490,936.44. Since then, on May 21, 1992, the Commission has ordered the Presidential Committee to repay \$118,943.94 to the U.S. Treasury, this repayment being based upon the determination that the Committee exceeded the expenditure limitation in Iowa by \$452,543.95.

Not included as a basis for the Commission's May 21, 1992, repayment determination was information which has been received during the investigation in another enforcement matter, MUR 2884, indicating that the Presidential Committee had acquired the use of a computerized list of registered Democrats, Democratic Party activists, and precinct caucus attendees from the Iowa Democratic Party ("the Party"). According to the Party's response to questions in that second matter, "[a]ll campaigns [which received the list, including the Presidential Committee], or someone on their behalf, provided \$10,000 in cash or services to the Iowa

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Democratic Party for the list."⁶ However, no third-party benefactor for the Presidential Committee has been identified, nor has the Audit Division found any evidence of a \$10,000 payment to the Party by the Presidential Committee itself. The Presidential Committee did not report such an in-kind contribution or expenditure, nor did it allocate an expenditure of this nature and amount to its Iowa limitation.

In the Interim Addendum to the Final Audit Report sent to the Presidential Committee on August 6, 1991, the Committee was asked to provide documentation regarding the source of a \$10,000 payment for the Party's list, including the identity of any person or entity that had paid the Party for its use. In addition, the Presidential Committee was provided an opportunity to submit an explanation as to why the cost of the list should not be allocated to the Iowa expenditure limitation.

In its response to the Interim Addendum Audit Report, the Presidential Committee noted that it had limited information concerning the acquisition of the list from the Party. However, the Presidential Committee asserted that the information it had in hand indicated that the Party had offered its list to a number of candidates as consideration for their promise to assist the party

6. Pursuant to information provided during a deposition taken in MUR 2884, the Party valued the use of the list by each campaign at \$10,000. Payment could be made either in cash or in the form of services to the Party.

At least four Democratic presidential candidate committees paid \$10,000 to the Party in 1987 for use of the list, these being Dukakis for President, Simon for President, Hart for President and Gore for President.

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with its fundraising efforts. According to the response, Congressman Gephardt was offered the list on that basis.

On April 21, 1992, the Commission considered the Addendum to the Final Audit Report for the Presidential Committee, voted to add the \$10,000 payment for the list as an expenditure allocable to Iowa, and made an initial determination that an additional \$2,628.34 should be repaid to the U.S. Treasury. The Commission on this date also referred to the Office of the General Counsel the same \$10,000 payment to be considered in conjunction with its earlier referral of expenditures made by the Presidential Committee in excess of the Iowa state limitation. On August 4, 1992, the Commission made its final determination that the \$2,628.34 was repayable.

This Office will add the \$10,000 payment to the Iowa Democratic Party for a list to the expenditures being addressed in MUR 3342 as having been in excess of the Presidential Committee's Iowa state spending limitation.

2. Excessive Contribution

2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the amount which a multicandidate political committee may contribute to a candidate and his or her authorized committee with respect to any election. 2 U.S.C. § 441a(f) prohibits the knowing acceptance of an excessive contribution by a candidate or his authorized committee. 2 U.S.C. § 434(b)(4)(H)(i) requires that political committees report all contributions made to other political committees, while 2 U.S.C. § 434(b)(3)(B) requires that committees report the identification of all political committees making contributions to

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the reporting committee. Pursuant to 2 U.S.C. § 431(8)(A), "contribution" is defined as including "anything of value" provided for the purpose of influencing a federal election. 11 C.F.R. § 100.7(a)(1)(iii) includes within "anything of value" all in-kind contributions.

In the absence of information identifying a third party as the source of payment for all or part of the cost of the use of the computerized list supplied to the Presidential Committee by the Party, it appears that the Party made an excessive in-kind contribution of \$5,000 to that committee. Therefore, this Office recommends that the Commission find reason to believe that the Iowa Democratic Party and Mary Maloney, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i) by making an excessive in-kind contribution to the Gephardt for President Committee and by failing to report the contribution, and that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) and 2 U.S.C. § 434(b)(3)(B) by knowingly accepting an excessive in-kind contribution from the Iowa Democratic Party and by failing to report this receipt.

III. RECOMMENDATIONS

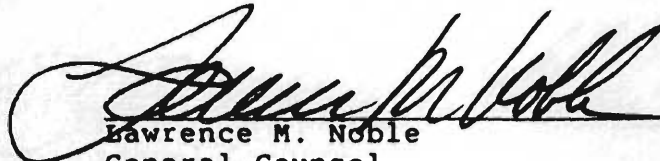
1. Find reason to believe that the Gephardt for President Committee, Inc., and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an impermissible transfer from the Gephardt for Congress Committee and by knowingly accepting an excessive in-kind contribution from the Iowa Democratic Party (Federal Division).
2. Find reason to believe that the Gephardt for President Committee, Inc., and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B).

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3. Find reason to believe that the Gephardt in Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
4. Find reason to believe that the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i).
5. Approve the attached Factual and Legal Analyses and the appropriate letters.

Date

6/7/93


Lawrence M. Noble
General Counsel

Attachments

1. Referral dated April 24, 1992
2. Factual and Legal Analyses (3)

Staff Assigned: Anne Weissenborn

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS *[Signature]*
COMMISSION SECRETARY

DATE: JUNE 10, 1993

SUBJECT: MUR 3342 - GENERAL COUNSEL'S REPORT
DATED JUNE 7, 1993.

The above-captioned document was circulated to the
Commission on Tuesday, June 8, 1993 at 11:00 a.m..

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	_____
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda
for Tuesday, June 15, 1993.

Please notify us who will represent your Division before
the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3342
Gephardt for President, Inc.;)
S. Lee Kling, as treasurer;)
Gephardt in Congress Committee;)
John T. Tumbarello, as treasurer;)
Iowa Democratic Party (Federal)
Division);)
Mary Maloney, as treasurer;)
Richard A. Gephardt)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 29, 1993, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 3342:

1. Find reason to believe that the Gephardt for President Committee, Inc., and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an impermissible transfer from the Gephardt for Congress Committee and by knowingly accepting an excessive in-kind contribution from the Iowa Democratic Party (Federal Division).
2. Find reason to believe that the Gephardt for President Committee, Inc. and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B).

(continued)

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Federal Election Commission
Certification for MUR 3342
June 29, 1993

Page 2

3. Find reason to believe that the Gephardt in Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
4. Find reason to believe that the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i).
5. Approve the Factual and Legal Analyses and the appropriate letters as recommended in the General Counsel's report dated June 7, 1993.

Commissioners Aikens, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented; Commissioner McDonald was not present and did not vote on this matter.

Attest:

6-30-93
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JULY 1, 1993

Mary Maloney, Treasurer
Iowa Democratic Party (Federal Division)
2116 Grand Avenue
Des Moines, Iowa 50312

RE: MUR 3342

Dear Ms. Maloney:

On June 29, 1993, the Federal Election Commission found that there is reason to believe the Iowa Democratic Party (Federal Division) ("the Committee") and you, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Mary Maloney, Treasurer
Iowa Democratic Party (Federal Division)
page 2

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,


John Warren McGarry
Commissioner

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Iowa Democratic Party
(Federal Division)
Mary Maloney, as treasurer

MUR: 3342

2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the amount which a multicandidate political committee may contribute to a candidate and his authorized committee with respect to any election.

2 U.S.C. § 434(b)(4)(H)(i) requires that political committees report all contributions made to other political committees.

Pursuant to 2 U.S.C. § 431(8)(A), "contribution" is defined as including "anything of value" provided for the purpose of influencing a federal election. 11 C.F.R. § 100.7(a)(1)(iii) includes within "anything of value" all in-kind contributions.

Information received by the Federal Election Commission ("the Commission") indicates that the Gephardt for President Committee ("Gephardt Committee") acquired the use of a computerized list of registered Democrats, Democratic Party activists, and precinct caucus attendees from the Iowa Democratic Party ("the Party"). The Party valued the use of the list at \$10,000 per recipient and those that received the list, including the Gephardt Committee, or someone on their behalf, were to pay either in cash or in the form of services.¹ However, no third-party benefactor for the Gephardt Committee has been identified, nor is there in

1. At least four Democratic presidential candidate committees paid \$10,000 to the Party in 1987 for use of the list, these being Dukakis for President, Simon for President, Hart for President and Gore for President.

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hand evidence of a \$10,000 payment to the Party by the Gephardt Committee itself. The latter committee did not report such an in-kind contribution or expenditure.

In the Interim Addendum to the Final Audit Report on the Gephardt Committee's activities sent to that committee on August 6, 1991, the Committee was asked to provide documentation regarding the source of the \$10,000 payment for the mailing list, including the identity of the person or entity that had paid the Party for the list.

In its response to the Interim Addendum Audit Report, the Gephardt Committee noted that it had limited information concerning the acquisition of the mailing list from the Party. However, the Gephardt Committee asserted that the information that it had in hand indicated that the Party had offered its mailing lists to a number of candidates as consideration for their promise to assist the party with its fundraising efforts. According to the response, Congressman Gephardt was apparently offered the list on that basis.

In the absence of information identifying a third party as the source of payment of all or part of the cost of the computerized list supplied to the Gephardt Committee, it appears that the Party made an excessive in-kind contribution of \$10,000 to that committee. Therefore, this Office recommends that the Commission find reason to believe that the Iowa Democratic Party and Mary Maloney, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i) by making an excessive in-kind

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contribution to the the Gephardt for President Committee and
failing to report the contribution.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 1, 1993

John R. Tumbarello, Treasurer
Gephardt in Congress Committee
7435 Watson Road, Suite 107
St. Louis, MO 63119

RE: MUR 3342

Dear Mr. Tumbarello:

On June 29, 1993, the Federal Election Commission found that there is reason to believe the Gephardt in Congress Committee ("the Committee") and you, as treasurer, violated 2 U.S.C. § 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days

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John R. Tumbarello, Treasurer
Gephardt in Congress Committee
page 2

prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,


John Warren McGarry
Commissioner

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form

cc: The Hon. Richard A. Gephardt

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Gephardt in Congress Committee
John R. Tumbarello, as treasurer

MUR: 3342

I. BACKGROUND

On April 21, 1992, the Commission referred to the Office of the General Counsel certain issues which arose during the course of the audit of the Gephardt for President Committee, Inc. These issues are being addressed by the Commission within the context of an ongoing matter, MUR 3342.

II. ANALYSIS

Transfer to the Gephardt for President Committee

Generally, transfers of funds between candidate committees are subject to the \$1,000 limitation on contributions set forth at 2 U.S.C. § 441a(a)(1) and in the Commission's regulations at 11 C.F.R. §§ 110.1 and 110.2. The making of transfers in excess of these limitations results in violations of 2 U.S.C. § 441a(a)(1)(A).

In 1988-89 the Commission's regulations did not, nor do they presently, limit the transfer of funds between a candidate's previous federal campaign committee and his or her current federal campaign committee, provided that the funds did not include contributions which would violate the Federal Election Campaign Act ("the Act"). 11 C.F.R. § 110.3(a)(2)(iv)(1988); 11 C.F.R. § 110.3(c)(4)(1992). Nor did they limit transfers between the principal campaign committees of a candidate for two federal

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offices in the same election cycle as long as: such a transfer was not made while the candidate was actively seeking election to more than one office; the limitations on contributions were not exceeded; and the candidate had not received funds under Title 26. 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(A)-(C) (1988); 11 C.F.R. § 110.3(c)(5)(i), (ii) and (iii)(1992).

The Gephardt in Congress Committee ("the Congressional Committee") was the candidate's principal campaign committee for his 1988 campaign for re-election to the United States House of Representatives; later, the same committee was designated his principal campaign committee for the 1990 congressional campaign. The Gephardt for President Committee, Inc. ("the Presidential Committee") was the candidate's authorized committee for his 1988 campaign for the office of President. The Gephardt Committee was established by the Presidential Committee and the Congressional Committee in 1988 as a joint fundraising committee.

The 1988 general election was held on November 8. On December 12, 1988, the Congressional Committee declared a surplus of funds and transferred \$50,000 to the Presidential Committee. In response to the Interim Addendum Audit Report sent to the Presidential Committee by the Commission on August 6, 1991, counsel for the Presidential Committee argued that the \$50,000 transfer was not made between campaign committees of a candidate seeking election to more than one federal office in the same election cycle. Rather, counsel contended, the transfer was made between Congressman Gephardt's then current congressional committee for the 1989-90 election cycle and his previous presidential committee. On

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this basis the Presidential Committee concluded that the regulation governing this transfer was 11 C.F.R. § 110.3(a)(2)(iv), not 11 C.F.R. § 110.3(a)(2)(v).

1. Application of 11 C.F.R. § 110.3(a)(2)(iv)(1988)

Two issues arise with regard to the application of 11 C.F.R. § 110.3(a)(2)(iv) to the transfer from the Congressional Committee to the Presidential Committee. These are (1) whether it was the candidate's 1988 or his 1990 congressional committee which was the actual source of the transfer, i.e., whether the transfer was in fact between a then current committee and a previous committee, and (2) whether the funds transferred were permissible under the Act.

a. Identity of Transferring Committee

The Presidential Committee has argued that, by the time the funds were transferred on December 12, 1988, the Congressional Committee had completed its work with respect to the 1988 general election and was concerned with the next election. On this basis counsel has asserted that the transfer was made by the candidate's then current, 1990 campaign to his previous presidential campaign committee, not by his previous, 1988 congressional campaign committee to the presidential committee. In support of this argument, the Presidential Committee asserts that Congressman Gephardt was officially a candidate for the 1990 congressional election at the time of the transfer.¹

1. Counsel also has pointed to the present definition of "previous Federal campaign committee" at 11 C.F.R. § 110.3(c)(4)(i)(1992) as a committee "organized to further the candidate's campaign in a Federal election which has already been held," arguing that this definition "clearly fits the Congressional Committee in December 1988." This argument seems to

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The decisive issue with regard to the transfer by the Congressional Committee to the Presidential Committee is whether the Congressional Committee was, as of December 12, 1988, still active in the 1988 general election cycle, not whether the 1990 campaign committee had come into existence.² The fact that the 1988

(Footnote 1 continued from previous page)
contradict the position that the Congressional Committee was by that time working on the 1990 campaign.

2. Counsel asserts that Congressman Gephardt had filed his amended Statement of Candidacy on December 15, 1988, designating the Congressional Committee as his principal campaign committee for the 1990 election. The Office of the General Counsel, however, continues to question, as it did, together with the Audit Division, during the audit, whether Congressman Gephardt was a candidate for the 1990 congressional election at the time of the transfer. Generally, an individual does not become a candidate until he receives contributions or makes expenditures aggregating in excess of \$5,000.00. 11 C.F.R. § 100.3(a)(1). These contributions and expenditures are aggregated on an election cycle basis. 11 C.F.R. § 100.3(b). The election cycle begins on the first day following the previous general election, or, in the case of contributions or expenditures designated for another election, when an individual or committee first receives contributions or makes expenditures for the designated election. *Id.* The Congressional Committee's 1988 Year End Report, covering the period from November 29, 1988, to December 31, 1988, reveals that it did not designate any expenditures or receipts for the 1990 primary election during this time. Therefore, Congressman Gephardt did not become a candidate for the 1990 primary election until sometime after December 31, 1988 when he received contributions or made expenditures aggregating in excess of \$5,000.00.

Furthermore, contrary to the Presidential Committee's assertion, the candidate did not file his Statement of Candidacy on December 15, 1988. At most the candidate merely signed his Statement of Candidacy on December 15, 1988. It was deposited in regular mail on February 2, 1989. The Office of the Clerk did not receive the Statement of Candidacy until February 10, 1989. A document is considered filed on the date it is deposited in registered or certified mail. 11 C.F.R. § 100.19(b). Reports and statements sent by regular mail are filed on the date they are received. Therefore, the Statement of Candidacy was not filed until February 10, 1989. See 11 C.F.R. § 100.19(b).

It appears that the dates on Congressman Gephardt's Statement

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general election had been held did not preclude the Congressional Committee from engaging in financial activity related to that election. See 11 C.F.R. § 110.1(b)(3)(i). Further, Congressman Gephardt's status as a candidate for the 1990 primary election would not have prevented the Congressional Committee from engaging in financial activity related to the 1988 general election in December, 1988, and later. If the Congressional Committee had net debts outstanding from the 1988 general election, it could have continued to receive contributions designated for that election, and to make expenditures after the election had taken place. 11 C.F.R. § 110.1(b)(3)(i).

In fact, the Congressional Committee made \$53,168.10 in disbursements between December 12, 1988, the date of the second transfer here at issue, and December 31, 1988, to satisfy obligations apparently incurred in connection with the 1988 general election. All of these disbursements, as well as others earlier in December, were itemized on the Committee's 1988 Year End Report as being for the general election. The \$53,168.10 included \$34,000 paid on December 20 to Doak, Shrum & Associates for "consulting services," and two \$5,000 payments on December 19 and December 20 to Telephone Contact Inc. for "phone bank services"; these three expenditures were thus made after the date of the transfer to the

(Footnote 2 continued from previous page)
of Candidacy and on the Congressional Committee's Statement of Organization for the 1990 election were changed at some point from January 15, 1989 to December 15, 1988. The date of January 15, 1989, would have been more consistent with the February 2, 1989 date on which the statements apparently were mailed to the Office of the Clerk of the House.

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Presidential Committee. Although the Congressional Committee had not reported debts owed on its 1988 Pre-General and Post-General Reports, the natures of the three expenditures cited above indicate that they were related to obligations which existed before the general election and thus well before the date of the transfer to the Presidential Committee. "[F]unds raised after an election to retire election campaign debts are just as much for the purpose of influencing an election and in connection with the election as are those contributions received before the election." Advisory Opinion 1983-2. See also Advisory Opinion 1981-22 and PEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988).

The Congressional Committee's financial activity through December 31, 1988 was within the purview of the 1988 general election cycle, resulting in the transfer to the Presidential Committee having been made by the candidate's 1988, and thus previous, Congressional committee, not by his 1990 committee. Therefore, the 11 C.F.R. § 110.3(a)(2)(iv)(1988) is not the applicable provision. Rather, the transfer must be examined in light of the requirements of 11 C.F.R. § 110.3(a)(2)(v)(1988) which governs transfers between the principal campaign committees of a candidate seeking more than one Federal office within the same election cycle. (See discussion beginning at page 8 below.)

b. Source of Funds

Even if the funds were determined to have come from the then current, 1990 Gephardt Congressional Committee, it appears that the funds transferred by the Congressional Committee to the Presidential Committee contained impermissible contributions which

would have placed the transfer in violation of 11 C.F.R. § 110.3(a)(2)(iv)(1988). The Commission's audit of the Presidential Committee determined that one of the sources of the transferred funds was all or part of two earlier transfers made to the Congressional Committee by the candidate's joint fundraising committee, the Gephardt Committee, which had been established by the Presidential Committee and the Congressional Committee in May, 1988. The transfers from the joint-fundraising committee to the Congressional Committee included one of \$10,000 made on November 8, 1988, and one of \$40,000 made on December 2, 1988. These transfers were reported by the Congressional Committee as being for the general election.

The allocation formula in the joint fundraising agreement required that, unless a contributor specifically designated his or her contribution to the Congressional Committee, the contribution would be allocated to the Presidential Committee to the extent of the contributor's limitation under the Act. Any amounts in excess of the statutory limits were allocable to the Congressional Committee. In addition, contributors could specifically designate contributions to the Congressional Committee.

Absent review of the bank records of the Congressional Committee, it has been the opinion of the Audit Division that the transfer by the Congressional Committee to the Presidential Committee contained all of the \$10,000 received from the joint fundraising committee on November 8, 1988 and possibly some

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portion of the \$40,000 received on December 2, 1988.³ By the terms of the joint fundraising agreement, the \$50,000 in transfers to the Congressional Committee necessarily contained funds which were in excess of the amounts individual contributors could have given to the Presidential Committee under the Act, and which had therefore been allocated to the Congressional Committee, as well as funds which had been specifically designated to the Congressional Committee. Thus, the transfer by the Congressional Committee to the Presidential Committee would have been comprised, at least in part, of funds which would have been excessive if contributed directly to the latter committee.

2. Application of 11 C.F.R. § 110.3(a)(2)(v)(1988)

11 C.F.R. § 110.3(a)(2)(v)(1988) permitted transfers between the committees of a candidate seeking election to more than one Federal office provided that the transfer did not occur while the candidate was actively seeking both offices, the limitations on contributions were not exceeded, and the candidate had not received funds under Title 26. In the present matter the transfer from the 1988 Congressional Committee to the Presidential Committee fails two of these tests.

3. The auditors began with the Congressional Committee's reported ending cash balance as of November 28, 1988 and determined the reported receipts that made up this balance. Applying a first in, first out analysis based on reported activity from November 28, 1988 to December 12, 1988, the Audit staff determined that the Congressional Committee's transfer of \$50,000 to the Presidential Committee on December 12, 1988 included all of the \$10,000 from the joint fundraising committee.

a. Source of Funds

As discussed above, at least a portion of the funds used for the transfer to the Presidential Committee originally came from \$50,000 in contributions made to the candidate's joint fundraising committee. This portion represented contributions which had either exceeded the contributor's limitations with regard to the Presidential Committee or which had been specifically designated for the Congressional Committee. Thus, the transfer apparently contained funds which resulted in the knowing receipt of excessive contributions from individual contributors in violation of the Act.

b. Receipt of Funds under Title 26

Richard Gephardt in 1988 received presidential primary matching funds, pursuant to 26 U.S.C. § 9037. Therefore, the transfer of funds by the Congressional Committee to the Presidential Committee was impermissible, pursuant to 11 C.F.R. § 110.3(a)(v)(C).⁴

There is reason to believe that the Gephardt for Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive transfer to the Gephardt for President Committee.

4. The third prong of the transfer test set out at 11 C.F.R. § 110.3(a)(2)(v)(1988) was that the candidate not be actively seeking nomination or election to more than one Federal office at the time of a transfer. Because the transfer here at issue fails two other tests, it is not necessary in this present matter to make a determination as to whether the candidate was not actively seeking election to two offices at the time of the transfer.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 1, 1993

Robert F. Bauer, Esquire
Perkins Coie
607 14th Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President
Committee
S. Lee Kling, as treasurer

Dear Mr. Bauer:

On June 29, 1993, the Federal Election Commission found that there is reason to believe your clients, the Gephardt for President Committee ("the Committee") and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) and 2 U.S.C. § 434(b)(3)(B), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), by knowingly accepting an impermissible transfer from the Gephardt for Congress Committee, by knowingly accepting an excessive in-kind contribution from the Iowa Democratic Party (Federal Division) ("the Party"), and by failing to report the contribution from the Party. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and S. Lee Kling, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter.

As you are aware, these Commission determinations are the latest, and last, in a series of reason to believe findings made by the Commission with regard to your clients. It is the understanding of the Office of the General Counsel, based upon your letter of July 6, 1992, that you do not intend to present additional factual information with regard to the issues involved in the Commission's earlier reason to believe determinations, but that you will be presenting certain legal issues during the course of the pre-probable cause conciliation process which you intend to request. In the latter regard, it also is the understanding of the Office of the General Counsel that your letter of July 6, 1992 was meant to indicate your intention to request pre-probable cause conciliation in the future, not as a submission of such a request as of that date.

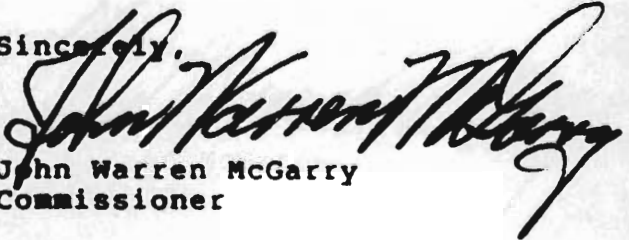
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Robert F. Bauer, Esquire
page 2

If you are indeed interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission proposing an agreement in settlement of the matter.

If you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,


John Warren McGarry
Commissioner

Enclosures
Factual and Legal Analysis

cc: The Hon. Richard A. Gephardt

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Gephardt for President Committee
S. Lee Kling, as treasurer

MUR: 3342

I. BACKGROUND

On April 21, 1992, the Commission referred to the Office of the General Counsel two additional issues which arose during the course of the audit of the Gephardt for President Committee, Inc. These issues are being addressed by the Commission within the context of the ongoing, audit-generated matter, MUR 3342, in which the Gephardt for President Committee, Inc. and its treasurer, S. Lee Kling, are respondents.¹

1. On April 18, 1991, the Commission found reason to believe in MUR 3111 that the Committee had violated 2 U.S.C. § 441a(f) by knowingly accepting \$73,980 in excessive contributions from individuals. On October 1, 1991, the Commission found reason to believe in MUR 3342 that the Committee had violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a) by exceeding the state expenditure limitation in Iowa, and that Richard A. Gephardt had violated 26 U.S.C. § 9035(a) by exceeding his personal \$50,000 expenditure limitation. The Commission also voted on October 1, 1991, to merge MUR 3342 with MUR 3111, with the combined matter to be designated MUR 3342.

On February 25, 1992, the Commission considered information received in the context of Debt Settlement Request 90-16 and found reason to believe that the Committee had violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions from certain partnerships, individuals, and political committees, and 2 U.S.C. § 441b by knowingly accepting contributions from certain incorporated law firms. These violations were added to those at issue in MUR 3342.

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II. ANALYSIS

A. Transfer from the Gephardt in Congress Committee

Generally, transfers of funds between candidate committees are subject to the \$1,000 limitation on contributions set forth at 2 U.S.C. § 441a(a)(1)(A) and in the Commission's regulations at 11 C.F.R. §§ 110.1 and 110.2. Knowing acceptance of transfers in excess of these limitations results in violations of 2 U.S.C. § 441a(f).

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In 1988-89 the Commission's regulations did not, nor do they presently, limit the transfer of funds between a candidate's previous federal campaign committee and his or her current federal campaign committee, provided that the funds did not include contributions which would violate the Federal Election Campaign Act ("the Act"). 11 C.F.R. § 110.3(a)(2)(iv)(1988); 11 C.F.R. § 110.3(c)(4)(1992). Nor did they limit transfers between the principal campaign committees of a candidate for two federal offices in the same election cycle as long as: such a transfer was not made while the candidate was actively seeking election to more than one office; the limitations on contributions were not exceeded; and the candidate had not received funds under Title 26. 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(A)-(C) (1988); 11 C.F.R. § 110.3(c)(5)(i), (ii) and (iii)(1992).

The Gephardt in Congress Committee ("the Congressional Committee") was the candidate's principal campaign committee for his 1988 campaign for re-election to the United States House of Representatives; later, the same committee was designated his principal campaign committee for the 1990 congressional campaign.

The Gephardt for President Committee, Inc. ("the Presidential Committee") was the candidate's authorized committee for his 1988 campaign for the office of President. The Gephardt Committee was established by the Presidential Committee and the Congressional Committee in 1988 as a joint fundraising committee.

The 1988 general election was held on November 8. On December 12, 1988, the Congressional Committee declared a surplus of funds and transferred \$50,000 to the Presidential Committee. In response to the Interim Addendum Audit Report sent to the Presidential Committee by the Commission on August 6, 1991, counsel for the Presidential Committee argued that the \$50,000 transfer was not made between campaign committees of a candidate seeking election to more than one federal office in the same election cycle. Rather, counsel contended, the transfer was made between Congressman Gephardt's then current congressional committee for the 1989-90 election cycle and his previous presidential committee. On this basis the Presidential Committee concluded that the regulation governing this transfer was 11 C.F.R. § 110.3(a)(2)(iv), not 11 C.F.R. § 110.3(a)(2)(v).

1. Application of 11 C.F.R. § 110.3(a)(2)(iv)(1988)

Two issues arise with regard to the application of 11 C.F.R. § 110.3(a)(2)(iv) to the transfer from the Congressional Committee to the Presidential Committee. These are (1) whether it was the candidate's 1988 or his 1990 congressional committee which was the actual source of the transfer, i.e., whether the transfer was in fact between a then current committee and a previous committee, and (2) whether the funds transferred were permissible under the Act.

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a. Identity of Transferring Committee

The Presidential Committee has argued that, by the time the funds were transferred on December 12, 1988, the Congressional Committee had completed its work with respect to the 1988 general election and was concerned with the next election. On this basis counsel has asserted that the transfer was made by the candidate's then current, 1990 campaign to his previous presidential campaign committee, not by his previous, 1988 congressional campaign committee to the presidential committee. In support of this argument, the Presidential Committee asserts that Congressman Gephardt was officially a candidate for the 1990 congressional election at the time of the transfer.²

The decisive issue with regard to the transfer by the Congressional Committee to the Presidential Committee is whether the Congressional Committee was, as of December 12, 1988, still in the 1988 general election cycle, not whether the 1990 campaign committee had come into existence.³p

2. Counsel also has pointed to the present definition of "previous Federal campaign committee" at 11 C.F.R. § 110.3(c)(4)(i)(1992) as a committee "organized to further the candidate's campaign in a Federal election which has already been held," arguing that this definition "clearly fits the Congressional Committee in December 1988." This argument seems to contradict the position that the Congressional Committee was by that time working on the 1990 campaign.

3. Counsel asserts that Congressman Gephardt had filed his amended Statement of Candidacy on December 15, 1988, designating the Congressional Committee as his principal campaign committee for the 1990 election. The Office of the General Counsel, however, continues to question, as it did, together with the Audit Division, during the audit, whether Congressman Gephardt was a candidate for the 1990 congressional election at the time of the transfer. Generally, an individual does not become a candidate until he receives contributions or makes expenditures aggregating

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The fact that the 1988 general election had been held did not preclude the Congressional Committee from engaging in financial activity related to that election. See 11 C.F.R. § 110.1(b)(3)(i). Further, Congressman Gephardt's status as a candidate for the 1990 primary election would not have prevented the Congressional Committee from engaging in financial activity related to the 1988 general election in December, 1988, and later. If the Congressional Committee had net debts outstanding from the 1988

(Footnote 3 continued from previous page)
in excess of \$5,000.00. 11 C.F.R. § 100.3(a)(1). These contributions and expenditures are aggregated on an election cycle basis. 11 C.F.R. § 100.3(b). The election cycle begins on the first day following the previous general election, or, in the case of contributions or expenditures designated for another election, when an individual or committee first receives contributions or makes expenditures for the designated election. Id. The Congressional Committee's 1988 Year End Report, covering the period from November 29, 1988, to December 31, 1988, reveals that it did not designate any expenditures or receipts for the 1990 primary election during this time. Therefore, Congressman Gephardt did not become a candidate for the 1990 primary election until sometime after December 31, 1988 when he received contributions or made expenditures aggregating in excess of \$5,000.00.

Furthermore, contrary to the Presidential Committee's assertion, the candidate did not file his Statement of Candidacy on December 15, 1988. At most the candidate merely signed his Statement of Candidacy on December 15, 1988. It was deposited in regular mail on February 2, 1989. The Office of the Clerk did not receive the Statement of Candidacy until February 10, 1989. A document is considered filed on the date it is deposited in registered or certified mail. 11 C.F.R. § 100.19(b). Reports and statements sent by regular mail are filed on the date they are received. Therefore, the Statement of Candidacy was not filed until February 10, 1989. See 11 C.F.R. § 100.19(b).

It appears that the dates on Congressman Gephardt's Statement of Candidacy and on the Congressional Committee's Statement of Organization for the 1990 election were changed at some point from January 15, 1989 to December 15, 1988. The date of January 15, 1989, would have been more consistent with the February 2, 1989 date on which the statements apparently were mailed to the Office of the Clerk of the House.

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general election, it could have continued to receive contributions designated for that election, and to make expenditures after the election had taken place.

11 C.F.R. § 110.1(b)(3)(i).

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In fact, the Congressional Committee made \$53,168.10 in disbursements between December 12, 1988, the date of the second transfer here at issue, and December 31, 1988, to satisfy obligations apparently incurred in connection with the 1988 general election. All of these disbursements, as well as others earlier in December, were itemized on the Committee's 1988 Year End Report as being for the general election. The \$53,168.10 included \$34,000 paid on December 20 to Doak, Shrum & Associates for "consulting services," and two \$5,000 payments on December 19 and December 20 to Telephone Contact Inc. for "phone bank services"; these three expenditures were thus made after the date of the transfer to the Presidential Committee. Although the Congressional Committee had not reported debts owed on its 1988 Pre-General and Post-General Reports, the natures of the three expenditures cited above indicate that they were related to obligations which existed before the general election and thus well before the date of the transfer to the Presidential Committee. "[F]unds raised after an election to retire election campaign debts are just as much for the purpose of influencing an election and in connection with the election as are those contributions received before the election." Advisory Opinion 1983-2. See also Advisory Opinion 1981-22 and FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988).

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The Congressional Committee's financial activity through December 31, 1988, was within the purview of the 1988 general election cycle, resulting in the transfer to the Presidential Committee having been made by the candidate's 1988, and thus previous, Congressional committee, not by his 1990 committee. Therefore, the 11 C.F.R. § 110.3(a)(2)(iv)(1988) is not the applicable provision. Rather, the transfer must be examined in light of the requirements of 11 C.F.R. § 110.3(a)(2)(v)(1988) which governs transfers between the principal campaign committees of a candidate seeking more than one Federal office within the same election cycle. (See discussion beginning at page 9 below.)

b. Source of Funds

Even if the funds were determined to have come from the then current, 1990 Gephardt Congressional Committee, it appears that the funds transferred by the Congressional Committee to the Presidential Committee contained impermissible contributions which would have placed the transfer in violation of 11 C.F.R. § 110.3(a)(2)(iv)(1988). The Commission's audit of the Presidential Committee determined that one of the sources of the transferred funds was all or part of two earlier transfers made to the Congressional Committee by the candidate's joint fundraising committee, the Gephardt Committee, which had been established by the Presidential Committee and the Congressional Committee in May, 1988. The transfers from the joint-fundraising committee to the Congressional Committee included one of \$10,000 made on November 8, 1988, and one of \$40,000 made on December 2, 1988.

These transfers were reported by the Congressional Committee as being for the general election.

The allocation formula in the joint fundraising agreement required that, unless a contributor specifically designated his or her contribution to the Congressional Committee, the contribution would be allocated to the Presidential Committee to the extent of the contributor's limitation under the Act. Any amounts in excess of the statutory limits were allocable to the Congressional Committee. In addition, contributors could specifically designate contributions to the Congressional Committee.

Absent review of the bank records of the Congressional Committee, it has been the opinion of the Audit Division that the transfer by the Congressional Committee to the Presidential Committee contained all of the \$10,000 received from the joint fundraising committee on November 8, 1988 and possibly some portion of the \$40,000 received on December 2, 1988.⁴ By the terms of the joint fundraising agreement, the \$50,000 in transfers to the Congressional Committee necessarily contained funds which were in excess of the amounts individual contributors could have given to the Presidential Committee under the Act, and which had

4. The auditors began with the Congressional Committee's reported ending cash balance as of November 28, 1988 and determined the reported receipts that made up this balance. Applying a first in, first out analysis based on reported activity from November 28, 1988 to December 12, 1988, the Audit staff determined that the Congressional Committee's transfer of \$50,000 to the Presidential Committee on December 12, 1988 included all of the \$10,000 from the joint fundraising committee.

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therefore been allocated to the Congressional Committee, as well as funds which had been specifically designated to the Congressional Committee. Thus, the transfer by the Congressional Committee to the Presidential Committee would have been comprised, at least in part, of funds which would have been excessive if contributed directly to the latter committee.

2. Application of 11 C.F.R. § 110.3(a)(2)(v)(1988)

11 C.F.R. § 110.3(a)(2)(v)(1988) permitted transfers between the committees of a candidate seeking election to more than one Federal office provided that the transfer did not occur while the candidate was actively seeking both offices, the limitations on contributions were not exceeded, and the candidate had not received funds under Title 26. In the present matter the transfer from the 1988 Congressional Committee to the Presidential Committee fails two of these tests.

a. Source of Funds

As discussed above, at least a portion of the funds used for the transfer to the Presidential Committee originally came from \$50,000 in contributions made to the candidate's joint fundraising committee. This portion represented contributions which had either exceeded the contributor's limitations with regard to the Presidential Committee or which had been specifically designated for the Congressional Committee. Thus, the transfer apparently contained funds which resulted in the knowing receipt of excessive contributions from individual contributors in violation of the Act.

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b. Receipt of Funds under Title 26

Richard Gephardt in 1988 received presidential primary matching funds, pursuant to 26 U.S.C. § 9037. Therefore, the transfer of funds by the Congressional Committee to the Presidential Committee was impermissible, pursuant to 11 C.F.R. § 110.3(a)(v)(C).⁵

There is reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive transfer from the Gephardt in Congress Committee.

B. Iowa Democratic Party List

1. Excessive State Expenditures - Iowa

On October 1, 1991, the Commission found reason to believe that the Presidential Committee had violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A) by making expenditures in excess of the 1987-88 \$775,217.60 expenditure limitation for the state of Iowa. This determination was based upon the potentiality of excessive expenditures totaling \$490,936.44. Since then, on May 21, 1992, the Commission has ordered the Presidential Committee to repay \$118,943.94 to the U.S. Treasury, this repayment being based upon the determination that the Committee had exceeded the expenditure limitation in Iowa by \$452,543.95.

5. The third prong of the transfer test set out at 11 C.F.R. § 110.3(a)(2)(v)(1988) was that the candidate not be actively seeking nomination or election to more than one Federal office at the time of a transfer. Because the transfer here at issue fails two other tests, it is not necessary in this present matter to make a determination as to whether the candidate was not actively seeking election to two offices at the time of the transfer.

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Not included as a basis for the Commission's May 21, 1992, repayment determination was information which has been received by the Commission indicating that the Presidential Committee acquired the use of a computerized list of registered Democrats, Democratic Party activists, and precinct caucus attendees from the Iowa Democratic Party ("the Party"). The Party valued the list at \$10,000 per recipient campaign, and those that received the list, including the Presidential Committee, or someone on their behalf, were to pay either in cash or in the form of services.⁶ However, no third-party benefactor for the Presidential Committee has been identified, nor has evidence been located of a \$10,000 payment to the Party by the Presidential Committee itself. The Presidential Committee did not report the expenditure as an in-kind contribution/expenditure, nor did it allocate an expenditure of this nature and amount to its Iowa limitation.

In the Interim Addendum to the Final Audit Report sent to the Presidential Committee on August 6, 1991, the Committee was asked to provide documentation regarding the source of the \$10,000 payment for the mailing list, including the identity of the person or entity that had paid the Party for the list. In addition, the Presidential Committee was provided an opportunity to submit an explanation as to why the cost of the mailing list should not be allocated to the Iowa expenditure limitation.

6. At least four Democratic presidential candidate committees paid \$10,000 to the Party in 1987 for use of the list, these being Dukakis for President, Simon for President, Hart for President, and Gore for President.

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In its response to the Interim Addendum Audit Report, the Presidential Committee noted that it had limited information concerning the acquisition of the mailing list from the Party. However, the Presidential Committee asserted that the information that it had in hand indicated that the Party had offered its mailing lists to a number of candidates as consideration for their promise to assist the party with its fundraising efforts. According to the response, Congressman Gephardt was apparently offered the list on that basis.

On April 21, 1992, the Commission considered the Addendum to the Final Audit Report for the Presidential Committee, voted to add the \$10,000 payment for the mailing list as an expenditure allocable to Iowa, and made an initial determination that an additional \$2,628.34 should be repaid to the U.S. Treasury. The Commission on this date also referred to the Office of the General Counsel the same \$10,000 payment to be considered in conjunction with its earlier referral of expenditures made by the Presidential Committee in excess of the Iowa state limitation. On August 4, 1992, the Commission made its final determination that the \$2,628.34 was repayable.

The \$10,000 payment to the Iowa Democratic Party for a mailing list will be added to the expenditures being addressed in MUR 3342 as having been in excess of the Presidential Committee's Iowa state spending limitation.

2. Excessive Contribution

2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the amount which a multicandidate political committee may contribute to a candidate

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and his authorized committee with respect to any election. 2 U.S.C. § 441a(f) prohibits the knowing acceptance of an excessive contribution by a candidate or his or her authorized committee. 2 U.S.C. § 434(b)(3)(B) requires that committees report the identification of all political committees making contributions to the reporting committee. Pursuant to 2 U.S.C. § 431(8)(A), "contribution" is defined as including "anything of value" provided for the purpose of influencing a federal election. 11 C.F.R. § 100.7(a)(1)(iii) includes within "anything of value" all in-kind contributions.

In the absence of information identifying a third party as the source of payment for all or part of the cost of the use of the computerized list supplied to the Presidential Committee by the Party, it appears that the Presidential Committee knowingly accepted and did not report an excessive in-kind contribution of \$5,000 from the Party. Therefore, there is reason to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) and 2 U.S.C. § 434(b)(3)(B).

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

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FEDERAL ELECTION COMMISSION

93 JUL -9 AM 11:23

July 9, 1993

Anne Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3342 - Gephardt in Congress Committee,
John Tumbarello, Treasurer

Dear Ms. Weissenborn:

Enclosed is a facsimile copy of a designation of counsel
for the above-referenced matter under review.

We would also like to request an extension of time to
respond to the Commission's finding of reason to believe. The
additional twenty days requested is necessary due to the need
to coordinate with Committee staff in St. Louis, coordination
which is hampered by vacation schedules during the first
fifteen days available for response.

The Committee received the Commission's notice on July 6,
1993. The original response would be due, therefore, on
July 21. With an extension of 20 days, the response would be
due on August 10.

If you have any questions or need additional information,
please contact the undersigned.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel for Respondent

[15850-0001/DA931890.045]

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3342

NAME OF COUNSEL: Perkins Cole: Robert F. Bauer and Judith L. Corley

ADDRESS: 607 14th Street, NW, Suite 800
Washington, DC 20005

TELEPHONE: (202) 628-6600

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

July 8, 1993
Date

John R. Trumbarello
Signature

RESPONDENT'S NAME: Gephardt in Congress

ADDRESS: 7435 Watson Road
Suite 107
St. Louis, MO 63119

HOME PHONE: _____

BUSINESS PHONE: _____

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 9, 1993

Joseph Hickey, Treasurer
Beryl Anthony for Congress
Campaign Committee
423 North Washington
El Dorado, AR 71730

RE: MUR 3342

Dear Mr. Hickey:

On January 27, 1993, you requested that the Federal Election Commission permit the Beryl Anthony for Congress Campaign Committee ("Committee") to terminate pursuant to 2 U.S.C. § 433(d) and Section 102.3 of the Commission's Regulations. Because of the ongoing enforcement matter involving your Committee, this request has been denied. Therefore, you are reminded that the Committee must continue to file all the required reports with the Commission until such time as the enforcement matter has been closed as to the Committee.

If you have any questions, please contact Anne Weissenborn or myself at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

cc: Reports Analysis Division

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 12, 1993

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt in Congress
John Tumbarello, as
treasurer

Dear Mr. Bauer and Ms. Corley:

This is in response to your letter dated July 9, 1993, which we received on that same date, requesting an extension of twenty days, or until August 10, 1993 to respond to the Commission's reason to believe determination. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on August 10, 1993.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

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PERKINS COIE

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607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
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FEDERAL ELECTION COMMISSION

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July 15, 1993

Anne Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3342 - Gephardt for President Committee
S. Lee Kling as Treasurer

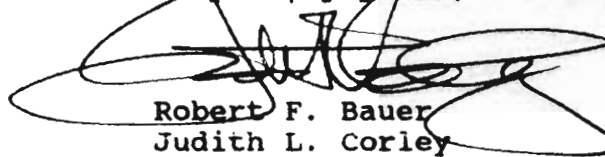
Dear Ms. Weissenborn:

This is to request an extension of time until August 10, 1993, to respond to the Commission's finding of reason to believe in the above referenced matter under review.

The Gephardt for President Committee is, for obvious reasons, coordinating its response with the Gephardt in Congress Committee. That Committee has received an extension on its response date until August 10. We would propose to file the two responses together on that date.

If you have any questions or need additional information, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel for Respondents

[04669-0001/DA931960.008]



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 16, 1993

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President
S. Lee Kling, as
treasurer

Dear Mr. Bauer and Ms. Corley:

This is in response to your letter dated July 15, 1993, which we received on that same date, requesting an extension until August 10, 1993 to respond to the Commission's reason to believe determination. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on August 10, 1993.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over a horizontal line.

Anne A. Weissenborn
Senior Attorney

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Eric Tabor, State Chair

2116 Grand Avenue • Des Moines, Iowa 50312 • 515/244-7292

July 21, 1993

Federal Election Commission
999 E Street NW
Washington, DC 20463

ATTN: Anne Weissenborn
FEC Attorney

Dear Ms. Weissenborn:

RE: Correspondence Dated July 1, 1993
MUR 3342

The Iowa Democratic Party is requesting an extension of 30 days from today's date for our response to the above matter, deadline then being August 21, 1993.

Des Moines business community is operating under a Mayoral proclamation which dictates that only essential businesses be operated as "business as usual." All others are to severely curtail operations. IDP falls in the latter group. We are without water and a severe electricity cutback. Our staff is doing what work they can out of their homes during this crisis.

Thank you for your consideration of our request.

Respectfully,

Judith McCoy
Judith McCoy
Executive Director

JM/dr
Bookkeeper

Enclosures

93 JUL 22 AM 10:16



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 26, 1993

Judith McCoy
Executive Director
Iowa Democratic Party
2116 Grand Avenue
Des Moines, Iowa 50312

RE: MUR 3342

Dear Ms. McCoy:

This is in response to your letter dated July 21, 1993, which we received on July 22, 1993, requesting an extension of 30 days to respond to the Commission's reason to believe determination. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on August 21, 1993.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, which appears to read "Anne A. Weissenborn", is written above the typed name.

Anne A. Weissenborn
Senior Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AUGUST 16, 1993

Allan J. Katz, Esquire
Katz, Kutter, Haigler, Alderman, Davis,
Marks & Rutledge
106 East College Avenue, Suite 1200
Tallahassee, FL 32301

RE: MUR 3342

Dear Mr. Katz:

On February 25, 1992, the Commission found reason to believe that your present law firm, Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge had violated 2 U.S.C. § 441b by incurring expenses on behalf of the Gephardt for President Committee ("the Committee").

On March 30, 1992, the Office of the General Counsel received your response in which you explained that the expenses at issue had been incurred by the Tallahassee office of the law firm of Swann & Haddock from which your firm had later purchased assets and assumed certain obligations. You also stated that sometimes your present firm would receive bills from vendors which included expenses incurred by Swann & Haddock. Apparently, Katz, Kutter paid those bills and then sought reimbursement from Swann & Haddock which was not forthcoming.

In order for the Office of the General Counsel to make a recommendation to the Commission with regard to your present firm's involvement in this matter, further information is needed. Please provide answers to the following inquiries:

1. Was the Gephardt for President Committee a client of Swann & Haddock? If yes, please state the varieties of services performed by Swann & Haddock for the Committee.
2. Was there a written agreement between Swann & Haddock and the Committee concerning services to be provided? If yes, please furnish a copy of this agreement.

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3. Were the particular expenditures by Katz, Kutter at issue in the present matter incurred pursuant to the agreement, if any, between Swann & Haddock and the Committee? If not, did these particular expenditures result from personal activities of members or staff of the firm on behalf of the campaign? If the latter is the accurate scenario, please identify the individual(s) whose activities were involved.

4. It is the understanding of the Office of the General Counsel that Swann & Haddock was a law firm. Did that firm furnish the same types of apparently non-legal services, e.g., arrangement of political meetings, telephones, rental cars, hotels, travel expenses, etc., for other clients as were provided for the Committee? If yes, please identify examples of such clients.

5. Did the expenditures made by Katz, Kutter on behalf of the Gephardt for President Committee involve obligations of Swann & Haddock assumed by your present firm pursuant to a written agreement between the two firms? If yes, please provide a copy of that agreement. If there was no written agreement, please explain the basis for the division of obligations.

6. Please identify the expenditures made by Katz, Kutter on behalf of the Gephardt campaign which were made pursuant to the division of obligations between your present firm and Swann & Haddock.

7. Please identify any expenditures made by Katz, Kutter on behalf of the Gephardt campaign which resulted from bills received directly from vendors as opposed to those made in response to the division of obligations between your present firm and Swann & Haddock.

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Allan J. Katz, Esquire
page 3

Please submit your response to the above inquiries within fifteen days of your receipt of this letter. If you have any questions, please contact either myself or Mary Taksar at (202) 219-3400 or (800) 424-9530.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

5043643866



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AUGUST 16, 1993

Daniel L. Watkins
Assistant Treasurer
Slattery for Congress Committee
211 East 8th Street, Suite C
Lawrence, Kansas 66044

RE: MUR 3342

Dear Mr. Slattery:

On February 25, 1992, the Federal Election Commission found reason to believe that the Slattery for Congress Committee ("the Committee") had violated 2 U.S.C. § 441a(a)(1)(A) by making expenditures totaling \$4,804.63 on behalf of the Gephardt for President Committee. On April 20, 1992, the Commission received your response on behalf of the Committee in which you requested conciliation prior to a finding of probable cause to believe.

In order for the Office of the General Counsel to make a recommendation to the Commission with regard to preprobable cause conciliation, additional information is needed. Specifically, we would ask that you detail the efforts made by your committee to collect the debt owed by the Gephardt campaign, including, but not limited to, the dates of all requests for payment and the names of persons contacted.

Please submit your response within fifteen days of your receipt of this letter. If you have any questions, please telephone either myself or Mary Taksar at (202) 219-3400 or (800) 424-9530.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over a white rectangular redaction box.

Anne A. Weissenborn
Senior Attorney

15043643867



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AUGUST 16, 1993

R. Laurence Macon, Esquire
Akin, Gump, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, TX 78205

RE: MUR 3342
Heard, Goggan, Blair
& Williams

Dear Mr. Macon:

On February 25, 1992, the Federal Election Commission found reason to believe that your client, Heard, Goggan, Blair & Williams, had violated 2 U.S.C. § 441a(a)(1)(A) by incurring expenses on behalf of the Gephardt for President Committee ("the Committee") in excess of \$1,000.

On March 30, 1992, the Office of the General Counsel received your response in which you explained your client's reasons for agreeing to accept only 10% of the \$21,677.85 owed in settlement of the Committee's debt. In this letter you also stated:

The debt incurred by the Committee to Heard, Goggan, Blair & Williams was made in the ordinary course of business. The services provided were intended to meet the client's needs at the time, including services and functions arranged by our office.

In order for the Office of the General Counsel to make a recommendation to the Commission with regard to your client's involvement in this matter, further information is needed. Please provide answers to the following questions:

1. Was the Gephardt for President Committee a client of Heard, Goggan, Blair & Williams?
2. If yes, please state the services which the firm was hired to provide.
3. Was there a written contract or other agreement between the Committee and the firm with regard to the furnishing of non-legal services such as, e.g., arrangements for parties? If yes, please provide a copy of the agreement.

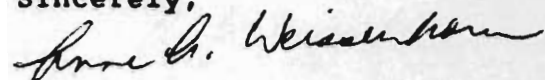
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R. Laurence Macon, Esquire
page 2

4. Were the particular expenditures at issue in the present matter incurred pursuant to the agreement if any, between the Committee and Heard, Goggan, Blair & Williams? If not, did these particular expenditures result from personal activities of members or staff of the firm on behalf of the Gephardt campaign? If the latter is the accurate scenario, please identify the individual(s) whose activities were involved.
5. It is the understanding of the Office of the General Counsel that Heard, Goggan, Blair & Williams is a law firm. Has the firm furnished the same types of apparently non-legal services, e.g., arranging for parties and meetings, advancing airfares and hotel accommodations, and providing TV news tapings, etc., for other clients as were provided for the Committee? If yes, please identify such clients and the types of the services provided.

Please submit your response to the above inquiries within fifteen days of your receipt of this letter. If you have any questions, please contact either myself or Mary Taksar at (202) 219-3400 or (800) 424-9530.

Sincerely,



Anne A. Weissenborn
Senior Attorney

5043643869

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

RECEIVED
FEDERAL ELECTION COMMISSION

93 AUG 18 AM 11:12

August 18, 1993

Anne Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3342: Gephardt in Congress Committee and
John R. Tumbarello, as Treasurer
Gephardt for President Committee and
S. Lee Kling, as Treasurer

Dear Ms. Weissenborn:

This is the joint response of the two Respondents named above to the Commission's finding of reason to believe that the Committees violated the Act with respect to a transfer of \$50,000 from the Gephardt in Congress Committee ("GIC") to the Gephardt for President Committee ("GPC").

Background

At issue are funds raised into The Gephardt Committee, a joint fundraising committee established by GIC and GPC. The principal purpose of the joint fundraising committee was to raise funds to retire debts of Congressman Gephardt's 1988 Presidential campaign. This was reflected in the allocation formula adopted by the joint fundraising effort: all funds that could lawfully be accepted by GPC would go to GPC, all others would go to GIC. The joint fundraising committee was intended to continue in operation until GPC's debts were retired, and was not designed around fundraising for a particular election or electoral event, such as Congressman Gephardt's 1988 reelection campaign. The joint fundraising committee continued, in fact, to transfer funds to GIC and GPC during 1990.

Despite this principal purpose, the joint fundraiser became a major source of funding for the 1988 Congressional campaign. As GIC's 1988 year-end report reflects, transfers from the joint fundraiser constituted over half of the receipts of GIC during calendar year 1988. These funds, together with funds rose directly into GIC, were used to pay

[15850-0001/DA932220.057]

all of the relevant expenses of the Congressional campaign related to the 1988 election.

The Committee budgeted its expenses carefully; it not only paid all expenses incurred in connection with the 1988 election and had no debts remaining after the election, but also had funds available in excess of the expenses it had incurred. Rather than use these funds to begin Congressman Gephardt's 1990 reelection campaign, the Committee transferred, on December 12, 1988, \$50,000 of its excess funds to the Presidential campaign to assist that committee in retiring its debts.

It is this transfer that the Commission has questioned in this matter. The funds transferred apparently included, as calculated by the Commission's audit staff, funds that had been transferred to GIC from the joint fundraising committee. The General Counsel's Factual and Legal Analysis presents these circumstances as giving rise somehow to illegal contributions to the Presidential debt retirement effort. The Commission's position in accepting the General Counsel's report in this matter is not only shortsighted and ill-considered as a matter of policy, but it is not supported by the law or its own regulations.

Legal Arguments

The General Counsel's report finds fault with the transfer on two grounds:

1. The committee that transferred the funds to GPC was Congressman Gephardt's 1988 committee, not his 1990 committee, thereby barring the transfer under 11 C.F.R. § 110.3(a)(2)(v); and
2. The funds transferred were in any event illegal because they consisted at least in part of funds transferred to GIC from the joint fundraising committee.

1. Status of Transferring Committee

The General Counsel's report concludes that the funds were transferred from Congressman Gephardt's 1988, not 1990, Congressional committee. It bases this conclusion on the fact that the committee made payments for operating expenditures

after the transfer to GPC that were, in the General Counsel's own words, "apparently incurred in connection with the 1988 general election." General Counsel's Factual and Legal Analysis, p. 6. The report notes that GIC did not report any debts or obligations owed on its FEC reports during this period, but nonetheless concludes "the natures of the three expenditures cited above indicate that they were related to obligations which existed before the general election"

The report then applies to this factual conclusion the following legal standard:

The fact that the 1988 general election had been held did not preclude the Congressional Committee from engaging in financial activity related to that election. [Citation omitted.] Further, Congressman Gephardt's status as a candidate for the 1990 primary election would not have prevented the Congressional Committee from engaging in financial activity related to the 1988 general election in December, 1988 or later. If the Congressional Committee had net debts outstanding from the 1988 general election, it could have continued to receive contributions designated for that election, and to make expenditures after the election had taken place. [Citation omitted; emphasis added.]

The citations omitted above are both to the Commission's regulations at 11 C.F.R. § 110.1(b)(3)(i) which in 1988 read in relevant part:

A contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding.

This section and the legal standard set out in the General Counsel's report are not relevant to this matter. Whether or not the payments identified in the General Counsel's report were related to the 1988 election, Section 110.1(b)(3)(i) would only be relevant if the Committee had net debts outstanding and it chose to continue to receive funds for the election already passed. In that case, the Committee could

accept funds only to the extent that it had net debts outstanding.

The General Counsel's report assumes that GIC continued to raise funds after the date of the election to retire net debts. The language emphasized in the quotation above reflects that this is an assumption only -- an assumption that is at variance with the facts of the matter. In effect, the Commission is addressing a hypothetical situation, not the situation of this Committee in this case.

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The Committee was not required under the law to calculate "net debts" from the 1988 election and to raise funds subject to the 1988 contribution limits to retire these debts.¹ The Commission has long recognized that a committee may use funds from a future election to retire obligations from a past election. See, e.g., Advisory Opinions 1989-22, 1988-6, 1987-4, 1986-12, 1986-8, 1985-5, 1981-9, 1980-143, 1980-32, 1977-41. Further, at the time GIC made the \$50,000 transfer to GPC, it had cash on hand close to \$100,000. It raised only approximately an additional \$15,000 through the end of the year. Yet it ended calendar year 1988 with no debts and a positive cash-on-hand. Even without the transfer from the joint fundraising committee, there was no reason for GIC to continue to raise funds for the 1988 election in order to pay expenses from that election.

The Congressional campaign budgeted to cover its own expenses -- accurately, as demonstrated by its year-end positive balance. It chose to use its surplus to assist a committee, GPC, that little or no hope of raising funds to retire substantial debts and obligations. In fact, GPC was required to settle many of its debts for less than the full amount owed.

¹There may be some confusion due to the manner in which GIC reported its receipts on the reports covering the period after the 1988 general election. Almost all receipts are marked on the reports as for the general election. A review of the date of receipt of the contributions, however, reveals that many of the contributions, including the bulk of the funds making up the \$40,000 transfer from the joint fundraising committee, were reported as received after the date of the general election.

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The assumptions made in the General Counsel's report also inexplicably ignore a major requirement of debt retirement activity that takes place after the date of the election for which obligations were incurred: contributions received for this purpose must be designated for debt retirement by the contributor. 11 C.F.R. § 110.1(b)(2). The regulations contain a specific presumption that without a contributor's designation, a contribution is considered received for the next election, in this case, the 1990 primary. In the quotation from the report set out above, the General Counsel notes that GIC "could have continued to receive contributions designated for that [the 1988] election . . .," yet does not explain why the contributor designation requirement would not apply here.

Rather, the report appears to conclude that because GIC was apparently still making expenditures related to the general election after the date of the general election, all funds received by the committee during that period, designated or not, were for the general election. The report quotes from Advisory Opinion 1983-2, that "funds raised after an election to retire election campaign debts are just as much for the purpose of influencing an election and in connection with the election as those contributions received before the election." Applied without the contributor designation requirement, however, this conclusion flies in the face of the Commission's regulations and its opinions allowing a committee to use future election funds to retire past election debts.

The Commission has placed enormous emphasis the importance of contributor intent in the use of contributions by a candidate's committee. The Commission's regulations set out elaborate requirements for obtaining a contributor designation for any use of any undesignated contribution by a committee that for the next election. See, e.g., Advisory Opinion 1990-30. See, also, 11 C.F.R. §§ 100.8(c), 104.8(c), 104.8(d), 110.1(k). Similarly, where a contributor indicates some intent as to the use of a contribution, the regulations again set out extensive requirements for obtaining, within a particular time frame, the clear written, signed, redesignation or reallocation of the contribution by the contributor. 11 C.F.R. § 110.1(b)(3)(i). Any deviation from the procedures results in a requirement to refund the contribution.

Yet the Commission, when it suits its needs, is more than willing to ignore such requirements for an indication of contributor intent. An example is the repayment determination for the Gephardt for President Committee. In this case, the Commission made its final repayment determination and then refused to permit an extension of time for the repayment to allow the Committee to attempt to raise the funds to make the repayment. Instead, the Commission encouraged, in fact insisted, that the 1992 Gephardt in Congress Committee make the repayment or transfer the funds to GPC for the repayment.² This, despite the fact that:

- None of the 1992 GIC contributors gave to the Committee with any intent that the funds be use for Congressman Gephardt's 1988 Presidential campaign;
- None of the contributors were informed of the use of their funds for this purpose or asked for their permission;
- Some of those 1992 GIC contributors were, no doubt, maxed out contributors to the 1988 Presidential campaign.

The Commission appears to have applied its "flexible" standard here, concluding that because the Committee had expenditures through December 31, 1988, that the Commission has assumed were related to the 1988 election, all funds received during that period were per se 1988 general election contributions. The Commission cannot have it both ways.

Its regulations do not provide for such a conclusion. Without an indication of contributor intent, contributions may not be attributed to a past election. Moreover, funds from a future election may be used to retire past election debts.

²It is unclear what the Commission will do if it continues to find that the transfer is illegal. Presumably GPC would be required to refund the money to GIC. As the Commission is well aware, GPC has no funds. The Commission resolved this problem in the repayment situation by insisting that GIC transfer the funds to GPC. Would the Commission require GIC to transfer \$50,000 of its current cash on hand to GPC so it could refund the \$50,000 transfer to GIC?

These principles, when applied to GIC's transfer, can result only in the conclusion that the transfer was lawfully made under 11 C.F.R. § 110.3(b)(2)(iv).

2. Source of Funds

The General Counsel's report goes on to conclude that even if (as is the case) the transfer was lawfully made by GIC under Section 110.3(b)(2)(iv), the funds transferred contained "impermissible contributions." General Counsel's Report at p. 7. The Commission's Audit staff had determined that at least a portion of the funds transferred to GPC by GIC consisted of funds transferred to GIC from the joint fundraising committee. The report notes that, because of the allocation formula used by the joint fundraising committee, the funds transferred by the joint fundraising committee to GIC necessarily included funds "which would have been excessive if contributed directly to the latter committee [GPC]." (Emphasis added.)

This last phrase is key: the funds were not contributed directly to GPC. They were contributed to GIC, and were lawful for that purpose as to source and amount. The funds were attributed to the contributor's limitation for contributions to GIC. Once attributed to GIC, under Section 110.3(b)(2)(iv), the transferred funds to GPC did not need to be aggregated with contributors to GPC. Compare 11 C.F.R. § 110.3(b)(2)(v)(B), which requires that the limitations of contributors not be exceeded as a result of the transfer.

Any other conclusion would render the joint fundraising regulations meaningless. These regulations allow separate committees to raise funds jointly, but subject to their own contribution limitations. In the Gephardt joint fundraising committee example, a contributor, assuming no other contributions to either of the committees, could have lawfully written a check for \$3,000 (\$1,000 for GIC Primary, \$1,000 for GIC General, \$1,000 for GPC Primary). Yet this \$3,000 check would have been excessive if given directly to either GIC or GPC.

As a further example: what if a party committee and a candidate held a joint fundraising event. An individual who had "maxed out" to the candidate contributed to the joint fundraiser. The funds were, of course, attributed solely to the participating party committee. The party subsequently

Anne Weissenborn
August 18, 1993
Page 8

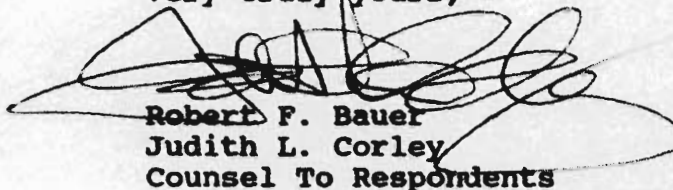
made a contribution to the candidate. An analysis of the contribution revealed that "at least some portion" of the funds used by the party to make the contributions to the candidate were funds transferred to the party committee from the joint fundraising event.

Would the Commission find, therefore, that the party's contribution was prohibited, made from "impermissible contributions"? Yet this is exactly what the Commission has done here. The result is insupportable as a matter of law or logic.

Conclusion

The General Counsel's report goes to great lengths to try to shoehorn the facts of this case into a regulatory scheme that would result in a violation. The discussion above shows that this effort has not been successful. It remains for the Commission to determine why this is apparently so important.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel To Respondents

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

August 11, 1993

Anne Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

Re: MUR 3342 - Gephardt for President Committee
and S. Lee Kling, as treasurer

Dear Ms. Weissenborn:

This is the response of the Gephardt for President Committee ("the Committee") to the Commission's finding of reason to believe that the Committee had accepted an excessive contribution from the Iowa Democratic Party ("the Party") by accepting the Party's mailing list, valued at \$10,000.¹

Compensation for Mailing List

This matter first arose in connection with the Interim Addendum Audit Report of the Committee. As we noted in response to that report, the Committee had little or no information concerning the acquisition of the mailing list from the Party, except that it is the Committee's understanding that the Party offered the mailing list to all Presidential candidates in 1988 in return for a payment of \$10,000, or in consideration for the candidate's promise to assist the Party in its fundraising efforts.

As the Commission has noted, the Committee made no payment to the Party for the mailing list, and did not report the value of the mailing list as a contribution in-kind. Congressman Gephardt, however, did appear at numerous events on behalf of the Party during the extended period leading up to the Iowa caucuses in early February 1988. Because of his strong relationship to Iowa Democrats and his continued high

¹The Committee is submitting a joint response with the Gephardt in Congress Committee to the Commission's other reason to believe finding involving a transfer of funds between the two committees.

[04669-0002/DA932220.005]

name recognition, Congressman Gephardt still appears on behalf of the Party at fundraising functions and other events promoting the Democratic Party in the state. While such appearances do not have a standard "fair market value," it is clear that in 1988 the Party valued Congressman Gephardt's appearances highly, as they continue to value these appearances today.

The Commission's regulations define the term "contribution" to include "anything of value," including a mailing list. 11 C.F.R. § 100.7(a)(1)(iii). Such in-kind contributions are contributions, however, only to the extent that they are provided at no charge or at less than the normal or usual charge. The Commission has acknowledged in this section, and in other sections of the regulations (e.g., 11 C.F.R. § 114.9(e), reimbursement for use of corporate facilities does not result in corporate contribution),² that the receipt of consideration in exchange for something of value does not result in a contribution.

Here, Congressman Gephardt provided valuable consideration in exchange for the mailing list from the Party by appearing in their behalf and assisting with the Party's fundraising efforts.

Commission Interpretations of Law

The provision of services as consideration for the mailing list instead of a \$10,000 payment was justified on other grounds as well. The Commission's interpretations of its regulations has created some doubt over the legality of a federal candidate committee making a \$10,000 payment to a state party. A candidate's committee is limited in the contributions it may make to a state party committee to \$5,000 per calendar year. Repeated Advisory Opinions issued by the Commission have taken the position that the proceeds from the sale of goods or services by a political committee are contributions subject to the contribution limits and source restrictions. See, e.g., Advisory Opinions 1983-2 (sale of computer services); 1981-3 (sale of advertisements in party magazine); 1979-17 (party credit card).

²See also Advisory Opinions 1981-46, 1982-41 (exchange of mailing lists of equal value does not result in contribution to either party).

The Commission has acknowledged in certain limited circumstances that the sale of a mailing list does not result in a contribution by the purchaser, as where the mailing list is "a unique asset" developed for the owner's own use rather than fundraising purposes and where the cost represents a fair market value. Advisory Opinion 1981-53. Here, however, the Committee had no way of assessing whether the Party's mailing list met these criteria. The list was offered to numerous candidates, at a very steep price.

The Committee avoided a potentially excessive contribution to the Party by providing valuable consideration for the mailing list instead. The Party did not provide the mailing list to the Committee at no charge or at a reduced charge; it sought and received compensation for it. There is no requirement in the statute or regulations that goods or services be paid for with cash, and there is no meaningful difference between an in-kind and a cash payment -- in each case, the Party was compensated in full, under its own terms, for its mailing list. The provision of other consideration for value received removed here, as it does in the other cases discussed above, any contribution by the Party to the Committee.

Standards of Liability

As the General Counsel's report notes, the Commission, in connection with its audit of the Committee, determined that the Committee was required to repay to the Treasury \$2,628.34 in connection with the Party mailing list. The Committee made this repayment as part of its full repayment made on November 9, 1992. The Committee's repayment, however, should not be viewed, nor was it intended, as an admission of liability for purposes of this enforcement proceeding.

The standards of liability for repayment issues are, necessarily, different from those that should be applied in an enforcement action. Repayment issues involve the Commission's responsibilities as a fiduciary for public funds. It is understood that in these cases the Commission can, and should, resolve any doubts in favor of conserving public funds. The Commission has broad authority to protect the public fisc in these circumstances. 26 U.S.C. §§ 9038(b) and 9040(b).

A candidate facing a repayment determination, too, understands that the standard for judgment is different. Under the statutory provisions, the candidate is operating under an inflexible deadline to repay funds or face a court challenge. Both the cost of such an undertaking, together with the public considerations, militate against such a challenge, especially in a case like this, where the repayment amount totaled less than \$3,000. Like the Commission, the candidate in these circumstances may well elect to resolve the doubt in favor of the agency, especially where more compelling repayment issues are presented and require resolution under statutory deadline.

In an enforcement proceeding, however, the liability standard is no different from the liabilities present in any enforcement matter. Nor is the same question presented as in the repayment determination, for the proceedings are separate and the judgment in one is not res judicata in the other. Moreover, a candidate now faces a determination that the law was broken in such a way as to warrant the imposition of a civil penalty and a public conciliation agreement conceding responsibility. The stakes have changed, both in terms of the monetary cost and the reputational issues raised by such a finding.

With such severe consequences, the Commission must make its case clearly, establishing liability under a "probable cause" standard.

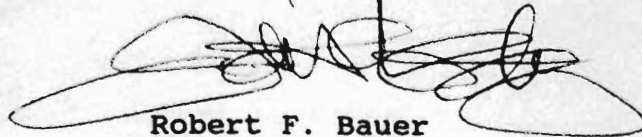
Conclusion

Here, the Commission has not made its case nor established a clear finding of a violation. As set out above, there is a question raised by the Commission's own interpretations whether payment of \$10,000 by a candidate committee to a state party would result in an excessive contribution to the state party. Further, there is a reasonable basis for finding that the Iowa State Party was, in any event, compensated in full for its mailing list.

Anne Weissenborn
August 11, 1993
Page 5

The Commission should dismiss this finding of a violation
against the Committee.

Very truly yours,

A handwritten signature in black ink, appearing to be "Robert F. Bauer", written over a horizontal line.

Robert F. Bauer
Judith L. Corley
Counsel to Respondents

15043643302



OAC 9768

RECEIVED
FEDERAL ELECTION COMMISSION

93 AUG 20 AM 11:59

Eric Tabor, State Chair

2116 Grand Avenue • Des Moines, Iowa 50312 • 515/244-7292

August 18, 1993

Mr. John Warren McGarry
Federal Election Commission
Washington, D.C. 20463

Dear Mr. McGarry:

This letter is in response to your letter of July 1, 1993,
concerning MUR 3342.

We welcome the opportunity to demonstrate that no action should
be taken against the Iowa Democratic Party ("the Party") with
respect to this matter.

To the best of the recollection of the Party staff involved with
this matter, the following occurred:

Activist information was requested by the Gephardt for President
Committee ("the Committee") sometime in early 1986. They were
provided with two tapes of raw data, not the compiled list later
sold to other campaigns. The information provided to the
Committee was of much lower value than the compiled list,
although no specific value was set on the information. In return
for this information, the Committee agreed to assist the Party in
its fundraising efforts.

The Committee, for its part, more than fulfilled its agreement to
assist the Party. Congressman Gephardt's efforts garnered the
Party thousands of dollars. The following are some of his
efforts:

- (1) He appeared in nearly every county in Iowa, raising
funds for the Party and its candidates, and encouraging Democrats
to attend the Party's caucuses.
- (2) He secured speakers for numerous fundraising events
held by the Party and its candidates.
- (3) He made our 1986 Jefferson-Jackson Dinner a success by
bringing a large contingent of members of Congress.
- (4) He helped to make our 1987 Jefferson-Jackson Dinner an
even bigger success by helping us sell tickets to supporters from
across the Midwest, particularly Missouri. (The 1987 dinner had a
record setting attendance of 2700, compared to 1400 in 1992 when
Hillary Clinton was speaker.)
- (5) He assisted our Democratic candidates with fundraising
in Washington, as well as in Iowa.

Please keep in mind that at the time Congressman Gephardt

requested activists information from us we had no idea that the 1988 caucuses would be the hugely successful political event they were, attracting 100,000 Iowans. It is likely that the caucuses would not have become that event were it not for the strong early campaigning of Congressman Gephardt.

In conclusion, the Party did not make a contribution of information to the Committee. An agreement to exchange raw data for fundraising assistance was made and executed. The Party believed, and still believes, that we got back more than the value of the activists information. Later arrangements with other campaigns involved much different and more valuable data and required campaigns to give the Party money in lieu of extensive fundraising assistance.

I hope this will resolve this matter.

Sincerely yours,

Judy McCoy

Judy McCoy
Administrative director

5043643884

OGC 9837

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

ATTORNEYS AT LAW

1333 NEW HAMPSHIRE AVENUE, N.W.
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WASHINGTON, D.C. 20036
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A REGISTERED LIMITED LIABILITY PARTNERSHIP
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FAX (210) 224-2035

WRITER'S DIRECT DIAL NUMBER (210) 270-

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(512) 499-6200

1900 PENNZOIL PLACE SOUTH TOWER
711 LOUISIANA STREET
HOUSTON, TEXAS 77002
(713) 220-5800

65 AVENUE LOUISE, P.B. NO. 7
1050 BRUSSELS, BELGIUM
(011) 32 2-535.29.11

August 30, 1993

Ms. Ann A. Weissenborn
Federal Election Commission
999 E. Street
Washington, D.C. 20463

Re: MUR 3342; Heard, Goggan, Blair & Williams

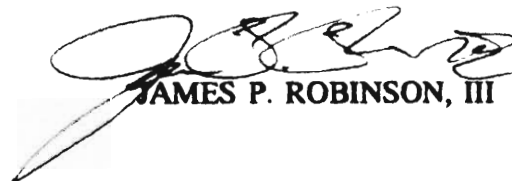
Dear Ms. Weissenborn:

This letter is to confirm your agreement to grant Heard, Goggan, Blair & Williams a twenty-one day extension within which to respond to your letter of August 16, 1993. By my calculations, this will mean that the information you requested must be provided to you on or before September 21, 1993.

Heard, Goggan, Blair & Williams requests this extension due to the deposition and trial schedule of its attorney, R. Laurence Macon, who is presently out of the country, and so that it may have an adequate amount of time to review its files and properly answer each query.

Thank you for your courtesy and professionalism in this matter. If you have any questions, please feel free to call me at the above number.

Sincerely,


JAMES P. ROBINSON, III

JPR/sly
2938-000\011.sly

ic: R. Laurence Macon, P.C.

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FEDERAL ELECTION COMMISSION
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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 3, 1993

James P. Robinson, III, Esquire
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

RE: MUR 3342
Heard, Gogan, Blair
& Williams

Dear Mr. Robinson:

This is in response to your letter dated August 30, 1993, which we received on September 2, 1993, requesting an extension of twenty-one days to respond to questions posed to your client, Heard, Gogan, Blair & Williams, by this Office. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on September 21, 1993.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over the typed name.

Anne A. Weissenborn
Senior Attorney

5043643886

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

ATTORNEYS AT LAW

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WRITER'S DIRECT DIAL NUMBER (210) 270-

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65 AVENUE LOUISE, P.B. NO. 7
1050 BRUSSELS, BELGIUM
(011) 32-2-535.29.11

September 21, 1993

Ms. Anne A. Weissenborn
Senior Attorney
Federal Election Commission
999 E. Street
Washington, D.C. 20463

VIA FACSIMILE 202-219-3923

Re: MUR 3342; Heard, Goggan, Blair & Williams

Dear Ms. Weissenborn:

This letter is in response to the specific questions posed in your letter of August 16, 1993.

In response to specific question number one, the Gephardt for President Committee was not a client of Heard, Goggan, Blair & Williams. Specific questions number two is, thus, inapplicable.

In response to specific question number three, there was no written contract between the Gephardt for President Committee and Heard, Goggan, Blair & Williams, although there was an agreement that the Committee would pay in full for the services it received from Heard, Goggan, Blair & Williams.

In response to specific question number four, there was an agreement between the Gephardt for President Committee and Heard, Goggan, Blair & Williams that the Committee would pay in full for all services received from Heard, Goggan, Blair & Williams.

In response to specific question number five, Heard, Goggan, Blair & Williams has provided similar types of services for other clients. Please see the attachment to this letter.

RECEIVED
FEDERAL ELECTION COMMISSION
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AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.


Ms. Anne A. Weissenborn

September 20, 1993

Page 2

Please call if you have any questions or if I can be of any further assistance.

Sincerely,



R. LAURENCE MACON, P.C.

RLM/sly

2938-000013.sly

cc: Oliver S. Heard, Jr.

25043643308

ATTACHMENT A

Heard, Goggan, Blair & Williams has provided similar services to the following: Ann Dixon, Orlando Garcia, Bob Lee, Carleton Spears, Rose Spector, Mark White, the State Bar of Texas, the Bexar County Democratic Party, the American Cancer Society, various school bond elections, Jack Valenti, President of Motion Pictures Association, the Hispanic Designers Show & Reception, and various private tax clients.

The types of non-legal services performed for the above clients have included the following: mailing services, assistance with fund raising, assistance in arranging rallies, assistance in arranging block walking, assistance in providing election day workers, assistance with phone banks, assistance with arranging travel, hosting dinners and receptions, providing staff support, assistance with organizing receptions, and coordinating with news clipping agencies.

Jim Slattery.
U.S. CONGRESS

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September 22, 1993

Ms. Anne A. Weissenborn
Senior Attorney
Federal Election Commission
Washington, DC 20463

Re: MUR 3342

Dear Ms. Weissenborn:

I am writing to respond to your letter of August 16, 1993, regarding conciliation prior to a finding of probable cause to believe an expenditure by the Slattery for Congress Committee for the Gephardt for President Committee exceeded allowable contribution limits. As I indicated in recent phone discussions with your office, we have again contacted the Gephardt for President Committee and Representative Gephardt's office to request repayment of the amount owed to the Slattery for Congress Committee.

I have been in contact over the past month with staff at the Gephardt for Congress Committee who referred me to attorneys in Washington, D.C., Judy Corley and Robert Bauer, who represent the Gephardt for President Committee. It is my understanding that the Gephardt for President Committee has now authorized and sent a check for \$3,324.17 to the Slattery for Congress Committee. This amount represents the amount above the \$1,000.00 limit which was still outstanding on the postage expenditure by the Slattery for Congress Committee for the Gephardt for President campaign. The initial expenditure was \$4,804.63, of which a 10% repayment (\$480.64) had been received previously by the Slattery for Congress Committee under a proposed debt settlement agreement.

When we were informed in 1992 that the FEC had determined that the debt settlement agreement did not satisfactorily resolve the over-expenditure for Gephardt, we contacted the Gephardt for President Committee representatives through Congressman Gephardt's staff. At that time we understood that the amount owed would be repaid by the Gephardt for President Committee. In a telephone discussion with Judy Corley in late August or early



Ms. Anne A. Weissenborn
September 22, 1993
Page 2

September, 1993, she indicated that she thought repayment had been recommended and made in 1992 based on the Slattery for Congress Committee's initial contact with the Gephardt for President Committee. A check of their records revealed that no payment was made.

It has taken until this date to receive confirmation from the Gephardt Committee that repayment has now been authorized and paid. We will send a copy of the check when we receive it in the next day or so.

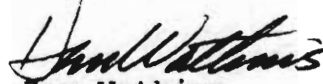
Our correspondence with your office in April, 1992, set out the facts regarding the postage expenditure for the mailing in which Representative Slattery announced his support of Representative Gephardt for President and encouraged Kansas Democrats to participate in the Kansas caucus. There was no intent to violate FEC laws and after we were notified in 1992 that this expenditure was considered a contribution in excess of the \$1,000.00 limit, we requested repayment of the excess amount from the Gephardt for President Committee.

We request that no action be taken against the Committee or Mr. VanDyke, the Treasurer, as the matter has now been rectified with the repayment of the excess amount by the Gephardt for President Committee.

Please contact me regarding your proposed recommendations to the Commission on this matter. If you need further information or have any questions, please call me at (913) 843-0181.

Thank you for your consideration.

Sincerely,



Dan Watkins
Assistant Treasurer

DLW:ge

15043643891

KATZ, KUTTER, HAIGLER, ALDERMAN, DAVIS, MARKS & BRYANT

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

SILVIA MORELL ALDERMAN
ALAN HARRISON BRENTS
DANIEL C. BROWN
BILL L. BRYANT, JR.
RICHARD E. COATES
MARGUERITE H. "DITTI" DAVIS
MARTIN R. DIX
PAUL R. EZATOFF, JR.
WILLIAM M. FURLOW
MITCHELL B. HAIGLER
EDWARD S. JAFFRY
ALLAN J. KATZ
EDWARD L. KUTTER
RICHARD P. LEE
JOHN C. LOVETT
JOHN R. MARKS, III
BRIAN M. NUGENT

POST OFFICE BOX 1877 32302-1877
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TELEPHONE (904) 224-8834
TELECOPIER (904) 222-0103
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GARY P. TIMIN
J. LARRY WILLIAMS
DAVID A. YON
PAUL A. ZEIGLER

OF COUNSEL
PATRICK F. MARONEY
ARTHUR L. STERN, III

GOVERNMENTAL CONSULTANTS
MONICA A. LASSETER*
GERALD C. WESTER*
(*NOT AN ATTORNEY)

September 23, 1993

Ms. Anne A. Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

Re: MUR 3342

Dear Ms. Weissenborn:

I have enclosed herewith answers to the questions you posed in your letter dated August 16, 1993.

As I indicated to you by telephone and in my letter dated March 27, 1993, our firm never intended to provide the Gephardt campaign with any services or funds. We reluctantly accepted a settlement from the Gephardt campaign only after we had exhausted all means to collect the obligation from Swann & Haddock.

I trust that the enclosed information will enable you to make a determination in this matter that is favorable to our firm.

Sincerely,
KATZ, KUTTER, HAIGLER, ALDERMAN, DAVIS, MARKS & BRYANT, P.A.

Allan J. Katz

Enclosures.

RECEIVED
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COMMISSION
MAIN OFFICE / ROOM
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93 SEP 28 PM 3:18

Proposed Answers to Interrogatories from FEC
Request date: August 16, 1993

1. Was the Gephardt for President Committee a client of Swann & Haddock? If yes, please state the varieties of services performed by Swann & Haddock for the Committee.

Answer. Although we did not control such matters in Tallahassee, we believe that the Committee was a client of Swann & Haddock. I do not have knowledge of the scope of services provided by Swann & Haddock in their home office of Orlando, FL or in branch offices, other than Tallahassee.

2. Was there a written agreement between Swann & Haddock and the Committee concerning services to be provided? If yes, please furnish a copy of this agreement.

Answer. I am not personally aware of a written agreement between the parties but one could have existed.

3. Were the particular expenditures by Katz, Kutter at issue in the present matter incurred pursuant to the agreement, if any, between Swann & Haddock and the Committee? If not, did these particular expenditures result from personal activities of members or staff of the firm on behalf of the campaign? If the latter is the accurate scenario, please identify the individual(s) whose activities were involved.

Answer. The expenditures billed occurred during a transition period from Swann & Haddock to our new firm. Further, the expenses were incurred primarily by one individual, Ron Fried, who was not a shareholder of the new firm. Mr. Fried resigned from our firm in January 1988. No member of our firm had direct personal involvement in this matter. Under our general agreement with Swann & Haddock we were to be reimbursed for any expenditures incurred on their behalf and vice versa. We directly billed Swann & Haddock for all of the expenses in question (see attached specimen invoice copy), and we fully expected to be paid by Swann & Haddock for all such expenses. We contacted the Gephardt campaign only when it became apparent that Swann & Haddock would/could not pay. Our firm made a business judgment to accept less than 100% of the bill from the Gephardt campaign because we feared that we would get nothing otherwise.

Proposed Answers to Interrogatories from FEC
Request date: August 16, 1993

4. It is the understanding of the Office of the General Counsel that Swann & Haddock was a law firm. Did that firm furnish the same types of apparently non-legal services, e.g., arrangement of political meetings, telephones, rental cars, hotels, travel expenses, etc., for other clients as were provided for the Committee? If yes, please identify examples of such clients.

Answer. Yes, Swann & Haddock did furnish similar services for a number of other clients since it carried out a substantial "legislative" practice. MCA and American Pioneer are examples of those clients.

5. Did the expenditures made by Katz, Kutter on behalf of the Gephardt for President Committee involve obligations of Swann & Haddock assumed by your present firm pursuant to a written agreement between the two firms? If yes, please provide a copy of that agreement. If there was no written agreement, please explain the basis for the division of obligations.

Answer. There was a written agreement between Katz, Kutter and Swann & Haddock as to major assets purchased/sold and liabilities assumed; however, the agreement did not specifically address the expenditures of the type in question since they were in the ordinary course of business. It was originally expected that the two firms would have opportunities to work together on a number of matters on an ongoing basis. As such any expenditures without exception or division made on behalf (or at the direction) of Swann & Haddock were to be reimbursed. Unfortunately the relationship between the two firms deteriorated rapidly and cooperation was difficult to obtain.

6. Please identify the expenditures made by Katz, Kutter on behalf of the Gephardt campaign which were made pursuant to the division of obligations between your present firm and Swann & Haddock.

Answer. None of the expenses were made pursuant to the division of obligations between our firm and Swann & Haddock. This particular matter was not specifically addressed in our purchase agreement with Swann & Haddock because it was considered to be in the "ordinary course of business".

7. Please identify any expenditures made by Katz, Kutter on behalf of the Gephardt campaign which resulted from bills received directly from vendors as opposed to those made in

Proposed Answers to Interrogatories from FEC
Request date: August 16, 1993

response to the division of obligations between your present firm and Swann & Haddock.

Answer. As your inquiry indicates, the majority of expenses charged to Swann & Haddock arose as a result of reimbursement of expense account charges. Ron Fried who was not a member of our firm sought reimbursement for most, if not all, of these charges. Other expenses for telephone calls, photocopies, etc. were incurred as a result of Mr. Fried's activities on behalf of Swann & Haddock. Our firm did not specifically authorize Mr. Fried to incur these expenses. In fact the amount of these expenses only became apparent when bills were received from vendors.

050436433895

KATZ, KUTTER, HAIGLER, ALDERMAN, EATON & DAVIS, P.A.

ATTORNEYS AND COUNSELORS AT
SUITE 800
BARNETT BANK BUILDING
315 SOUTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32301
(904) 224-9634

ACCOUNT NO: 8000-8790010M

02/03/88

SWANN & HADDOCK
ATTORNEYS AT LAW
135 W. CENTRAL AVE.
ORLANDO, FL 32328

GEPHARDT CAMPAIGN

	PREVIOUS BALANCE	\$4,748.03
01/06/88	ENVELOPES	25.20
01/18/88	GENERAL OFFICE EQUIPMENT	8.35
01/19/88	RENTAL CAR - POLITICAL MEETINGS IN ORLANDO - RAF	95.58
01/25/88	FEDERAL EXPRESS	28.00
01/25/88	COURIER SERVICE	5.00
01/25/88	WORD PROCESSING	50.00
01/25/88	POSTAGE	42.07
01/25/88	PHOTOCOPIES	246.00
01/25/88	PHONE BILL	512.10
01/25/88	TELEFAX AND TELECOPY	42.30

	TOTAL COSTS	1054.60
01/05/88	PAYMENT	-348.00

	TOTAL PAYMENTS	-348.00
	BALANCE DUE	\$5,454.63
		=====

YOUR ACCOUNT IS 60 DAYS PAST DUE.

PAYMENTS RECEIVED AFTER THE 25TH ARE NOT REFLECTED

BEFORE THE FEDERAL ELECTION COMMISSION

93 OCT -1 PM 12: 20

In the Matter of)

Edmund M. Reggie)

James C. Robinson)

Beryl Anthony for Congress Committee)
and Joseph Hickey, as treasurer)

Mack E. Barham)

William J. Fleming)

SENSITIVE

MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This report addresses several respondents in MUR 3342 who have been found to have made excessive contributions to the Gephardt for President Committee (the "Committee"). The Committee itself will be addressed in a separate report.

On April 16, 1991, the Commission found reason to believe, inter alia, that Edmund M. Reggie and James C. Robinson had violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee ("the Committee").¹ Following receipt of responses from these two individuals, the

1. On April 16, 1991 the Commission found reason to believe that four individuals had made excessive contributions to the Committee. On September 23, 1992, the Commission accepted a signed conciliation agreement and civil penalty submitted on behalf of F.P. Blank and closed the file as it pertained to him. Later, on January 9, 1993, the Commission voted to take no further action against William D. Rollnick and closed the file with regard to him. The Commission determination in the latter regard was based upon information showing that at no time did Mr. Rollnick intend for the Committee to have \$2,000 in contributions from himself; his second \$1,000 contribution was intended to replace an earlier \$1,000 which he understood to have been lost. In addition, there was evidence that reattribution to Mrs. Rollnick of half of a \$2,000 contribution had been obtained within 60 days of receipt of that contribution.

Office of the General Counsel mailed briefs recommending that the Commission find probable cause to believe that violations had occurred. Both Mr. Reggie and Mr. Robinson responded to the briefs with letters.

On February 25, 1992, the Commission found reason to believe, inter alia, that the Beryl Anthony for Congress Committee ("the Anthony Committee") and Joseph Hickey, as treasurer, Mack E. Barham, and William J. Fleming had violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee.²

II. ANALYSIS

A. Statutory and Regulatory Provisions

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his or her authorized committee with respect to any election for Federal office.

2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election.

11 C.F.R. § 110.1(k)(1) requires that contributions made by more than one person include the signature of each person on the check, money order or other negotiable instrument, or in a separate writing.

Pursuant to 11 C.F.R. § 103.3(b)(3), contributions which, when

2. This Office is in the process of obtaining additional information from the remaining 6 contributor respondents (1 individual, 3 law firms, 1 business entity and 1 political committee) with regard to which the Commission made reason to believe findings on February 25, 1992, and will submit that information to the Commission in the near future, together with recommendations for Commission action.

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aggregated with other contributions, exceed the statutory limitations may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt.

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The Commission's regulations provide that corporate vendors may extend credit to political committees without such credit being considered an advance and thus a contribution, provided they do so in the ordinary course of business. Corporations may also settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4. At the time the advances at issue in the present matter were the subject of debt settlement agreements and submitted to the Commission for approval, it was Commission policy to extend possibilities for advances and settlement or forgiveness of debt to non-corporate vendors as well; this policy is now reflected in the Commission's regulations at 11 C.F.R. § 116.4(a). Again, such non-corporate vendors must have extended credit in the ordinary course of business.

B. Respondents

1. Edmund M. Reggie (The General Counsel's Brief is incorporated by reference into this report.)

The General Counsel's Brief submitted to Mr. Reggie states

that he was responsible for \$2,500 in contributions to the Committee.³ This amount consisted of \$500 received by the Committee on June 30, 1987 and \$2,000 received on September 30, 1987. Mr. Reggie received a refund of the excessive amount more than sixty days after his contributions became excessive.

In his letter responding to the brief (Attachment 1), Mr. Reggie states that the \$2,000 came from an account "which was a community property account and therefore represented a \$2,000 contribution from Mrs. Reggie and myself." (Emphasis in original.) Mr. and Mrs. Reggie are residents of the State of Louisiana.

As stated above, 11 C.F.R. § 110.1(k)(1) requires that, in order for a contribution to be considered jointly made by two or more persons, the signature of each contributor must appear on the check or other instrument used to make the contribution, or in a separate writing. 11 C.F.R. § 100.7(c) states that "a contribution . . . made by an individual shall not be attributed to any other individual, unless otherwise specified by that other individual in accordance with 11 C.F.R. § 110.1(k). In the present matter, Mr. Reggie's signature was the only one on the two checks used to make the contributions at issue, and there was no accompanying statement signed by Mrs. Reggie that the contribution was partially hers. The facts that the account upon which the \$2,000 check was drawn was a joint account, and that Louisiana is a community property state, did not serve to attribute one half of the \$2,000

3. At the time of the Commission's finding of reason to believe it appeared that Mr. Reggie had contributed \$3,500; however, information provided by the respondent has shown that \$1,000 of this amount was contributed by his son, Ed Michael Reggie.

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to Mrs. Reggie. See Advisory Opinion 1980-67.⁴

Mr. Reggie also asserts his good faith in the belief that his contributions were "within the legal limits," and that he did not mean to violate the law. In this regard there has been no finding of a knowing and willful violation of the Federal Election Campaign Act on his part.

On the basis of the above discussion there remain sufficient bases for the Commission to proceed against Mr. Reggie with regard to his excessive contributions. However, the amount of the excessive contributions remaining, \$1,500, is relatively low. Therefore, consistent with the proper ordering of the Commission's priorities and resources, See Heckler v. Chaney, 470 U.S. 821 (1985), this Office recommends that the Commission find probable cause to believe that Edmund M. Reggie violated 2 U.S.C. § 441a(a)(1)(A), but take no further action and close the file as to this respondent. We recommend further that the letter sent to Mr. Reggie contain an appropriate admonishment.

2. James C. Robinson (The General Counsel's Brief is incorporated by reference into this report.)

Mr. Robinson made four contributions to the Gephardt campaign, including two of \$1,000 each received on June 29, 1987, and June 30, 1987, and two of \$1,000 each received on March 1, 1988, for a total of \$4,000. The Respondent's signature was the only one on the checks used to make these contributions. The check dated

4. In AO 1980-67, the Commission stated, "[R]egardless of the property law of the state where a contributor is domiciled, no attribution of a portion of a contribution will be presumed unless specified."

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June 25, 1987, contained the name and address of Elizabeth T. Robinson on the memo line, and a second dated February 25, 1988, contained the printed name of Elizabeth T. Robinson underlined above the signature line.

In his letter response to the General Counsel's Brief (Attachment 2), Mr. Robinson states that the account on which the four checks were issued is a joint account established over forty years ago. According to Mr. Robinson, the terms of the agreement establishing the account "serves [sic] as approval by my wife, in writing, of any checks I write on the account and, by the same token, as approval by me, in writing, of any checks which she may write. We have operated under this understanding with respect to this account for the forty years it has been in existence."

As stated above with regard to Mr. Reggie's contributions, the Commission's regulations require that the attribution of portions of a contribution to someone other than the person signing a check be specific, either by having the second person sign the check or other instrument, or by means of an accompanying written statement. These requirements were not met with regard to the \$4,000 in checks signed by Mr. Robinson.

Mr. Robinson argues that he had no knowledge of federal election laws and would "have assumed that had there been a problem with the contributions made by my wife and myself, the Gephardt Committee would have notified us of this fact. We received no such notice until the contributions were refunded. . . . The ability to make the refunds, however, was entirely within the control of the Gephardt committee." Mr. Robinson asks that the Commission take no

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further action.

Although the failure by the Committee to address Mr. Robinson's excessive contributions in a timely fashion would serve as a mitigating circumstance during the conciliation process, it does not relieve him of responsibility for the making of the contributions. An additional mitigating factor would be Mr. Robinson's apparent attempts to have half of \$4,000 in contributions attributed to his wife by means of placing his wife's name on one check's memo line and by underlining her typed name above his signature on the second check.

This Office recommends that the Commission find probable cause to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A) by making \$3,000 in excessive contributions.

3. Beryl Anthony for Congress Committee

The Anthony Committee hosted a fundraiser/dinner on behalf of Mr. Gephardt's candidacy in the fall (October or November) of 1987. The expenses incurred for the dinner totaled \$3,459.60. According to the Anthony Committee, the Gephardt campaign committed itself to prompt reimbursement of the expenses involved.

In addition, in December, 1987, the Anthony Committee reimbursed a "friend of Congressman Anthony" for her payments on behalf of the Gephardt campaign of \$500 for rent for a campaign headquarters and of \$145.65 for related telephone service. This brought the total of advances to \$4,105.25. The Anthony Committee also made a direct contribution of \$1,000 to the Gephardt campaign.

Joseph Hickey, treasurer of the Anthony Committee, has stated that on January 6, 1988 he wrote to the Gephardt Committee

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requesting reimbursement for the expenses incurred in relation to the fundraiser dinner and the campaign headquarters.

(Attachment 3). Later that same month Mr. Hickey wrote to Robert F. Bauer, counsel to the Gephardt campaign, assertedly to find out how long the Committee had within which to pay the bill before coming into violation of the Federal Election Campaign Act ("the FECA"). According to Mr. Hickey, counsel responded that, as long as the debt was paid within a commercially reasonable time, there should be no violation of the FECA. On February 3, 1988, Mr. Bauer advised Mr. Hickey that he had spoken to the Gephardt Committee and it would make payment immediately. Payment was not received.

Mr. Hickey asserts further that on September 2, 1988 he spoke to Boyd Lewis, Finance Director of the Gephardt Committee, who offered on behalf of the latter committee 10% on each dollar in full satisfaction of the debt. According to Mr. Hickey, Mr. Lewis stated that campaign counsel would provide an opinion that the compromise of the debt by the Anthony Committee would not constitute an illegal contribution by the Anthony Committee to the Gephardt Committee.

On September 7, 1988 Mr. Hickey wrote to Congressman Anthony to relate this information. Mr. Hickey states that Congressman Anthony approved the compromise in reliance upon the representation that such an arrangement would not violate the FECA. Mr. Hickey then notified the Gephardt Committee that the compromise would be acceptable.

Mr. Hickey states that the Anthony Committee never received

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the promised opinion from campaign counsel, but it did receive a payment of \$410.53 from the Gephardt Committee on January 20, 1989. On November 23, 1990, the Anthony Committee received a notification from the Commission that it had instructed the Gephardt Committee to pay the full debt owed the Anthony Committee. The Anthony Committee then contacted the Gephardt Committee and was told that it was "broke."

As a result of its payments of bills owed by the Gephardt campaign, the Anthony Committee made advances on behalf of the Gephardt Committee totaling \$4,105.25. Because the Anthony Committee was not in the business of providing the services represented by these advances, the expenditures were made outside the ordinary course of business and were not subject to debt settlement. Thus, they resulted in contributions in the amount of \$4,105.25, which, when added to the Anthony Committee's direct contribution of \$1,000, brought its total contributions to to \$5,105.25. Of this amount \$410.53 has been repaid, although repayment was made outside the sixty-day period established by the Commission's regulations.

The Anthony Committee has requested pre-probable cause conciliation. This Office recommends that the Commission agree to this request and approve the attached proposed conciliation agreement.

4. Mack E. Barham

Mr. Barham was a Committee volunteer who made \$1,164.22 in expenditures on behalf of the Committee for debts related to a luncheon fundraiser and telephone use. Mr. Barham also made a

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direct contribution to the Committee of \$1,000. Because Mr. Barham was not in the business of providing the goods and services involved in his expenditures on behalf of the Committee, those payments resulted in excessive advances/contributions of \$1,164.22, \$116.42 of which has been repaid as a result of a debt settlement agreement. (See discussion below.)

Mr. Barham states that, prior to his payment of the Committee's debts, he repeatedly billed the Committee by mail and telephone to obtain the funds to pay the telephone charges and the food and beverage costs that were incurred in connection with the luncheon meeting. (Attachment 4). Mr. Barham asserts that, because his personal financial standing and his law firm's financial standing depended upon payment to local businesses, he eventually was forced to pay the telephone bill to keep his firm's telephone service and to discharge the invoice for the luncheon. According to Mr. Barham, he paid obligations related to credit which was extended to the Committee upon his representations and continued to bill the Committee in an attempt to recoup the money.

Mr. Barham asserts further that on August 30, 1988 Boyd Lewis, the Committee's Finance Director, advised him that the Committee was unable to pay the outstanding balance owed in relation to the luncheon meeting and telephone charges, but that the Committee would like to settle with him for 10% on the dollar as they were doing with all other persons to whom money was owed. When Mr. Barham questioned the legality of such a settlement, he was assured that legal counsel for the Committee had cleared this matter with the Commission and that he needed merely to accept the

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10%, sign the debt settlement agreement, and the Commission would make a pro forma review of the agreement. Mr. Barham states that throughout his conversations with Mr. Lewis and other staff members of the Committee, he was "assured and reassured that this was not only the proper way but the only way to settle this matter." Therefore, he signed the agreement.

As stated above, Mr. Barham's payments on behalf of the Committee were not made in the ordinary course of business. Thus, they were not subject to debt settlement. However, according to the additional information recently supplied by Mr. Barham, it appears that he tried to have the Committee pay the debt amount of \$1,164.22 directly, and that he finally paid the vendors involved because the debts were impacting his firm's ability to do business. He later questioned the appropriateness of a debt settlement agreement. In light of the small amount of money involved and the respondent's efforts to obtain direct payment by the Committee prior to his payment of the bills involved, this Office recommends that the Commission take no further action with regard to a violation by Mr. Barham and close the file as to this respondent. We recommend further than the letter sent to him contain an admonishment.

5. William J. Fleming

Mr. Fleming, a Committee staff member, agreed with the Committee to settle the \$3,676.36 debt owed to him by the Committee. The original debt has been identified as involving his payments for Committee-related operational expenses and for

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travel.⁵ Mr. Fleming agreed to accept 50% of the outstanding balance, or \$1,838.18, in settlement of the debt. Mr. Fleming also made a direct contribution of \$25 and an in-kind contribution of \$900 to the Committee.

Because Mr. Fleming's payments on behalf of the Committee for other than his own transportation were apparently not made in the ordinary course of his business, they were not subject to debt settlement. Rather, they constituted advances and thus contributions. Therefore, Mr. Fleming's actual contributions to the Committee may have totaled as much as \$4,460.28.

A reason to believe notification letter was originally sent to Mr. Fleming at an address in St. Louis, Missouri. It appears that the letter was returned by the U.S. Postal Service because he had moved to Minneapolis, Minnesota. A second letter which enclosed the original notification letter was sent to Mr. Fleming at a Minneapolis address. This letter was returned to this Office on July 9, 1993. A letter was sent on July 10, 1993 to the U.S. Postal Service requesting Mr. Fleming's new address. On September 16, 1993 this Office received a response from the post office indicating that Mr. Fleming has moved and left no forwarding address.

Given the inability of this Office to locate Mr. Fleming, we recommend that the Commission take no further action with regard to this respondent and close the file as it applies to him.

5. The Committee has stated that only \$141.08 involved exempt transportation costs pursuant to 11 C.F.R. § 110.7(b)(8).

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III. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

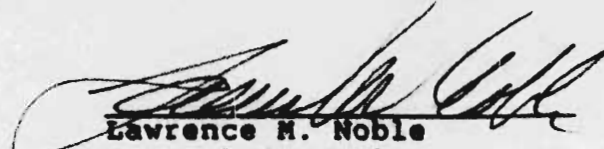
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IV. RECOMMENDATIONS

1. Find probable cause to believe that Edmund M. Reggie violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.
2. Find probable cause to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A).
3. Enter into conciliation with the Beryl Anthony for Congress Committee and Joseph Hickey, as treasurer, prior to a finding of probable cause to believe.
4. Take no further action against Mack E. Barham.
5. Take no further action against William J. Fleming.

6. Close the file as to Edmund M. Reggie, Mack E. Barham and William J. Fleming.
7. Approve the attached conciliation agreements and appropriate letters.

10/1/93
Date


Lawrence M. Noble
General Counsel

Attachments

1. Letter from Edmund M. Reggie
2. Letter from James C. Robinson
3. Letters from counsel and treasurer for the Beryl Anthony for Congress Committee
4. Letter from Mack E. Barham
5. Conciliation Agreements (2)

Staff assigned: Anne A. Weissenborn
Sarah F. Strange


05043643910



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS 
COMMISSION SECRETARY

DATE: OCTOBER 8, 1993

SUBJECT: MUR 3342 - GENERAL COUNSEL'S REPORT
DATED OCTOBER 1, 1993.

The above-captioned document was circulated to the
Commission on Monday, October 4, 1993 at 11:00.

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u> </u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda
for Tuesday, October 19, 1993.

Please notify us who will represent your Division before
the Commission on this matter.

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)))))))

Edmund M. Reggie;
James C. Robinson;
Beryl Anthony for Congress Committee
and Joseph Hickey, as treasurer;
Mack E. Barham;
William J. Fleming

CERTIFICATION

1. Find probable cause to believe that Edmund M. Reggie violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.
2. Find probable cause to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A).
3. Enter into conciliation with the Beryl Anthony for Congress Committee and Joseph Hickey, as treasurer, prior to a finding of probable cause to believe.
4. Take no further action against Mack E. Barham.

1. Find probable cause to believe that Edmund M. Reggie violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.
2. Find probable cause to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A).
3. Enter into conciliation with the Beryl Anthony for Congress Committee and Joseph Hickey, as treasurer, prior to a finding of probable cause to believe.
4. Take no further action against Mack E. Barham.

Federal Election Commission
Certification for MUR 3342
October 19, 1993

Page 2

5. Take no further action against William J. Fleming.
6. Close the file as to Edmund M. Reggie, Mack E. Barham and William J. Fleming.
7. Approve the conciliation agreements and appropriate letters as recommended in the General Counsel's report dated October 1, 1993

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

Attest:

10-20-93
Date

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

25043643913



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCTOBER 22, 1993

Joseph Hickey
Compton, Prewett, Thomas & Hickey, P.A.
423 North Washington
El Dorado, Arkansas 71731

RE: MUR 3342
Beryl Anthony for Congress
Campaign Committee
Joseph Hickey, as treasurer

Dear Mr. Hickey:

On February 25, 1992, the Federal Election Commission found reason to believe that the Beryl Anthony for Congress Campaign Committee and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A). At your request, on October 19, 1993, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

Enclosure
Conciliation Agreement

15043643914



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCTOBER 22, 1993

Gail N. Wise, Esquire
Barham & Arceneaux
Poydras Center, Suite 2700
650 Poydras Street
New Orleans, LA 70130-6101

RE: MUR 3342
Mack E. Barham

Dear Ms. Wise:

On March 10, 1992, your client, Mack E. Barham, was notified that the Federal Election Commission had found reason to believe he violated 2 U.S.C. § 441a(a)(1)(A). On June 21, 1993, Mr. Barham submitted a response to the Commission's reason to believe finding.

After considering the circumstances of the matter, the Commission determined on October 19, 1993, to take no further action against Mr. Barham, and closed the file as it pertains to him. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds you that Mr. Barham's making of advances on behalf of the Gephardt for President Committee totaling \$1,164.22, in addition to a direct contribution of \$1,000, appears to have been a violation of 2 U.S.C. § 441a(a)(1)(A). Your client should take steps to ensure that this activity does not occur in the future.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

OCTOBER 22, 1993

Edmund M. Reggie
Reggie, Harrington and Reggie
526 North Parkerson Avenue
P.O. Drawer D
Crowley, Louisiana 70527-6004

RE: MUR 3342

Dear Mr. Reggie:

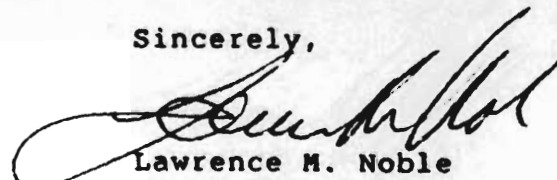
This is to advise you that on October 19, 1993, the Federal Election Commission found probable cause to believe that you violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Gephardt for President Committee. After considering the circumstances of this matter, however, the Commission also determined to take no further action and closed its file in this matter as it pertains to you.

Please be aware that 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any individual may contribute to a candidate with respect to any election for federal office.

The file will be made public within 30 days after the matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

25043643916

Jim Slattery.
U.S. CONGRESS

06C 0431
RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION

Nov 15 12 43 PM '93

MEMORANDUM

TO: Anne Weissenborn
FROM: Dan Watkins *DW*
DATE: October 29, 1993
RE: MUR 3342, Gephardt Reimbursement

93 NOV 15 PM 3:15

RECEIVED
FEDERAL ELECTION COMMISSION

Attached is a copy of a check from the Gephardt for President Committee which we just received.

The Gephardt Committee has made this payment at the request of the Slattery for Congress Committee. The Gephardt Committee has informed us that they do not in any way regard this payment as an admission or acknowledgment regarding any matters currently pending before the FEC on this matter or any others.

The Slattery for Congress Committee requested this repayment because of the FEC finding that the postage paid for a mailing, was a contribution and not a debt subject to debt settlement under FEC regulations.

When the Slattery for Congress Committee was made aware of this FEC position, the Committee initiated efforts to secure reimbursement of the excess amount from the Gephardt Committee.

The Slattery Committee did not intend to violate any FEC laws or regulations and again requests that the FEC take no action against the Committee or Mr. VanDyke, the Treasurer, regarding this matter.

Please contact me regarding your proposed recommendations to the Commission on this matter. If you need further information or have any questions, please call me at (913)843-0181.



GEPHARDT FOR PRESIDENT
COMMITTEE, INC.
88 F STREET NW 9TH FLOOR
WASHINGTON, D.C. 20081

3205

October 28, 1993

18-187
B40

TO THE
ORDER OF Slattery for Congress Committee

\$ 3,324.17

Three Thousand Three Hundred Twenty Four and 17/100***

DOLLARS



FOR

A handwritten signature in dark ink, appearing to read "S. G. ...", written over a horizontal line.

#003205# #054001576# #01 002019 01#

10. 28. 93 04 103PM *

RECEIVED
FEDERAL ELECTION COMMISSION

93 NOV 15 PM 3:46

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RECEIVED
F.E.C.
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

JAN -5 PM 12:13

In the Matter of

Beryl Anthony for Congress
Campaign Committee
Joseph Hickey, as treasurer

SENSITIVE
MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 25, 1992, the Commission found reason to believe that the Beryl Anthony for Congress Committee ("the Committee") and Joseph Hickey, as treasurer, had violated 2 U.S.C. § 441a(a)(1)(A). (Attachment 1). On October 19, 1993, the Commission agreed to enter into conciliation prior to a finding of probable cause to believe. (Attachment 2). A proposed conciliation agreement was sent to the respondents. On November 17, 1993 this Office received a signed agreement from the Committee containing no changes, and a check for the civil penalty in the amount of \$1,500. (Attachment 3).

This report contains recommendations to assure that this matter conforms to the court's opinion in FEC v. NRA Political Victory Fund, et. al., No. 91-5360 (D.C. Cir. Oct. 22, 1993).

II. RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA

Consistent with the Commission's November 9, 1993 decisions concerning compliance with the NRA opinion, this Office recommends that the Commission re-vote its prior finding of reason to believe that the Committee and Mr. Hickey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), approve the attached Factual and Legal Analysis

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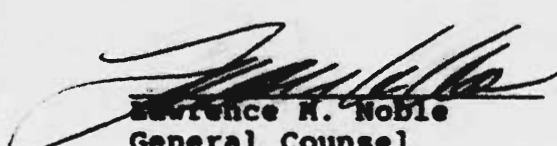
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(Attachment 4), and approve the attached proposed conciliation agreement. (Attachment 5). Although the attached agreement contains no changes from the one previously approved by the Commission and signed and submitted by the Committee's treasurer, this Office believes that it is necessary, in view of the NRA decision and the reconstitution of the Commission, that the Commission revote its approval of the proposed agreement and seek a new signature.

II. RECOMMENDATIONS

1. Find reason to believe that the Beryl Anthony for Congress Committee and Joseph Hickey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
2. Enter into conciliation with the Beryl Anthony for Congress Committee and Joseph Hickey, as treasurer, prior to a finding of probable cause to believe.
3. Approve the attached conciliation agreement and Factual and Legal Analysis and the appropriate letter.

Date 4/5/99


Lawrence H. Noble
General Counsel

Attachments

1. Certification of reason to believe finding
2. Certification of pre-probable cause conciliation
3. Photocopy of civil penalty check
4. Factual and Legal Analysis
5. Conciliation Agreement

Staff Assigned: Anne Weissenborn

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Beryl Anthony for Congress Campaign
Committee and Joseph Hickey, as
treasurer.

)
)
) MUR 3342
)
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 10, 1994, the Commission decided by a vote of 5-0 to take the following actions in MUR 3342:

1. Find reason to believe that the Beryl Anthony for Congress Committee and Joseph Hickey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
2. Enter into conciliation with the Beryl Anthony for Congress Committee and Joseph Hickey, as treasurer, prior to a finding of probable cause to believe.
3. Approve the conciliation agreement and Factual and Legal Analysis and the appropriate letter, as recommended in the General Counsel's Report dated January 5, 1994.

Commissioners Aikens, Elliott, McDonald, Potter, and Thomas voted affirmatively for the decision; Commissioner McGarry did not cast a vote.

Attest:

1-10-94
Date

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

Received in the Secretariat: Wed., Jan. 05, 1994 12:13 p.m.
Circulated to the Commission: Wed., Jan. 05, 1994 4:00 p.m.
Deadline for vote: Mon., Jan. 10, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JANUARY 13, 1994

Joseph Hickey, Treasurer
Beryl Anthony for Congress Campaign Committee
Compton, Prewett, Thomas & Hickey, P.A.
423 North Washington
P.O. Drawer 1917
El Dorado, Arkansas 71731

RE: MUR 3342

Dear Mr. Hickey:

On February 25, 1992, the Federal Election Commission found reason to believe that the Beryl Anthony for Congress Committee ("the Committee") and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and subsequently entered into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. A proposed conciliation agreement was mailed to you on October 22, 1993, and a signed agreement was submitted on November 11, 1993.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on January 10, 1994, the Commission revoted to find reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and to approve the Factual and Legal Analysis previously mailed to you. You should refer to that document for the basis of the Commission's decision. If you need an additional copy, one will be provided upon request.

Furthermore, the Commission revoted to enter into conciliation negotiations prior to a finding of probable cause to believe, and approved the enclosed proposed conciliation agreement which is the

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Joseph Hickey, Treasurer
page 2

same as that previously mailed to you. In view of the NRA decision, and the reconstitution of the Commission as a six member body, it is necessary that you sign the enclosed conciliation agreement. Please sign and return the enclosed agreement within ten days.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,


Trevor Potter
Chairman

Enclosure
Conciliation Agreement

25043643923

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Beryl Anthony for Congress
Campaign Committee
Joseph Hickey, as treasurer

MUR: 3342

25043643924
The Gephardt for President Committee ("the Committee") submitted to the Federal Election Commission a debt settlement agreement signed on behalf of the Beryl Anthony for Congress Campaign Committee with regard to \$4,105.25 in debts owed the Anthony campaign by the Committee. The debt settlement agreement stated that the purposes of the obligation were "Printing/Postage." Pursuant to the agreement, the Anthony campaign agreed to accept \$410.53, or 10% of the outstanding balance, in settlement. Thus, \$3,694.72 was not to be repaid.

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a federal candidate and his or her political committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. 2 U.S.C. § 431(11) defines "person" to include a committee.

2 U.S.C. § 441a(A)(2)(A) permits a multicandidate committee to contribute up to \$5,000 to a candidate or his or her committee per election; however, pursuant to 2 U.S.C. § 432(e)(3)(A), no multicandidate committee may be designated as an authorized committee of a candidate, and it thus follows that no authorized candidate committee may become a multicandidate committee.

2 U.S.C. § 432(e)(3)(B) does permit authorized committees to make contributions of no more than \$1,000 to other authorized committees.

The advances made by the Anthony committee on behalf of the Committee in the amount of \$4,105.25 became in-kind contributions. The \$4,104.25 was not subject to debt settlement because it represented in-kind contributions by the Committee in excess of the contribution limitations. Because the Anthony campaign had already made a \$1,000 contribution to the Committee, its total contributions reached \$5,105.25. Thus, there is reason to believe that the Beryl Anthony for Congress Campaign Committee and Joseph Hickey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

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RECEIVED
F.E.C.
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

94 JAN -7 AM 11:50

SENSITIVE
MUR 3342

In the Matter of
James C. Robinson

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)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 16, 1991, the Commission found reason to believe that James C. Robinson ("the Respondent") had violated 2 U.S.C. § 441a(a)(1)(A). (Attachment 1). On October 19, 1993, the Commission found probable cause to believe (Attachment 2) and approved a proposed conciliation agreement to be sent to Mr. Robinson (Attachment 3).

This report contains recommendations to assure that this matter conforms to the court's opinion in FEC v. NRA Political Victory Fund, et. al., No. 91-5360 (D.C. Cir. Oct. 22, 1993).

II. RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA

Consistent with the Commission's November 9, 1993 decisions concerning compliance with the NRA opinion, this Office recommends that the Commission: ratify its prior finding of reason to believe that Mr. Robinson violated 2 U.S.C. § 441a(a)(1)(A); re-vote its finding of probable cause to believe that Mr. Robinson violated this provision; and approve the conciliation agreement attached to this report. (Attachment 5).

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II. RECOMMENDATIONS

1. Ratify the Commission's prior finding of reason to believe that James C. Robinson violated 2 U.S.C § 441a(a)(1)(A) and the Factual and Legal Analysis approved at that time.
2. Find probable cause to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A).
3. Approve the proposed conciliation agreement at Attachment 5 and the appropriate letter.

Date

1/6/97


Lawrence M. Noble
General Counsel

Attachments

Certification of reason to believe finding
Certification of probable cause finding
General Counsel's original proposed conciliation agreement

General Counsel's proposed agreement
Photocopy of civil penalty check

Staff Assigned: Anne Weissenborn

25043643928

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
James C. Robinson.

)
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) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 13, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Ratify the Commission's prior finding of reason to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A) and the Factual and Legal Analysis approved at that time.
2. Find probable cause to believe that James C. Robinson violated 2 U.S.C. § 441a(a)(1)(A).
3. Approve the proposed conciliation agreement at Attachment 5 and the appropriate letter, as recommended in the General Counsel's Report dated January 6, 1994.

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

Attest:

1-13-94
Date

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

Received in the Secretariat: Fri., Jan. 07, 1994 11:50 a.m.
Circulated to the Commission: Mon., Jan. 10, 1994 11:00 a.m.
Deadline for vote: Thurs., Jan. 13, 1994 4:00 p.m.

bjr

25043643929



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20461

JANUARY 24, 1994

Mr. James C. Robinson
Giles, Hedrick and Robinson, P.A.
390 North Orange Avenue, Suite 800
P.O. Box 2631
Orlando, FL 32802

RE: MUR 3342

Dear Mr. Robinson:

On October 19, 1993, the Federal Election Commission found that there is probable cause to believe you violated 2 U.S.C. § 441a(a)(1)(A).

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on January 13, 1994, the Commission ratified its prior finding of reason to believe, and revoted to find probable cause to believe that you violated 2 U.S.C. § 441a(a)(1)(A). The Commission also approved the terms contained in your most recent submission. In view of the NRA decision and the reconstitution of the Commission, it is necessary that you

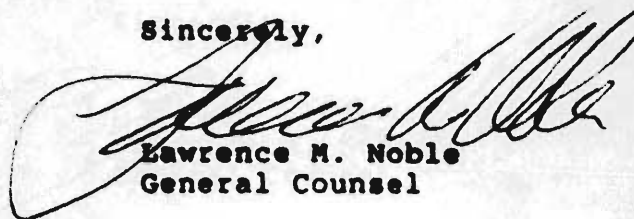
25043643930

James C. Robinson
page 2

sign the enclosed agreement reflecting those terms. Please sign and return the enclosed agreement to the Commission within ten days.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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RECEIVED
F.E.C.
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION FEB 10 PM 2:23

In the Matter of
James C. Robinson

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SENSITIVE
MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND


Attached is a conciliation agreement which has been signed by James C. Robinson.

The attached agreement contains no changes from the agreement approved by the Commission on January 13, 1994. A check for the civil penalty has been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with James C. Robinson
2. Close the file as to this respondent.
3. Approve the appropriate letter.

2/10/94
Date


Lawrence M. Noble
General Counsel

Attachments

1. Conciliation Agreement
2. Photocopy of civil penalty check

Staff Assigned: Anne A. Weissenborn

25043643932

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
James C. Robinson.

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) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 15, 1994, the Commission decided by a vote of 5-0 to take the following actions in MUR 3342:

1. Accept the conciliation agreement with James C. Robinson, as recommended in the General Counsel's Report dated February 10, 1994.
2. Close the file as to this respondent.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated February 10, 1994.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter did not cast a vote.

Attest:

2-15-94
Date

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

Received in the Secretariat:	Thurs., Feb. 10, 1994	2:23 p.m.
Circulated to the Commission:	Thurs., Feb. 10, 1994	4:00 p.m.
Deadline for vote:	Tues., Feb. 15, 1994	4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

FEBRUARY 18, 1994

James C. Robinson
Giles & Robinson, P.A.
390 N. Orange Avenue
Suite 800
Orlando, Florida 32802

RE: MUR 3342

Dear Mr. Robinson:

On February 15, 1994, the Federal Election Commission accepted the signed conciliation agreement and civil penalty which you submitted in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to you.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
James C. Robinson

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MUR 3342

94 FEB -3 PM 3:49

RECEIVED
FEDERAL ELECTION COMMISSION

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission, pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that James C. Robinson ("Respondent") violated 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Gephardt for President ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4).

2. 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his authorized committee with respect to any election for Federal office.

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3. 11 C.F.R. § 110.1(k)(1) requires that contributions made by more than one person include the signature of each person on the check, money order or other negotiable instrument, or in a separate writing.

4. 11 C.F.R. § 103.3(b)(3) provides that contributions which, when aggregated with other contributions, exceed the statutory limitations may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer of the committee may request reattribution or redesignation by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt.

5. Respondent made four contributions to the Committee, including two of \$1,000 each received on June 29, 1987, and June 30, 1987, and two of \$1,000 each received on March 1, 1988, for a total of \$4,000. The contribution checks were signed only by Respondent. The check dated June 25, 1987, contained the name and address of Elizabeth T. Robinson on the memo line, and a second dated February 25, 1988, contained the printed name of Elizabeth T. Robinson underlined above the signature line.

6. The Committee refunded \$2,000 on February 15, 1990, and obtained a reattribution of \$1,000 to Elizabeth T. Robinson. The refund and reattribution took place more than sixty days after receipt of the contributions.

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V. Respondent contributed a total of \$4,000 to Gephardt for President, in violation of 2 U.S.C. § 441a(a)(1)(A).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Four Hundred Dollars (\$400), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

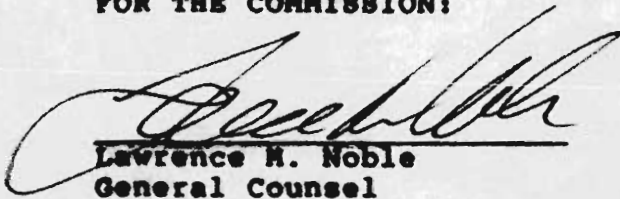
X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made

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by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

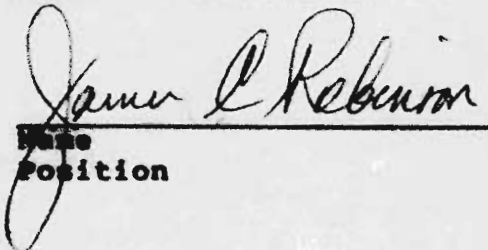
XI. This Conciliation Agreement, unless violated, is a complete bar to any further action by the Commission with respect to the subject of the agreement, including the bringing of a civil proceeding under 2 U.S.C. § 437g(a)(6)(A).

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

2/18/94
Date

FOR THE RESPONDENT:


Name
Position

1/27/94
Date

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JAMES C. OR ELIZABETH T. ROBINSON 01-54

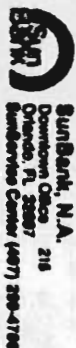
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PAY TO THE ORDER OF FEDERAL ELECTION COMMISSION November 15, 19 93 \$ 400.00

*** Four Hundred & No/100 ***

DOLLARS



01-54

FOR MUR 3342

James C. Robinson

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RECEIVED
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SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION FEB 10 PM 2:08

SENSITIVE

In the Matter of)
Beryl Anthony for Congress)
Campaign Committee)
Joseph Hickey, as treasurer)

MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND

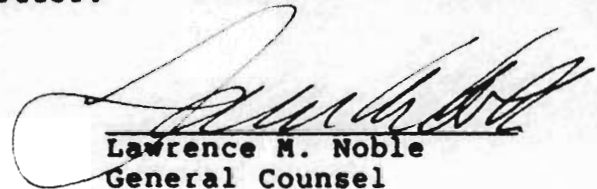
Attached is a conciliation agreement which has been signed by Joseph Hickey.

The attached agreement contains no changes from the agreement approved by the Commission on January 10, 1994. A check for the civil penalty has been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Beryl Anthony for Congress Campaign Committee and Joseph Hickey, as treasurer.
2. Close the file as to these respondents.
3. Approve the appropriate letter.

2/18/94
Date


Lawrence M. Noble
General Counsel

Attachments

1. Conciliation Agreement
2. Photocopy of civil penalty check

Staff Assigned: Anne A. Weissenborn

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Beryl Anthony for Congress
Campaign Committee and
Joseph Hickey, as treasurer.

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) MUR 3342
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CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 24, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Accept the conciliation agreement with the Beryl Anthony for Congress Campaign Committee and Joseph Hickey, as treasurer, as recommended in the General Counsel's Report dated February 18, 1994.
2. Close the file as to these respondents.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated February 18, 1994.

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

Attest:

2/24/94
Date

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

Received in the Secretariat: Fri., Feb. 18, 1994 2:08 p.m.
Circulated to the Commission: Mon., Feb. 22, 1994 11:00 a.m.
Deadline for vote: Fri., Feb. 25, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

FEBRUARY 28, 1994

Joseph Hickey, Treasurer
Beryl Anthony for Congress
Campaign Committee
Compton, Prewett, Thomas & Hickey, P.A.
423 North Washington
El Dorado, Arkansas 71731

RE: MUR 3342

Dear Mr. Hickey:

On February 24, 1994, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of the Beryl Anthony for Congress Campaign Committee and you, as treasurer, in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to your committee.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

Enclosure
Conciliation Agreement

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FEDERAL ELECTION
COMMISSION
MAIL ROOM

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Beryl Anthony for Congress Campaign
Committee
Joseph Hickey, as treasurer

MUR 3342

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Beryl Anthony for Congress Campaign Committee and Joseph Hickey, as treasurer, ("Respondents") violated 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. The Beryl Anthony for Congress Campaign Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Joseph Hickey is the treasurer of the Committee.

3. 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person, including a political committee, may contribute to a candidate and his or her authorized committee with respect to any election for federal office.

4. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election.

5. In 1987 and 1988 the Commission's regulations permitted corporate vendors to extend credit to political committees without such credit being considered an advance and thus a contribution. Corporations could also settle or forgive debts if such settlement or forgiveness was considered commercially reasonable, provided that the debt had been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10; see also present 11 C.F.R. §§ 116.3 and 116.4.

6. In 1987 and 1988 it was Commission policy to extend possibilities for extensions of credit and for settlement or forgiveness of debt to non-corporate vendors; however, such extensions of credit had to have been made in the ordinary course of business.

7. In the fall of 1987 the Committee hosted a fundraiser/dinner on behalf of the Gephardt for President Committee. The Committee paid \$3,459.60 to third-party vendors

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for expenses in connection with this fundraiser. Beginning on January 6, 1988, the Committee sought reimbursement from the Gephardt for President Committee.

8. In December, 1987 the Committee reimbursed an individual for her expenses on behalf of the Gephardt for President Committee in the amounts of \$500 for campaign headquarters rent and of \$145.65 for related telephone service. Beginning on January 6, 1988 the Committee sought reimbursement from the Gephardt for President Committee.

9. In September, 1988 the Committee agreed to accept \$410.53 from the Gephardt for President Committee in settlement of the \$4,105.25 owed by the latter committee. Payment of the \$410.53 was received on January 29, 1989.

10. The \$4,105.25 owed the Committee by the Gephardt for President Committee was not subject to debt settlement because it represented in-kind contributions by the Committee which were made in excess of the contribution limitations. The full amounts of the advances were contributions to the Gephardt for President Committee.

11. The Committee made a direct contribution of \$1,000 to the Gephardt for President Committee.

V. Respondents made a total of \$5,105.25 in contributions to the Gephardt for President Committee, in violation of 2 U.S.C. § 441a(a)(1)(A).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Fifteen Hundred Dollars (\$1,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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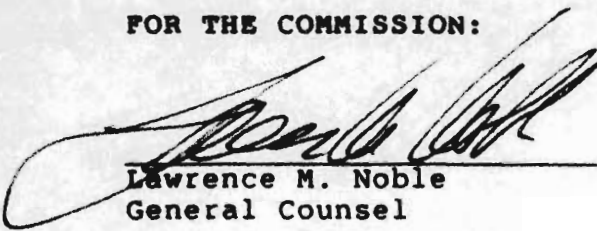
VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

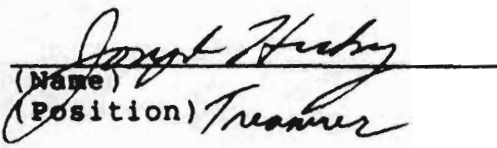
X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

2/9/94
Date

FOR THE RESPONDENTS:


(Name)
(Position) Treasurer

2/5/94
Date

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4677

81-93/829

PAY
TO THE
ORDER OF

Federal Election Commission

Jan. 12 1977

\$1,500.⁰⁰

One thousand five hundred dollars and no/100 -

DOLLARS



NATIONAL BANK OF COMMERCE
The People's Bank
EL PASO, ARIZONA 85201

ANTHONY FOR CONGRESS
CAMPAIGN COMMITTEE

FOR

David Pickens

93 NOV 17 AM 10:19

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FEDERAL ELECTION COMMISSION

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F.E.C.
SECRETARIAT

94 FEB 18 PM 2:08

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Slattery for Congress Committee
Mike Van Dyke, as treasurer

MUR 3342

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 25, 1992, the Commission found reason to believe that the Slattery for Congress Committee ("the Slattery Committee") and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making expenditures totaling \$4,804.63 on behalf of the Gephardt for President Committee ("the Gephardt Committee"). This determination arose out of the Commission's consideration of a debt settlement agreement entered into by the Slattery Committee and the Gephardt Committee, pursuant to which the Slattery campaign agreed to accept \$480.46, or 10% of the \$4,804.63 owed by the Gephardt campaign, in settlement of the latter's debt.

This report contains recommendations to assure that this matter conforms to the court's opinion in FEC v. NRA Political Victory Fund, et. al., No. 91-5360 (D.C. Cir. Oct. 22, 1993).

II. RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA

Consistent with the Commission's November 9, 1993 decisions concerning compliance with the NRA opinion, this Office recommends that the Commission: re-vote its finding of reason to believe that the Slattery for Congress Committee and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A); approve the attached

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revised Factual and Legal Analysis; determine to enter into conciliation prior to a finding of probable cause to believe; and approve the attached proposed conciliation agreement.

III. ANALYSIS

In a letter to the Commission dated April 15, 1992, the assistant treasurer of the Slattery Committee, Daniel Watkins, acknowledged that his committee had paid the costs of postage "for a pre-caucus mailing in 1988 to some Kansas Democrats in which Rep. Slattery announced his support of Rep. Gephardt for the Democratic nomination for President and encouraged Kansas Democrats to participate in the Kansas caucus." Attached to this response was a check dated March 8, 1988, for \$4,804.63 made payable to the U.S. Postal Service.

Also attached to Mr. Watkins' response was a copy of a letter to the Slattery Committee from the Gephardt Committee dated September 15, 1988, which referenced the obligation owed the Slattery campaign in the amount of \$4,804.63, stated that the latter committee had agreed to accept \$480.46 in full settlement of the debt, and enclosed a debt settlement agreement for signature. A check for \$480.46 dated September 14, 1988, was also apparently enclosed, although it is not expressly referenced in the letter from the Gephardt Committee. The agreement between the two committees was signed by Mr. Watkins on behalf of the Slattery Committee on October 3, 1988.

Mr. Watkins, in his April, 1992, response requested pre-probable cause conciliation on behalf of the Slattery Committee. In this regard, this Office, on August 16, 1993, wrote

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to Mr. Watkins seeking additional information about any efforts made to collect the debt owed by the Gephardt campaign.

Mr. Watkins responded on September 22, 1993, stating that, after his committee was informed in 1992 that the Commission had not accepted the debt settlement agreement with the Gephardt Committee, he contacted that committee through Congressman Gephardt's staff. He stated further that he had understood at the time that "the amount owed would be repaid" Actual repayment was not received until October 29, 1993. The amount of this second repayment was \$3,324.17, a figure representing the difference between the committee's \$4,804.63 in expenditures, minus the earlier repayment of \$480.46, and its \$1,000 contribution limitation ($\$4,804.63 - \$480.46 - \$1,000 = \$3,324.17$). In this second letter Mr. Watkins also asked that no action be taken against the Committee and its treasurer, "as the matter has now been rectified with the repayment of the excess amount by the Gephardt for President Committee."

The Gephardt Committee's partial repayment of \$480.46 did not take place until six months after the Slattery Committee's expenditure of \$4,804.64, and the remaining repayment of \$3,324.17 was not made until five years after the fact; both came long after the sixty day repayment period provided by the Commission's regulations at 11 C.F.R. § 103.3. Thus, these reimbursements have not "rectified" the excessive expenditure and resulting in-kind contribution made by the Slattery campaign on behalf of the Gephardt Committee.

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This Office recommends that the Commission re-vote its finding of reason to believe that the Slattery Committee violated 2 U.S.C. § 441a(a)(1)(A). With regard to the Slattery Committee's pre-NRA request for no further action, in an attempt to forestall another such request we also recommend that the letter sent to the committee, notifying them of the Commission's revote, acknowledge receipt of this request prior to NRA, and state that, nonetheless, the Commission decided to revote reason to believe. In addition, this Office recommends that the Commission offer to enter into conciliation with the respondents prior to a finding of probable cause to believe.

IV. RECOMMENDATIONS

1. Find reason to believe that the Slattery for Congress Committee and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

2. Enter into conciliation with the Slattery for Congress Committee and Mike Van Dyke, as treasurer, prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis, the attached proposed conciliation agreement, and the appropriate letter.

Date

2/18/94

Lawrence M. Noble
General Counsel

Attachments

1. Certification of reason to believe finding
2. Factual and Legal Analysis
3. Conciliation Agreement

Staff Member Assigned: Anne Weissenborn

25043643952

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Slattery for Congress Committee
and Mike Van Dyke, as treasurer.

)
)
) MUR 3342
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 25, 1994, the Commission decided by a vote of 5-0 to take the following actions in MUR 3342:

1. Find reason to believe that the Slattery for Congress Committee and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
2. Enter into conciliation with the Slattery for Congress Committee and Mike Van Dyke, as treasurer, prior to a finding of probable cause to believe.

(continued)

25043643953

3. Approve the Factual and Legal Analysis, the proposed conciliation agreement, and the appropriate letter, as recommended in the General Counsel's Report dated February 18, 1994.

Commissioners Aikens, Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

2-25-94
Date

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

Received in the Secretariat: Fri., Feb. 18, 1994 2:08 p.m.
Circulated to the Commission: Tues., Feb. 22, 1994 11:00 a.m.
Deadline for vote: Fri., Feb. 25, 1994 4:00 p.m.

bjr

95043643954



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MARCH 1, 1994

Mike Van Dyke, Treasurer
Slattery for Congress Committee
Post Office Box 1978
Topeka, Kansas 66601

RE: MUR 3342

Dear Mr. Van Dyke:

On February 25, 1992, the Federal Election Commission found that there is reason to believe the Slattery for Congress Committee ("the Committee") and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, (U.S. No. 93-1151, Jan. 18, 1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on February 25, 1994, the Commission revoted to find reason to believe that the Committee, and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and to approve the enclosed revised Factual and Legal Analysis which reflects the Committee's recent receipt of \$3,324.17 from the Gephardt for President Committee.

In addition, in order to expedite the resolution of this matter, the Commission also decided to offer to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe, and to approve the enclosed proposed conciliation agreement.

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Mike Van Dyke, Treasurer
Page 2

In responding to the Commission's finding of reason to believe, you may rely on the Committee's prior submissions, or you may submit any additional factual and legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,


Trevor Potter
Chairman

Enclosures

Factual and Legal Analysis
Conciliation Agreement

25043643906

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Slattery for Congress Committee
Mike Van Dyke, as treasurer

MUR: 3342

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The Gephardt for President Committee ("the Gephardt Committee") has submitted to the Federal Election Commission a debt settlement agreement signed on behalf of the Slattery for Congress Committee ("the Slattery Committee") with regard to \$4,804.63 in debts owed the Slattery campaign by the Gephardt Committee. The debt settlement agreement stated that the purposes of the obligation were "Postage and supplies." Pursuant to the agreement, the Slattery campaign agreed to accept \$480.46, or 10% of the outstanding balance, in settlement. Thus, \$4,324.17 was not to be repaid. More recently, on October 29, 1993, the Gephardt Committee made a second repayment of \$3,324.17.

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a federal candidate and his or her political committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election. 2 U.S.C. § 431(11) defines "person" to include a committee.

2 U.S.C. § 441a(a)(2)(A) permits multicandidate committees to contribute up to \$5,000 to a candidate or his or her committee per election; however, pursuant to 2 U.S.C. § 432(e)(3)(A), no multicandidate committee may be designated as an authorized committee of a candidate, and it thus follows that no authorized candidate committee may become a multicandidate committee.

2 U.S.C. § 432(e)(3)(B) does permit authorized committees to make contributions of no more than \$1,000 to other authorized committees.

The advance made by the Slattery Committee on behalf of the Gephardt Committee in the amount of \$4,804.63 became an in-kind contribution. The \$4,804.63 was not subject to debt settlement because it represented an in-kind contribution by the Slattery Committee in excess of the contribution limitations. Thus, there is reason to believe that the Slattery for Congress Committee and Mike Van Dyke, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MARCH 2, 1994

Mr. Richard H. Hughes
1904 North Adams Street
Arlington, VA 22201

RE: MUR 3342

Dear Mr. Hughes:

On March 10, 1992, you were notified that the Federal Election Commission ("the Commission") had found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A). Enclosed are copies of the material that were sent to you at that time. Under the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations, you have an opportunity to demonstrate that no action should be taken against you by submitting relevant documents or written statements.

During our telephone conversation on February 11, 1994, we understood you to have stated that you were the owner of the airplane involved in transporting members of the Gephardt for President Committee ("the Committee") during the Gephardt campaign in 1992. If this is correct, we would like you to provide the Commission with additional information pertaining to ownership of the airplane and its use by the Committee.

Please provide the following information: (1) the names and addresses of all individuals and/or business entities own(ed) the plane at issue; (2) whether any owner entity is (was) incorporated; (3) an explanation of the arrangements made with the Committee regarding payment for use of the airplane, together with any relevant documents such as letters, contracts, and invoices; (4) the dates, times, and destinations of the flights involved; and (5) the names of the passengers. This information and supporting documents will enable us to expedite this matter.

Thank you for your cooperation.

Sincerely,

Clinett Short
Paralegal

Enclosures

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 7, 1994

R. Laurence Macon, P.C.
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

RE: MUR 3342
Heard, Goggan, Blair
& Williams

Dear Mr. Macon:

Since this Office has been unsuccessful in reaching you by telephone the past two weeks with regard to your client, Heard, Goggan, Blair & Williams, we have decided to contact you by mail in hopes of speedily obtaining the additional information needed to resolve the above-cited matter. If we do not receive the needed information by close of business on Monday, April 11, we will be forced to recommend Commission approval of an order for answers to questions to be served on your client.

The information needed is as follows:

1. In your letter of September 21, 1993, you stated that the Gephardt for President Committee ("the Committee") was not a "client" of Heard, Goggan, Blair & Williams, yet there was "an agreement" between these two entities whereby the Committee would make full payment for services rendered. Please explain the exact relationship between the law firm and the committee.
2. Were the law firm's expenditures on behalf of the Committee part of a business arrangement whereby the firm was hired to perform certain non-legal services, or were they the result of personal activities of one or more partners, associates or other representatives of the firm on behalf of the Committee for which the firm paid the bills? If the second scenario is applicable, please identify the individuals involved. If neither of these scenarios reflects the situation, please clarify.

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R. Laurence Macon, P.C.
page 2

3. With regard to the "flight account" charges of \$10,895.34, please state whose travel was involved and whether or not those persons were Heard, Goggan partners, associates or employees.

4. Was it ordinary business practice in 1988 for Heard, Goggan to provide non-legal services for clients and to send bills afterwards, rather than require advance payments? Did this practice extend to payments for air travel? Please describe the firm's usual and normal billing practices, particularly with regard to air travel.

Thank you for your attention to this request.

Sincerely,

Abigail A. Shaine

Abigail A. Shaine
Assistant General Counsel

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OGC 1007

CORNERSTONE INTERNATIONAL ADVISORS LTD.

7232 S. Atlanta Pl.
Tulsa, OK 74136
Ph. (918) 492-4190

1904 N. Adams St.
Arlington, VA 22201
Ph. (703) 243-3847
FAX (703) 522-0266

Mr. Clinton Shor
Federal Election Commission
Washington D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION
APR 18 3 04 PM '94

MUR 3342

Dear Mr. Shor:

The Federal Election Commission has, since March 10 1992 (Received in June 1993) inquired about a possible violation of 2 USC 5412(a)(1)(A), regarding transportation of certain persons during the Gephardt campaign for President in 1988.

As stated to you, and previously to your predecessors, the Companies I was involved with were placed in Bankruptcy in Jan 1993 (Debtors Case # 93-4008217) in the Northern District of State of Texas, Judge Houston Abel. All the records are under control of the two trustees - one for Hindenliter Trustees, Inc and one for Entacap International, Inc (formerly Coaker International).

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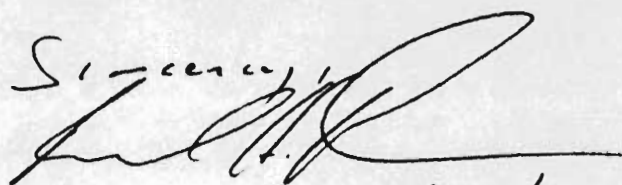
IN CONTRAST TO THE STATEMENT IN YOUR
LETTER OF MARCH 2 1994, I DO NOT KNOW
WHO OWNED THE AIRPLANE AT THE
TIME. PRIOR TO THE AIRPLANE SALE,
HUGHES AVIATION OWNED THE PLANE
AND LEASED IT TO COMPANIES AND
AT CERTAIN TIMES HINDENBERG AND
CONKLE MAY HAVE OWNED THE AIRPLANE.

TO THE BEST OF MY KNOWLEDGE AND
BELIEF MR ROBERT THOMPSON REQUESTED
I JOIN HIM AND OTHERS IN TOWNS
FOR THE PRIMAARY, WHICH I DID. AFTER
THE PRIMAARY, WE WERE ASKED TO RETURN
TO WASHINGTON WITH MEMBERS OF
THE GEPHARDT FOR PRESIDENT COMMITTEE,
MR THOMPSON, AND OTHERS
WE ADVISED MR THOMPSON, THAT WE WOULD
BE HAPPY TO COMPLY, BUT WE WOULD
HAVE TO BILL THE COMMITTEE FOR
THE APPROPRIATE CHARGES AND WE
WERE TOLD TO GO AHEAD AND DO SO.
WE FLEW A PLANE LONG TO WASHINGTON
D.C. AND RETURNED TO TULSA, OKLA.

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Since Himmelfarb on Condon were
responsible for a master lease,
I assume they called the Geopharot
Committee appropriating. I do not
know if the bill was paid.
You might get accounts from the
Geopharot Committee. I do not
have any recollection of signing
a "DEBT SETTLEMENT AGREEMENT";
but I would have if one
was sent to me and it
conformed with the law.
Please forward me a copy
to verify my signature.

Sincerely,

Richard H. Hughes

P.S. Your letter of March 2, 1984
states "during the Geopharot campaign
in 1982". I believe it was 1988.

D

RECEIVED
F.E.C.
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION
94 APR 15 AM 11:39

In the Matter of)
)
Slattery for Congress Committee)
Mike Van Dyke, as treasurer)

MUR 3342

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by the assistant treasurer of the Slattery for Congress Committee ("the Committee"). (Attachment 1).

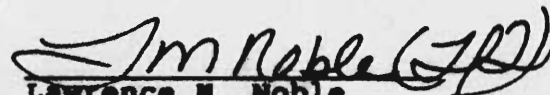
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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Slattery for Congress Committee and Mike Van Dyke, as treasurer.
2. Close the file as to these respondents.
3. Approve the appropriate letters.

Date

4/14/94


Lawrence M. Noble
General Counsel

Attachments

1. Conciliation Agreement
2. Photocopy of civil penalty check

Staff Assigned: Anne Weissenborn

95043643966

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Slattery for Congress Committee) MUR 3342
and Mike Van Dyke, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 20, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Accept the conciliation agreement with the Slattery for Congress Committee and Mike Van Dyke, as treasurer, as recommended in the General Counsel's Report dated April 14, 1994.
2. Close the file as to these respondents.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated April 14, 1994.

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

Attest:

4-20-94
Date

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

Received in the Secretariat: Fri., April 15, 1994 11:39 a.m.
Circulated to the Commission: Fri., April 15, 1994 2:00 p.m.
Deadline for vote: Wed., April 20, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 25, 1994

Dan Watkins
Assistant Treasurer
Slattery for Congress Committee
211 East 8th Street, Suite C
Lawrence, Kansas 66044

RE: MUR 3342

Dear Mr. Watkins:

On April 20, 1994, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of the Slattery for Congress Committee ("the Committee") and Mike Van Dyke, as treasurer, in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to the Committee and Mr. Van Dyke.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

Enclosure
Conciliation Agreement

95043643908

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Slattery for Congress Committee
Mike Van Dyke, as treasurer

)
)
)
)
)

MUR 3342

11:30 AM 11/25/16

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Slattery for Congress Committee and Mike Van Dyke, as treasurer ("Respondents") violated 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Slattery for Congress Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

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2. Mike Van Dyke is the treasurer of the Slattery for Congress Committee.

3. 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person, including a political committee, may contribute to a candidate and his or her authorized committee with respect to any election for federal office.

4. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for purposes of influencing a federal election.

5. In 1987 and 1988 the Commission's regulations permitted corporate vendors to extend credit to political committees without such credit being considered an advance and thus a contribution. Corporations could also settle or forgive debts if such settlement or forgiveness was considered commercially reasonable, provided that the debt had been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10; see also present 11 C.F.R. §§ 116.3 and 116.4.

6. In 1987 and 1988 it was Commission policy to extend possibilities for extensions of credit and for settlement or forgiveness of debt to non-corporate vendors; however, such extensions of credit had to have been made in the ordinary course of business.

6. In March, 1988 the Slattery for Congress Committee ("the Slattery Committee") paid postage costs totaling \$4,804.63 for a mailing to Kansas Democrats in which U.S. Representative Jim Slattery announced his support for U.S. Representative Richard

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Gephardt for the Democratic nomination for President and encouraged participation in the Kansas caucus.

7. In October, 1988 the Slattery Committee agreed to accept \$480.46 from the Gephardt for President Committee in settlement of the \$4,804.63 debt owed by the latter committee. Payment of the \$480.46 had been received in September, 1988.

8. An additional \$3,324.17 of the amount owed the Slattery Committee was reimbursed on October 29, 1993, leaving an in-kind contribution of \$1,000.

9. The Commission has determined that the \$4,804.63 owed the Slattery Committee by the Gephardt Committee was not subject to debt settlement. The advance is considered an in-kind contribution by the Commission rather than an extension of credit in the ordinary course of business.

V. While Respondents contend that the \$4,804.63 advance to the Gephardt Committee was made in good faith and without intent to violate 2 U.S.C. § 441a(a)(1)(A), such advance represented an in-kind contribution in excess of the contribution limits in violation of 2 U.S.C. § 441a(a)(1)(A).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Seven Hundred Fifty Dollars (\$750), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

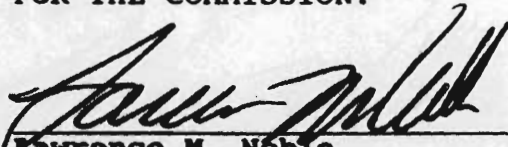
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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

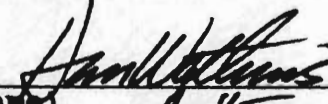


Lawrence M. Noble
General Counsel

4/25/94

Date

FOR THE RESPONDENTS:



(Name)
(Position) Asst Treasurer

4/6/94

Date

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95043643973

5913

SLATTERY FOR CONGRESS COMMITTEE

P. O. BOX 1978
TOPEKA, KS 66601

3/11 1994

44-113/1011

PAY TO THE
ORDER OF

Federal Election Commission \$ 750.00

Seven Hundred Fifty and no/100 DOLLARS



HIGHLAND PARK
BANK & TRUST
TOPEKA, KANSAS

[Signature]

MEMO

⑆10101138⑆ 33 133 3⑈ 5913

04 5 1 27 115

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SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

54 APR 18 PM 3:45

In the Matter of)
)
Heard, Goggan, Blair & Williams)

MUR 3342

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 25, 1992, the Commission found reason to believe that Heard, Goggan, Blair & Williams ("the firm") of San Antonio, Texas, had violated 2 U.S.C. § 441a(a)(1)(A) by incurring expenses on behalf of the Gephardt for President Committee ("the Committee") totaling \$21,677.84. (Attachment 1). This determination arose out of the Commission's consideration of a debt settlement agreement entered into by the Committee and Heard, Goggan, Blair & Williams, pursuant to which the firm agreed to accept \$2,167.78, or 10% of the amount owed by the Committee, in settlement of the latter's debt. (See Attachment 2 for itemization of expenditures.)

This report contains recommendations to assure that this matter conforms to the court's opinion in FEC v. NRA Political Victory Fund, et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993), and, in order to facilitate discovery in MUR 3342, makes a further recommendation that the Commission approve subpoenas for depositions and an order for answers to written questions.

II. RECOMMENDED ACTION IN LIGHT OF FEC V. NRA

Consistent with the Commission's November 9, 1993 decisions concerning compliance with the NRA opinion, this Office recommends

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that the Commission revoke its finding of reason to believe that Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A) and approve the Factual and Legal Analysis attached to the Memorandum to the Commission dated February 14, 1992 in DSR #90-16 and MUR 3342.

III. DISCUSSION AND ADDITIONAL RECOMMENDATION

Heard, Goggan, Blair & Williams was notified of the Commission's earlier finding of reason to believe on March 10, 1992. Counsel for the firm responded, and additional information about the expenditures and the relationship between the firm and the Committee was sought and provided. There remain, however, basic pieces of information missing, particularly in light of the absence of a written agreement, with regard to whether the firm was hired by the Committee to provide certain non-legal services, or whether the expenditures at issue resulted from personal activities of partners, associates or other representatives of the firm for which the firm paid the bills.

Informal methods of obtaining this additional information have failed, the most recent being a letter faxed to counsel on April 7, 1994 which requested answers by April 11 to questions already posed in an earlier letter. In light of this failure, and given the sum of \$21,677 at issue, this Office recommends that the Commission approve the attached Order to Submit Written Answers to be sent to Heard, Goggan, Blair & Williams. (Attachment 3).

Further, this Office believes that it may well be necessary to depose the presently unidentified individuals from the firm and the Committee who were directly responsible for the unwritten

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agreement between these two entities, and also the as yet unidentified individual(s) at the firm knowledgeable about its ordinary billing practices. Therefore, it is recommended that the Commission authorize the sample subpoena for deposition attached to this report to be served as needed after receipt by this Office of the firm's answers to the attached questions. (Attachment 4).

IV. RECOMMENDATIONS

1. Find reason to believe that Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A).
2. Approve the Factual and Legal Analysis attached to the General Counsel's Memorandum dated February 14, 1992 in DSR #90-16 and MUR 3342.
3. Authorize the attached Order to Submit Written Answers to Heard, Goggan, Blair & Williams and the attached sample subpoena for deposition.
4. Approve the appropriate letter.

Date

4/18/99


Lawrence M. Noble
General Counsel

Attachments

1. Certification of reason to believe finding
2. List of campaign-related expenditures
3. Order to Submit Written Answers
4. Sample Subpoena for Deposition

Staff Assigned: Anne Weissenborn

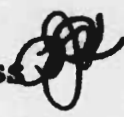
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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS 
COMMISSION SECRETARY

DATE: APRIL 22, 1994

SUBJECT: MUR 3342 - GENERAL COUNSEL'S REPORT
DATED APRIL 18, 1994.

The above-captioned document was circulated to the
Commission on Tuesday, April 19, 1994 at 11:00 a.m..

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	XXX
Commissioner Potter	_____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda
for Tuesday, May 3, 1994.

Please notify us who will represent your Division before
the Commission on this matter.

95743643917

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3342
Heard, Goggan, Blair & Williams)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 3, 1994, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Find reason to believe that Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A).
2. Approve the Factual and Legal Analysis attached to the General Counsel's Memorandum dated February 14, 1992 in DSR #90-16 and MUR 3342.
3. Authorize the Order to Submit Written Answers to Heard, Goggan, Blair & Williams, and the sample subpoena for deposition, as recommended in the General Counsel's report dated April 18, 1994.

(continued)

25043643978

4. Approve the appropriate letter as recommended in the General Counsel's report dated April 18, 1994.

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

Attest:

5-4-94
Date

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

95043643919



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 9, 1994

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

R. Laurence Macon, P.C.
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

RE: MUR 3342
Heard, Goggan, Blair
& Williams

Dear Mr. Macon:

On March 10, 1992 your client, Heard, Goggan, Blair & Williams was notified that the Federal Election Commission had found reason to believe your client violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1151). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on May 3, 1994, the Commission revoted to find reason to believe that Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A), and to approve the Factual and Legal Analysis previously mailed to your client. Please refer to that document for the basis of the Commission's decision. If you need an additional copy, one will be provided upon request.

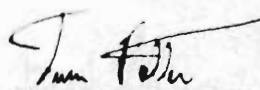
25943643900

R. Laurence Macon, P.C.
page 2

You may rely on your prior submissions, or you may submit any additional factual and legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers must be submitted within 15 days of your receipt of this Order. Any additional materials or statements which you wish to submit should accompany the response to this Order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

For the Commission,


Trevor Potter
Chairman

Enclosure
Order to Submit Written Answers

25043643981

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
)
)

MUR 3342

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Heard, Goggan, Blair & Williams
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
c/o R. Laurence Macon, P.C.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

Pursuant to 2 U.S.C. § 437d(a)(1), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

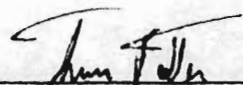
Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, within 15 days of your receipt of this Order.

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MUR 3342
Heard, Goggan, Blair & Williams
page 2

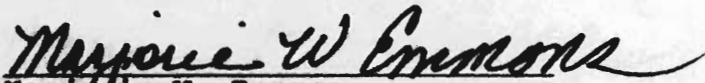
WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand in Washington, D.C. on this 5th
day of April, 1994.

For the Commission,



Trevor Potter
Chairman

ATTEST:



Marjorie W. Emmons
Secretary to the Commission

Attachment

95043643283

9 5 0 4 3 6 4 3 2 8 4
MUR 3342

Heard, Goggan, Blair & Williams

page 3

INSTRUCTIONS

In answering these interrogatories furnish all information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any items about which information is requested by any of the following interrogatories, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1987 to December 31, 1988.

The following interrogatories are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

MUR 3342

Heard, Goggan, Blair & Williams

page 4

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

95043643985

INTERROGATORIES

1. In a letter from counsel dated September 21, 1993, it was stated that the Gephardt for President Committee ("the Committee") was not a "client" of Heard, Goggan, Blair & Williams ("the firm") in 1987-88 and that there was no written contract, yet there was "an agreement" between these two entities whereby the Committee would make full payment for services rendered. Please explain the exact relationship between the firm and the Committee. In addition, please identify the individual(s) at the firm and the individual(s) with the Committee who were directly involved in formulating the agreement.
2. Please explain whether the expenditures made by Heard, Goggan, Blair & Williams on behalf of the Committee were made as part of a business arrangement whereby the firm was to perform certain non-legal services for the Committee, or whether these expenditures were the result of the personal activities of one or more partners, associates or other representatives of the firm on behalf of the Committee for which the firm paid the bills. If neither scenario applies, please explain the situation in detail.
3. If the expenditures made by Heard, Goggan, Blair & Williams on behalf of the Committee were the result of personal activities of a partner, associate and/or other representative of the firm, please identify the individual(s) involved.
4. With regard to the "flight account" charges of \$10,895.34 included in the bill sent to the Committee, please identify the individual(s) whose "travel" was involved and whether or not each such individual was a partner, associate or employee of the firm.
5. Please explain whether it was ordinary business practice in 1987-88 for Heard, Goggan, Blair & Williams to pay for non-legal services for clients and others, and then to seek reimbursement, rather than require advance payments. Did this practice extend to payments for air travel and for hotel accommodations?
6. Please describe the firm's usual and normal billing practices in 1987-88, particularly with regard to air travel, and identify the individual most familiar with the firm's billing system during that period of time.

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AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
ATTORNEYS AT LAW

1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 887-4000

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(011) 32 2 535 29 11

65 EAST 55TH STREET
33RD FLOOR
NEW YORK, NEW YORK 10022
(212) 872-1000

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

1500 NATIONS BANK PLAZA
300 CONVENT STREET
SAN ANTONIO, TEXAS 78205
(210) 270-0800
FAX (210) 224-2035

WRITER'S DIRECT DIAL NUMBER (210) 270-

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMIN

MAY 27

1700 PACIFIC AVENUE
SUITE 4100
DALLAS, TEXAS 75201-4618
(214) 589-2800

2100 FRANKLIN PLAZA
III CONGRESS AVENUE
AUSTIN, TEXAS 78701
(512) 499-6700

1900 PENNZOIL PLACE-SOUTH TOWER
711 LOUISIANA STREET
HOUSTON, TEXAS 77002
(713) 220-5800

May 20, 1994

MUR 3342

Ms. Ann Weisenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

VIA FACSIMILE (202) 219-3923

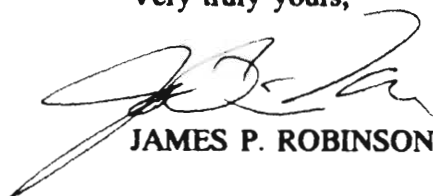
Re: Heard, Goggan, Blair & Williams

Dear Ms. Weisenborn:

Due to counsel's recent absence from the state, we are hereby requesting a brief extension of time in which to answer the Interrogatories propounded by the Federal Election Commission to Heard, Goggan, Blair & Williams. Counsel for Heard, Goggan, Blair & Williams is also lead counsel in a large Federal Court case which has required the taking of depositions outside the state of Texas on every weekday and on many weekends for the last several weeks, in an effort to complete all the necessary depositions before the court imposed discovery deadline. For this reason, Heard, Goggan, Blair & Williams will require a short extension of time in which to properly respond to the Interrogatories. It is expected that a two week extension will be sufficient.

Please call to discuss this matter.

Very truly yours,


JAMES P. ROBINSON, III

JPR/sly

ic: R. Laurence Macon, P.C.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 27 12 12 PM '94

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 26, 1994

James P. Robinson, III, Esquire
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

RE: MUR 3342
Heard, Goggan, Blair
& Williams

Dear Mr. Robinson:

This letter is in response to your request, dated May 20, 1994, for an extension of two weeks to respond to the Order to Submit Written Answers recently issued by the Federal Election Commission to your client, Heard, Goggan, Blair & Williams.

After considering the circumstances outlined in your letter and during our telephone conversations yesterday, this Office has granted your request. We wish to emphasize, however, that this will be the only extension of time to respond we will be able to grant or recommend to the Commission. We attempted earlier to obtain the same information from your client by informal means, and the firm's continuing failure to respond fully has caused a serious interruption of our investigation. If the information sought is not provided by the end of the allotted time, we will promptly recommend that the Commission seek judicial enforcement of the Order.

According to our calculations, you should have received the May 9, 1994 letter from the Chairman of the Commission, with the enclosed Order, on or about May 12. The fifteen day response time provided in the Order would have resulted in the response being due on May 27, 1994. Thus, the two week extension of time moves the response deadline to the close of business on June 10, 1994.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over a horizontal line.

Anne A. Weissenborn
Senior Attorney

95043643988



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 31, 1994

Mr. Richard H. Hughes
1904 North Adams Street
Arlington, VA 22201

RE: MUR 3342

Dear Mr. Hughes:

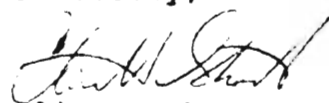
On April 29, 1994, you were faxed a copy of the Debt Settlement Agreement entered into between you and the Gephardt for President Committee. This agreement addresses \$3,807.45 in expenses apparently incurred by you on behalf of the Gephardt Committee, resulting in your having made in-kind contributions to the Committee in excess of the \$1,000 contribution limit, and thus in violation of 2 U.S.C. § 441a(a)(1)(A).

Based upon the Debt Settlement Agreement and information you have furnished, it is our understanding that the Gephardt Committee asked you to furnish a plane, which was owned or leased by a company with which you were associated, to transport the candidate, representatives of the Committee and yourself to Washington, D.C. after the Iowa primary in 1988. We also understand that the \$3,807.45 cited in the Debt Settlement Agreement represented the amount which you personally paid to the company for use of the plane.

Are these understandings accurate? If not, please explain. In addition, please tell us how many seats there were on the plane. We ask that you respond no later than June 15, 1994.

Thank you for your cooperation.

Sincerely,


Clint Short
Paralegal

95043643989

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

ATTORNEYS AT LAW

1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
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1900 PENNZOIL PLACE-SOUTH TOWER
711 LOUISIANA STREET
HOUSTON, TEXAS 77002
(713) 220-5800

June 9, 1994

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

VIA CMRRR # P 915 492-056

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 14 23 PM '94

Re: In the Matter of MUR 3342; Heard, Goggan, Blair & Williams

Dear Counsel:

Please find enclosed herewith Written Answers pursuant to the Court's Order of April 5, 1994.

Please also note that the firm has designated additional counsel and a Statement of Designation of this additional counsel is enclosed herewith.

Very truly yours,



R. LAURENCE MACON, P.C.

JPR/sly

ic: James P. Robinson, III

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3342

NAME OF COUNSEL: MINTON, BURTON, FOSTER & COLLINS, P.C.

ADDRESS: 1100 Guadalupe Street
Austin, Texas 78701

TELEPHONE: (512) 476-4873; (512) 479-8315 (Facsimile)

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 14 12 23 PM '94

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

June 9, 1994
Date

Stephen S. Blair
Signature STEPHEN S. BLAIR

RESPONDENT'S NAME: HEARD, GOGGAN, BLAIR & WILLIAMS

ADDRESS: Tenth Floor, Tower Life Building
San Antonio, Texas 78205

HOME PHONE: _____

BUSINESS PHONE: (210) 225-6763

25043643991

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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S
S

MUR 3342

WRITTEN ANSWERS

TO: Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Heard, Goggan, Blair & Williams submits the following Written Answers in response to the Commission's Order to submit Written Answers dated April 5, 1994.

AKIN, GUMP, STRAUSS, HAUER &
FELD, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205
(210) 270-0800
(210) 224-3035 (Telecopier)



R. LAURENCE MACON, P.C.
State Bar No. 12787500

MINTON, BURTON, FOSTER & COLLINS
A Professional Corporation
1100 Guadalupe Street
Austin, Texas 78701
(512) 476-4873
(512) 479-8315 (Facsimile)



CHARLES R. BURTON
State Bar No. 03476000

ATTORNEYS FOR HEARD, GOGGAN, BLAIR,
& WILLIAMS

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 14 12 23 PM '94

9504364392

INTERROGATORIES

INTERROGATORY NO. 1:

In a letter from counsel dated September 21, 1993, it was stated that the Gephardt for President Committee ("the Committee") was not a client of Heard, Goggan, Blair & Williams ("the firm") in 1987-88 and that there was no written contract, yet there was "an agreement" between these two entities whereby the Committee would make full payment for services rendered. Please explain the exact relationship between the firm and the Committee. In addition, please identify the individual(s) at the firm and the individual(s) with the Committee who were directly involved in formulating the agreement.

ANSWER:

In the letter from counsel dated September 21, 1993, wherein it was stated that the Gephardt for President Committee ("the Committee") was not a client of Heard, Goggan, Blair & Williams ("the firm") in 1987-88, the information intended to be conveyed was that the services to be provided the Committee by the firm were not legal services, so that in that sense the Committee was not a client of the firm. The exact relationship between the firm and the Committee was that the firm was asked to provide services needed by the Committee in its campaign in Texas upon the agreement that the Committee would make full payment to the firm for those services. The individuals directly involved in formulating the agreement were Oliver Heard at the firm, Richard Gephardt, John O'Hanlon and other members of the campaign staff for the Committee.

Persons capable of furnishing testimony regarding this response are Oliver Heard, Richard Gephardt, John O'Hanlon and perhaps other members of the Committee whose names have not presently been recalled.

The individuals who provided informational, documentary or other input, and those who assisted in drafting the Interrogatory Response are Oliver Heard, Greg DeWinne, Carri Baker, Stephen S. Blair and the undersigned counsel.

INTERROGATORY NO. 2:

Please explain whether the expenditures made by Heard, Goggan, Blair & Williams on behalf of the Committee were made as part of a business arrangement whereby the firm was to perform certain non-legal services for the Committee, or whether these expenditures were the result of the personal activities of one or more partners, associates or other representatives of the firm on behalf of the Committee for which the firm paid the bills. If neither scenario applies, please explain the situation in detail.

ANSWER:

The expenditures were made by the firm as part of a business arrangement whereby the firm was to provide certain non-legal services for the Committee. These services did include payment of some expenses of one or more partners, associates or other representatives of the firm which were incurred in providing services to the Committee.

Persons capable of furnishing testimony regarding this response are Oliver S. Heard, Jr., Richard Gephardt, John O'Hanlon and perhaps other members of the Committee whose names have not presently been recalled.

The individuals who provided informational, documentary or other input, and those who assisted in drafting the Interrogatory Response are Oliver S. Heard, Jr., Greg DeWinne, Carri Baker, Stephen S. Blair and the undersigned counsel.

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INTERROGATORY NO. 3:

If the expenditures made by Heard, Goggan, Blair & Williams on behalf of the Committee were the result of personal activities of a partner, associate and/or other representative of the firm, please identify the individual(s) involved.

ANSWER:

As explained in Answer to Interrogatory No. 2, the expenditures made by Heard, Goggan, Blair & Williams were made pursuant to an agreement to provide services to the Committee for which the Committee would make full payment. These payments did include some expenses of one or more partners, associates and/or other representatives of the firm which were incurred in providing services for the Committee, namely Oliver Heard, Carri Baker, Joe Ponce and possibly others.

Persons capable of furnishing testimony regarding this response are Oliver S. Heard, Jr., Richard Gephardt, John O'Hanlon and perhaps other members of the Committee whose names have not presently been recalled.

The individuals who provided informational, documentary or other input, and those who assisted in drafting the Interrogatory Response are Oliver S. Heard, Jr., Greg DeWinne, Carri Baker, Stephen S. Blair and the undersigned counsel.

INTERROGATORY NO. 4:

With regard to the "flight account" charges of \$10,895.34 included in the bill sent to the Committee, please identify the individual(s) whose "travel" was involved and whether or not each such individual was a partner, associate or employee of the firm.

ANSWER:

The travel involved with regard to the flight account questioned was that of Richard Gephardt, his wife Jane, and members of his campaign organization as well as law firm partner, Oliver S. Heard, Jr., employee Carri Baker and possibly others.

95043643226

The persons capable of furnishing testimony concerning this response are Richard Gephardt, Jane Gephardt, other unidentified members of the campaign organization, Oliver S. Heard, Jr. and Carri Baker.

The individuals who provided informational, documentary or other input and those who assisted in drafting the Interrogatory Response are Oliver S. Heard, Jr., Carri Baker, Greg DeWinne, Stephen S. Blair and the undersigned counsel.

INTERROGATORY NO. 5:

Please explain whether it was ordinary business practice in 1987-88 for Heard, Goggan, Blair & Williams to pay for non-legal services for clients and others, and then to seek reimbursement, rather than require advance payments. Did this practice extend to payments for air travel and for hotel accommodations?

ANSWER:

It was ordinary business practice in 1987-88 for Heard, Goggan, Blair & Williams to pay for non-legal services for clients and others and then to seek reimbursement, rather than require advance payments, including payments for air travel and for hotel accommodations where reimbursement for such advance payment was agreed upon between the clients and others.

The persons capable of furnishing testimony concerning this response are Oliver S. Heard, Jr., Greg DeWinne, Stephen S. Blair.

The individuals who provided informational, documentary or other input, and who assisted in drafting this Interrogatory Response are Greg DeWinne, Stephen S. Blair and the undersigned counsel.

INTERROGATORY NO. 6:

Please describe the firm's usual and normal billing practices in 1987-88, particularly with regard to air travel, and identify the individual most familiar with the firm's billing system during that period of time.


ANSWER:

The firm's usual and normal billing practices in 1987-88, particularly with regard to air travel, was that the firm did not bill clients for air travel because the firm's contracts with most of their clients did not entitle the firm to seek reimbursement for their expenses. Greg DeWinne is the individual most familiar with the firm's billing system during 1987-88.

The persons capable of furnishing testimony concerning this response are Oliver S. Heard, Jr., Greg DeWinne, Stephen S. Blair.

The individuals who provided informational, documentary or other input, and who assisted in drafting this Interrogatory Response are Greg DeWinne, Stephen S. Blair and the undersigned counsel.

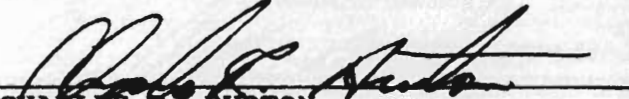
AKIN, GUMP, STRAUSS, HAUER &
FELD, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205
(210) 270-0800
(210) 224-2035 (Telecopier)



R. LAURENCE MACON, P.C.
State Bar No. 12787500

25043643227

MINTON, BURTON, FOSTER & COLLINS
A Professional Corporation
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Austin, Texas 78701
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(512) 479-8315 (Facsimile)

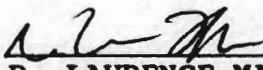


CHARLES R. BURTON
State Bar No. 03476000

ATTORNEYS FOR HEARD, GOGGAN, BLAIR
& WILLIAMS

CERTIFICATE OF SERVICE

A copy of the foregoing Written Answers has been set by
certified mail, return receipt requested, to the Office of the
General Counsel, Federal Election Commission, 999 E Street, N.W.,
Washington, D.C. 20463, on this the 9th day of June, 1994.



R. LAURENCE MACON, P.C.

9504364320

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

§
§
§

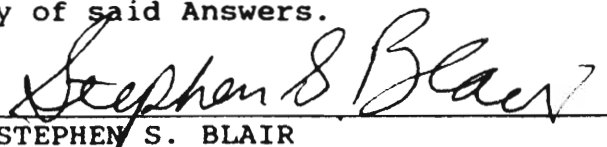
MUR 3342

AFFIDAVIT OF STEPHEN S. BLAIR

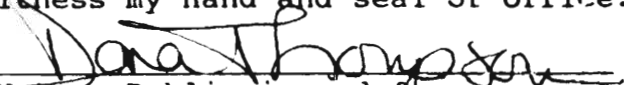
STATE OF TEXAS §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this date personally appeared **STEPHEN S. BLAIR**, known to me to be the person whose name is subscribed to this affidavit, and after being by me duly sworn, according to law upon her oath, deposed and stated as follows:

1. My name is Stephen S. Blair. I am over 18 years of age, of sound mind and competent in all respects to make this Affidavit. I am a partner in the law firm of Heard, Goggan, Blair & Williams. I am duly authorized to make this Affidavit.
2. I have read the attached Written Answers to the Federal Elections Commission's Interrogatories. The Written Answers of Heard, Goggan, Blair & Williams to such Interrogatories, as attached, are true and correct to the best of my information and belief.
3. I do not have personal knowledge of the underlying events described in these written answers. However, due to my position as a partner in the law firm of Heard, Goggan, Blair & Williams and due to my review of the records of Heard, Goggan, Blair & Williams, I have sufficient knowledge and information to swear to the veracity of said Answers.


STEPHEN S. BLAIR

SUBSCRIBED AND SWORN TO BEFORE ME on this the 9 day of June, 1994, to certify which witness my hand and seal of office.


Notary Public in and for
The State of Texas

95043643299

JAN 30 11 11 AM '94

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Katz, Kutter, Haigler, Alderman,)
Eaton, Davis & Marks)
Swann & Haddock)
Trammell Crow Asset Company, Inc.)

SENSITIVE

MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 25, 1992, the Commission found reason to believe that Katz, Kutter, Haigler, Alderman, Eaton, Davis & Marks ("Katz, Kutter"), and Swann & Haddock violated 2 U.S.C. § 441b and that Trammell Crow Asset Company violated 2 U.S.C. § 441a(a)(1)(A) by incurring expenses on behalf of the Gephardt for President Committee ("the Committee"). (Attachment 1). These determinations arose out of the Commission's consideration of debt settlement agreements entered into by these entities with the Committee.

This report contains recommendations to assure that this matter conforms to the court's opinion in FEC v. NRA Political Victory Fund, et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993). For reasons set forth below, several recommendations have changed from those acted upon by the Commission in 1992.

II. ANALYSIS

2 U.S.C. § 441b(a) provides that it is unlawful for any corporation to make a contribution or expenditure in connection with any federal election. The term "contribution" shall

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include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services to any candidate, campaign committee, or political party or organization, in connection with any election for federal office. 2 U.S.C. § 441b(b)(2).

A. Katz, Kutter

In his response to the Commission's initial reason to believe determination, Mr. Allan Katz stated that to the best of his knowledge the firm's expenditures on behalf of the Committee totaling \$5,454.62, which are identified in the Factual and Legal Analysis, were expenses that were incurred by another firm, Swann & Haddock, on behalf of the Committee prior to November 1, 1987. Shortly after that date, certain members of the Swann & Haddock law firm left to create the new firm now known as Katz, Kutter, Haigler, Alderman, Eaton, Davis & Marks, P.A. This new firm purchased certain assets and assumed certain obligations of Swann & Haddock.

Katz, Kutter tried on numerous occasions to collect reimbursements for payments of the outstanding debts incurred by Swann & Haddock on behalf of the Committee, first from Swann & Haddock and then from the Committee. These attempts were unsuccessful. Katz, Kutter assertively treated the Committee as any other debtor and ultimately chose to accept a lower payment in settlement of the debt. Mr. Katz states that sometime in 1990 Swann & Haddock went out of business.

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This Office recommends that the Commission revote to find reason to believe that Katz Kutter violated 2 U.S.C. § 441b. However, based on the fact that the obligations on behalf of the Committee were not originally those of Katz, Kutter, but were assumed when the newly created firm purchased the assets of Swann & Haddock, this Office also recommends that the Commission take no further action against Katz, Kutter, send an admonishment letter, and close the file as to this respondent.

B. Swann & Haddock

Swann & Haddock assumed responsibility for expenses of the Committee totaling \$2,930.00 over and above those involved in the Katz, Kutter expenditures. This Office has made several attempts to contact Swann & Haddock by mail and telephone. Local listings for Orlando, Florida do not contain a telephone number for Swann & Haddock. We have contacted the Department of State of Florida, which cannot tell if this firm is still an active business; Mr. Katz, however, has stated that Swann & Haddock went out of business sometime in 1990. This Office concludes that Swann & Haddock is no longer a operating business, and, therefore, recommends that the Commission take no action and close the file as to this respondent.

C. Trammell Crow Asset Company, Inc.

The Commission originally found reason to believe that the Trammell Crow Company had violated 2 U.S.C. § 441a(a)(1)(A) by making an apparent in-kind contribution to the Committee in the form of a trip on a company airplane on February 19, 1988.

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This determination was based upon the understanding that this company was operating as a partnership at the time the contribution was made. Since that time counsel for Trammell Crow has stated that the Trammell Crow Company is now called the Trammell Crow Asset Company. Counsel also indicated that this respondent was a corporation, not a partnership. Thus, the receipt of a contribution from this company would result in a violation of 2 U.S.C. § 441b.

Pursuant to 11 C.F.R. § 114.9(e)(1),

a candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation . . . other than a corporation . . . licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation . . .

- (i) In the case of travel to a city served by regularly scheduled commercial service, the first class air fare:
- (ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

The Trammell Crow Asset Company responded to the Commission's original reason to believe finding, stating that the Committee had requested use of Trammell Crow's aircraft for Committee officials. The trip involved a flight from Dallas, Texas to Marshall, Texas and on to St. Paul, Minnesota on February 19, 1988. Six persons from the Gephardt campaign were accommodated, including the candidate. The Committee calculated the price of the air fare based on first-class quotes of \$656 per passenger and advised Trammell Crow to submit a bill for \$3,936.00 for reimbursement as payment in

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full for the Committee's use of the aircraft. Trammell Crow made several attempts to obtain payment; however, it became evident that the Committee would be unable to pay the debt owed. Therefore, Trammell Crow and the Committee entered into a debt settlement agreement in the amount of \$393.

Trammell Crow requested to enter into pre-probable cause conciliation on April 17, 1992. This Office recommends that the Commission find reason to believe that the Trammell Crow Asset Company violated 2 U.S.C. § 441b, approve the attached, revised Factual and Legal Analysis (Attachment 2), and determine to enter into pre-probable cause conciliation with the Corporation.

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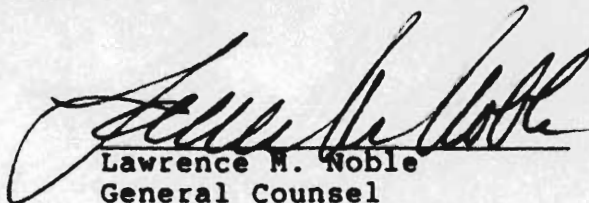
III. RECOMMENDATIONS

1. Find reason to believe that Katz, Kutter, Haigler, Alderman, Eaton, Davis & Marks violated 2 U.S.C. § 441b, approve the Factual & Legal Analysis attached to the General Counsel's Memorandum to the Commission dated February 14, 1992 in DSR #90-16 & MUR 3342, determine to take no further action as to this respondent, approve the sending of an admonishment letter, and close the file as to this respondent.
2. Take no action against Swann & Haddock and close the file as to this respondent.

3. Find reason to believe that Trammell Crow Asset Company violated 2 U.S.C. § 441b, approve the attached Factual & Legal Analysis, determine to enter into pre-probable cause conciliation with this respondent, and approve the attached proposed conciliation agreement.

4. Approve the appropriate letter.

6/30/94
Date


Lawrence M. Noble
General Counsel

Attachments

1. Certification of reason to believe finding.
2. Revised Factual and Legal Analysis to be sent to Trammel Crow Asset Company.
3. Proposed conciliation agreement with Trammel Crow Asset Company.

Staff assigned: Anne Weissenborn/Clinett Short

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Katz, Kutter, Haigler, Alderman,) MUR 3342
Eaton, Davis & Marks;)
Swann & Haddock;)
Trammell Crow Asset Company, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 6, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Find reason to believe that Katz, Kutter, Haigler, Alderman, Eaton, Davis & Marks violated 2 U.S.C. § 441b, approve the Factual and Legal Analysis attached to the General Counsel's Memorandum to the Commission dated February 14, 1992 in DSR #90-16 & MUR 3342, determine to take no further action as to this respondent, approve the sending of an admonishment letter, and close the file as to this respondent.
2. Take no action against Swann & Haddock and close the file as to this respondent.

(continued)

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3. Find reason to believe that Trammell Crow Asset Company violated 2 U.S.C. § 441b, approve the Factual and Legal Analysis, determine to enter into pre-probable cause conciliation with this respondent, and approve the proposed conciliation agreement, as recommended in the General Counsel's Report dated June 30, 1994.
4. Approve the appropriate letter, as recommended in the General Counsel's Report dated June 30, 1994.

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

Attest:

7-6-94
Date

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

Received in the Secretariat: Thur., June 30, 1994 11:11 A.M.
Circulated to the Commission: Thur., June 30, 1994 4:00 P.M.
Deadline for vote: Wed., July 06, 1994 4:00 P.M.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

July 12, 1994

Edward E. Haddock, Jr.
390 N. Orange Avenue
Orlando, FL 32802

RE: MUR 3342

Dear Mr. Haddock:

On March 10, 1992, you were notified that the Federal Election Commission found reason to believe that the law firm of Swann & Haddock violated 2 U.S.C. § 441b. As of yet, no response to this notification has been received.

After considering the circumstances of this matter, the Commission determined on July 6, 1994, to take no further action and close the file as it pertains to Swann & Haddock. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds you that by incurring expenses on behalf of the Gephardt for President Committee, Swann & Haddock appears to have violated 2 U.S.C. § 441b. You should take steps to ensure that this activity does not occur in the future.

If you have any questions, please contact me at (202) 219-3684.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne H. Weissenborn", is written over the typed name.

Anne Weissenborn
Senior Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1994

Allan J. Katz, Esquire
Katz, Kutter, Haigler, Alderman, Davis
Marks & Rutledge
106 East College Avenue, Suite 1200
Tallahassee, FL 32301

RE: MUR 3342

Dear Mr. Katz:

On February 25, 1992, the Federal Election Commission found that there is reason to believe that your law firm, Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge violated 2 U.S.C. § 441b.

The Commission has taken several actions to comply with the requirements of the court's decision in FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). While the Commission awaits Supreme Court consideration of this decision, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without ex officios. In addition, the Commission has adopted specific procedures for re-voting or ratifying decisions pertaining to open enforcement matters. As a result, the NRA decision does not further affect this enforcement action.

In this matter, on July 6, 1994, the Commission re-voted to find reason to believe that Katz, Kutter, Haigler, Alderman, Davis, Marks & Rutledge violated 2 U.S.C. § 441b, and to approve the Factual and Legal Analysis previously mailed to you. Please refer to that document for the basis of the Commission's decision. If you need an additional copy, one will be provided upon request.

After considering the circumstances of this matter, the Commission also determined on July 6, 1994, to take no further action and close the file as it pertains to your firm. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

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Allan J. Katz
Page 2

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds you that by incurring expenses on behalf of the Gephardt for President Committee, your law firm appears to have violated 2 U.S.C. § 441b. You should take steps to ensure that this activity does not occur in the future.

If you have any questions, please contact Anne Weissenborn at (202) 219-3684.

Sincerely,


Trevor Potter
Chairman

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1994

R. Todd Johnson, Esquire
Jones, Day, Reavis & Pogue
1450 G Street, NW
Washington, DC 20005-2088

RE: MUR 3342
Trammell Crow Asset Company

Dear Mr. Johnson:

On February 25, 1992, the Federal Election Commission found reason to believe that the Trammell Crow Company, now the Trammell Crow Asset Company, violated 2 U.S.C. § 441a(a)(1)(A).

The Commission has taken several actions to comply with the requirements of the court's decision in FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). While the Commission awaits Supreme Court consideration of this decision, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without ex officios. In addition, the Commission has adopted specific procedures for re-voting or ratifying decisions pertaining to open enforcement matters. As a result, the NRA decision does not further affect this enforcement action.

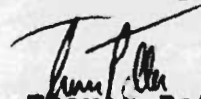
In this matter, on July 6, 1994, the Commission re-voted to find reason to believe that Trammell Crow violated 2 U.S.C. § 441b, and to approve the enclosed Factual and Legal Analysis. At your request, on July 6, 1994 the Commission also determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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R. Todd Johnson
Page 2

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Anne Weissenborn at (202) 219-3400.

Sincerely,


Trevor Potter
Chairman

Enclosure
Conciliation Agreement
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Trammel Crow Asset Company, Inc.

MUR 3342

The Gephardt for President Committee ("the Committee") submitted to the Federal Election Commission a debt settlement agreement signed on August 28, 1989, on behalf of Trammel Crow Asset Company, Inc., with regard to \$3,936 in debts owed by the Committee to this firm. The debt settlement agreement stated that the purpose of the obligation was "Air Travel." Pursuant to the agreement, the firm agreed to accept \$393.60, or 10% of the outstanding balance, in settlement. Thus, \$3,542.40 was not to be repaid.

2 U.S.C. § 441b(a) provides that it is unlawful for any corporation to make a contribution or expenditure in connection with any federal election. The term "contribution" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services to any candidate, campaign committee, or political party or organization, in connection with any election for federal office. 2 U.S.C. § 441b(b)(2).

Corporations may settle or forgive debts if such settlement or forgiveness is considered commercially reasonable, one criterion for which is that the debt must have been incurred in the ordinary course of business. Former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3 and 116.4.

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According to documentation provided by the Committee, the amount owed Trammel Crow was for a plane trip from Dallas, Texas to Minneapolis, Minnesota on February 19, 1988, by the candidate and five other individuals. The amount was based upon first class quotes of \$656 per passenger.

There is no indication that Trammel Crow was in the business of providing air transportation in 1988. Thus, the original amount of the debt of \$3,936 became a contribution to the Committee by the corporation. There is reason to believe that Trammel Crow Asset Company, Inc. violated 2 U.S.C. § 441b.

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BEFORE THE FEDERAL ELECTION COMMISSION

JUL 29 10 01 AM '94

In the Matter of

SENSITIVE

Gephardt for President Committee
S. Lee Kling, as treasurer
Gephardt in Congress Committee
John R. Tumbarello, as treasurer
Iowa Democratic Party (Federal Division)
Mary Maloney, as treasurer
Richard A. Gephardt
Heard, Goggan, Blair & Williams
Richard Hughes

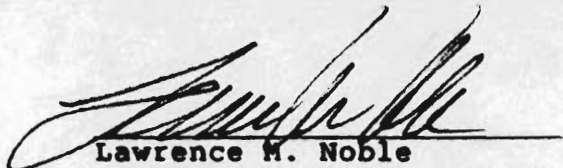
MUR 3342

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to the Gephardt for President Committee and S. Lee Kling, as treasurer; the Gephardt in Congress Committee and John R. Tumbarello, as treasurer; the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer; and Richard A. Gephardt, based on the assessment of the information presently available.

Date

7/25/94


Lawrence H. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20006

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JUL 29 10 37 AM '94

July 29, 1994

SENSITIVE

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President
Committee
S. Lee Kling, as treasurer

Dear Mr. Bauer and Ms. Corley:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on April 16, 1991, the Federal Election Commission, in the context of MUR 3111, found reason to believe that the Gephardt for President Committee ("the Committee") and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(a)(f), and instituted an investigation in this matter. On October 1, 1991, in the context of MUR 3342, the Commission found reason to believe that the Committee and Mr. Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A) by exceeding the statutory limitations on state by state expenditures by a presidential candidate who accepts public campaign funds pursuant to 26 U.S.C. § 9033. On this date the Commission merged MUR 3342 with MUR 3111.

Later, on February 22, 1992, during its consideration of Debt Settlement Request 90-16, the Commission found reason to believe that the Committee and Mr. Kling, as treasurer, violated 2 U.S.C. § 441a(f) and § 441b by accepting excessive and prohibited in-kind contributions in the form of advances. Finally, on June 29, 1993, the Commission found reason to believe that the Committee and Mr. Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an impermissible transfer from the Gephardt in Congress Committee and an excessive in-kind contribution from the Iowa Democratic Party (Federal Division), and 2 U.S.C. § 434(b)(3)(B) by failing to report the contribution from the Iowa Democratic Party.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe a violation has occurred.

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Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Page 2

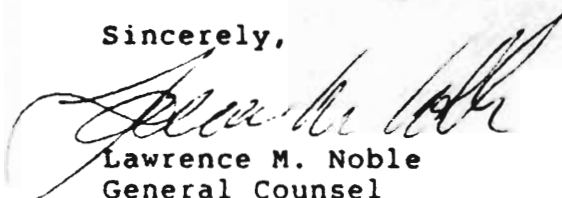
The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,


Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Gephardt for President Committee
S. Lee Kling, as treasurer

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MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

The Gephardt for President Committee ("the Committee" or "the Presidential Committee") was the authorized committee of Congressman Richard A. Gephardt for his campaign for nomination to the office of President of the United States in 1987-88. As a presidential candidate, Congressman Gephardt accepted public matching funds pursuant to 26 U.S.C. 9031, et seq., and the Committee was therefore subject to an audit by the Commission pursuant to 26 U.S.C. § 9038.

On April 16, 1991, in the context of MUR 3111, which arose from the Commission's audit, the Commission found reason to believe that the Committee and S. Lee Kling, as treasurer, had violated 2 U.S.C. § 441a(f) by accepting excessive contributions totaling \$73,980 from 133 individuals. On October 1, 1991, in the context of MUR 3342, which also originated as an audit-related referral, the Commission found reason to believe that the Committee and Mr. Kling, as treasurer, had violated 26 U.S.C. 9035(a) and 2 U.S.C. § 441a(b)(1)(A) by exceeding the statutory limitations on state by state expenditures by a presidential candidate who accepts public campaign funds pursuant to 26 U.S.C.

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§ 9033. On this latter date the Commission merged MUR 3342 with MUR 3111.

On February 25, 1992, during its consideration of Debt Settlement Request 90-16, the Commission found reason to believe that the Committee and Mr. Kling, as treasurer, had violated 2 U.S.C. § 441a(f) by accepting excessive contributions in the form of advances from the law firm of Heard, Goggan, Blair and Williams, the Trammell Crow Company, the Beryl Anthony for Congress Campaign Committee, the Levin for Congress Committee, the Slattery for Congress Committee, and six individuals, and added these violations to those already at issue in MUR 3342. On the same date the Commission also found reason to believe that the Committee and Mr. Kling, as treasurer, had violated 2 U.S.C. § 441b(a) by accepting contributions in the form of advances from the law firm of Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge and the law firm of Swann & Haddock, and again added these violations to those at issue in MUR 3342.

Finally, on June 29, 1993, the Commission found reason to believe that the Committee and Mr. Kling, as treasurer, had violated 2 U.S.C. § 441a(f), first by knowingly accepting an impermissible transfer of \$50,000 from the Gephardt for Congress Committee, and secondly by knowingly accepting an excessive in-kind contribution valued at \$10,000 from the Iowa Democratic Party (Federal Division). The Commission also found reason to believe that the Committee and Mr. Kling had violated 2 U.S.C. § 434(b)(3)(B) by failing to report the contribution from the Iowa Democratic Party. The \$10,000 at issue was to be added to the

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amount by which the Committee had exceeded its expenditure limitation for Iowa.

II. ANALYSIS

A. Receipt of Excessive Direct Contributions

1. The Law

2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 per election the amount which any person may contribute for the purpose of influencing a federal election. 2 U.S.C. § 431(11) defines "person" to include "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons" U.S.C. § 441a(f) prohibits candidates and political committees from knowingly accepting contributions in excess of the limitations established at 2 U.S.C. § 441a(a).

11 C.F.R. § 103.3(b)(3) states that contributions which on their face exceed the contribution limitations, and contributions which, when aggregated with other contributions, exceed the limitations, may either be deposited into a committee's account or returned to the contributor. If deposited, the treasurer may request reattribution to another person or redesignation to another election by the contributor in accordance with 11 C.F.R. § 110.1. If no reattribution or redesignation is obtained, the treasurer must refund the contribution within sixty days of its receipt. 11 C.F.R. § 110.1(k)(3) permits the reattribution of joint contributions if, within sixty days of receipt, the contributors provide a written reattribution of the contribution which has been signed by each contributor, and which states the

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amount to be attributed to each contributor in situations in which an equal attribution is not intended.

2. Factual and Legal Analysis

In the present matter the audit of the Committee's records indicated that the Committee had received contributions from 133 individuals who had exceeded their contribution limitations by a combined total of \$73,980. Of this amount \$51,010 had been refunded as of the completion of the audit, but not within sixty days of the dates of the contributions. ~~The Committee had also~~ obtained reattribution statements for the remaining \$22,970; however, these statements were not dated, thus making it impossible to ascertain whether the reattributions had been obtained within the sixty days permitted by the regulations.¹

The Committee has not challenged the facts upon which the Commission's reason to believe determination was based. In a letter dated July 6, 1992, counsel included the receipt of excessive contributions "from other persons" as one of the issues which the Committee would no longer contest, but which it would raise again in the context of conciliation. However, as a result of information received from one of the individual respondents in this matter, Edmund B. Reggie, it appears that a \$1,000 contribution attributed to him was in fact made by his son, thereby reducing by that amount the excessive direct contributions from individuals accepted by the Committee. The remaining total is \$72,980.

1. Because the Committee was not involved in the general election, no redesignations were possible.

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3. Conclusion

This Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions totaling \$72,980.

B. Excessive Transfer from the Gephardt in Congress Committee

The Presidential Committee registered with the Commission on March 9, 1987. The Gephardt in Congress Committee ("the Congressional Committee") was the candidate's principal campaign committee for his 1988 campaign for re-election to the United States House of Representatives; later, in a Statement of Organization filed on February 10, 1989, the same committee was designated his principal campaign committee for the 1990 congressional campaign. On December 12, 1988, the Congressional Committee declared a surplus of funds and transferred \$50,000 to the Presidential Committee. During the audit of the Presidential Committee questions arose as to whether this transfer constituted an excessive contribution. On June 29, 1993, the Commission found reason to believe that an excessive contribution had been received.

1. The Law

Generally, transfers of funds between candidate committees are subject to the \$1,000 limitation on contributions set forth at 2 U.S.C. § 441a(a)(1)(A) and in the Commission's regulations at 11 C.F.R. §§ 110.1 and 110.2. Knowingly accepting transfers in excess of these limitations results in violations of 2 U.S.C. § 441a(f).

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As an exception to this general rule, neither the Federal Election Campaign Act ("the Act") nor the Commission's regulations limits the transfer of funds between a candidate's previous federal campaign committee and his or her current federal campaign committee, provided that the funds do not include contributions which would violate the Act. 11 C.F.R. § 110.3(a)(2)(iv)(1988); 11 C.F.R. § 110.3(c)(4)(1994). The Act and the regulations also permit unlimited transfers between the principal campaign committees of a candidate for two federal offices in the same election cycle as long as: such transfers are not made while the candidate is actively seeking election to more than one office; the contributions making up the transfer would not, when aggregated with contributions from the same persons to the committee receiving the transfer, result in excessive contributions; and the candidate has not received funds pursuant to Title 26, U.S. Code. 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(A)-(C) (1988); 11 C.F.R. § 110.3(c)(5)(i), (ii) and (iii)(1994). The requirements for entitlement to unlimited transfers between committees active in the same election cycle are thus more stringent than those for transfers between committees active in different election cycles.

2. Factual and Legal Analysis

The 1988 general election was held on November 8. As stated above, the transfer of \$50,000 here at issue took place on December 12, 1988. In a letter to the Clerk of the House of Representatives dated March 21, 1989, the treasurer of the Congressional Committee stated: "This letter is to confirm that the Gephardt-In-Congress Committee . . . declared a surplus of funds in

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its congressional re-election campaign from 1988. This campaign fund surplus allowed us to transfer \$50,000.00 to the Gephardt for President Committee, Inc., and transfer was made on December 12, 1988."

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The Interim Addendum to the Final Audit Report sent to the Presidential Committee by the Commission on August 6, 1991 questioned the legality of the \$50,000 transfer in light of the requirements of 11 C.F.R. § 110.3(a)(2)(v)(1988) and the ~~candidate's acceptance of public matching funds~~, and recommended that the Presidential Committee either provide evidence that the transfer was permissible or refund the \$50,000 to the Congressional Committee. In response, the Presidential Committee asserted that the transfer had not been made between the campaign committees of a candidate seeking election to more than one federal office in the same election cycle, the situation addressed by 11 C.F.R. 110.3(a)(2)(v)(1988). Rather, the transfer had assertedly been made between Congressman Gephardt's then current congressional committee for the 1989-90 election cycle and his previous 1988 presidential committee. On this basis the Presidential Committee concluded (1) that the regulation governing this transfer was 11 C.F.R. § 110.3(a)(2)(iv)(1988), not the more exacting 11 C.F.R. § 110.3(a)(2)(v)(1988), and (2) that the transfer was not subject to the general \$1,000 statutory limitation because it met the requirements of Section 110.3(a)(2)(iv)(1988).

The Commission found reason to believe the Committee had violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive transfer from the Congressional Committee. This determination was

based, first, upon the conclusion that the applicable regulation with regard to the transfer was 11 C.F.R. § 110.3(a)(2)(v)(1988) because the source of the transfer had been the 1988 Congressional Committee, not the 1990 Congressional Committee. Secondly, the Commission concluded that the transfer had failed to meet two of the criteria set forth in the operative regulation.

a. Identity of Transferring Committee

Identification of the regulation applicable to the transfer at issue depends upon prior identification of the transferring committee. In response to the Interim Addendum, the Presidential Committee argued that the 1988 Congressional Committee had completed its work by the time of the \$50,000 transfer on December 12, 1988, and that Congressman Gephardt was by then already a candidate for the 1990 elections.² Therefore, the transfer was assertedly "between the candidate's previous campaign committee [GPC] and his currently registered committee [GIC]."

In response to the Commission's reason to believe determinations, the Presidential Committee and the Congressional Committee correctly state that a principal basis for the Commission's conclusion that the 1988 Congressional Committee was the source of the transfer is the fact that the Congressional Committee made operating expenditures totaling \$53,168.10 after it transferred the \$50,000 to the Presidential Committee. In its 1988

2. The candidate's Statement of Candidacy for the 1990 election was deposited in regular mail on February 2, 1989. The Office of the Clerk of the House of Representatives did not receive this Statement until February 10, 1989. Reports and statements sent by regular mail are filed on the date they are received. See 11 C.F.R. § 100.19(b).

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Year-End Report the Congressional Committee reported all of these post-transfer expenditures as being for the "General" election campaign. Examples include:

<u>Payee</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Purpose</u>
Mark Lougabaugh	12/13/88	450.52	reimbursement: travel
American Express	12/19/88	963.72	audio and video tapes;
			services-campaign van
Telephone Contact, Inc.	12/19/88	5,000.00	phone bank services
	12/20/88	5,000.00	phone bank services
Doak, Shrum & Associates	12/20/88	34,000.00	consulting services
		<u>\$45,314.24</u>	

The fact that these expenditures were made in connection with the 1988 campaign is evidence that the 1988 Congressional Committee was a functioning entity at least through mid-December, 1988. It would, therefore, follow that the 1988 Congressional Committee was the source of the December 12, 1988 transfer of \$50,000 to the Presidential Committee.

The joint response to the Factual and Legal Analysis which accompanied the notifications of the Commission's reason to believe findings contains several misunderstandings. First, the response discusses at length the Analysis' citation of 11 C.F.R. § 110.1(b)(3), which permits the acceptance of contributions designated for a past election if net debts remain to be paid. It concludes that this citation is not relevant unless the 1988 Congressional Committee had net debts outstanding and chose to receive funds for the election already passed. (Emphasis in original.) The response also contains the statement that "[t]he General Counsel's report assumes that GIC continued to raise funds after the date of the election to retire net debts." Respondents

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argue that the Congressional Committee did not have to raise funds after the election, or accept a \$40,000 transfer from the Gephardt Committee (see discussion below), in order to pay expenses from the 1988 election. The response states:

The Congressional campaign budgeted to cover its own expenses -- accurately, as demonstrated by its year-end positive balance. It chose to use its surplus to assist a committee, GPC, that [sic] little or no hope of raising funds to retire substantial debts and obligations.

In fact, no assumption was made in the Analysis as to whether or not the Congressional Committee had continued to raise funds into December, 1988 for 1988 election purposes, although the Committee's 1988 Year-End Report shows a total of \$1,750 as having been received for the "General" election. Rather, the citation to Section 110.1(b)(3) was intended as support for the statement that the 1988 Congressional Committee was free to make expenditures after the election to pay off remaining obligations, whether or not Congressman Gephardt was by then a candidate for a future election. The Congressional Committee made and reported such 1988-related expenditures after the date of the transfer, with the effect of keeping the 1988 Committee in existence and making it the source of the \$50,000 transfer.³

3. For the same reason counsels' lengthy discussion of contributor intent is irrelevant as regards the identity of the contributing committee. The expenditure of funds for 1988 election-related activity after the December 12 transfer is the determining factor here, not the receipt of contributions.

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The response also cites a list of Advisory Opinions which have established the principle that a committee may declare "excess campaign funds" with regard to an election which has not yet taken place and use those funds to pay off obligations from a prior election. Respondents have not, however, provided any evidence that the Congressional Committee, at the time of the \$50,000 transfer to the Presidential Committee, declared that transfer to be excess for the 1990 primary election. Indeed, the Congressional Committee's March, 1988 letter to the Clerk of the House cited above, sent after Congressman Gephardt had become a candidate for the 1990 primary election, expressly stated that the surplus involved in the transfer had come from the 1988 Congressional re-election campaign.

In summary, the expenditures made after the \$50,000 transfer to meet 1988-related obligations, and statements made on behalf of the Committee close to the time of the transfer, are proof that the transfer at issue came from the 1988 Congressional Committee. Thus, the transfer occurred between the principal campaign committees of a candidate for two federal offices in the same election cycle, and the appropriate regulation governing the transfer was 11 C.F.R. § 110.3(a)(2)(v)(1988).⁴

4. In the joint response to the Commission's finding of reason to believe, respondents refer to a statement in the Factual and Legal Analysis that the transfer would fail even if Section 110.3(a)(2)(iv)(1988) were the appropriate regulation because certain contributors would have already made maximum contributions to the Presidential Campaign. The response correctly states that under this particular subsection of the regulations it would not have been necessary to aggregate contributions received by the Presidential Committee through the Gephardt Committee and the Congressional Committee with contributions already given directly

**b. Application of 2 U.S.C. § 441a(a)(5)(C) and
11 C.F.R. § 110.3(a)(2)(v)(1988)**

As stated above, 2 U.S.C. § 441(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(1988) permitted unlimited transfers between the committees of a candidate seeking election to more than one Federal office, provided that the transfer did not occur while the candidate was actively seeking both offices, the limitations on contributions were not exceeded, and the candidate had not received funds under Title 26. In the present matter the transfer from the 1988 Congressional Committee to the Presidential Committee failed two of these tests.

i. Receipt of Funds under Title 26

Richard Gephardt in 1988 received presidential primary matching funds, pursuant to 26 U.S.C. § 9031, et seq. Therefore,

(Footnote 4 continued from previous page)
to the Presidential Committee. However, because of the inapplicability of Section 110.3(a)(2)(iv) to the transfer here at issue, this lack of required aggregation does not change the present outcome.

In support of their argument regarding Section 110.3(a)(2)(iv)(1988), Respondents have posed a hypothetical situation involving a joint fundraising event held by a party committee and a candidate in which individual has "maxed out" as to the candidate, with the result that all of his or her contribution to the joint fundraiser would have to be attributed to the party committee. The party committee then makes a contribution to the candidate, some portion of that contribution having come to the party from the joint fundraising event. Respondents argue that any finding that the party's contribution to the candidate had been made with "impermissible funds" would be "insupportable as a matter of law or logic." Because the facts in the present matter are not the same as those posed in Respondents' hypothetical formulation, and because Section 110.3(a)(2)(iv) (1988) addressed only transfers involving the authorized committees of a particular candidate, not joint fundraising and contributions by and between party committees and candidate committees, it is unnecessary in the present context to resolve the issue presented in Respondents' hypothetical situation.

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the transfer of funds by the 1988 Congressional Committee to the Presidential Committee was not eligible for the exception at 11 C.F.R. § 110.3(a)(v)(1988) because it failed to meet the requirement established at 2 U.S.C. § 441a(a)(5)(C)(iii) and 11 C.F.R. § 110.3(a)(2)(v)(C)(1988) that the recipient candidate not have received public funds.

ii. Source of Funds

The Commission's audit of the Presidential Committee determined that a portion of the \$50,000 transferred to that committee by the Congressional Committee came from funds transferred earlier to the Congressional Committee by the candidate's joint fundraising committee, the Gephardt Committee. The transfers from the Gephardt Committee to the Congressional Committee included one of \$10,000 made on November 8, 1988, and one of \$40,000 made on December 2, 1988. These latter transfers were reported by the Congressional Committee as being for the 1988 general election.

The allocation formula in the joint fundraising agreement required that contributions be allocated to the Presidential Committee to the extent of the contributor's limitation under the Act, unless a contributor specifically designated his or her contribution to the Congressional Committee. Any amounts in excess of the statutory limits on contributions to the Presidential Committee were to be allocated to the Congressional Committee.

The Audit Division concluded that the \$50,000 transfer in December, 1988 by the Congressional Committee to the Presidential

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Committee contained all of the \$10,000 received by the former from the Gephardt Committee on November 8, 1988 and possibly some portion of the \$40,000 received on December 2, 1988. By the terms of the joint fundraising agreement, namely the first call on contributions by the Presidential Committee unless those contributions would result in excessive contributions to that committee or had been designated for the Congressional Committee, the funds transferred to the Congressional Committee by the Gephardt Committee contained contributions which could not have gone directly to the Presidential Committee. The presence of contributions excessive as to the Presidential Committee in the subsequent transfer by the Congressional Committee caused that later transfer to violate the requirement at 2 U.S.C. § 441a(a)(5)(C)(ii) and 11 C.F.R. § 110.3(a)(2)(v)(B)(1988) and, as a result, took it outside the exceptions to the contribution limitations.

3. Conclusion

For the above stated reasons, the \$50,000 transfer from the Congressional Committee to the Presidential Committee did not meet the conditions of 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(B) and (C)(1988) and, therefore, came within the \$1,000 per election limitation on contributions by one political committee to another established at 2 U.S.C. § 441a(a)(1)(A). By exceeding this \$1,000 limitation, the transfer resulted in a violation of the Act by the Presidential Committee. Therefore, this Office recommends that the Commission find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as

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treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting a transfer from the Gephardt in Congress Committee which exceeded the contribution limitation by \$49,000.

C. Receipt of Excessive and Corporate In-Kind Contributions

1. The Law

As stated above, 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his or her committee per election. 2 U.S.C. § 441a(a)(2)(A) limits contributions by multicandidate committees (including party committees) to candidates to \$5,000 with respect to any election. 2 U.S.C. § 441b prohibits the making and receipt of corporate contributions in connection with federal elections.

2 U.S.C. § 431(8) and 2 U.S.C. § 441b(b)(1) define "contribution" to include any loan or advance made for the purpose of influencing a federal election. During the 1988-89 election cycle the Commission's regulations permitted corporate vendors to extend credit to political committees without such credit being considered an advance, provided that they did so in the ordinary course of business. See former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3. It was also Commission policy to permit such extensions of credit by non-corporate vendors as well; this policy is now reflected at 11 C.F.R. § 116.3(a) and 11 C.F.R. § 100.7(a)(4). If extensions of credit or advances were made on behalf of a committee outside the ordinary course of business, they were to be considered in-kind contributions and thus subject either to the limitations on contributions from persons imposed at

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2 U.S.C. § 441a(a), or to the prohibitions against corporate contributions found at 2 U.S.C. § 441b(a).

In 1987-88 the Commission's regulations granted committees sixty days in which to make refunds of excessive contributions. See 11 C.F.R. § 103.3. In-kind contributions were deemed to have been made on the date goods or services were provided. 11 C.F.R. § 110.1(b)(6). 11 C.F.R. § 100.7(b)(8) exempted from the definition of contribution unreimbursed expenditures up to \$1,000 for transportation used by an individual on behalf of a candidate, and unreimbursed payments from a volunteer's personal funds for his or her own subsistence expenses related to volunteer activity.

2. Factual and Legal Analysis

a. Advances by Individuals

As stated above, the Commission found reason to believe that the Committee had accepted advances and thus in-kind contributions from six individuals which, when taken alone or added to their direct contributions, exceeded these persons' \$1,000 contribution limitations. The six persons were Mark E. Barham, William F. Beuck, John B. Crosby, William D. Fleming, Richard Hughes, and Samuel Tennebaum. The excessive amounts, after deductions for personal transportation and subsistence and additions of direct contributions, total \$9,521.41.⁵

5. The advances made by William Fleming were reported as being for "operational expenses/travel" (\$3,676.36); Mack E. Barham's for "luncheon meeting, telephone" (\$1,164.22); William Beuck's for "air travel" (\$2,337); John Crosby's for "travel expenses" and later for "other expenses" (\$3,555.95); Richard Hughes' for "air travel" (\$3,807.54); and Samuel Tennebaum's for "special event/food and beverages" (\$309.30).

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The six individuals involved were either Committee staff

(Footnote 5 continued from previous page)

Of Mr. Fleming's \$3,676.36, his own transportation accounted for \$141.08, leaving \$3,535.28 as a contribution. To this amount must be added \$925 in additional contributions, for a total of \$4,460.28 and thus \$3,460.28 in excess of the \$1,000 limitation. Mr. Barham also contributed an additional \$1,000, bringing his contributions to \$2,164.22, or \$1,164.22 in excess of the limitation.

None of Mr. Beuck's payment for air travel involved his own transportation, nor did he make any other contributions to the Committee; therefore, his contribution was the \$2,337 in advances or \$1,337 in excessive of \$1,000 limitation. Mr. Crosby's figure of \$3,555.95 should be reduced by \$1,087.18 for personal transportation and by \$625.70 in exempt subsistence costs, bringing his contribution to \$1,843.07, which was \$843.07 in excess. Mr. Tennebaum contributed \$1,000 in addition to his \$309.30 in advances, placing him in excess of the limitation by the latter amount.

The investigation in this matter has revealed that the debt of \$3,807.54 owed Mr. Hughes was for travel on a plane owned or leased by one of two companies with which he was then associated. (These companies are now in bankruptcy and all records are under the control of trustees.) He also made a separate \$100 contribution to the Committee.

According to Mr. Hughes,

To the best of my knowledge and belief, Mr. Robert Thompson requested I join him and others in Iowa for the primary, which I did. After the primary, we were ask [sic] to return to Washington with members of the Gephardt for President Committee, Mr. Thompson and others. We advised Mr. Thompson that we would be happy to comply, but we would have to bill the Committee for the appropriate charges and we were told to go ahead and do so. We flew a plane load to Washington, DC and returned to Tulsa, Okla.

Mr. Hughes has indicated that he does not remember who paid for the flight; he presumes that one of the two companies did so. However, the debt for this flight was reported by the Committee as owed to Mr. Hughes personally, not to a company, and it was Mr. Hughes who signed a debt settlement agreement on his own behalf. Therefore, absent hard evidence to the contrary, it appears that Mr. Hughes paid for this flight.

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members or volunteers who made expenditures on behalf of the Committee and then sought reimbursement. None were in the business of providing the goods or services involved. These advances were made in 1987 and early 1988, while the Committee's partial repayments to each of the individuals were made in late 1988 or 1989. Repayments by the Committee to these individuals totaled \$3,919.78, leaving \$5,601.63 outstanding.

This Office recommends that the Commission find probable cause to believe that the Committee knowingly accepted \$9,521.41 in excessive in-kind contributions from six individuals in violation of 2 U.S.C. § 441a(f).

b. Advances from Political Committees

The Commission also found reason to believe that the Committee had accepted advances from three political committees, the Beryl Anthony for Congress Campaign Committee ("Anthony Committee"), the Levin for Congress Committee ("Levin Committee") and the Slattery for Congress Committee ("Slattery Committee"), which, when combined with direct contributions from these committees, resulted in excessive contributions totaling \$8,523.53. Partial repayments of \$480.46 to the Slattery Committee, \$410.53 to the Anthony Committee and \$61.37 to the

(Footnote 5 continued from previous page)

Because Mr. Hughes was one of the passengers, his share of the cost of the trip, up to \$1,000, would not be deemed a contribution, pursuant to 11 C.F.R. § 100.7(b)(8). Because the exact number of passengers is not known, and given the inaccessibility of the records, this Office has subtracted \$500 from the amount owed Mr. Hughes in acknowledgment of his participation in the trip, reducing his total, excessive contributions from \$2,907.54 to \$2,407.54 (\$3,807.54 + \$100 - \$1,000 - \$500).

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Levin Committee were made in September, 1988. More recently, the Committee repaid an additional \$3,324.17 to the Slattery Committee. Because these repayments by the Committee totaling \$4,276.53 were not made within sixty days of its receipt of the benefits provided, the entire amount remains excessive. A total of \$4,247 is still outstanding, and is not subject to debt settlement because it represents in-kind contributions in excess of the contribution limitations.

The advances here at issue arose in the following manners.. The Anthony Committee hosted a fundraiser/dinner for the Gephardt campaign in the fall of 1987, with expenses for this event totaling \$3,459.60. In addition, in December, 1987 the Anthony Committee reimbursed a "friend of Congressman Anthony" for her payments on behalf of the Committee of \$500 for rent for a campaign headquarters and of \$145.65 for related telephone service. This brought the total of advances by the Anthony Committee to \$4,105.25. Earlier, on June 2, 1987, the Anthony Committee had made a direct contribution of \$1,000 to the Committee, creating a total of \$5,105.25 in contributions. The Committee repaid \$410.53 of the advances to the Anthony Committee on January 20, 1989, and thus outside the sixty-day period established by the Commission's regulations. Because of the Anthony Committee's direct contribution of \$1,000, the timing of the partial repayment, and the fact that the Anthony Committee was not in the business of providing the services involved, the entire amount of the advances on behalf of the Gephardt campaign, or \$4,105.25, constituted excessive in-kind contributions.

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The Levin Committee made a direct contribution to the Committee of \$1,000 on June 17, 1987. The Levin campaign also advanced a total of \$613.65 in expenditures for "telephones." The Committee repaid \$61.37 in September, 1988, leaving an outstanding debt of \$552.28. Because the Levin Committee was not in the business of providing telephone services, the entire amount of its advance became a contribution, thereby bring its total contributions to the Committee to \$1,613.65, a figure which is \$613.65 in excess of the statutory limitation.

The Slattery for Congress Committee made an expenditure on March 8, 1988 totaling \$4,804.63 for postage to be used for a pre-caucus mailing in Kansas. In that mailing Congressman James Slattery announced his support for Congressman Gephardt's nomination and urged Democrats in the state to take part in the Kansas caucus. The Committee reimbursed \$480.46 of this amount on September 14, or six months after the advance was made, leaving \$4,324.17 in remaining debt owed the Slattery campaign. As noted above, the Committee made an additional \$3,324.17 repayment on October 29, 1993. The Slattery Committee made no other contributions to the Gephardt campaign; thus, the amount of its excessive contribution was the full amount of the advance minus its \$1,000 limit, or \$3,804.63.

This Office recommends that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) by knowingly accepting \$8,523.53 in excessive in-kind contributions from three political committees.

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c. Advances From Partnership

The Commission found reason to believe that the Committee accepted excessive advances from Heard, Goggan, Blair and Williams, ("Heard, Goggan"), a law firm in San Antonio, Texas doing business as a partnership. The advances totaled \$21,677.84, of which \$2,167.78 was reimbursed on November 13, 1989, in accordance with the debt settlement agreement submitted by the Committee for Commission approval.

According to information supplied by the Committee, the advances at issue included \$11,271.34 for "flight charges," at least \$10,895.34 of which involved flights to Houston, Montgomery, Corpus Cristi, Dallas, Fort Worth and Austin between May 4 and October 16, 1987. The remaining portion of the \$21,677.84 included a total of \$1,794.88 for hotel accommodations, \$2,000 for a party, \$3,415.60 for receptions, \$1,126.67 for a planning meeting, and smaller amounts for stationery, stamps, invitations, shipments, TV news taping and mileage reimbursement. These debts owed Heard, Goggan were not included on the Schedule D-P's submitted by the Committee to the Commission.

In the most recent responses dated June 9, 1994 to Commission interrogatories, Heard, Goggan described the relationship with the Committee as follows: "[T]he firm was asked to provide services needed by the Committee in its campaign in Texas upon the agreement that the Committee would make full payment to the firm for those services." Although there was no written contract between the firm and the Committee, "there was an agreement that the Committee would pay in full for the services it received from

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Heard, Goggan, Blair & Williams." In response to another question as to whether the firm's expenditures were made as part of a business arrangement or as the result of the personal activities of a partner, associate or other representative of the firm, counsel has stated that "[t]he expenditures were made by the firm as part of a business arrangement whereby the firm was to provide certain non-legal services for the Committee. These services did include payment of some expenses of one or more partners, associates or other representative of the firm which were incurred in providing services to the Committee."

In a previous submission to the Commission, it was stated that Heard, Goggan has offered similar types of non-legal services to clients. The response listed a number of such clients and cited services such as mailing services, assistance with fund raising, assistance in arranging rallies, assistance with arranging travel, hosting dinners and receptions, and providing staff support.

In response to a question about whether it was ordinary business practice in 1987-88 for Heard, Goggan to pay for non-legal services for clients and others and then seek reimbursement, rather than require advance payment, the firm, in its June 9, 1994 response, answered in the affirmative. Such arrangements assertedly included air travel and hotel accommodations. As to the air travel arranged for the Gephardt Committee, the firm has stated that these expenditures involved the travel of "Richard Gephardt, his wife Jane, and members of his campaign organization as well as law firm partner, Oliver S.

Heard, Jr., employee Carrie Baker and possibly others." It has also stated that the firm's ordinary practice was not to bill for the travel of firm representatives because most agreements with clients did not provide for such reimbursement.

Based upon the information most recently provided by the firm, it appears that Heard, Goggan, Blair & Williams provided services for the Committee in the ordinary course of that firm's business. Therefore, this Office recommends that the Commission find no probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from a partnership.

d. Mailing List From the Iowa Democratic Party

On June 8, 1992 the Commission issued a Final Addendum to the Final Audit Report of the Gephardt for President Committee's 1987-88 activity. This addendum addressed the acquisition by the Committee of a mailing list which, it appeared, had been purchased on behalf of the Committee from the Iowa Democratic Party ("the Party") by an unknown person or entity for \$10,000. The Commission determined that this \$10,000 was to be added to the amount by which the Committee had exceeded its expenditure limitation in Iowa (see further discussion below) and that as a result the Committee was required to refund \$2,628.34 to the U.S. Treasury.⁶ The Commission also referred this issue to the Office of the General Counsel as the receipt of an apparently excessive in-kind contribution by the Committee.

6. This amount was in addition to the required refund amount which the Commission had previously established.

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The Committee made the required \$2,628.34 repayment to the Treasury on November 9, 1992. In the absence of information as to the identity of any third party purchaser of the list, the Commission, on June 29, 1993, found reason to believe that the Committee had received an excessive contribution from the Party in violation of 2 U.S.C. § 441a(f), and that the Committee had also violated 2 U.S.C. § 434(b)(3)(B) by not reporting this receipt.

1. Mailing List as Contribution

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Respondents' August 11, 1993 response to notification of the Commission's reason to believe determination does not dispute the facts that the Committee did not pay the Party for the mailing list and that it did not report the receipt of the list as a contribution in-kind. Respondents do assert, however, that the Party was compensated for the list by means of services performed by Congressman Richard Gephardt, stating: "Congressman Gephardt provided valuable consideration in exchange for the mailing list from the Party by appearing in their behalf and assisting with the Party's fundraising efforts." According to the response, the candidate appeared at "numerous events on behalf of the Party during the period leading up to the Iowa caucuses in early February 1988."

Respondents argue that this form of compensation for the list was necessitated by concerns regarding the legality of a direct payment of \$10,000 to the Party for the mailing list. They point to Advisory Opinions 1983-2, 1981-3 and 1979-17 as examples of opinions issued by the Commission which "have taken the position that the proceeds from the sale of goods or services by a

political committee are contributions subject to the contribution limits and source restrictions."

Respondents argue further that the fact that the Committee repaid the additional \$2,628.34 to the U.S. Treasury "should not be viewed, nor was it intended, as an admission of liability for purposes of this enforcement proceeding." They draw a distinction between the Commission's authority to protect the public fisc by requiring a repayment, and a determination within the enforcement context that a committee has broken the law.

In its response to the Commission in this matter the Iowa Democratic Party also does not claim third party payment for use of the mailing list. Relying upon "the best of the recollection of the Party staff involved with this matter," the Party, like the Committee, asserts that it received compensation for the list in the form of activities undertaken by Congressman Gephardt on its behalf. These activities included appearances by Congressman Gephardt at county fundraisers, the securing of speakers for fundraising events, helping to secure participation in the 1986 and 1987 Jefferson-Jackson Dinners, and assisting Democratic candidates with fundraising in Washington and in Iowa.

One of the advisory opinions cited by the Presidential Committee, Advisory Opinion 1983-2, explains the flaw in this argument. That opinion states that the exchange or sale of mailing or contributor lists at the usual and normal charge has been deemed by the Commission to be an exception to the general rule that payments to a committee for a service or product are to be considered contributions. "The Commission has developed this

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. . . exception because the Commission views such lists as a unique type of asset of the committees involved in that each list's value, at least in part, is determined on the basis of the committee's political fundraising efforts or other political use of the list." See also Advisory Opinion 1981-53.

Having established that it would have been appropriate for the Presidential Committee to make a direct payment to the State Party for the mailing list, the next issue is whether the performance of the aforementioned services by the candidate constituted remuneration for use of the list. In Advisory Opinion 1977-26 the Commission addressed the propriety of a candidate's being reimbursed for voter registration promotional activities which he had performed for a state party committee while he was also campaigning for election to the United States Senate. The opinion request stated that the candidate had "encouraged voter registration as an integral part of his campaign throughout the Commonwealth of Pennsylvania." In its opinion the Commission cited 11 C.F.R. § 110.8(e), which permits reimbursement by a political party of expenses incurred by a candidate on behalf of the party, but stated that "payment of this kind is limited to situations where the services performed are strictly party related and where the activity is a bona fide party event or appearance rather than for the purpose of influencing the candidate's nomination or election." Because it was seemingly impossible in the Pennsylvania situation to distinguish the candidate's party-building activities from his own campaign activities, the Commission found that it was "most unlikely that the VRC [voter

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registration campaign] did not in fact influence his own Senate candidacy." In the situation addressed in the advisory opinion, any reimbursement of the candidate would have had to be considered a contribution to his committee because the activity for which he was being reimbursed benefited his campaign.

In the present matter, Congressman Gephardt's activities on behalf of the Party coincided with his own campaign in the same state. Because his activities for the Party also benefited his own campaign, the Party's provision of information from a voter list cannot be treated as reimbursement for Mr. Gephardt's activities on behalf of the Party, but must be considered a contribution to the Gephardt campaign.

As a multi-candidate party committee, the Iowa Democratic Party could contribute only \$5,000 to a candidate committee per election. Thus, this Office recommends that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive in-kind contribution valued at \$10,000 from the Party, and that the Committee violated 2 U.S.C. § 434(b)(3)(B) by not reporting this receipt.⁷

7. The Party argues that the Gephardt campaign received only "raw data" which had never before been sold to other campaign entities, not the compiled list provided to other committees for which \$10,000 was charged. While raw data would probably not be as readily useful as a compiled list, the Party has not placed a specific value on the information which was provided to the Committee. In the absence of such additional information, this Office recommends that the Commission retain the \$10,000 valuation.

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e. Corporate Advances

i. Katz, Kutter, Haigler, Alderman, Davis, Marks & Bryant

On February 25, 1992, the Commission found reason to believe that the Committee had violated 2 U.S.C. § 441b by accepting advances made on behalf of the campaign by the law firm of Katz, Kutter, Haigler, Alderman, Davis, Marks and Rutledge (originally Katz, Kutter, Haigler, Alderman, Eaton & Davis; now Katz, Kutter, Haigler, Alderman, Davis, Marks & Bryant) ("Katz, Kutter") of Tallahassee, Florida and by a branch of the law firm of Swann & Haddock in the same city.⁸

According to the debt settlement request submitted by the Committee, charges totaling \$5,454.63 were paid by Katz, Kutter on behalf of the Gephardt Committee. The three cumulative bills submitted by Katz, Kutter for reimbursement show that these debts involved payments for "political meetings," Federal Express, photocopies, postage, telephone bills, and hotel costs made between October 7, 1987 and January 25, 1988. The debt settlement agreement signed on behalf of Katz, Kutter and the Committee provided for payment of \$717.54, leaving \$4,737.09 owing.

According to information supplied by Katz, Kutter, that firm was founded by several members of the firm of Swann & Haddock in November, 1987. Katz, Kutter purchased the assets and assumed certain obligations of the Tallahassee office of Swann & Haddock. It paid certain bills involving expenses incurred by the old firm, including ones related to the Gephardt campaign, and then billed

8. The home office of Swann & Haddock was in Orlando, Florida.

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Swann & Haddock for reimbursement. When unable to collect from Swann & Haddock, Katz, Kutter sent its bills on to the Committee. Swann & Haddock went out of business sometime in 1990.

It is clear from the explanations provided on behalf of Katz, Kutter that this firm did in fact pay bills for services rendered to the Committee totaling \$5,454.63, either by reimbursing an individual for his payments to vendors on behalf of the Committee, or by paying directly vendors who provided services to the Gephardt campaign. ~~Katz, Kutter apparently did not incur these~~ charges in the first place, and undertook their payment in anticipation of reimbursement by Swann & Haddock. When such reimbursement was not forthcoming, Katz, Kutter turned to the Committee.

Whatever the motivation and level of initial involvement of Katz, Kutter, this firm made expenditures for services which had as their purpose the influencing of a federal election. The expenditures constituted in-kind contributions, albeit indirect, by the firm to the Committee. Therefore, the full amount paid by the firm, or \$5,454.63, became in-kind contributions received by the Committee. This figure should be included in the total amount of corporate contributions received by the Committee in violation of 2 U.S.C. § 441b.

ii. Swann & Haddock

The Commission also found reason to believe that the Committee violated 2 U.S.C. § 441b by accepting \$2,930.04 in advances made by Swann & Haddock directly. Information provided by the Committee indicates that this sum was owed for air travel,

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Federal Express services, meetings, hotel costs, telephone charges, mileage, postage, courier services, photocopying, 75 breakfasts and a buffet for fifteen. The breakfasts and buffet are itemized on a bill apparently received from a club of which Edward Haddock, Jr. was a member. The Committee paid Swann & Haddock \$293.04 in attempted settlement of its debt, leaving \$2,637.40 still owed.

The Committee has not provided information regarding whether the Committee was in fact in a business relationship with Swann & Haddock, instead of the beneficiary of activities undertaken by a partner, employee or associate outside the ordinary course of the firm's business.⁹ In the absence of information that the amounts paid out by Swann & Haddock on behalf of the Gephardt Committee were paid pursuant to a business arrangement between these two parties, the expenditures should be treated as corporate contributions totaling \$2,930.04.

iii. Trammell Crow Asset Company

Also included in the Commission's reason to believe determinations regarding violations of 2 U.S.C. § 441a(f) was an apparent in-kind contribution to the Committee by the Trammell Crow Company in the form of a trip on a company airplane on February 19, 1988. This determination was based upon the assumption that this company was operating as a partnership at the time the contribution was made. Since that time counsel for Trammell Crow

9. As noted above, this firm is apparently no longer in business. According to Katz, Kutter, Swann & Haddock did provide similar types of services for clients.

has stated that the Trammell Crow Company is now the Trammell Crow Asset Company and should be treated as an incorporated entity. Thus, the receipt of a contribution from this company would result in a violation of 2 U.S.C. § 441b.

Pursuant to 11 C.F.R. § 114.9(e)(1),

a candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation . . . other than a corporation . . . licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation

- (i) In the case of travel to a city served by regularly scheduled commercial service, the first class air fare:
- (ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

According to information supplied on behalf of Trammell Crow Asset Company, it was neither licensed to provide commercial travel services nor was it extending credit in the ordinary course of business. Thus, any use of a company airplane not paid for in advance would have constituted a corporate contribution in the amount of either first class air fare or the usual charter rate, depending upon the itinerary.

The trip at issue involved a flight from Dallas, Texas to Marshall, Texas and on to St. Paul, Minnesota on February 19, 1988. Six persons from the Gephardt campaign were accommodated, including the candidate. The cost of \$3,936 was based upon first-class quotes of \$656 per passenger. Trammell Crow assertedly made several attempts to collect full reimbursement, but on August 28, 1989, agreed to accept 10% or \$393.60.

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By accepting the use of the airplane owned by Trammell Crow Asset Company without prior payment, the Committee accepted an in-kind corporate contribution valued at the full \$3,936, in violation of 2 U.S.C. § 441b.

In summary, this Office recommends that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 441b(a) by knowingly accepting in-kind contributions totaling \$12,320.67 from three corporate entities: Katz, Kutter, Haigler, Alderman, Davis, Marks & Bryant; Swann & Haddock; and Trammel Crow Asset Company.

D. Expenditures in Excess of State by State Limitations

1. The Law

Pursuant to 26 U.S.C. § 9035 and 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c), no candidate for the office of President of the United States, who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury, may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000.00, as adjusted by changes in the Consumer Price Index. Except for expenditures exempted under 11 C.F.R. § 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular state shall be allocated to that state. 11 C.F.R. § 106.2(a)(1).

2 U.S.C. 431((9)(A) and 11 C.F.R. § 100.8(1)(1) define "expenditure" as including any "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value,

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made by any person for the purpose of influencing any election for Federal office." 11 C.F.R. § 100.8(1)(iv)(A) defines "anything of value" to include in-kind contributions, and also states that "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for the goods or services is an expenditure."

2. Factual and Legal Analysis

a. Earlier Determinations re. Gephardt Expenditures

For the 1988 presidential primary elections, the expenditure limitation for the State of Iowa was \$775,217.60. As of November 30, 1988, the Committee had reported a total of \$748,711.03 in expenditures allocable to that state.

In its response to the Commission's Interim Audit Report, the Committee did not disagree with certain additional allocations to Iowa totaling \$125,269.52. As a result, the Committee acknowledged having exceeded the Iowa expenditure limitation by at least \$89,530.90. The Committee did continue to take issue with certain other allocations to Iowa identified by the Commission.

During its considerations of the Final Audit Report on May 14, May 23 and June 10, 1991, the Commission agreed to adjustments which reduced its additional allocations to Iowa by approximately \$157,000. These determinations left in dispute approximately \$420,000 in allocations to Iowa¹⁰ minus \$19,191.90 in

10. The disputed allocations came within the following categories:

Committee's 25% "National Allocation"	\$178,910.11
Telephone Related Charges	
Northwestern Bell	221.95

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exempt compliance and fundraising expenditures, for a total of approximately \$400,800 in allocations contested by the Committee.

The Final Audit Report contained an initial determination that the Committee should repay to the United States Treasury the sum of \$126,383.37, this amount representing \$480,848.63 in expenditures in excess of the Iowa expenditure limitation times the Committee's repayment ratio of 26.2834%. On May 21, 1992, the Commission approved its final repayment determination and Statement of Reasons; these reduced the amount spent in excess of the Iowa state limitation to \$452,543.95. On July 6, 1992 counsel indicated that his clients did not intend to contest further the Commission's position on the allocations making up this figure.

(Footnote 10 continued from previous page)

MCI	1,222.15
Salaries, Employer FICA, Consulting Fees, and Staff Benefits	
Iowa Staff Salaries and Consulting Fees	9,300.00
Iowa Staff Employer FICA	12,210.36
Health and Life Insurance	1,888.40
Intrastate Travel and Subsistence	1,705.88
Car Rentals	3,780.79
Polling	
Travel Expenses - Kennan Research	19,288.08
Telemarketing	
Lewis and Associates	6,988.00
Voter Contact	11,104.15
Printing	
Carter Printing	15,154.51
Brown	135.00
Media - Doak & Shrum	74,235.77
Event - Jefferson/Jackson Day	21,156.96
Miscellaneous	28,035.57
Committee Adjustments	1,982.57
Accounts Payable	25,221.06
House and Apartment Rentals	7,371.46

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b. Voter List

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Follow-up fieldwork carried out by the Audit Division resulted in the June 8, 1992 issuance of a Final Addendum to the Final Audit Report. As discussed above, this addendum contained, inter alia, the determination that the Committee had acquired the Iowa Democratic Party voter list, but had not paid for the use of this list. This list was valued at \$10,000 based upon the amounts paid by other candidate committees for the same list. The Commission increased by \$10,000 ~~the amount of expenditures~~ allocable to Iowa, thereby raising the amount spent in excess of the Iowa state limitation to \$462,543.95, and also proportionately the amount of repayment due the U.S. Treasury, the latter figure resulting in an additional repayment of \$2,628.34. Finally, a referral was made to the Office of the General Counsel in part for purposes of adding the amount of the Party's contribution to the amount by which the Committee had exceeded its expenditure limitation in Iowa. The Factual and Legal Analysis sent to the Committee following the Commission's findings of reason to believe on June 29, 1993 informed the Committee that an additional \$10,000 would be added to the expenditures being addressed in MUR 3342 as having exceeded the state limitation in Iowa.

The analysis set out at Section C, 2, d, above applies with equal force to the issue of whether the Committee should be charged with an additional \$10,000 in expenditures in Iowa as a result of receiving a voter list from the Iowa Democratic Party, thereby raising the amount by which it exceeded the expenditure limitation in that state. Given the conclusions above that any

activities undertaken by Congressman Gephardt on behalf of the Party also benefited his own campaign, he cannot be said to have reimbursed the Party for use of its list. The result is an in-kind contribution by the Party to the Gephardt campaign and correspondingly an expenditure by the campaign in the same amount. Further, the amount of the in-kind contribution/expenditure remains \$10,000 given the absence of a lower valuation by either the Party or the Committee.

3. Conclusions

This Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441(b)(1)(A) by making expenditures in excess of the 1987-88 limitation of \$775,217.60 in Iowa, the amount in excess being \$462,543.95.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive direct contributions from individuals totaling \$72,980.
2. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive transfers from the Gephardt in Congress Committee totaling \$49,000.
3. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions from six individuals totaling \$9,521.41.

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4. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions from three political committees totaling \$8,523.53.

5. Find no probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions from a partnership.

6. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive in-kind contribution from the Iowa Democratic Party valued at \$10,000.

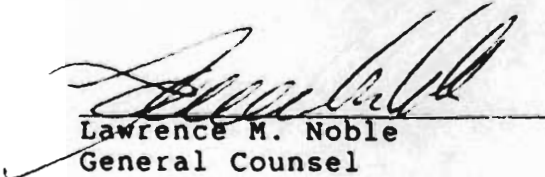
7. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Iowa Democratic Party in the amount of \$50,000.

8. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441b(a) by knowingly accepting in-kind contributions from Katz, Kutter, Haigler, Alderman, Davis, Marks & Bryant; Swann and Haddock; and the Trammel Crow Asset Company totaling \$12,320.67.

9. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441(b)(1)(A) by making \$462,543.95 in expenditures in excess of the 1987-88 limitation in Iowa.

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Date

7/25/94


Lawrence M. Noble
General Counsel



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

July 29, 1994

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt in Congress Committee
John R. Tumbarello, as
treasurer

Dear Mr. Bauer and Ms. Corley:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on June 29, 1993, the Federal Election Commission found reason to believe that the Gephardt in Congress Committee and John R Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

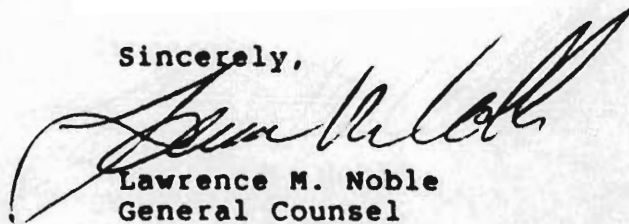
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Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Page 2

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Gephardt in Congress Committee
John R. Tumbarello, as treasurer

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MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On June 29, 1993, the Federal Election Commission ("the Commission") found reason to believe the Gephardt in Congress Committee ("the Congressional Committee") violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive transfer to the Gephardt for President Committee ("the Presidential Committee").

II. ANALYSIS

The Presidential Committee registered with the Commission on March 9, 1987 as the principal campaign committee of Congressman Richard A. Gephardt for his campaign for nomination to the office of President of the United States in 1988. The Congressional Committee was Congressman Gephardt's principal campaign committee for his 1988 campaign for re-election to the United States House of Representatives. Later, in a Statement of Organization filed on February 10, 1989, the same committee was designated his principal campaign committee for the 1990 congressional campaign. Congressman Gephardt, as a candidate for nomination to the office of President, accepted public funds pursuant to Title 26.

On December 12, 1988, the Congressional Committee declared a surplus of funds and transferred \$50,000 to the Presidential Committee. During the audit of the Presidential Committee

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undertaken by the Commission pursuant to 26 U.S.C. § 9038, questions arose as to whether this transfer constituted an excessive contribution. On June 29, 1993, the Commission found reason to believe that an excessive contribution had been made.

A. The Law and Regulations

Generally, transfers of funds between candidate committees are subject to the \$1,000 limitation on contributions by political committees other than multicandidate committees, set forth at 2 U.S.C. § 441a(a) and in the Commission's regulations at 11 C.F.R. §§ 110.1 and 110.2. The making of transfers in excess of these limitations results in violations of 2 U.S.C. § 441a(a)(1)(A).

As an exception to this general rule, neither the Federal Election Campaign Act ("the Act") nor the Commission's regulations limits the transfer of funds between a candidate's previous federal campaign committee and his or her current federal campaign committee, provided that the funds do not include contributions which would violate the Act. 11 C.F.R. § 110.3(a)(2)(iv)(1988); 11 C.F.R. § 110.3(c)(4)(1994). The Act and the regulations also permit unlimited transfers between the principal campaign committees of a candidate for two federal offices in the same election cycle as long as: such transfers are not made while the candidate was actively seeking election to more than one office; the contributions making up the transfer would not, when aggregated with contributions from the same persons to the committee receiving the transfer, result in excessive

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contributions; and the candidate has not received funds pursuant to Title 26, U.S. Code. 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(A)-(C)(1988); 11 C.F.R. § 110.3(c)(5)(i), (ii) and (iii)(1994). The requirements for entitlement to unlimited transfers between committees active in the same election cycle are thus more stringent than those for transfers between committees active in different election cycles.

B. Factual and Legal Analysis

The 1988 general election was held on November 8. As stated above, the transfer of \$50,000 here at issue took place on December 12, 1988. In a letter to the Clerk of the House of Representatives dated March 21, 1989, the treasurer of the Congressional Committee stated: "This letter is to confirm that the Gephardt-In-Congress Committee . . . declared a surplus of funds in its congressional re-election campaign from 1988. This campaign fund surplus allowed us to transfer \$50,000.00 to the Gephardt for President Committee, Inc., and transfer was made on December 12, 1988."

The Interim Addendum to the Final Audit Report sent to the Presidential Committee by the Commission on August 6, 1991, questioned the legality of the \$50,000 transfer in light of the requirements of 11 C.F.R. § 110.3(a)(2)(v)(1988) and the candidate's acceptance of public matching funds. In response, the Presidential Committee asserted that the transfer had not been made between the campaign committees of a candidate seeking election to more than one federal office in the same election cycle. Rather, the transfer had assertedly been made between

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Congressman Gephardt's then current congressional committee for the 1989-90 election cycle and his previous 1988 presidential committee. On this basis the Presidential Committee concluded (1) that the regulation governing this transfer was 11 C.F.R. § 110.3(a)(2)(iv)(1988), not the more exacting 11 C.F.R. § 110.3(a)(2)(v)(1988), and (2) that the transfer was not subject to the general \$1,000 statutory limitation because it had met the requirements of Section 110.3(a)(2)(iv)(1988).

The Commission found reason to believe the Congressional Committee had violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive transfer to the Presidential Committee. This determination was based, first, upon the conclusion that the appropriate regulation was 11 C.F.R. § 110.3(a)(2)(v)(1988) because the source of the transfer had been the 1988 Congressional Committee, not the 1990 Congressional Committee. Secondly, the Commission found that the transfer had failed to meet two of the criteria set forth in the operative regulation.

1. Identity of Transferring Committee

Identification of the regulation applicable to the transfer at issue depends upon prior identification of the transferring committee. In response to the Interim Addendum, the Presidential Committee asserted that the 1988 Congressional Committee had completed its work by the time of the \$50,000 transfer of December 12, 1988, and that Congressman Gephardt was already a candidate for

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the 1990 elections.¹ Therefore, the transfer was assertedly "between the candidate's previous campaign committee [GPC] and his currently registered committee [GIC]."

In response to the Commission's reason to believe determinations, the Presidential Committee and the Congressional Committee correctly state that a principal basis for the Commission's conclusion that the 1988 Congressional Committee was the source of the transfer is the fact that the Congressional Committee made operating expenditures totaling \$53,168.10 after it transferred the \$50,000 to the Presidential Committee. In its 1988 Year-End Report the Congressional Committee reported all of these post-transfer expenditures as being for the "General" election campaign. Examples include:

<u>Payee</u>	<u>Date Paid</u>	<u>Amount</u>	<u>Purpose</u>
Mark Lougabaugh	12/13/88	450.52	reimbursement: travel
American Express	12/19/88	963.72	audio and video tapes;
			services-campaign van
Telephone Contact,	12/19/88	5,000.00	phone bank services
Inc.	12/20/88	5,000.00	phone bank services
Doak, Shrum &	12/20/88	34,000.00	consulting services
Associates			
		<u>\$45,314.24</u>	

The fact that these expenditures were made in connection with the 1988 campaign is evidence that the 1988 Congressional Committee was a functioning entity at least through mid-December, 1988. It would, therefore, follow that the 1988 Congressional Committee was

1. The candidate's Statement of Candidacy for the 1990 election was deposited in regular mail on February 2, 1989. The Office of the Clerk of the House of Representatives did not receive this Statement until February 10, 1989. Reports and statements sent by regular mail are filed on the date they are received. See 11 C.F.R. § 100.19(b).

the source of the December 12, 1988 transfer of \$50,000 to the Presidential Committee.

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The joint response to the factual and legal analyses which accompanied the notifications of the Commission's reason to believe findings contains several misunderstandings. First, this response discusses at length the Analysis' citation of 11 C.F.R. § 110.1(b)(3), which permits the acceptance of contributions designated for a past election if net debts remain to be paid. It concludes that this citation is not relevant unless the 1988 Congressional Committee had net debts outstanding and chose to receive funds for the election already passed. (Emphasis in original.) The response also states that "[t]he General Counsel's report assumes that GIC continued to raise funds after the date of the election to retire net debts." Respondents argue that the Congressional Committee did not have to raise funds after the election, or accept a \$40,000 transfer from the Gephardt Committee (see discussion below), in order to pay expenses from 1988 election. They state:

The Congressional campaign budgeted to cover its own expenses -- accurately, as demonstrated by its year-end positive balance. It chose to use its surplus to assist a committee, GPC, that [sic] little or no hope of raising funds to retire substantial debts and obligations.

In fact, no assumption was made in the Analysis as to whether or not the Congressional Committee had continued to raise funds into December, 1988 for 1988 election purposes, although the Congressional Committee's 1988 Year-End Report shows a total of

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\$1,750 as having been received for the "General" election. Rather, the citation to Section 110.1(b)(3) was intended as support for the statement that the 1988 Congressional Committee was free to make expenditures after the election to pay off remaining obligations, whether or not Congressman Gephardt was by then a candidate for a future election. The Congressional Committee made and reported such 1988-related expenditures after the date of the transfer, with the effect of keeping the 1988 Committee in existence and making it the source of the \$50,000 transfer.²

Respondents also cite a list of Advisory Opinions which have established the principle that a committee may declare "excess campaign funds" with regard to an election which has not yet taken place and use those funds to pay off obligations from a prior election. They have not, however, provided any evidence that the Congressional Committee, at the time of the \$50,000 transfer to the Presidential Committee, declared that transfer to be excess for the 1990 primary election. The Congressional Committee's March, 1989 letter to the Clerk of the House cited above, sent after Congressman Gephardt had become a candidate for the 1990 primary election, expressly stated that the surplus involved had come from the 1988 Congressional re-election campaign.

In summary, the expenditures made after the \$50,000 transfer to meet 1988-related obligations, and statements made on behalf of

2. For the same reason the lengthy discussion in the response of contributor intent is irrelevant. The expenditure of funds for 1988 election-related activity after the December 12 transfer is the determining factor here, not the receipt of contributions.

the Committee close to the time of the transfer, are proof that the transfer at issue came from the 1988 Congressional committee. Thus, the regulation governing the transfer was 11 C.F.R.

§ 110.3(a)(2)(v)(1988).³

2. Application of 2 U.S.C. § 441a(a)(5)(C) and
11 C.F.R. § 110.3(a)(2)(v)(1988)

As stated above, 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(1988) permitted transfers between the committees of a candidate seeking election to more than one Federal office provided that the transfer did not occur while the candidate was actively seeking both offices, the limitations on contributions

3. In the joint response to the Commission's findings of reason to believe, respondents refer to a statement in the Factual and Legal Analysis that the transfer would fail even if Section 110.3(a)(2)(iv)(1988) were the appropriate regulation because certain contributors would have already made maximum contributions to the Presidential Campaign. The response correctly states that under this particular subsection of the regulations it would not have been necessary to aggregate contributions received by the Presidential Committee through the Gephardt Committee and the Congressional Committee with contributions already given directly to the Presidential Committee. However, because of the inapplicability of Section 110.3(a)(2)(iv)(1988) to the transfer here at issue, this lack of required aggregation does not change the present outcome.

Respondents have extended their argument related to Section 110.3(a)(2)(iv)(1988) to a hypothetical situation involving a joint fundraising event held by a party committee and a candidate. They pose the scenario of an individual having "maxed out" as to the candidate, with the result that all of his or her contribution to the joint fundraiser would have to be attributed to the party committee. The party committee then makes a contribution to the candidate, with some portion of that contribution having come to the party from the joint fundraising event. Respondents argue that any finding that the party's contribution to the candidate had been made with "impermissible funds" would be "insupportable as a matter of law or logic." In reality, any determination of the legality of such a contribution would depend upon the factual situation, including the language of the solicitation.

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were not exceeded, and the candidate had not received funds under Title 26. In the present matter the transfer from the 1988 Congressional Committee to the Presidential Committee fails two of these tests.

a. Receipt of Funds under Title 26

Richard Gephardt in 1988 received presidential primary matching funds, pursuant to 26 U.S.C. § 9031, et seq. Therefore, the transfer of funds by the 1988 Congressional Committee to the Presidential Committee was also ineligible for the exception at 2 U.S.C. § 411a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(1988) because it failed to meet the requirement that the recipient candidate not have received public funds.

b. Source of Funds

The Commission's audit of the Presidential Committee determined that a portion of the funds transferred to that committee by the Congressional Committee came from funds transferred earlier to the Congressional Committee by the candidate's joint fundraising committee, the Gephardt Committee. The transfers from the Gephardt Committee to the Congressional Committee included one of \$10,000 made on November 8, 1988, and one of \$40,000 made on December 2, 1988. These latter transfers were reported by the Congressional Committee as being for the 1988 general election.

The allocation formula in the joint fundraising agreement required that contributions be allocated to the Presidential Committee to the extent of the contributor's limitation under the Act, unless a contributor specifically designated his or her

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contribution to the Congressional Committee. Any amounts in excess of the statutory limits on contributions to the Presidential Committee were also to be allocated to the Congressional Committee.

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The Audit Division concluded that the \$50,000 transfer in December, 1988 by the Congressional Committee to the Presidential Committee contained all of the \$10,000 received by the former from the Gephardt Committee on November 8, 1988 and possibly some portion of the \$40,000 received on December 2, 1988. By the terms of the joint fundraising agreement, namely the first call on contributions by the Presidential Committee unless those contributions would result in excessive contributions to that committee or had been designated for the Congressional Committee, the funds transferred to the Congressional Committee by the Gephardt Committee contained funds which could not have gone directly to the Presidential Committee. The presence of contributions excessive as to the Presidential Committee in the subsequent transfer by the Congressional Committee to the Presidential Committee caused that later transfer to violate the requirements at 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. 110.3(a)(2)(v)(B)(1988), and, as a result, took it outside those exceptions to the contribution limitations.

B. Conclusion

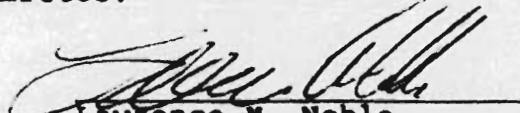
For the above stated reasons, the \$50,000 transfer from the Congressional Committee to the Presidential Committee did not meet the conditions of 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(B) and (C)(1988) and, therefore, came within the \$1,000 per election limitation on contributions by one political

committee to another established at 2 U.S.C. § 441a(a)(1)(A). By exceeding this \$1,000 limitation, the transfer resulted in a violation of the Act by the Congressional Committee. Therefore, this Office recommends that the Commission find probable cause to believe that the Gephardt in Congress Committee and John Tumbarello, as treasurer, violated 2 U.S.C. 441a(a)(1)(A) by making a \$49,000 excessive transfer to the Gephardt for President Committee.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Gephardt in Congress Committee and John Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive transfer to the Gephardt for President Committee.

7/21/94
Date


Lawrence M. Noble
General Counsel

95043644067



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20541

July 29, 1994

Richard Hughes
4524 East 67th Street
P.O. Box 35887
Tulsa, Oklahoma 74135

RE: MUR 3342

Dear Mr. Hughes:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on February 22, 1992, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

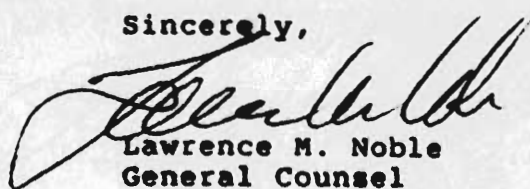
A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

25043644068

Richard Hughes
Page 2

Should you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

95043644069

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Richard Hughes

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MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

25043644070
This matter was generated by an audit of the Gephardt for President Committee, Inc. ("the Committee") undertaken by the Federal Election Commission pursuant to 26 U.S.C. § 9038(a) and by additional information ascertained in the normal course of carrying out the Commission's supervisory responsibilities. On February 25, 1992, the Commission found reason to believe that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind contribution to the Committee in the form of an advance payment of \$3,807.5 for air travel. Of this amount \$380.75, or 10% of the outstanding balance, was reimbursed on September 29, 1989.

II. ANALYSIS

2 U.S.C. § 441(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his or her own authorized committee per election. 2 U.S.C. § 431(8) defines "contribution" to include any loan or advance made for the purpose of influencing a federal election. During the 1988-89 election cycle the Commission's regulations permitted corporate vendors to extend credit to political committees without such credit being considered an advance, provided that they did so in the ordinary course of business. See former 11 C.F.R. § 114.10 and present

11 C.F.R. §§ 116.3. It was also Commission policy to permit such extensions of credit by non-corporate vendors as well; this policy is now reflected at 11 C.F.R. § 116.3(a) and 11 C.F.R. § 100.7(a)(4). "Ordinary course of business" encompassed both the nature and conduct of the creditor's business and the timing involved in the extension of credit. See, e.g., MUR 1741. If extensions of credit or advances were made on behalf of a committee outside the ordinary course of business, they were to be considered in-kind contributions and thus subject either to the limitations on contributions from persons imposed at 2 U.S.C. § 441a(a), or to the prohibitions against corporate contributions found at 2 U.S.C. § 441b(a).

In 1988 11 C.F.R. § 100.7(b)(8) exempted from the definition of contribution unreimbursed expenditures up to \$1,000 for transportation used by an individual on behalf of a candidate.

The investigation in this matter has revealed that the debt of \$3,807.54 owed by the Committee to Mr. Hughes was for travel on a plane owned or leased by one of two companies with which he was then associated. (These companies are now in bankruptcy and all records are under the control of trustees.) Mr. Hughes also made a separate \$100 contribution to the Committee.

According to Mr. Hughes,

To the best of my knowledge and belief, Mr. Robert Thompson requested I join him and others in Iowa for the primary, which I did. After the primary, we were ask [sic] to return to Washington with members of the Gephardt for President Committee, Mr. Thompson and others. We advised Mr. Thompson that we would be happy to comply, but we would have to bill the

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Committee for the appropriate charges and we were told to go ahead and do so. We flew a plane load to Washington, DC and returned to Tulsa, Okla.

Mr. Hughes has indicated that he does not remember who paid for the flight, although he presumes that one of the two companies did so. However, the debt for this flight was reported by the Committee as owed to Mr. Hughes personally, not to a company. In addition, it was Mr. Hughes who signed a debt settlement agreement on his own behalf, not on behalf of either of the companies. Therefore, this Office has concluded that Mr. Hughes paid for this flight personally.

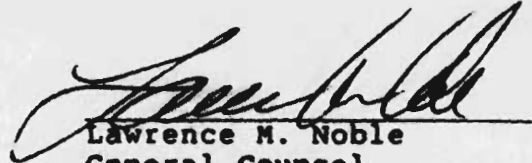
Because Mr. Hughes was one of the passengers, his share of the cost of the trip, up to \$1,000, would not be deemed a contribution, pursuant to 11 C.F.R. § 100.7(b)(8). Because the exact number of passengers is not known due to the inaccessibility of records, this Office has estimated that there were 7-8 people on the plane and has subtracted \$500 from the amount owed Mr. Hughes as his share of the \$3,807.54 cost. In addition, he was entitled to a \$1,000 contribution pursuant to 2 U.S.C. § 441a(a)(1)(A). Thus, his excessive contributions totaled \$2,407.54 ($\$3,807.54 + \$100 - \$500 - \$1,000$). This Office recommends that the Commission find probable cause to believe that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making \$2,407.54 in excessive contributions to the Gephardt for President Committee.

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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Richard Hughes violated
2 U.S.C. § 441a(a)(1)(A).

7/25/99
Date


Lawrence M. Noble
General Counsel

25043644013



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

July 29, 1994

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Richard A. Gephardt

Dear Mr. Bauer and Ms. Corley:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on October 1, 1991, the Federal Election Commission found reason to believe that your client, Richard A. Gephardt, violated 26 U.S.C. § 9035(a), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

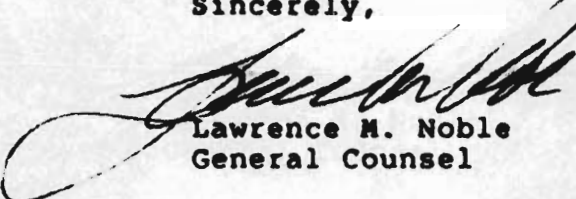
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Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Page 2

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

25043644075

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Richard A. Gephardt

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MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated by an audit of the Gephardt for President Committee, Inc., ("the Committee") undertaken by the Federal Election Commission pursuant to 26 U.S.C. § 9038(a). The Committee was the authorized committee of Richard A. Gephardt for his campaign for nomination to the office of President of the United States in 1988.

On May 14, 1991, the Commission voted to refer to the Office of the General Counsel for enforcement purposes issues concerning certain expenditures made by Richard A. Gephardt as a candidate for nomination to the office of President. On October 1, 1991, the Commission found reason to believe that Richard A. Gephardt had violated 26 U.S.C. § 9035(a).

II. FACTUAL AND LEGAL ANALYSIS

1. Statutory and Regulatory Provisions

26 U.S.C. § 9035(a) and 11 C.F.R. § 9035.2(a)(1) require that a candidate for nomination to the office of President, who elects to accept public matching fund payments pursuant to 26 U.S.C. § 9034, not knowingly make expenditures from personal funds or from the personal funds of his immediate family in connection with his campaign for nomination in excess of \$50,000.

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Pursuant to 11 C.F.R. § 9035.2(a)(2), expenditures made using a credit card for which the candidate is jointly or solely liable will count against the \$50,000 limitation to the extent that the full amount due, including any finance charge, is not paid by the candidate's authorized committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this provision, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on the billing statement.

2. Use of Candidate's Credit Card

As a candidate for nomination to the office of President, Richard A. Gephardt accepted public matching payments pursuant to 26 U.S.C. § 9034. On February 5, 1988, Mr. Gephardt made a direct contribution to his campaign of \$50,000. Documents examined during the audit of the Committee showed that as of that same date the candidate also had outstanding charges for qualified campaign expenses on his personal American Express card totaling \$16,309.21, of which \$13,981 had been incurred in October 1987 and thus had been outstanding for more than 60 days.

On the basis of the above information, more documentation, including billing statements for the candidate's American Express card, was sought and obtained. The Audit Division's review of this additional information resulted in the following schedule of candidate contributions made by means of American Express charges:

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<u>Contributions as of¹</u>	<u>New Charges</u>	<u>Total Aggregate Credit Card Contributions</u>	<u>Aggregate Amount in excess of Limitation</u>
3/16/88	\$13,794.95	\$13,794.95	\$13,794.95
4/14/88	1,874.75	15,669.70	15,669.70
5/14/88	19,424.65	35,094.35	35,094.35
6/15/88	63,128.46	98,222.81	98,222.81
7/15/88	2,662.00	100,884.81	100,884.81
Finance charges	4,050.30	104,935.11	104,935.11

Thus, by July 15, 1988, Mr. Gephardt had accumulated \$104,935.11 in credit card charges which had not been paid by the Committee within 60 days of the closing dates on the respective billing statements. By January 15, 1989, the Committee had paid all but \$25,951.22 of the amount then owed. The charges were reduced to \$-0- by September 30, 1989.

As a result of these credit card charges Mr. Gephardt exceeded his \$50,000 personal expenditure limitation by as much as \$100,884.81 (not including finance charges). In a letter dated July 6, 1992, counsel for the Gephardt for President Committee stated that the Committee did not "expect to relitigate" certain questions, including the issue of Mr. Gephardt's extensions of credit, preferring to raise any legal issues during the course of conciliation. No additional response has been received.

The Office of the General Counsel recommends that the Commission find probable cause to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).

¹. Date given is 60th day after closing date of billing statement on which the outstanding charges first appear.

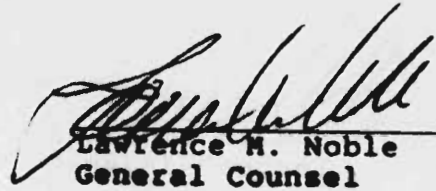
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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Richard A. Gephardt
violated 26 U.S.C. § 9035(a).

Date

7/25/99


Lawrence M. Noble
General Counsel

25043644019



FEDERAL ELECTION COMMISSION

July 29, 1994

Judy McCoy, Administrative Director
Iowa Democratic Party
2116 Grand Avenue
Des Moines, Iowa 50312

RE: MUR 3342
Iowa Democratic Party
(Federal Division)
Mary Maloney, as treasurer

Dear Ms. McCoy:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on June 29, 1993, the Federal Election Commission found reason to believe that the Iowa Democratic Party and Mary Maloney, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

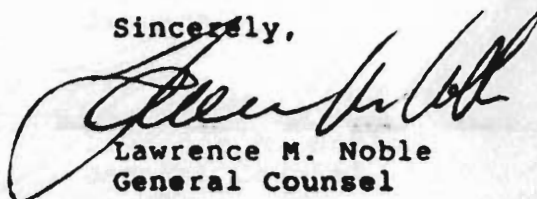
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Judy McCoy, Administrative Director
Page 2

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence M. Noble", is written over the typed name.

Lawrence M. Noble
General Counsel

Enclosure
Brief

25043644001

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Iowa Democratic Party (Federal Division)
Mary Maloney, as treasurer

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MUR 3342

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated by an audit of the Gephardt for President Committee, Inc., ("the Committee") undertaken by the Federal Election Commission pursuant to 26 U.S.C. § 9038(a). On June 29, 1993, the Commission found reason to believe that the Iowa Democratic Party (Federal Division) ("the Party") and Mary Maloney, as treasurer, had violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i) by making an excessive in-kind contribution to the Gephardt for President Committee in the form of a mailing list valued at \$10,000 and by failing to report the contribution.

II. ANALYSIS

2 U.S.C. § 441a(a)(2)(A) limits to \$5,000 the amount which any multicandidate political committee, including a state party committee, may contribute to a candidate and his authorized committee with respect to any election. 2 U.S.C. § 431(8) defines "contribution" to include "any gift, . . . or anything of value made . . . for the purpose of influencing" a federal election. 2 U.S.C. § 434(b)(4)(H)(i) requires that political committees other than authorized committees report all contributions made to other political committees.

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The Commission's audit of the Gephardt for President Committee initially determined that the Committee had acquired a mailing list which apparently had been purchased for \$10,000 from the Party by an unknown person or entity. Subsequently, it appeared that no third person was involved. The Commission found reason to believe that the Party had violated 2 U.S.C. § 441a(a)(2)(A) by itself providing the mailing list without charge and 2 U.S.C. § 434(b)(4)(H)(i) by not reporting this in-kind contribution.

In its response to the Commission's determinations, the Party has not claimed third party payment for use of the mailing list. Relying upon "the best of the recollection of the Party staff involved with this matter," the Party asserts that it received compensation for the list in the form of activities undertaken by Congressman Gephardt on its behalf. These activities included appearances by Congressman Gephardt at county fundraisers, the securing of speakers for fundraising events, helping to secure participation in the 1986 and 1987 Jefferson-Jackson Dinners, and assisting Democratic candidates with fundraising in Washington and in Iowa.

The response filed by the Committee also does not dispute the fact that the Committee did not pay the Party for the mailing list. The Committee does, however, assert that the Party was compensated by means of services performed by Congressman Richard Gephardt. "Congressman Gephardt provided valuable consideration in exchange for the mailing list from the Party by appearing in their behalf and assisting with the Party's fundraising efforts."

According to the response, the candidate appeared at "numerous events on behalf of the Party during the extended period leading up to the Iowa caucuses in early February 1988."

The Committee argues that this form of compensation for the list was necessitated by concerns regarding the legality of a direct payment of \$10,000 to the Party for the mailing list. Advisory Opinions 1983-2, 1981-3 and 1979-17 are cited as examples of opinions issued by the Commission which "have taken the position that the proceeds from the sale of goods or services by a political committee are contributions subject to the contribution limits and source restrictions."

One of these advisory opinions, Advisory Opinion 1983-2, explains the flaw in this argument. That opinion states that the exchange or sale of mailing or contributor lists at the usual and normal charge has been deemed by the Commission to be an exception to the general rule that payments to a committee for a service or product are to be considered contributions. "The Commission has developed this . . . exception because the Commission views such lists as a unique type of asset of the committees involved in that each list's value, at least in part, is determined on the basis of the committee's political fundraising efforts or other political use of the list." See also Advisory Opinion 1981-53.

Having established that it would have been appropriate for the Committee to compensate the Party, the next issue is whether the performance of the aforementioned services by the candidate constituted remuneration for use of the list. In Advisory Opinion 1977-26 the Commission addressed the propriety of a candidate's

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being reimbursed for voter registration promotional activities which he had performed for a state party committee while he was also campaigning for election to the United States Senate. The opinion request stated that the candidate had "encouraged voter registration as an integral part of his campaign throughout the Commonwealth of Pennsylvania." In its opinion the Commission cited 11 C.F.R. § 110.8(e), which permits reimbursement by a political party of expenses incurred by a candidate on behalf of the party, but stated that "payment of this kind is limited to situations where the services performed are strictly party related and where the activity is a bona fide party event or appearance rather than for the purpose of influencing the candidate's nomination or election." Because it was seemingly impossible in the Pennsylvania situation to distinguish the candidate's party-building activities from his own campaign activities, the Commission found that it was "most unlikely that the VRC [voter registration campaign] did not in fact influence his own Senate candidacy." In the situation addressed in the advisory opinion, any reimbursement of the candidate would have had to be considered a contribution to his committee because the activity for which he was being reimbursed benefited his campaign.

In the present matter, Congressman Gephardt's activities on behalf of the Party coincided with his own primary campaign in the same state. Because his activities on behalf of the Party also benefited his own campaign, the Party's provision of information from a voter list cannot be treated as reimbursement for


activities on behalf of the Party, but must be considered a contribution to the Gephardt campaign.

As a multi-candidate party committee, the Iowa Democratic Party could contribute only \$5,000 to a candidate committee per election. Therefore, the Office of the General Counsel recommends that the Commission find probable cause to believe that the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i) by making an excessive in-kind contribution valued at \$10,000 to the Gephardt for President Committee and by failing to report the contribution.¹

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 434(b)(4)(H)(i).

7/25/94
Date


Lawrence M. Noble
General Counsel

1. The Party argues that the Gephardt campaign received only "raw data" which had never before been sold to other campaign entities, not the compiled list provided to other committees for which \$10,000 was charged. While raw data would probably not be as readily useful as a compiled list, the Party has not placed a specific value on the information which was provided to the Committee. In the absence of such additional information, this Office recommends that the Commission retain the \$10,000 valuation.

25043644086



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

July 29, 1994

R. Laurence Macon, Esquire
James P. Robinson, III, Esquire
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

RE: MUR 3342
Heard, Goggan, Blair &
Williams

Dear Mr. Macon and Mr. Robinson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on February 22, 1992, the Federal Election Commission found reason to believe that your client, Heard, Goggan, Blair & Williams, violated 2 U.S.C. § 441a(a)(1)(A), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

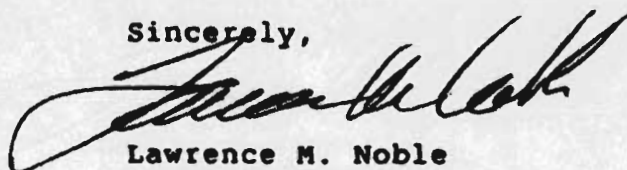
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

25043644087

R. Laurence Macon, Esquire
James P. Robinson, III, Esquire
Page 2

Should you have any questions, please contact Anne A. Weissenborn, the senior attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

25043644088

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3342
Heard, Goggan, Blair & Williams)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

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This matter was generated by an audit of the Gephardt for President Committee, Inc. ("the Committee") undertaken by the Federal Election Commission pursuant to 26 U.S.C. § 9038(a) and by additional information ascertained in the normal course of carrying out the Commission's supervisory responsibilities. On May 3, 1994, the Commission revoted to find reason to believe that Heard, Goggan, Blair & Williams ("Heard, Goggan") violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Committee in the form of advances totaling \$21,677.84. Of this amount \$2,167.78 was reimbursed on November 13, 1989 pursuant to a proposed debt settlement agreement with the firm.

After several only partially successful attempts by this Office to obtain information concerning the circumstances under which these advances were made, the Commission on May 3, 1994, authorized an Order to Submit Written Answers which was issued to the firm. Responses were received on June 14, 1994.

II. ANALYSIS

2 U.S.C. § 441(a)(1)(A) limits to \$1,000 the amount which any person may contribute to a candidate and his or her own authorized committee per election. 2 U.S.C. § 431(11) defines "person" to include "an individual, partnership, committee, association,

corporation, labor organization, or any other organization or group of persons"

2 U.S.C. § 431(8) and 2 U.S.C. § 441b(b)(1) define "contribution" to include any loan or advance made for the purpose of influencing a federal election. During the 1987-88 election cycle the Commission's regulations permitted corporate vendors to extend credit to political committees without such credit being considered an advance, provided that they did so in the ordinary course of business. See former 11 C.F.R. § 114.10 and present 11 C.F.R. §§ 116.3. It was also Commission policy to permit such extensions of credit by non-corporate vendors as well; this policy is now reflected at 11 C.F.R. § 116.3(a) and 11 C.F.R. § 100.7(a)(4). If extensions of credit or advances were made on behalf of a committee outside the ordinary course of business, they were to be considered in-kind contributions and thus subject either to the limitations on contributions from persons imposed at 2 U.S.C. § 441a(a), or to the prohibitions against corporate contributions found at 2 U.S.C. § 441b(a).

Heard, Goggan, Blair & Williams is law firm located in San Antonio, Texas doing business as a partnership. According to information supplied by the Committee, the \$21,667.84 in advances at issue with regard to Heard, Goggan included \$11,271.34 for "flight charges," at least \$10,895.34 of which involved flights to Houston, Montgomery, Corpus Cristi, Dallas, Fort Worth and Austin between May 4 and October 16, 1987. The remaining portion of the \$21,677.84 included a total of \$1,794.88 for hotel accommodations, \$2,000 for a party, \$3,415.60 for receptions, \$1,126.67 for a

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planning meeting, and smaller amounts for stationery, stamps, invitations, shipments, TV news taping and mileage reimbursement. These debts owed Heard, Goggan were not included on the Schedule D-P's submitted by the Committee to the Commission.

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In the responses received on June 14, 1994 to Commission interrogatories, the firm described its relationship with the Committee as follows: "[T]he firm was asked to provide services needed by the Committee in its campaign in Texas upon the agreement that the Committee would make full payment to the firm for those services." Although there was no written contract between the firm and the Committee, "there was an agreement that the Committee would pay in full for the services it received from Heard, Goggan, Blair & Williams." In response to another question as to whether the firm's expenditures were made as part of a business arrangement or as the result of the personal activities of a partner, associate or other representative of the firm, the firm has stated, "[t]he expenditures were made by the firm as part of a business arrangement whereby the firm was to provide certain non-legal services for the Committee. These services did include payment of some expenses of one or more partners, associates or other representative of the firm which were incurred in providing services to the Committee."

In a previous submission to the Commission, it was stated that Heard, Goggan had offered similar types of non-legal services to clients. The response listed a number of such clients and provided examples of services rendered such as mailing services, assistance with fund raising, assistance in arranging rallies, assistance with

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arranging travel. The firm's services also included the hosting of dinners and receptions, and providing staff support. In response to a question about whether it was the firm's ordinary business practice in 1987-88 to pay for non-legal services for clients and others and then seek reimbursement, rather than require advance payment, Heard, Goggan's June 9, 1994 response was in the affirmative. Such arrangements included air travel and hotel accommodations. As to the air travel arranged for the Gephardt Committee, the firm's response stated that these expenditures involved the travel of "Richard Gephardt, his wife Jane, and members of his campaign organization as well as law firm partner, Oliver S. Heard, Jr., employee Carrie Baker and possibly others." The response also stated that it was not ordinary practice to bill for the travel of firm representatives because most agreements with clients did not provide for such reimbursement.

Based upon the information most recently provided by the firm, it appears that Heard, Goggan, Blair & Williams provided services for the Committee in the ordinary course of that firm's business. Therefore, this Office recommends that the Commission find no probable cause to believe that Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Gephardt for President Committee.

III. GENERAL COUNSEL'S RECOMMENDATION

Find no probable cause to believe that Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A).

7/25/94
Date


Lawrence M. Noble
General Counsel

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

August 15, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 15 2 50 PM '94

Ms. Anne Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3342

Dear Ms. Weissenborn:

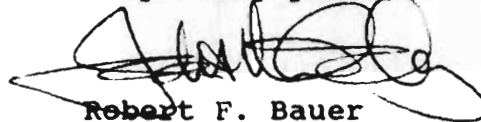
This is to request an extension of time of 30 days for Respondents Richard A. Gephardt, Gephardt for President and Gephardt in Congress to respond to the probable cause briefs of the Office of the General Counsel for the above referenced Matter Under Review.

This extension is requested to give Respondents adequate time to prepare a response to the probable cause brief. Because of vacations schedules and Congressional recess uncertainties, it will be difficult to coordinate all of the responses until after the Labor Day holiday. The information needed to prepare each of the responses overlaps with the others and requires more extensive coordination of the responses than might otherwise be the case.

Since the original response would have been due on August 19, 1994, with the extension, the responses will be due on September 19, 1994.

If you have any questions, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel for Respondents

[15850-0001/DA942270.018]



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AUGUST 16, 1994

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President Committee
S. Lee Kling, as treasurer
Gephardt in Congress Committee
John R. Tumbarello, as treasurer
Richard A. Gephardt

Dear Mr. Bauer and Ms. Corley:

This is in response to your letter dated August 15, 1994, which we received on August 16, 1994, requesting an extension of 30 days to respond to the General Counsel's Briefs in the above-cited matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on September 19, 1994.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written above the typed name.

Anne A. Weissenborn
Senior Attorney

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3342

NAME OF COUNSEL:

Gerald W. Crawford

ADDRESS:

6943 Vista Drive
West Des Moines, IA 50266

TELEPHONE:

(515) 221-7979

Facsimile:

(515) 221-7978

The above-named individual is hereby designated as my counsel and is authorized to receive any notification and other communications from the Commission and to act on my behalf before the Commission.

8-19-94
Date

Judy McCoy
Signature
Judy McCoy - Administrative Director
Iowa Democratic Party

RESPONDENT'S NAME:

Mary Maloney - Treasurer Iowa
Democratic Party

ADDRESS:

431 East Locust
Des Moines, IA 50309

HOME PHONE:

N/A

BUSINESS PHONE:

(515) 244-7292

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 22 7 15 AM '94

25043644095

CRAWFORD
LAW FIRM

August 19, 1994

Ms. Karen Zimmerman
Federal Election Commission
Washington, D. C. 20463

VIA FAX: 202-219-3923

Dear Ms. Zimmerman:

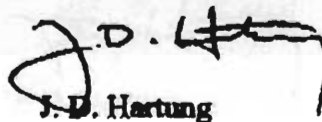
Along with this letter you will find a statement of Designation of Counsel from the Iowa Democratic Party. Please let us know if a similar designation from Mary Maloney, Treasurer is required.

It is my understanding that Judy McCoy, Administrative Director of the Iowa Democratic Party has already contacted Anne Weissenborn regarding this matter. Apparently the Commission's letter dated July 29, 1994 was mailed to the Democratic Party's former address and was not received until earlier this week.

Please let this letter serve as our written request for an additional thirty (30) days from today's date to file a responsive brief in this matter.

Your assistance is greatly appreciated. If you have any questions or comments, do not hesitate to call.

Sincerely,


J. D. Hartung

Attachment - Designation of Counsel

CRAWFORD
LAW FIRM

September 2, 1994

Ms. Anne A. Weissenborn
Federal Election Commission
Washington, D.C.
Via Fax: 202-219-3880

SEP 2 12 03 PM '94

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF CLERK

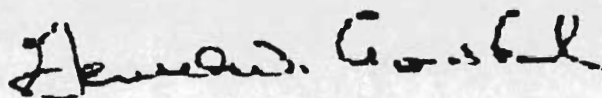
Dear Ms. Weissenborn:

This letter confirms our telephone request for an extension of time in which to file responsive pleadings in MUR 3342 until September 16, 1994.

I am by copy of this letter informing my client, The Iowa Democratic Party, of this deadline.

Thank you for your assistance in this matter.

Sincerely,



Gerald W. Crawford

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

September 6, 1994

Gerald W. Crawford, Esquire
Crawford Law Firm
6943 Vista Drive
West Des Moines, Iowa 50266

RE: MUR 3342
Iowa Democratic Party
Mary Maloney, as
treasurer

Dear Mr. Crawford:

This is in response to your facsimile dated September 2, 1994 requesting an extension until September 16, 1994 to respond to the General Counsel's Brief in the above-cited matter. After considering the circumstances presented in your request, the Office of the General Counsel has granted the extension. Accordingly, the response is due by the close of business on September 16, 1994.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn".

Anne A. Weissenborn
Senior Attorney

25043644098

BEFORE THE FEDERAL ELECTION COMMISSION

SEP 2 9 42 AM '94

In the Matter of)

Trammel Crow Asset Company, Inc.)

MUR 3342

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by J. McDonald Williams, President of Trammel Crow Asset Company.

The attached agreement contains no changes from the agreement approved by the Commission on July 6, 1994. A copy of the check received in the amount of \$1,900 for the civil penalty is attached.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Trammel Crow Asset Company, Inc.
2. Close the file as to this respondent.
3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

Date

9/12/94

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. Conciliation Agreement
2. Civil Penalty Check

Staff Assigned: Anne Weissenborn/Clinett Short

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Trammel Crow Asset Company, Inc.

)
)
) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 9, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Accept the conciliation agreement with Trammel Crow Asset Company, Inc., as recommended in the General Counsel's Report dated September 2, 1994.
2. Close the file as to this respondent.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated September 2, 1994.

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

Attest:

9-9-94
Date

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

Received in the Secretariat: Fri., Sept. 2, 1994 9:42 a.m.
Circulated to the Commission: Fri., Sept. 2, 1994 12:00 p.m.
Deadline for vote: Fri., Sept. 9, 1994 4:00 p.m.

esh

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 14, 1994

R. Todd Johnson, Esquire
Jones, Day, Reavis & Pogue
1450 G Street, NW
Washington, DC 20005-2088

RE: MUR 3342
Trammell Crow Asset Company

Dear Mr. Johnson:

On September 9, 1994, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441b. Accordingly, the file has been closed in this matter as it pertains to you.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3684.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne Weissenborn".

Anne Weissenborn
Senior Attorney

25043644101

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Trammel Crow Asset Company, Inc.)

MUR 3342

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 25 4 26 PM '94

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Trammel Crow Asset Company, Inc. ("Trammel Crow") violated 2 U.S.C. § 441b.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. Trammel Crow Asset Company is a corporation within the meaning of 2 U.S.C. § 441b.

2. Pursuant to 2 U.S.C. § 441b(b)(2) a "contribution" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services to any candidate, campaign committee, or political party or organization, in connection with any election for federal office.

3. The Gephardt for President Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

4. Trammel Crow provided transportation to the candidate, Richard A. Gephardt, and to five campaign staff members using Trammel Crow's aircraft for a February 19, 1988 trip from Dallas, Texas to Marshall, Texas and then to Minneapolis, Minnesota.

5. The costs of the transportation furnished to the Committee by Trammel Crow totaled \$3,936.00.

6. The Committee paid \$393.60 to Trammel Crow, leaving \$3,542.40 outstanding.

V. Respondent made a \$3,936.00 contribution to the Gephardt for President Committee, in violation of 2 U.S.C. § 441b.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of One Thousand, Nine Hundred Dollars (\$1,900), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein, or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any

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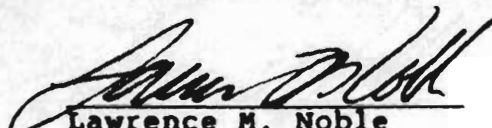
requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

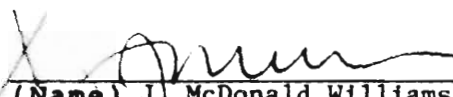
X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

9/14/94
Date

FOR THE RESPONDENTS:


(Name) J. McDonald Williams
(Position) President

8/9/94
Date

25043644104

TRAMMELL CROW ASSET MANAGEMENT

2001 ROSS AVE. SUITE 3500
DALLAS, TEXAS 75201-2997
214/979-4283

034475

CHECK NO.
34475

DATE
AUG 19 94

AMOUNT
\$ *****1,900.00**

***** One THOUSAND, Nine HUNDRED DOLLARS *****

PAY
TO THE ORDER OF

Federal Election Commission
Attn: Trevor Potter
Washington,

DC 20463

DISBURSEMENT ACCOUNT
VOID AFTER 90 DAYS

FIRST INTERSTATE BANK - PLANO, TEXAS



25043644105



RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 19 12 53 PM '94

Eric Tabor, State Chair

431 East Locust • Des Moines, Iowa 50309 • 515/244-7292

September 15, 1994

General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 3342

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION
SEP 19 11 22 AM '94

Dear Sir:

Please find enclosed the Iowa Democratic Party's brief responding to your brief dated July 25, 1994.

I hope this will resolve the matter.

Sincerely yours,


Eric Tabor

25043644106

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Iowa Democratic Party (Federal Division))
Mary Maloney, as treasurer)

MUR 3342

RESPONDENT'S BRIEF

I. Statement of the Case

The Iowa Democratic Party ("the Party") in early 1986 entered into an agreement with the Gephardt for President Committee ("the Committee") whereby the Party would provide activist data to the Committee and, as full compensation for the data, the Committee agreed to assist the Party in fundraising and other activities. This agreement was executed and the Party was fully compensated. No in-kind contribution occurred, so none was reported by the Party. The Party has communicated this information to the Federal Election Committee by letter dated August 18, 1993.

II. ANALYSIS

The key issue in this case is whether the Party was fully compensated by the Committee for the data provided. Obviously, two factors are relevant, the value of the data and the value of the services performed by the Committee.

As to the value of the data, the Party provided two tapes of raw activist data to the Committee. This data was not nearly as valuable as the list later sold to other presidential campaigns for \$10,000. The list sold to others was more current (including 1986 information) and was compiled to be more useful. A recent review of the Party's financial records shows that between September 5, 1987, and February 22, 1988, the Committee paid the Party \$3,253.84 for lists and labels. This is persuasive evidence that the data provided in 1986 was much less valuable.

While it is difficult to place an exact value on the data provided to the Committee, it is reasonable to say that the value was less than \$5,000.

As to the value of the services performed by the Committee, the general counsel of the FEC ("general counsel") does not dispute the fact that Congressman Gephardt performed extensive fundraising services for the Party, but cites Advisory Opinion 1977-26 arguing the services should not be considered remuneration to the party.

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Clearly the facts in Advisory Opinion 1977-26 are distinguishable from the case at hand. The situation addressed by the Advisory Opinion involved reimbursement of a candidate by a political committee for voter registration activities carried out by the candidate. The opinion deems the reimbursement a contribution to the candidate because the activities were acknowledged by the candidate to be an "integral part of (the candidate's) campaign". In other words, the candidate directly benefitted from all the activity for which he was being reimbursed.

The same is not true in the present case. While Congressman Gephardt received some indirect political benefit from his fundraising for the Party, it is undeniable that he often accommodated the Party's requests in ways that were more beneficial to the Party than to his campaign. He was repeatedly asked to rearrange his schedule to fit the Party's needs. He raised money for the party in lieu of raising money for his own campaign. It is important to remember that the Party was under intense political pressure to remain neutral in the caucus contest and was not hesitant to ask Congressman Gephardt to honor his agreement by performing extensive services. Without this agreement, it is reasonable to assume that Congressman Gephardt would have done much less for the Party and would have directed his time and efforts in a manner which was more beneficial to his interests.

In short, the Committee's services should be considered remuneration for the Party's data. The value of these services is difficult to quantify, but is not unreasonable to assume they would be worth \$10,000.

III. Conclusion

The general counsel overestimates the value of the data provided by the Party and underestimates the value of the services provided by the Committee. It seems evident to the Party that the Committee's remuneration far exceeds the value of the data.

In the alternative, if the Commission finds that the Committee's services cannot be treated as reimbursement for the data, the Party would argue that the value of the data provided did not exceed \$5,000 and that no excessive in-kind contribution was made.

BEFORE THE FEDERAL ELECTION COMMISSION ~~SEP 20 12 30 PM '94~~ AM '94

In the Matter of)
Gephardt for President Committee) MUR 3342
Gephardt in Congress Committee)
S. Lee Kling, as treasurer)
and)
Richard A. Gephardt)

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COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 20 12 30 PM '94

REPLY TO GENERAL COUNSEL'S BRIEF

Introduction

The Gephardt for President Committee (the "Presidential" Committee) files this brief in response to the "probable cause" recommendations of the General Counsel on certain issues arising out of the 1988 post-Presidential primary election audit. The Committee will address in various parts of this Brief the following:

- I. A transfer from the Gephardt In Congress Committee (the "Congressional" Committee) to the Presidential Committee in December of 1988;¹
- II. Charges incurred by the Presidential Committee on a personal credit card of the candidate and not timely tracked or paid by the Committee, so as to raise liability issues under § 9035.2(a)(2) of the Presidential Primary Matching Fund regulations;
- III. The Presidential's acceptance of a mailing list by the Iowa Democratic Party in consideration for fundraising efforts by the candidate for the benefit of the party in early 1988.

¹The Congressional joins in this part of the Reply.

Other issues raised by the OGC brief include alleged violations of the Iowa state expenditure limit and the acceptance from supporters of advances for fundraising and other activities which the Commission has held to constitute contributions subject to the limits of section 441a of the Act. The Presidential has not chosen to revisit these issues, simply because it understands the OGC's position -- and likely that of the Commission -- to be inalterable.

By no means should this acknowledgment by the Committee of the Commission's position be taken as an unqualified admission by the Presidential that it believes these liability issues to have been correctly addressed under the law. Rather, the Presidential recognizes the importance of directing this proceeding, at this time, only toward issues which may be clarified with fresh arguments and on which there remains some prospect of prevailing with the Commission on the merits.

I. The December 1988 Transfers from the Presidential to the Congressional

The question still before the Commission is: Could the Congressional transfer funds to the Presidential in December of 1988 to retire debts of the Congressional. The exchange of pleadings to date has identified the regulations in dispute. The difference between the OGC and the Gephardt Committees lies in their views of which regulation controls the outcome.

A. Regulatory Analysis

A brief statement of the conflict may be helpful. Two regulations arguably bear on these transfers. One addresses transfers between a previous and current campaign committee of the same candidate, and the other speaks to the case of a "dual" candidate, seeking two federal offices simultaneously. Compare 11 C.F.R. § 110.2(a)(2)(iv) with § 110.2(a)(2)(v)(1988). There is no dispute that if properly made under the first such regulation, that is, under the "current-to-previous" regulation

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-- the Gephardt transfer would have been lawfully made.² The OGC disputes this as the appropriate regulation, however, claiming instead that the "dual office" regulation applies. OGC further contends that because that regulation does not permit transfers if either the transferor or transferee committee accepted public funds,³ the Presidential as a publicly-funded committee could not accept (and the Congressional could not make) the December 1988 transfers.

What, then, is the basis for the belief that the "current-to-previous" regulation does not apply? OGC denies that the Congressional in December of 1988 was a "current committee," already working toward the 1990 election. It bases this claim on the fact of purportedly 1988-related expenditures made by the Congressional after the transfer of \$50,000 to the Presidential. This is the key point, and OGC stresses it as follows:

The Congressional Committee made and reported such 1988-related expenditures after the date of the transfer, with the effect of keeping the 1988 Committee in existence and making it the source of the \$50,000 transfer.⁴

The expenditure of funds for 1988 election related activity after the December 12 transfer is the determining factor here⁵

This fact is central to OGC's legal conclusion, because OGC reasons further that because it continued to make what OGC considers 1988-related expenditures, the Congressional and the Presidential could not be treated as "current" and "previous"

²For sake of simplicity, we refer to a regulation authorizing transfers from "current" to "previous committees," but the right of transfer works both ways. See 54 Fed. Reg. 34103 (Aug. 17, 1989).

³OGC cites other problems under this regulation but the public funds prohibition is sufficient.

⁴OGC Br. at 10.

⁵Id. at 10, n.3.

committees, but rather committees which operated in the same election cycle -- the 1988 election cycle. OGC's conclusion on this point bears emphasis:

In summary, the expenditures made after the \$50,000 transfer to meet 1988-related obligations, and statements made on behalf of the Committee close to the time of the transfer, are proof that the transfer at issue came from the 1988 Congressional Committee. Thus, the transfer occurred between the principal campaign committees of a candidate for two federal offices in the same election cycle, and the appropriate regulation governing the transfer was 11 C.F.R. § 110.3(a)(2)(v)(1988).⁶

OGC cannot sustain this construction. The "current-to-previous" regulation in effect in 1988 made no mention of the term "election cycle," even though the term was then, as it is now, a defined term under the regulations. See, e.g., § 100.3(b)(1988). But even if OGC is correct in that contention, this "election cycle" analysis supports completely the position taken by the Gephardt Committees. The regulations stated then (as they do now) that an "election cycle" begins on the first day following the date of the last general election for the office sought and ends on the date of the next.⁷

By December of 1988, the 1988 election cycle was over. The general election for the 1988 Congressional and Presidential campaigns had ended. The 1988 campaign continued to raise funds, all of which would count toward the 1990 primary election for the House of Representatives. See Presidential year-end report (covering post-election period of 11/29/88-12/31/88). The 1988 Presidential campaign was, of course, fully ended, its termination marked first by Gephardt's withdrawal from the

⁶OGC Br. at 11 (emphasis added).

⁷11 C.F.R. § 100.3(b) stated:

The election cycle shall end on the date on which the general election for the office or seat that the individual seeks is held.

race, including notification to the Commission, and no less decisively by the election of someone else to the office he had sought on the first Tuesday of November, 1988.

The terms of the Commission's own regulations preclude, therefore, treatment of the two committees as operating in the same "cycle." There is, moreover, no evidence that the regulations as written intended the result advocated by OGC, namely, that the Presidential and Congressional would be viewed as both "current" committees in December of 1988.

This is absolutely clear from the history behind the Commission's revision of the "current-to-previous" regulation in 1989, immediately after the elections in question. It made the revisions to clarify their operation, not to change them in material respects, declaring that the revisions "continues the overall approach taken by the current [regulation]." See 54 Fed Reg. 34103 (August 17, 1989). The Commission then added a definition for "previous" and "current" campaign committees which made clear that they apply to the Presidential and Congressional Committees, respectively:

The phrase "previous Federal campaign committee" refers to a campaign committee that supported a candidate in any federal election that has already been held.

It is clear that Presidential election constituted an "election that has already been held," -- held, that, is by December of 1988. The Commission then offers a statement of the requirements for a committee to qualify as a "current Federal campaign committee":

A "current Federal campaign committee" refers to the candidate's committee that is working for his or her nomination or election in an upcoming election.

As noted, the Congressional completed the general election campaign with a surplus but began to raise funds after the election which by operation of Commission

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regulations are contributions toward the next primary election, the 1990 primary election. 11 C.F.R. § 110.2(b)(2)(ii)(1988). So the Congressional plainly qualified as a "current Federal campaign committee". See §§ 110.3(c)(4)(i) and (ii)(1994). Moreover, the Explanation and Justification makes clear the intent of the Commission to distinguish this situation from "transfers between committees of dual Federal candidates."⁸

B. Advisory Opinion Analysis

The regulations mandate the dismissal of the contentions of OGC. The Commission should consider also that OGC's position does not square with numerous Advisory Opinions issued over the years.

The Commission has liberally allowed over the years for transfers from a current to a previous committee for debt retirement. See, e.g., AO 1986-8, Fed. Election Camp. Fin. Guide (CCH) ¶ 5852 (April 23, 1986); 1977-52, Fed. Election Camp. Fin. Guide (CCH) ¶ 5283 (Feb. 8, 1978); 1980-32, Fed. Election Camp. Fin. Guide (CCH) ¶ 5493 (March 21, 1980); 1981-9, Fed. Election Camp. Fin. Guide (CCH) ¶ 5594 (Feb. 20, 1981); 1977-41, Fed. Election Camp. Fin. Guide (CCH) ¶ 5267 (Dec. 8, 1977); 1980-143, Fed. Election Camp. Fin. Guide (CCH) ¶ 5587 (Jan. 26, 1981). It has grounded these decisions in various rationales: the discretion of committees in their

⁸The Commission appears to applied the "dual office" regulation where a candidate sought to make transfers while an active candidate for one of the elections the candidate sought within the same calendar year. See, e.g., AOs 1979-51, Fed. Election Camp. Fin. Guide (CCH) ¶ 5436 (Nov. 2, 1979) and AO 1982-1, Fed. Election Camp. Fin. Guide (CCH) ¶ 5642 (Feb. 5, 1982). (Senate race discontinued in mid-summer while House race months away still pursued). Nor has the Commission been particularly strict on the point. In AO 1987-4, Fed. Election Camp. Fin. Guide (CCH) § 5888 (March 25, 1987), the Commission allowed a candidate for the Senate who had run unsuccessfully in the same cycle for the Presidency to make transfers of Senate surplus to retire the Presidential debt. The Commission conceded that the "dual office" regulation might not apply to "overlapping election cycles". Whether or not termed "overlapping", the elections pursued by the candidate in AO 1987-4 were pursued over the same time period. The candidate had not terminated his Senate committee while running for President or announced that he would not seek reelection; he merely kept it "on file" until the Presidential contest was decided and thereafter revived it by filing formally for the next Senate election.

choice of expenditures; the "current to previous" regulation at issue here; and the capacity of committees to declare "excess campaign" funds. In some such cases, the Commission cited multiple rationales.⁹

Running through all of these decisions has been a recognition that candidates should retain maximum flexibility in accomplishing the retirement of their debts. A contrary decision here -- in the face of the strong legal position of the Gephardt Committees -- runs clearly against this trend, upsetting legitimate debt retirement efforts generally afforded to other committees over the years.

OGC disputes, however, that these funds were fairly declared excess, on the same grounds that 1988-related expenditures continued to be made and that in a letter filed with the Clerk of the House declaring the "excess," the Committee described the surplus as one of the 1988 Committee. But these arguments place reliance on events without legal significance, and they tend to trivialize the issue by making much of simple differences of form.

The event without significance is the letter by which the Committee described itself as a 1988 Committee. Nothing in the regulations suggests that the Committee's own characterization is controlling. To the contrary, the law creates the characterization, not the committee, by focusing on the nature of the funds received

⁹See AO 1980-32, *infra* where the Commission stated:

In addition, 2 U.S.C. § 439a and Commission regulations at 113.2(d) permit the use of excess campaign funds for any "lawful purpose;" however, "any personal use" of the funds is prohibited if the individual candidate was not a member of Congress on January 8, 1980. As discussed in prior advisory opinions, for instance Advisory Opinion 1978-37 [¶ 5335], Commission regulations do not limit the transfer of funds between a candidate's current principal campaign committee and a previous campaign committee of that same candidate. 11 C.F.R. § 110.3(a)(2)(iv). Thus, it would be permissible for campaign funds in excess of amounts needed for expenditures of the 1980 Committee to be transferred to the 1978 Committee and used to retire the 1978 debt (emphasis added).

by the Committee over the relevant periods. The Committee had already begun to receive contributions which by law counted -- and could only count -- against the 1990 primary election limit.

Even if the transferring Committee was the 1988 Committee, it finished the election with a surplus, that is, as of Election Day, 1988, and it had on hand more funds than required to pay its debts. The Committee could easily declare these funds "excess" in the same way as would have been possible for the 1990 Committee. The regulations now, as then, allow the Committee to make the decision of what constitutes the excess and nowhere does the regulation condition the declaration of excess on whether payments for debt continue to occur.¹⁰ Commission opinions based in whole or in part on the authority to declare "excess" do not distinguish between "excess" declared in mid-campaign, or a surplus in hand following the date of the election. Compare AO 1980-32, Fed. Election Camp. Fin. Guide (CCH) ¶ 5493 (March 21, 1980), with AO 1977-41, Fed. Election Camp. Fin. Guide (CCH) ¶ 5267 (December 8, 1977).

The Commission has approved the declaration of "excess" in both cases. So it does not matter whether the surplus here was declared by the "88" or the "90" Gephardt Committee: The Opinions support the application of excess to the retirement of a previous campaign committee's debts.

By suggesting that there is somehow some significance to the question of which committee declared "excess" -- the 88 or the 90 committee -- the Committee is applying the current to previous regulation erroneously, in a way which cancels out the Gephardt Committee's clear right to declare excess in these circumstances. This

¹⁰The regulations have allowed the candidate the decision on "excess," providing that excess funds are "amounts received by a candidate . . . which he or she determines are in excess." 11 C.F.R. § 113.1(e) (emphasis added).

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conflict may have sprung from the multiplicity of rationales which, as noted, the Commission has used over the years to support transfers between and among candidate committees to retire debts. But the result here is to proceed without warrant in the regulations or the Opinions to deny a right to the Gephardt Committee afforded virtually without exception to other committees in the past. Should the problem heart be at uncertainty about the law, this uncertainty is not fairly charged against the Gephardt Committees.

C. Policy

Finally, there is the problem here of reliance by OGC on distinctions without meaningful difference. Had the Congressional merely held the money until the end of December when all expenditures considered by OGC to be '88 related were paid and "transferred" the funds to a newly created '90 committee, the same funds could have been made available within weeks to the same Presidential Committee for the same debt retirement purpose. Or the same result could have been achieved still again by completing the '88 related payments and without creating a "new committee," filing the '88 committee as a '90 committee and making the Presidential transfers. The only requirements for these steps would have been the execution of forms and a simple deferral of the transfers -- all of which could have been accomplished within the same time frame. It is well established that the Act is not properly applied to prohibit an action if the same could be accomplished simply enough another way. In one such case, also addressing "transfers," the Supreme Court stated:

We also find acceptable the Commission's view that the agency agreements were logically consistent with § 441a(a)(4). That section authorizes the transfer of funds among national, state and local committees of the same party. There can be little question but that the section applies to the National Republican Senatorial Committee, as that Committee is part of the Republican Party organization. Under that provision, by using direct money

transfers, instead of an agency agreement, the national committee could write a check to the state committee for the same amount that it would otherwise have spent directly under the agency agreement. That being so, we agree with the dissent below that the difference is "purely one of form, not substance."¹¹

II. Credit Card Expenditures

The Committee has noted before that it will not contest the application of § 9035.2(a)(2), or any underlying judgments about when a payment was made or in what state of delinquency. It is important that the Commission consider upon probable cause the unusual nature of this issue.

In effect, the Commission regulations treat as a violation of the contribution limitations by Mr. Gephardt, certain defaults and errors of his campaign committee. The regulation in question sets up a "grace period" for the use of a candidates credit card by his campaign. Indeed the regulation allows the candidate to loan the use of his or her card to the campaign without making a contribution. In this way, the rule in effect creates a limited exception to the contribution limitation, similar to other such exceptions in Part 100, and most like the exceptions created only recently in Part 116 for volunteers and staff.

It is also clear that the Commission regulations impose upon campaign committees, which use the card on condition of making the necessary payments, the obligation to track their charges and pay them. This obligation may consist only of careful accounting and timely bill payments. Perhaps in other cases, it extends also to the need to assure that available funds are properly budgeted so that monies are on hand as needed to pay invoices. The Commission in promulgating this regulation recognized that the primary duty for enforcement lay with the Committee:

¹¹Fed. Election Comm'n., v. Democratic Senatorial Campaign Comm., Fed. Election Camp. Fin. Guide (CCH) ¶ 9164 (Nov. 10, 1981) at 51255.

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New subsection (a)(2) addresses the application of the \$50,000 limit to disbursements made on a credit card for which the candidate is jointly or solely liable. Charges on the candidate's credit card will count against the \$50,000 limit unless they are paid in full by the committee, including any finance charge billed no later than 60 days after the closing date on the billing statement. The "closing date" is defined by this section as the date after which no further charges are included on that particular billing statement. In drafting this provision, the Commission considered several different dates from which the window for payment could start. One option was the payment due date, which was rejected because certain credit cards are due "upon receipt" and, therefore, not all credit cards set a definite date for payment on the billing statement. Other dates that were considered and rejected were the posting date or transaction date for a particular disbursements. Since there would be so many of these dates, they were considered to be too difficult for committees to track. Moreover, sometimes charges are not included on the next billing statement, which could interfere with the committee's efforts to comply with the limits. The closing date appeared to be the most ascertainable of the dates that could be used, and will allow both committees and the Commission to determine when payment must be made.

It should be noted that the committee must pay the credit card bill within 60 days after the closing date to avoid having the charges applied against the candidate's \$50,000 limit. Even if the candidate initially pays the amount due, the time within which the committee must reimburse the candidate still runs from the closing date on the billing statement. To facilitate the treasurer's review of the disbursements and to ensure that the time limits are met, the committee may want to obtain a credit card specifically for the candidate's campaign charges, for which the bill is sent directly to the committee.¹²

The Commission's position follows from the general rule that a candidate accepts contributions and also loans as "agent" for his campaign. See 11 C.F.R.

¹²32 Fed. Reg. 20672 (June 3, 1987) (emphasis added).

§ 101.2(b). The candidate is the agent, and the committee is the principal. The reference in this "agency" regulation to the acceptance of loans is particularly relevant here. The candidate in offering the use of the card is making available to the campaign the credit extended to him. In doing so, he is acting on behalf of the campaign, as its agent.

The regulations in turn define the obligation of the committee as principal to manage this extension of credit properly. But the Committee in this instance did not do so. The peculiar effect of the regulations is to convert this failure of the committee's into a violation by the candidate of his contribution limitations.

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This outcome turns on its head the normal rule that the agent cannot be held liable for the actions of its principal. See, e.g., Restatement (Second) of Agency §§ 320, 328 (1957); Hill v. Farm Credit Bank, 726 F. Supp. 1201, 1207 (E.D. Mo. 1989) ("[u]nder general tenets of agency law, a third party has no right of action against an agent who acts on behalf of a disclosed principal"); Ago v. Begg, Inc., 705 F. Supp. 613, 617-18 (D.D.C. 1988), aff'd, 911 F.2d 819 (D.C. Cir. 1990). The candidate travels, speaks, raises funds and functions in support of the committee in many ways. He or she does not, however, control the books, manage the campaign checking account, or prepare the public disclosure reports. All of these are the duties of campaign staff. Significantly, the law requires that an Agent does not guarantee "the solvency of the principal." Restatement § 328 cmt. a.

We will seek therefore to have these circumstances fully reflected in the conciliation process, both in the agreement language and the penalty assessed. This concern goes to a fair treatment of this candidate, to avoid the suggestion that this is a "contribution limitation violation" similar in kind to any other. It is, in fact, the rarest case -- where the candidate, as agent, is liable for failures of the committee acting under law as a principal. Id.

III. Mailing List

OGC disputes that the Presidential could have arranged to receive a mailing list from the Iowa Democratic Party, in consideration for fundraising services to the party by Mr. Gephardt. OGC objects on a number of grounds, all of which merit brief mention here.

First, OGC claims that Gephardt could have paid for the mailing list, without exceeding its contribution limit to the party. Second, OGC refers to § 110.8(e)(1) and concludes that Gephardt's activities on behalf of the party served as much to benefit him as the party and could not, therefore, qualify for the allowances of that particular section. In short, OGC holds that Gephardt made a bad bargain with the state party and that the Commission should now fine his campaign for it.

OGC overlooks the central fact that this is the bargain the party and Gephardt made and that the party made apparently a similar bargains with other candidates. In some cases the party offered the list for a fee; in other cases it determined that services provided by the candidate in fundraising would offer more valuable consideration. The party made this decision and it did not make that decision -- as the Commission might find other cases -- to benefit Gephardt among other candidates, but rather for its own fundraising purposes.

In this respect, the opinions cited by OGC which identify mailing lists as a "unique asset" go the same point. The asset in question was the party's, to dispose of as it saw fit. The party, not the Commission, is best equipped to decide which of the arrangements with candidates most effectively serve its party-building purpose. The Presidential did not second guess that decision nor had it any reason to do so. The party asked Gephardt reasonably to participate in fundraising efforts and by doing so he no doubt provided for the party considerably more than the \$10,000 that the OGC has decided upon by way of valuation.

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Only recently the Commission addressed and could not decide another case which involved political party committees providing voter lists to a candidate. See Matter Under Review 3024 (September 16, 1994). There the dissent protested bitterly the attempt by three of the Commissioners to shut down what they viewed as legitimate political party activity. Yet in that case, the circumstances presented a much closer question than found here. There, unlike here, the political party made the list available to a nominee and unlike here, it did so in the heat of a general election contest. The party did not support any other candidates and their own interests -- other than the interest in assisting in his re-election -- were not remotely affected. The political party involvement in providing a mailing list was merely one of a number of ways that the party sought to advance the re-election prospects of its nominee.

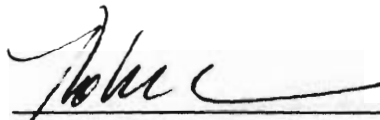
In this case, a political party took advantage of the interest of a wide number of candidates in its primary to raise money and otherwise enlist them in party-building efforts. The party made this judgment and should be free, we would argue, to make it without undue regulatory constraint. The result conceivably could be different if the Commission could show on the record that Mr. Gephardt did not render these services or that the party had not requested them. The record however remains clear that the bargain sought by the party was fulfilled and that under the arrangement made, both the candidate and the party benefited in a manner which certainly does not threaten the integrity of the Act. Rather it promotes the good of the party and in so doing merits the protection of the Commission's decision in this case. To cite again DSCC v. FEC:

Finally, the Commission's interpretation is not inconsistent with any discernible purpose of the Act. In Buckley v. Valeo, *supra*, we recognized that the primary interest served by the Act is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their

actions if elected to office. 424 U.S., at 25. It has not been suggested that this basic purpose of the Act is compromised by [party] agency arrangements.

Section 441a(d)(3) fits into the general scheme by assuring that political parties will continue to have an important role in federal elections. It is hardly unreasonable to suppose that the political parties were fully capable of structuring their expenditures so as to achieve the greatest possible return. Agency agreements may permit all party committees to benefit from fundraising, media expertise, and economies of scale. In turn, effective use of party resources in support of party candidates may encourage candidate loyalty and responsiveness to the party.¹³

Respectfully submitted,



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¹³Fed. Election Comm'n., infra, at 51256.

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October 17, 1994

VIA FAX

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Ms. Anne Weissenborn
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3342

Dear Ms. Weissenborn:

I appreciate your message of October 5, 1994, advising me that I should inform your Office by letter of the Gephardt respondents' wish to address certain issues in a Supplemental Brief.

As I noted, one issue we did not address in our Brief filed September 20, 1994 concerns unpaid "advances" by individuals, partnerships and political committees. We had originally advised your office that we would not further contest liability, because we did not consider it likely that we would make much headway in doing so, but we reconsidered our decision in light of decisions reached and released to the public in a case arising out of another Presidential campaign audit.

I also acknowledge your request that we file any such Supplemental Brief no later than early this week. As I confirmed to your office earlier today, we will file this

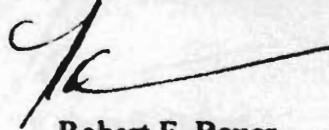
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Ms. Anne Weissenborn
October 17, 1994
Page 2

Supplemental no later than tomorrow, Tuesday the 18th of October.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Attorneys to
Gephardt for President Committee
Gephardt in Congress Committee
S. Lee King, as treasurer and
Richard A. Gephardt

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Gephardt for President Committee)
Gephardt in Congress Committee) MUR 3342
S. Lee Kling, as treasurer)
and)
Richard A. Gephardt)

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
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SUPPLEMENTAL BRIEF IN THE MATTER OF ADVANCES

Introduction

The Gephardt Respondents previously advised the Commission that it would not further contest the liability issues presented by certain advances made on behalf of the Committee by individual volunteers, lawyers acting through their firms or principal campaign committees of candidates supporting Mr. Gephardt for President.¹ Today Respondents are seeking to redirect the Commission's attention to this issue, believing that recent decisions of the agency cast a different light on the treatment of "advances" in this case.

By the time of its September 20, 1994 Brief, the Respondents had offered a full defense on the merits and the Office of General Counsel and the Commission appeared, in turn, to have rejected it. In offering to omit further briefing, Respondents intended to save the time and expense committed to an apparently futile argument on

¹ In a letter dated July 6, 1992, Respondents also declined further argument over debts owed by individuals. As noted below, this decision has been revisited to take account of the legal developments discussed infra.

liability. See Reply to General Counsel's Brief, September 20, 1994 at 2. While this position did not reflect diminished confidence in the merits of their argument, their preference then was to reserve further argument on the point for use in shaping a conciliation agreement.

The Commission then released its decision in MUR 3947, where it concluded that certain individuals whose advances violated the requirements of section 116.5 had made impermissible contributions but that no further action (other than issuance of admonishment letters) was required. The Commission decision, reached with only one dissent, followed a recommendation of the Office of General Counsel. This decision raises fundamental questions about the equitable treatment of advances outstanding on "probable cause" in this case and, more generally, about the consistency and fairness of the agency's decisions on advances made in different election cycles under different rules and regulations.

1988 Rules

In 1988, when the advances in this case were made, the regulations did not distinguish between advances by incorporated and unincorporated vendors, or between advances by individuals which were "contributions," subject to limits and reporting, and those which, if reimbursed in timely fashion, would not be so treated. Nor did any regulation suggest, much less clearly state, that "political committees" could not advance funds in expectation of repayment.

The regulations ran in several different directions at once on this issue. For example, the statute defines "contribution" to include an "advance," but the Commission regulations include broad authority to committee volunteers using corporate or union facilities to reimburse the fair market charge for the use of the

facilities provided that reimbursement is made within a commercially reasonable time. Nowhere in this regulation did there then, or does there now, appear any reference to the contribution limitations. The regulations explicitly contemplate payment by the volunteer or the candidate -- one or other.² It seemed unlikely in the extreme that Congress or the Commission intended to allow more favorable treatment of corporate or union volunteers, than of other volunteers, such as individual volunteers who are not corporate employees or stockholders but act solely in their individual capacity.

The 1988 version of § 114.9 is unchanged to this day. One other change has occurred, of central significance to this case. The 1988 regulations authorized "extensions of credit" by any person in any amount, provided that commercially reasonable efforts were made by those persons to collect on the debt or it was settled or forgiven in accordance with the standards then in effect for corporate vendors. The regulations stated in full:

"The extension of credit by any person for a length of time beyond normal business or trade practice is a contribution, unless the creditor has made a commercially reasonable attempt to collect the debt. [citation omitted.]

² The regulation in question states in pertinent part:

"A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge. (citation omitted), for the use of such facilities." (emphasis added).

"Use of corporate or labor organization facilities to produce materials. Any person who uses the facilities of a corporation or labor organization to produce materials in connection with a Federal election is required to reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market." 11 C.F.R. §§ 114.9(a)(2), (c). (emphasis added.).

A debt owed by a political committee which is forgiven or settled for less than the amount owed is a contribution unless such debt is settled in accordance with the standards set forth. [citation omitted.]"

The regulation made plain that these "credit" regulations applied to any person. The regulations also then, as now, defined a "person" to include an individual, partnership, corporation, or political committee (including a principal campaign committee) and "any other organization."³ For all purposes relevant here, of course, an "extension of credit" is treated like an advance in the application of the contribution limits. See FEC Advisory Opinion 1984-37, Fed. Election Camp. Fin. Guide (CCH)(Sept. 26, 1984).

New Rules

The Commission appeared to recognize the confusion and apparent contradictions running through its regulations. By December of 1988, two months after the election at issue in this case ended, the Commission proposed regulations in response to acknowledged uncertainty about the law. It referred to "issues" which had arisen in these matters. 53 Fed. Reg. 49193 (Dec. 6, 1988). Almost two years later, the Commission acted on a final rule, declaring that it was necessary to "clarify" regulations then in effect which had produced considerable confusion. 55 Fed. Reg. 40376 (Oct. 3, 1990).

³ As they do today, the regulations followed the statute, 2 U.S.C. § 431 (11), in defining "person" to include:

"... means an individual, partnership, committee, association, corporation, labor organization, and any other organization, or group of persons, but does not include the Federal government or any authority of the Federal government." 11 C.F.R. § 100.10 (1988).

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Also significant is a corresponding change in the regulations since 1988, in the wording of section 100.7(a)(1)(4). Now the section refers not to an extension of credit by "any person", but to an extension of credit "in the ordinary course of the person's business" and to the debt settlement procedures of Part 116. This change could not be assumed to have been casually made, or somehow meaningless. Rather it introduced into the rule a limitation which did not exist before. In this respect, the change confirmed that the law was different in 1988 than it is today -- if not different in intent, certainly different enough in appearance to have promoted good faith misunderstanding. Good faith misunderstanding is not, however, fair ground for the imposition of liability, when the confusion is attributable at least in part to the structure and wording of the Commission's own regulations.

The Present Case

The issues surrounding "advances" in this audit arose out of payments made by individuals, the principal campaign committees of candidates supporting Mr. Gephardt for President and law firms whose attorneys who were supporters. Prior to the adoption of the current section 116.5, these payments were properly addressed as follows:

- Individuals associated with incorporated law firms could make use of corporate facilities, provided that reimbursement at fair market value was made by the individual or the campaign within a commercially reasonable time. Here the relevant regulation was to be found at section 114.9. Failure of the individual or the committee to reimburse the charge would result in a

corporate contribution; but if the political committee sought to treat the obligation as a debt and to settle it, it could do so under the corporate debt settlement provisions of section 110.4.

- Any political committees or individuals acting without regard to any status as corporate employees could extend credit as a "person" authorized to do so under section 100.7(a)(1)(4), provided that the market-compatible charge was repaid by the committee within a commercially reasonable time.⁴ Once again, if the political committee failed to repay, owing to lack of funds, then the committee could settle for the less than the full amount, or forgive it altogether, if the requirements of commercial settlement then in effect under § 110.4 were satisfied.

Even if the Commission later concluded that it would not permit settlement in these circumstances, in effect upholding the strictest treatment of appropriate "advances" or extensions of credit, the Respondents' construction was a reasonable one in the circumstances. Indeed, the Commission's own explanation thereafter of the

⁴ The regulation imposed an "ordinary course" requirement in this sense -- that the treatment of the advance could not depart from the market model, both in the amount charged and the time in which repayment was required. The reference in the "regulation" to any **person** defeats any suggestion, however, that only businesses could provide extensions of credit under this provision.

need for new regulations, leading to the adoption of the Part 116, demonstrates that the law was not clear over the period in question.⁴

OGC and the Commission maintain in these proceedings, however, that the "ordinary course" requirement referred to the occupation of the person advancing funds. In order to do so, the Commission is required to find that "political committees" do not in the "ordinary course" advance funds to candidates other than their own to finance fundraising or other activities, and that individual volunteers do not advance funds in the "ordinary course" for their candidates. In this way, the Commission has read into prior section 100.7(a)(1)(4) a limitation which it did, by its terms, impose. Respondents made their case and, failing to prevail, chose to await conciliation to raise the question of uncertainty of the law by way of mitigation.

Impact of MUR 3947

The release MUR 3947, decided under section 116.5, presents fresh issues for the disposition of advances in this case. There the Commission chose to take no further action in the case of individual volunteers who had advanced funds for fundraising and transportation expenses benefiting a Presidential campaign. OGC took this position and the Commission adopted it, notwithstanding the clear terms of

⁴ The only contrary line of reasoning appears in Advisory Opinion, 1984-37, Fed. Election Camp. Fin. Guide (CCH) (Sept. 26, 1984), in which is to be found a footnote referring to the treatment of "advances." This footnote was dicta, not immediately responsive to the question put by the Requestor. It was also, on its own terms, confusing. The Commission stated somewhat equivocally that "[I]f an employee pays for such expenses from his or her own funds, technically such employee has made a contribution in kind to the candidate involved." (emphasis added). The Commission proceeds to state in one place that generally the allowance for extension of credit applies to avoid any contribution, except and only except where a person works "for Federal candidates at the direction of a [multicandidate] committee;" but in another place, it narrows the allowance to apply only to "an extension of credit by any person other than a business acting in its ordinary course of operation." This latter construction, in turn, did not square with a regulation which applied to "any person" without exception, under a definition of "person" including individuals and committees other than "businesses."

the new regulations which prescribe the means for individuals associated with a campaign to make lawful advances. Moreover, by the time of the events under review in this MUR, the regulations had been in existence and available to all concerned for almost two years.

The question of fundamental enforcement approach is how the Commission would excuse the conduct at issue in MUR 3947, occurring in violation of regulations specifically fashioned to address such conduct, but still proceed against the conduct at issue here where the law was uncertain and the parties in question acted in the good faith belief that their actions were lawful. The problems in the Commission's position are problems of both consistency and enforcement policy.

Consistency

The problem of consistency is apparent in the conflicting treatment of transportation expenses in the two cases, that MUR and this one. In MUR 3947, the individual financing transportation costs in violation of the rules paid his own, while in this case -- to take the example of Mr. Richard Hughes -- he paid for the transportation of others as well as himself. See MUR 3342, General Counsel's Brief (July 25, 1994). But this distinction is not material. The legal issue in both instances is the same: could the individual advance funds for transportation costs of the campaign -- his own, that of others, or both -- without regard to the contribution limits, if the political committee intended to reimburse the costs but, lacking funds, could not do so and attempted instead to settle the debt? The Commission, however, declined to take action in the one case while voting "reasonable believe" in this one which has now progressed to a "probable cause" finding of OGC.

Sound Policy

The question of sound policy arises where the Commission declines to act against the advances of a wealthy individual, while seeking to uphold a stricter position against "political committees" such as the principal campaign committees of candidates supporting Mr. Gephardt.

The FECA is largely concerned with the dangers inherent in large individual contributions, and the advances of wealthy donors implicates this concern directly, as the Commission acknowledged in acting on the final rules for Part 116.⁵ The same concerns hardly apply where a political committee established by one candidate advances funds to finance an event helpful to another candidate -- indeed, to both candidates -- with the understanding that the costs will be reimbursed in accordance with the standards of section 100.7(a)(1)(4).

This problem of enforcement policy is compounded by the decision to apply a strict interpretation against these advances under old, unsettled law, while relaxing enforcement under new regulations clearly drawn to limit "advances" by individual campaign volunteers and others who are not commercial "vendors." Section 116.5 was before the regulated community for 2 years before it was enacted, and it had been

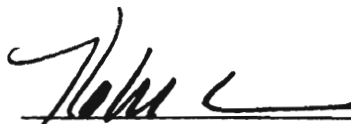
⁵ The Commission stated:

"Issues have arisen during the course of several compliance matters and in advisory opinion requests concerning payments by individuals, including campaign staff, using personal funds including personal credit cards to purchase various goods or services for political committees. See MUR 1349, and AO 1984-37. For example, such individuals have used, or sought to use, personal funds to purchase goods and services such as airfare, rental cars, meals, lodging, postage, office supplies, messenger services and a variety of other election-related items with the expectation of later reimbursement by the committee." 53 Fed. Reg. 49195 (Dec. 6, 1988). (emphasis added).

effective for still another two years before the payments addressed in MUR 3947. The Commission's decision to decline action there, while pursuing action on the "advances" in this matter, is arbitrary and not supported by any material legal or factual distinction between the two situations.

For these reasons, the Gephardt Respondents request that the Commission take no further action in the matter of the "advances" still at issue in this proceeding.

Respectfully submitted,



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Gephardt in Congress Committee,
S. Lee Kling, as treasurer and
Richard A. Gephardt

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BEFORE THE FEDERAL ELECTION COMMISSION

JAN 13 1 33 PM '95

In the Matter of

Gephardt for President Committee)
S. Lee Kling, as treasurer)
Gephardt in Congress Committee)
John R. Tumbarello, as treasurer)
Iowa Democratic Party (Federal Division))
Mary Maloney, as treasurer)
Heard, Goggan, Blair & Williams)
Richard A. Gephardt)
Richard Hughes)

SENSITIVE

MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On April 16, 1991, October 1, 1991, February 25, 1992 and June 29, 1993 the Commission found reason to believe that the Gephardt for President Committee ("the Presidential Committee") and S. Lee Kling, as treasurer, violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), 434(b)(3)(B), and 441b(a), and 26 U.S.C. § 9035(a). Also on October 1, 1991, the Commission found reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a), and, on February 25, 1992, that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A). On June 29, 1993 the Commission found reason to believe that the Gephardt in Congress Committee ("the Congressional Committee") and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and that the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b)(4)(H)(i). On May 3, 1994, the Commission revoted to find reason to believe that the partnership of Heard, Goggan, Blair and Williams had violated

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2 U.S.C. § 441a(a)(1)(A). An investigation ensued and on July 29, 1994, General Counsel's briefs were submitted to each of the above respondents setting forth the positions of this Office on all of the issues remaining in this matter.

The Gephardt for President Committee registered with the Commission on March 9, 1987 as the authorized committee of Richard A. Gephardt for his campaign for nomination to the office of President. Mr. Gephardt's date of ineligibility for public matching funds was later determined to have been March 28, 1988, based upon his announcement of withdrawal from the campaign that same day. The deadline for filing as a Congressional candidate in Missouri was March 29, 1988, and that was the date Mr. Gephardt filed for this office with state authorities.

On April 24, 1988 Mr. Gephardt filed with the Commission his Statement of Candidacy for the 1988 election for the office of U.S. Representative from the state of Missouri, District 3. According to the reports filed by the Gephardt in Congress Committee in 1988, that committee received contributions for the 1988 primary election totaling in excess of \$5,000 no earlier than April 22, 1988, triggering Mr. Gephardt's congressional candidacy on that date for purposes of the Federal Election Campaign Act ("the Act"). See 2 U.S.C. § 431(2)(A).

This report contains recommendations to assure that this matter conforms to the court's opinion in FEC v. NRA Political Victory Fund, et. al., No. 91-5360 (D.C. Cir. Oct. 22, 1993), cert. granted, 114 S.Ct. 2703 (1994).

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II. RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA

Consistent with the Commission's November 9, 1993 decisions concerning compliance with the NRA opinion, this Office recommends that the Commission ratify its findings of reason to believe that the Gephardt for President violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), 434(b)(3)(B), and 441b(a) and 26 U.S.C. § 9035(a); that the Gephardt in Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A); that the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b)(4)(H)(i); that Richard A. Gephardt violated 26 U.S.C. § 9035(a); and that Richard Hughes violated 2 U.S.C. § 441(a)(1)(A).

II. ANALYSIS¹

A. Receipt of Excessive Direct Contributions

The General Counsel's Brief states that the Presidential Committee's records show this committee received excessive direct contributions totaling \$72,980 from 132 individuals. The committee has not produced evidence that the excessive amounts were refunded or reattributed within 60 days of receipt. Nor has the committee disputed the above figure in its responses to the Commission.

This Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and

1. The General Counsel's Briefs are incorporated by reference into this report.

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S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions totaling \$72,980.²

B. Excessive Transfer from the Gephardt in Congress Committee

The basic issue before the Commission concerning the transfer of \$50,000 by the Congressional Committee to the Presidential Committee on December 12, 1988 arises from a disagreement over which of the Commission's regulations covering transfers between authorized committees of a candidate governed this particular transfer. See General Counsel's Briefs for a discussion of the regulations.

In the briefs sent to the two respondent committees, it continued to be the position of this Office (1) that the 1988 regulations apply to the transfer between the Gephardt committees here at issue, and (2) that, because expenditures related to the 1988 campaign were made by the Congressional Committee after the December 12, 1988 transfer, the transfer came from the 1988 Congressional Committee, not the 1990 Congressional Committee. The transfer was not, therefore, made by a current committee to a previous committee; rather, it was made between two committees of

2. The Commission found reason to believe that four of these individuals, F.P. Blank, Edmund M. Reggie, James C. Robinson and William D. Rollnick violated 2 U.S.C. § 441a(a)(1)(A). On September 23, 1992, the Commission accepted a conciliation agreement with Mr. Blank and closed the file as to this respondent. On January 6, 1993, the Commission voted to take no further action against Mr. Rollnick and closed the file as to his involvement. On October 19, 1993, the Commission found probable cause to believe that Mr. Reggie violated the Act, but voted to take no further action and closed the file as to him. And, on February 10, 1994 the Commission accepted a conciliation agreement with Mr. Robinson and closed the file with regard to him.

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a candidate seeking two offices within the same election cycle. On these bases, this Office in its briefs applied to the transfer at issue the requirements of 11 C.F.R. § 110.3(a)(2)(v) (1988).³ Further, because Mr. Gephardt received public funds for his campaign for the 1988 presidential nomination, and because, for reasons discussed in the General Counsel's briefs, the Audit Division concluded that the \$50,000 transfer contained monies which would have resulted in excessive contributions, this Office stated its intention to recommend that the Commission find probable cause to believe that the Presidential Committee and the Congressional Committee had violated 2 U.S.C. § 441a(f) and 2 U.S.C. § 441a(a)(1)(A) respectively.

In their joint reply brief dated September 19, 1994, both respondent committees maintain their position that the December, 1988 transfer between the Congressional Committee and the Presidential Committee was between a current (1990) committee and a previous (1988) committee, bringing it within the coverage of 11 C.F.R. § 110.3(a)(2)(iv). In support of their argument, respondents first cite 11 C.F.R. § 100.3(b), in particular the provisions that an election cycle "shall begin on the first day

3. The respondent committees correctly note that the phrase "election cycle" did not appear in the 1988 "current-to-previous" regulation at 11 C.F.R. § 110.3(a)(2)(iv). Nor did it appear in the "dual candidacy" regulation at Section 110.3(a)(2)(v). The Commission, nevertheless, has employed "election cycle" language in explaining the dual candidacy regulation. See Advisory Opinions 1982-1 and 1987-4. (The latter opinion was issued to the 1986 Senator John Glenn Committee regarding a transfer by the Senate Committee to the same individual's 1984 John Glenn for President Committee; thus, contrary to counsels' statement in footnote 8 of their reply brief, it did not address a transfer between two committees in the same cycle.)

following the date of the previous general election for the office or seat which the candidate seeks" and "shall end on the date on which the general election for the office or seat that the individual seeks is held." Respondents argue that by the time of the December, 1988 transfer both 1988 Gephardt campaigns were over, and that contributions received by the Congressional Committee after the 1988 general election were for the 1990 primary election. Therefore, the transfer was assertedly between two committees operating in two different election cycles.

Respondents have not, however, cited the entirety of 11 C.F.R. § 100.3(b). The portion which establishes the beginning of an election cycle concludes with the following proviso: "unless contributions or expenditures are designated for another election cycle." (Emphasis added.) In the present matter the expenditures made by the Congressional Committee after the December 12, 1988 transfer were reported as being for the "General Election," thereby designating them for the 1988 general election and extending both the 1988 election cycle and the life of the 1988 Congressional Committee.

Respondents also argue that the Commission's revision of 11 C.F.R. § 110.3(a)(2)(iv) in 1989 was intended "to clarify" the operation of the regulations, "not to change them in material respects" The consequence of this argument is to require that new language in the revised regulation be read back into the earlier one. In support of their argument, respondents look to the Commission's Explanation and Justification for this regulatory revision. 54 Fed Reg. 34103 (August 17, 1989).

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The Commission's revised transfer regulations at 11 C.F.R. § 110.3(c)(4)(1989), to which the respondents refer, provide for unlimited transfers "between a candidate's previous Federal campaign committee and his or her current Federal campaign committee, or between previous Federal campaign committees, provided that the candidate is not a candidate for more than one office at the same time, and provided that the funds transferred are not composed of contributions that would be in violation of the Act."⁴

The Explanation and Justification for the 1989 revision of 11 C.F.R. § 110.3(a)(2)(iv) states,

New § 110.3(c)(4) continues the overall approach taken by current § 110.3(a)(2)(iv), which permits transfers in either direction between a current campaign committee and a previous campaign committee of the same candidate, so long as the funds do not contain contributions in violation of the Act. In addition, new language has been added to clarify that transfers of permissible funds between two previous campaign committees of the same candidate are also allowed under paragraph (c)(4).

The Explanation and Justification then goes on to discuss the definitions of "current committee" and "previous committee" added by the revisions and cited by respondents. According to these

4. 11 C.F.R. § 110.3(c)(5)(1989) permits unlimited transfers between the principal campaign committees of an individual seeking nomination or election to more than one Federal office provided that the transfer does not occur while that individual is "actively seeking" more than one office, the individual has not accepted Federal funds, and the transfer does not contain contributions which would cause a contributor to exceed his or her limitation. "An individual will be considered to be seeking nomination or election to more than one Federal office if the individual is concurrently a candidate for more than one Federal office during the same or overlapping election cycles."

definitions at 11 C.F.R. § 110.3(c)(4)(i) and (ii)(1989), a "current Federal campaign committee" refers to the candidate's committee that is working for his or her nomination or election in an upcoming election, while a "previous Federal campaign committee" is one organized for the candidate's campaign for an election already held.

Relying upon this revised regulatory language, and upon the Explanation and Justification, respondents argue that these definitions of "previous" and "current" should be applied to the Gephardt committees. Respondents argue that this application would render the December 1989 transfer a "current" to "previous" transaction.

Whether or not the new definitions would affect this Office's characterization of a similar transaction which took place after the 1989 regulatory revisions were in place, the language at 11 C.F.R. § 110.3(a)(2)(iv) and (v)(1988) constituted the regulatory provisions relied upon by candidates and their committees throughout the 1987-88 election cycle, and were the provisions legally applicable to the transfer here at issue. These regulations clearly differentiated between transfers between a current and a previous campaign committee (Section 110.3(a)(2)(iv)) and transfers between committees of a candidate who sought more than one Federal office in an election cycle so long as he or she was not "actively seeking" more than one office at the same time (Section 110.3(a)(2)(v)). Taken as written in

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December, 1988, it was 11 C.F.R. § 110.3(a)(2)(v) which applied to the transfer between the Gephardt committees.⁵

This Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, and the Gephardt for Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(f) and 2 U.S.C. § 441a(a)(1)(A) respectively.

C. Receipt of Excessive and Corporate In-Kind Contributions

The Commission also found reason to believe that the Presidential Committee violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from six individuals, three corporations including two law firms, three authorized candidate

5. Even if 11 C.F.R. § 110.3(c)(4)(1989) were applicable, thus permitting unlimited transfers between previous committees, the presence of joint-fundraising proceeds in the transfer between the Gephardt committees would have rendered the transfer impermissible. The regulations governing joint-fundraising provide that a contributor may make a contribution to the joint-fundraising committee only up to the combined amount which he or she could contribute to all participants, including any other contributions made to those committees. The joint-fundraising committee must refund any resulting excessive amounts. 11 C.F.R. § 102.17(b)(5) and (6). In the present matter, the joint-fundraising agreement which created the Gephardt Committee acknowledged that certain contributions would not be allocable to the Presidential Committee because the contributions would thereby exceed the contributors' limitations. The mere passage of time, and a sojourn in the account of the Congressional Committee, would not have converted what would have been excessive contributions into non-excessive contributions as regards the Presidential Committee. This same conclusion applies to respondents' arguments regarding declarations of excess funds by either the 1988 Congressional Committee or the 1990 Congressional Committee.

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committees, a partnership and a state party committee.⁶ In all instances, except that of the state party committee, these apparent in-kind contributions took the form of advances made on behalf of the Presidential Committee which came to the attention of the Commission as a result of debt settlement requests submitted by that committee. The General Counsel's Briefs discuss a series of recommendations with regard to these advances.

a. Advances by Individuals, Candidate Committees and Partnership

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The reply brief submitted by the Presidential Committee on September 19, 1994, did not address the issue of excessive advances, except to note that they understood the position of this Office " - and likely that of the Commission - to be inalterable." More recently, however, the Presidential Committee has submitted a supplemental brief which discusses the issue of advances at length.

1. Regulations

Respondents assert that in 1988 there was no distinguishing line drawn "between advances by individuals which were 'contributions,' and those which, if reimbursed in a timely fashion, would not be so treated." Respondents acknowledge that the Act's definition of "contribution" included an "advance." Pointing, however, to the regulatory provisions which permit

6. Based on the amounts of the advances involved, the Commission found reason to believe that two other individuals, William Fleming and Mack E. Barham, violated 2 U.S.C. § 441a(a)(1)A). This Office was unable to locate Mr. Fleming, and Mr. Barham's excessive amount equaled only \$1,164.22. On October 19, 1993, the Commission voted to take no further action and closed the file as to these individuals.

volunteers to use corporate or union facilities and to make reimbursements of the fair market value of such facilities within a commercially reasonable time, (See 11 C.F.R. § 114.9), respondents assert that it was unlikely that either Congress or the Commission intended more favorable treatment of corporate or union volunteers.

Respondents also argue that the law governing extensions of credit was "different enough in appearance to have promoted good faith misunderstanding."⁷ They compare the language of 11 C.F.R. § 100.7 (1988) with that of the same regulation as revised in 1990.⁸ Respondents argue that in 1988 the "credit" regulation applied "to any person," including "an individual, partnership, corporation, or political committee," and that the 1990 change at Section 100.7(a)(4) "introduced into the rule a limitation which did not exist before."

Respondents' argument is premised upon a basic misreading of the purpose of the provisions which they cite. In 1988 the Act and the Commission's regulations defined "contribution" and "expenditure" by any "person" as including an "advance" made for the purpose of influencing, or in connection with, a federal election. 2 U.S.C. § 431(8), 2 U.S.C. § 431(9) and 2 U.S.C. § 441(b)(2). Exceptions as to advances by individuals were found

7. 11 C.F.R. § 100.7(a)(4)(1988) stated that "[t]he extension of credit by any person for a length of time beyond normal business or trade practice is a contribution, unless the creditor has made a commercially reasonable attempt to collect the debt."

8. "The extension of credit by any person is a contribution unless the credit is extended in the ordinary course of the person's business"

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at 11 C.F.R. § 100.7(b)(8)(1988), which permitted certain limited, unreimbursed payments for room rentals, invitations, food, and beverages and for limited, unreimbursed transportation costs incurred by an individual on behalf of candidates or political party committees as well as unreimbursed payments by volunteers for their own subsistence. There was no regulatory provision permitting outstanding reimbursements to be treated as debts which could be settled.

Also in 1988, as now, 2 U.S.C. § 441b prohibited contributions or expenditures by corporations and labor organizations. 11 C.F.R. § 114.10(1988), however, permitted corporate entities to extend credit to political committees, provided such extensions were made in the ordinary course of business and the terms are substantially similar to those extended to nonpolitical clients. The same regulatory provision also permitted corporate entities to forgive debts owed by candidates or political committees provided that the forgiveness was "commercially reasonable." As early as 1978 the Commission, as a matter of policy, agreed that non-corporate creditors also could forgive debts owed by political committees without such forgiveness resulting in contributions, (See Agenda Document #78-118, dated April 27, 1978 and adopted by the Commission on May 4, 1978).⁹ This ability to forgive a debt presumed the ability to extend credit. As with corporate vendors, such extensions of credit and forgiveness of debt by non-corporate

9. This policy is now reflected in the Commission's regulations at 11 C.F.R. § 116.3(a).

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creditors had to have been in the ordinary course of business and commercially reasonable.

Thus, in the present matter, extensions of credit by individuals and political committees to the Presidential Committee would have to have been made in the context of a business relationship in order to come within the exception to the definitions of "contribution" and "expenditure." Advances for goods or services made by individuals or other persons not in the business of providing those goods or services have always constituted contributions except in the narrow circumstances cited above.

In light of the virtually across-the-board statutory prohibition on corporate and labor organization contributions and expenditures, 11 C.F.R. § 114.9 was designed to permit, under particular circumstances, "occasional, isolated or incidental use" of corporate or labor organization facilities by individual employees and/or stockholders serving as volunteers for federal campaigns without resulting corporate or labor contributions or expenditures. The focus of the regulation was, and still is, upon the corporation or labor organization, not upon the volunteer as a potential contributor.

In situations in which the use of corporate or labor organization facilities went beyond "occasional, isolated or incidental," reimbursements to the corporation or labor organization were required within given time periods, otherwise corporate contributions resulted. Such reimbursements by volunteers constituted advances and thus contributions by those

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individuals. In this way the volunteers using corporate facilities were, and still are, treated similarly to those volunteers who act outside the corporate or labor organization context. Both were permitted to make in-kind contributions in the form of advances or reimbursements up to \$1,000 per election; both were deemed to have made excessive contributions if their advances or reimbursements on behalf of a campaign exceeded their contribution limitations.

2. MUR 3947

In arguing that the Commission should not pursue further the receipt of excessive advances, respondents place considerable emphasis upon the Commission's determinations in MUR 3947.¹⁰ They argue that problems of consistency and policy arise from what are perceived as the Commission's differing positions in these

10. On August 2, 1994, the Commission addressed, in the context of Debt Settlement Plan 1994-02, debt settlement requests submitted by the Kerrey for President Committee. On the same date the Commission also made determinations in an enforcement matter, MUR 3947, which involved two of the debts for which approval of settlements had been requested by the Kerrey campaign, but which involved apparent excessive contributions. At the recommendation of this Office the Commission voted to find reason to believe that the two individual creditors had violated 2 U.S.C. § 441a(a)(1)(A) and that the Kerrey committee had violated 2 U.S.C. § 441a(f), but to take no further action and close the file.

MUR 3947 was decided pursuant to the provisions of 11 C.F.R. § 116.5 which went into effect in June, 1990. At issue in this matter were advances made on behalf of the Kerrey committee by its treasurer which totaled \$8,161.52 (\$6,238.02 for travel and \$1,923.50 for unspecified purposes), and advances made by another individual for fundraising event expenses which totaled \$8,977.65. Based upon the unrefunded balances and their relationships to the threshold needed for a referral from the Audit Division (\$5,000), and upon the fact that 11 C.F.R. § 116.5(d) permits individuals who have made advances to enter into debt settlement agreements with a political committee which received the benefits of such advances, the Commission took the actions cited above.

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matters. With regard to consistency, respondents point particularly to the transportation expenses incurred by the committee treasurer in MUR 3947 and by Richard Hughes in the Gephardt matter. In the earlier matter the treasurer paid \$6,238 for sixteen of his own trips on behalf of the campaign. Mr. Hughes made \$3,807.50 in advance payments for a single trip on a corporate aircraft involving himself and a number of others, including Mr. Gephardt.

Respondents question why the Commission would decline "to act against the advances of a wealthy individual, while seeking to uphold a stricter position against 'political committees' such as the principal campaign committees of candidates supporting Mr. Gephardt." Further, respondents question why the Commission would "apply a strict interpretation against [the Gephardt-related] advances under old, unsettled law, while relaxing enforcement under new regulations clearly drawn to limit 'advances' by individual campaign volunteers and others who are not 'commercial vendors'."

The regulations under which the Gephardt for President Committee benefited from the advances in question did not include 11 C.F.R. § 116.5. At the time of the transactions at issue, advances were to be considered contributions by definition unless they came within the narrow exceptions outlined at pages 11-12 above. There was also at that time no provision in the regulations for debt settlement agreements with regard to advances made by individuals or entities not acting as commercial vendors; hence, payments made after the 60 day period provided for refunds

of excessive contributions did not reduce the excessive amounts of advances/contributions which constituted a violation. The Commission's determinations in MUR 3947 are therefore not relevant to the advances made on behalf of the Gephardt campaign.

3. Advances from Individuals

In the present matter the excessive advances/in-kind contributions made by six individuals on behalf of the Presidential Committee totaled \$9,521.41. No information has been provided in response to the General Counsel's Brief which changes the nature or amounts of the advances. Thus, this Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from six individuals.

One of these six individuals, Richard Hughes, remains a respondent in this matter.¹¹ No response has been received to the General Counsel's Brief sent to Mr. Hughes. Prior to briefing he repeatedly delayed in responding to inquiries from this Office. When he did respond his answers to the questions asked were very incomplete. This Office recommends that the Commission find probable cause to believe that Richard Hughes violated 2 U.S.C.

11. See the General Counsel's Brief sent to Mr. Hughes for discussion of this violation.

Based upon the amounts of the advances involved, the Commission found reason to believe that two of the other five individuals, William Fleming and Mack E. Barham, also violated 2 U.S.C. 441a(a)(1)(A). This Office was unable to locate Mr. Fleming, and Mr. Barham's excessive amount equaled only \$1,164.22. On October 19, 1993, the Commission voted to take no further action and closed the file as to these two individuals.

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§ 441a(a)(1)(A). In addition, in light of Mr. Hughes' lack of cooperation, this Office recommends seeking a civil penalty from him.

4. Advances from Political Committees

The three political committees which made excessive advances on behalf of the Presidential Committee were the Beryl Anthony for Congress Committee, the Levin for Congress Committee and the Slattery for Congress Committee.¹² Their resulting excessive contributions totaled \$8,523.53.

No information has been provided in response to the General Counsel's Brief which changes the amounts or nature of the advances made by the committees. Therefore, this Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from political committees.

5. Advances from Partnership

As discussed in the General Counsel's Briefs sent to the Presidential Committee and to the respondent partnership, the answers to Commission interrogatories submitted by Heard, Goggan, Blair and Williams state that it was the law firm's ordinary course of business in 1987-88 to advance non-legal services for legal clients and others, and then to seek

12. The Commission has successfully negotiated conciliation agreements with the Anthony Committee and the Slattery Committee which were accepted by the Commission on February 24 and April 20, 1994 respectively. The file has been closed as to these two committees. The amount of the Levin Committee's excessive contribution was only \$613.65.

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reimbursement. The answers also assert that arrangements with the Committee actually went beyond those with other clients in that the firm billed the Committee for the travel costs of firm representatives.¹³ According to the firm's answers to interrogatories, sworn to in an affidavit signed by one of the partners, Stephen S. Blair, the firm's "usual and normal billing practices in 1987-88, particularly with regard to air travel, was that the firm did not bill clients for air travel because the firm's contracts with most of their clients did not entitle the firm to seek reimbursement for their expenses."

Given this information, this Office recommends that the Commission find no probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions in the form of advances from a partnership. This Office also recommends that the Commission find no probable cause to believe that Heard, Goggan, Blair & Williams violated 2 U.S.C. § 441a(a)(1)(A) and close the file as to this respondent.

b. Mailing List from the Iowa Democratic Party

The issues before the Commission with regard to the Presidential Committee's receipt of a mailing list¹⁴ from the Iowa Democratic Party (Federal Division) ("the Party") in early 1986 involve (1) whether Richard Gephardt's activities on behalf of the

13. The largest items on the list of services billed to the Committee involved air travel and hotel accommodations. See the General Counsel's briefs for details.

14. The list was of past Iowa caucus attendees.

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state party constituted consideration for use of the Party's list and (2) the value of that list.¹⁵ As is stated in the reply brief submitted by the Iowa Democratic Party, "the key issue . . . is whether the Party was fully compensated by the Committee for the data provided."

Both respondent committees argue that Mr. Gephardt's fundraising activities on behalf of the Party more than compensated the Party for the mailing list. The Presidential Committee asserts that this exchange was "the bargain between the party and Gephardt"

The Party asserts:

While Congressman Gephardt received some indirect political benefit from his fundraising for the Party, it is undeniable that he often accommodated the Party's requests in ways that were more beneficial to the Party than to his campaign. He was repeatedly asked to rearrange his schedule to fit the Party's needs. He raised money for the party in lieu of raising money for his own campaign. It is important to remember that the Party was under intense political pressure to remain neutral in the caucus contest and was not hesitant to ask Congressman Gephardt to honor his agreement by performing extensive services. Without this agreement, it is reasonable to assume that Congressman Gephardt would have done much less

15. The Presidential Committee filed its Statement of Organization with the Commission on November 17, 1986. Thus, the Committee itself was not in existence in early 1986. According to information obtained by telephone from the present administrative director of the Party, the list at issue was requested by Gephardt "supporters." 11 C.F.R. § 110.7(b)(i)(i) permits the receipt of funds and the making of payments for purposes of determining whether an individual should become a candidate, without such receipts and payments being deemed respectively "contributions" and "expenditures" under the Act. Once an individual becomes a candidate, such "testing-the-waters" receipts and payments become reportable contributions and expenditures and are to be included within the expenditure limitations imposed upon presidential candidates who elect to receive public funds. (See further discussion below.)

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for the party and would have directed his time and efforts in a manner which was more beneficial to his interests.

In the present situation as in Advisory Opinion 1977-26, which is discussed in the General Counsel's Brief, it is impossible to distinguish between Mr. Gephardt's 1986 and 1987 activities in Iowa on behalf of the Party and those undertaken on behalf of his own potential and actual candidacies. Respondents' arguments in no way alter this Office's position. In the present matter, the Party's provision of a mailing list constituted an in-kind contribution to the Presidential Committee which should have been reported as such.

With regard to the value of the Party's in-kind contribution, the figure of \$10,000 cited in the General Counsel's briefs was the same as the amount which at least four other Democratic presidential candidate committees paid to the Party in 1987 for use of the list. This was also the amount cited in the Commission's Addendum to the Final Audit Report for the Presidential Committee, based upon which an additional \$2,628.34 repayment to the U.S. Treasury was required and paid.

The Party in its reply brief states that it provided "two tapes of raw activist data to the Committee" in early 1986. The Party asserts that "[t]his data was not nearly as valuable as the list later sold to other presidential campaigns for \$10,000. The list sold to others was more current (including 1986 information)

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and was compiled to be more useful."¹⁶ The reply brief also notes that "between September 5, 1987 and February 22, 1988, the Committee paid the Party \$3,253.84 for lists and labels." Respondents argue that this is persuasive evidence that the data provided in 1986 was much less valuable." The Party concludes that "it is reasonable to say that the value was less than \$5,000."

This valuation of "less than \$5,000" is the first which has been placed upon the list at issue by the Party. In addition, the Party's reply brief is more detailed as to the ways in which this list differed from the one provided later for \$10,000 to other presidential campaigns involved in the 1988 campaign. It appears that the later version of the list was more up to date and in more usable form.

The Party's contribution limitation with regard to the Presidential Committee was \$5,000. The recent information provided by the Party would result in a valuation of the mailing list at less than the contribution limitation. Given the difficulty of verifying the Party's valuation at this late date, this Office recommends that the Commission take no further action against the Gephardt for President Committee with regard to this issue and no further action against the the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, and close the file as to the latter respondents.

16. According to information provided by a representative of the Party during his deposition in MUR 2884, the Party first made the list available in electronic form in 1987.

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c. Corporate Advances

The Commission also found reason to believe that the Presidential Committee had accepted advances from three corporate entities: Katz, Kutter, Haigler, Alderman, Davis, & Marks; Swann & Haddock; and Trammel Crow Asset Company. All of these advances were deemed not to have been extended in the ordinary course of the corporations' businesses. The total amount of the advances at issue is \$12,320.67 of which \$1,404.18 has been reimbursed.

The Committee has provided no additional information showing that these advances did not constitute in-kind contributions. Therefore, this Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. 2 U.S.C. § 441b(a).¹⁷

D. Expenditures in Excess of State by State Limitations

The General Counsel's Brief sent to the Presidential Committee contained the proposed recommendation that the Commission find probable cause to believe that the committee violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A) by making expenditures totaling \$462,543.95 in excess of the 1987-88 limitation in Iowa. This figure included the \$452,543.95

17. On July 6, 1994, the Commission revoted to find reason to believe that Katz, Kutter, Haigler, Alderman, Davis & Marks violated 2 U.S.C. § 441b, but determined to take no further action and closed the file as to this respondent. On that same date the Commission also voted to take no action against Swann & Haddock and closed the file as to this firm; this Office had been unable to locate this respondent. Later, on September 9, 1994, the Commission accepted a conciliation agreement with Trammel Crow Asset Company and closed the file as to this respondent.

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contained in the Commission's final repayment determination and Statement of Reasons, plus \$10,000 in expenditures in Iowa as a result of receipt of the voter list from the Iowa Democratic Party discussed at Section C.3 above which constituted an in-kind contribution also reportable as an expenditure.

The Iowa Democratic Party has valued the voter list at less than \$5,000. How much less is not stated. Therefore this Office recommends that the Commission find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A) by making expenditures which were approximately \$457,543.95 (\$452,543.95 + \$5,000) in excess of the 1987-88 expenditure limitation for Iowa.

E. Excessive Use of Personal Funds by Candidate

The General Counsel's Brief sent to Richard A. Gephardt recommends probable cause to believe that he violated 26 U.S.C. § 9035(a) by exceeding his \$50,000 personal expenditure limitation by as much as \$100,884.81. This situation arose as a result of Mr. Gephardt's having accumulated \$104,935.11 in credit card charges between March 16 and July 15, 1988 which were not paid by the Presidential Committee within 60 days of the closing dates on the respective billing statements as required by 11 C.F.R. § 9035.2(a)(2).¹⁸

18. The March 15, 1988 date was the 60th day after the closing date of the billing statement on which the outstanding charges first appeared. Thus, the charges themselves began earlier.

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According to the respondents' reply brief, the committee does not contest the factual basis for this finding or the application of the Commission's regulations. Rather, respondents urge the Commission to "consider upon probable cause the unusual nature of this issue."

Respondents argue that in permitting use of his credit card, the candidate, Mr. Gephardt, was acting in effect as an "agent" of the committee. On the basis of this theory, respondents assert that it was the Committee's failures, as "principal," to make timely payments of the credit charges at issue which created the candidate's violation. Respondents do not deny that such a violation occurred, but cite a "concern" which "goes to the fair treatment of this candidate, to avoid the suggestion that this is a 'contribution limitation violation' similar in kind to any other. It is, in fact, the rarest case -- where the candidate, as agent, is liable for failures of the committee acting under law as a principal."

Respondents cite as the basis for their position 11 C.F.R. § 101.2. This provision, however, concerns contributions, loans or disbursements made before an individual becomes a candidate. Subsection (a) of this regulation reads:

Any candidate who received a contribution . . . , obtains any loan, or makes any disbursement, in connection with his or her campaign shall be considered as having received such contribution, obtained such loan or made such disbursement as an agent of his or her authorized committee(s).

This language is taken from 2 U.S.C. § 432(e)(2).

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Neither the legislative history of Section 432(e)(2) nor the Explanation and Justification for 11 C.F.R. § 101.2 suggest that a candidate should be considered the agent of the committee with regard to personal contributions or loans from that candidate. Certainly there is no indication that any agency relationship cancels out the candidate's personal role as contributor. The issue of the relative responsibilities of the candidate and his or her committee with regard to the payment of charges on the candidate's credit card is really only one of potential mitigation.

This Office recommends that the Commission find probable cause to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

Attached for the Commission's approval are four proposed conciliation agreements.

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IV. RECOMMENDATIONS

1. Ratify the Commission's previous findings of reason to believe that the Gephardt for President violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), 434(b)(3)(B), and 441b(a) and 26 U.S.C. § 9035(a).
2. Ratify the Commission's previous finding of reason to believe that the Gephardt in Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
3. Ratify the Commission's previous findings of reason to believe that the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b)(4)(H)(i).
4. Ratify the Commission's previous finding of reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).
5. Ratify the Commission's previous finding of reason to believe that Richard Hughes violated 2 U.S.C. § 441(a)(1)(A).
6. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive direct contributions from individuals totaling \$72,980.
7. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive transfers from the Gephardt in Congress Committee totaling \$49,000.
8. Find probable cause to believe that the Gephardt in Congress Committee and John Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive transfers totaling \$49,000 to the Gephardt for President Committee.
9. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Gephardt in Congress Committee in the amount of \$50,000.
10. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from six individuals totaling \$9,521.41.
11. Find probable cause to believe that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind contribution to the Gephardt for President Committee.

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12. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from three political committees totaling \$8,523.53.

13. Find no probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from a partnership.

14. Take no further action against the Gephardt for President Committee and S. Lee Kling, as treasurer, with regard to acceptance of an excessive in-kind contribution from the Iowa Democratic Party.

15. Take no further action against the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, with regard to the making of an excessive in-kind contribution to the Gephardt for President Committee.

16. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441b(a) by accepting in-kind contributions totaling \$12,320.67 from Katz, Kutter, Haigler, Alderman, Davis, & Marks; Swann and Haddock; and the Trammel Crow Asset Company.

17. Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441(b)(1)(A) by making \$457,543.95 in expenditures in excess of the 1987-88 expenditure limitation in Iowa.

18. Find probable cause to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).

19. Close the file with regard to Heard, Goggan, Blair & Williams.

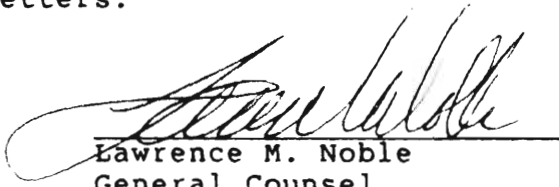
20. Close the file with regard to the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer.

21. Approve the attached proposed conciliation agreements.

22. Approve the appropriate letters.

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Date

1/13/95


Lawrence M. Noble
General Counsel

Attachments:
Conciliation Agreements (4)

Staff assigned: Anne A. Weissenborn


25043644164



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS 
COMMISSION SECRETARY

DATE: JANUARY 19, 1995

SUBJECT: MUR 3342 - GENERAL COUNSEL'S REPORT
DATED JANUARY 13, 1995.

The above-captioned document was circulated to the
Commission on Friday, January 13, 1995 at 2:00 p.m.

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	_____
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda
for Tuesday, January 31, 1995.

Please notify us who will represent your Division before
the Commission on this matter.

25043644105

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Gephardt for President Committee;
S. Lee Kling, as treasurer;
Gephardt in Congress Committee;
John R. Tumbarello, as treasurer;
Iowa Democratic Party (Federal Division);
Mary Maloney, as treasurer;
Heard, Goggan, Blair & Williams;
Richard A. Gephardt;
Richard Hughes

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) MUR 3342
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CORRECTED CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on January 31,
1995, do hereby certify that the Commission took the
following actions in MUR 3342:

1. Decided by a vote of 6-0 to -

- a) Ratify the Commission's previous findings of reason to believe that Gephardt for President violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), 434(b)(3)(B), and 441b(a) and 26 U.S.C. § 9035(a).
- b) Ratify the Commission's previous finding of reason to believe that the Gephardt in Congress Committee and John R. Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

(continued)

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- c) Ratify the Commission's previous findings of reason to believe that the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b)(4)(H)(i).
 - d) Ratify the Commission's previous finding of reason to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).
 - e) Ratify the Commission's previous finding of reason to believe that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A).
 - f) Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive direct contributions from individuals totaling \$72,980.

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

2. Decided by a vote of 5-1 to

- a) Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive transfers from the Gephardt in Congress Committee totaling \$49,000.

(continued)

- b) Find probable cause to believe that the Gephardt in Congress Committee and John Tumbarello, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive transfers totaling \$49,000 to the Gephardt for President Committee.

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

3. Decided by a vote of 6-0 to -

- a) Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Gephardt in Congress Committee in the amount of \$50,000.
- b) Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting in-kind contributions from six individuals totaling \$9,521.41
- c) Find probable cause to believe that Richard Hughes violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind contribution to the Gephardt for President Committee.

(continued)

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- d) Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting in-kind contributions from three political committees totaling \$8,523.53.
- e) Find no probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from a partnership.
- f) Take no further action against the Gephardt for President Committee and S. Lee Kling, as treasurer, with regard to acceptance of an excessive in-kind contribution from the Iowa Democratic Party.
- g) Take no further action against the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer, with regard to the making of an excessive in-kind contribution to the Gephardt for President Committee.
- h) Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441b(a) by accepting in-kind contributions totaling \$12,320.67 from Katz, Kutter, Haigler, Alderman, Davis, & Marks; Swann and Haddock; and the Trammel Crow Asset Company.

(continued)

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- i) Find probable cause to believe the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A) by making \$457,543.95 in expenditures in excess of the 1987-88 expenditure limitation in Iowa.
 - j) Find probable cause to believe that Richard A. Gephardt violated 26 U.S.C. § 9035(a).
 - k) Close the file with regard to Heard, Goggan, Blair & Williams.
 - l) Close the file with regard to the Iowa Democratic Party (Federal Division) and Mary Maloney, as treasurer.
 - m) Approve the proposed conciliation agreements recommended in the General Counsel's January 13, 1995 report
 - n) Approve the appropriate letters as recommended in the General Counsel's January 13, 1995 report.

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

Attest:

2-8-95
Date

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



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1995

HAND DELIVERED

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President
Committee
S. Lee Kling, as treasurer

Dear Mr. Bauer and Ms. Corley:

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Federal Election Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 63 U.S.L.W. 4027 (U.S. Dec. 6, 1994) (No. 93-1151). The Commission has taken several actions to comply with the courts' decisions. The Commission, consistent with the opinions, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

This letter is to inform you that the Commission has ratified its earlier findings of reason to believe that your clients, the Gephardt for President Committee ("the Committee") and S. Lee Kling, as treasurer, violated 2 U.S.C. §§ 441a(f), 441a(b)(1)(A), 434(b)(3)(B) and 441b(a) and 26 U.S.C. § 9035(a), provisions of the Federal Election Campaign Act of 1971, as amended, and of Chapter 96 of Title 26, U.S. Code. In addition, the Commission has found that there is probable cause to believe your clients violated 2 U.S.C. §§ 441a(f) by accepting excessive direct contributions from individuals, by accepting excessive transfers from the Gephardt in Congress Committee, by accepting in-kind contributions from six individuals, and by accepting in-kind contributions from three political committees. The Commission also found probable cause to believe that your clients violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind

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Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Page 2

contribution from the Iowa Democratic Party (Federal Division) in the amount of \$5,000; 2 U.S.C. § 441b(a) by accepting in-kind contributions from Katz, Kutter, Haigler, Alderman, Davis & Marks, Swann and Haddock, and the Trammel Crow Asset Company; and 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a) by making \$457,543.95 in expenditures in excess of the 1987-88 expenditure limitation in Iowa. Further, the Commission has found no probable cause to believe that your clients violated 2 U.S.C. § 441a(f) by accepting in-kind contributions from a partnership, and voted to take no further action with regard to acceptance of an excessive in-kind contribution from the Iowa Democratic Party. In addition, the Commission voted to approve the enclosed proposed conciliation agreement.

If your clients agree with the provisions of the enclosed agreement, please sign and return it to the Commission, along with the civil penalty. I will then recommend that the Commission accept the agreement. The check for the civil penalty should be made payable to the Federal Election Commission.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. The conciliation period will begin on the date you receive this letter. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

25043644172



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1995

HAND DELIVERED

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt in Congress
Committee
S. Lee Kling, as treasurer

Dear Mr. Bauer and Ms. Corley:

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Federal Election Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 63 U.S.L.W. 4027 (U.S. Dec. 6, 1994) (No. 93-1151). The Commission has taken several actions to comply with the courts' decisions. The Commission, consistent with the opinions, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On January 31, 1995, the Federal Election Commission ratified its earlier findings of reason to believe that your clients, the Gephardt in Congress Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended. On the same date the Commission found that there is probable cause to believe your clients violated 2 U.S.C. § 441a(a)(1)(A) by making excessive transfers totaling \$49,000 to the Gephardt for President Committee. In addition, the Commission voted to approve the enclosed proposed conciliation agreement.

If your clients agree with the provisions of the enclosed agreement, please sign and return it to the Commission, along with the civil penalty. I will then recommend that the Commission accept the agreement. The check for the civil penalty should be made payable to the Federal Election Commission.

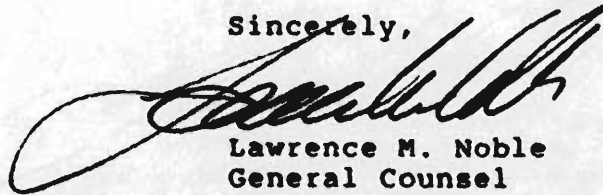
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Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Page 2

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. The conciliation period will begin on the date you receive this letter. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

250436441/4



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1995

HAND DELIVERED

Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Richard A. Gephardt

Dear Mr. Bauer and Ms. Corley:

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Federal Election Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 63 U.S.L.W. 4027 (U.S. Dec. 6, 1994) (No. 93-1151). The Commission has taken several actions to comply with the courts' decisions. The Commission, consistent with the opinions, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On January 31, 1995, the Federal Election Commission ratified its earlier findings of reason to believe that your client, Richard A. Gephardt, violated 26 U.S.C. § 9035(a). On the same date the Commission found that there is probable cause to believe your client violated 26 U.S.C. § 9035(a). In addition, the Commission voted to approve the enclosed conciliation agreement.

If your client agrees with the provisions of the enclosed agreement, please sign and return it to the Commission, along with the civil penalty. I will then recommend that the Commission accept the agreement. The check for the civil penalty should be made payable to the Federal Election Commission.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a

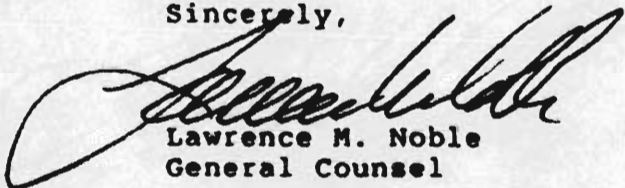
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Robert F. Bauer, Esquire
Judith L. Corley, Esquire
Page 2

conciliation agreement with a respondent. The conciliation period will begin on the date you receive this letter. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and see payment of a civil penalty.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

25043644176



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1995

J.D. Hartung, Esquire
Crawford Law Firm
6943 Vista Drive
West Des Moines, Iowa 50266

MUR 3342
Iowa Democratic Party
Mary Maloney, as
treasurer

Dear Mr. Hartung:

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Federal Election Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 63 U.S.L.W. 4027 (U.S. Dec. 6, 1994) (No. 93-1151). The Commission has taken several actions to comply with the courts' decisions. The Commission, consistent with the opinions, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On January 31, 1995, the Federal Election Commission ratified its earlier findings of reason to believe that the Iowa Democratic Party ("the Party") and Mary Maloney, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b)(4)(H)(i), provisions of the Federal Election Campaign Act of 1971, as amended. On the same date the Commission voted to take no further action against the Party and Ms. Maloney, as treasurer, with regard to the making of an excessive in-kind contribution to the Gephardt for President Committee, and closed the file as it pertains to the Party and Ms. Maloney, as treasurer.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

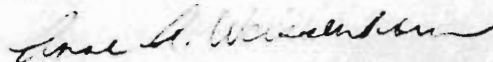
0504364177

J.D. Hartung, Esquire
Page 2

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,



Anne A. Weissenborn
Senior Attorney

5043644178



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1995

Richard Hughes
4524 East 67th Street
P.O. Box 35887
Tulsa, Oklahoma 74135

RE: MUR 3342

Dear Mr. Hughes:

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Federal Election Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 63 U.S.L.W. 4027 (U.S. Dec. 6, 1994) (No. 93-1151). The Commission has taken several actions to comply with the courts' decisions. The Commission, consistent with the opinions, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

On January 31, 1995, the Federal Election Commission ratified its earlier finding of reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended. On the same date the Commission found that there is probable cause to believe you violated 2 U.S.C. § 441a(a)(1)(A). In addition, the Commission voted to approve the enclosed proposed conciliation agreement.

If you agree with the provisions of the enclosed agreement, please sign and return it to the Commission. The check for the civil penalty should be made payable to the Federal Election Commission.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may

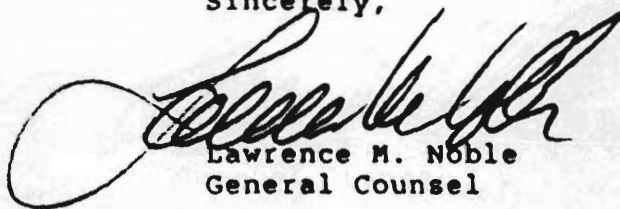
504364179

Richard Hughes
Page 2

institute a civil suit in United States District Court and seek payment of a civil penalty.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

5043644130



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 6 4 31 PM '95

February 6, 1995

SENSITIVE

MEMORANDUM

TO: The Commission
FROM: Lawrence M. Noble
General Counsel
SUBJECT: MUR 3342 - Gephardt for President Committee

BACKGROUND

On January 31, 1995, the Commission made a series of findings with regard to the Gephardt for President Committee and other respondents in the above-cited matter. It has come to the attention of this Office while preparing the next stage of correspondence in this matter that certain recommendations were not included in the list on pages 27-28 of the General Counsel's Report dated January 13, 1995 which formed the bases for the Commission's determinations.

First, the Report in question recommended that the Commission ratify its previous findings of reason to believe with regard to the Gephardt for President Committee but did not include the treasurer, S. Lee Kling, in this recommendation. Therefore, this Office now recommends that the Commission ratify its previous findings of reason to believe that S. Lee Kling, as treasurer of the Gephardt for President Committee, violated 2 U.S.C. § 441a(f), 441a(b)(1)(A), 434(b)(3)(B), and 441b(a) and 26 U.S.C. § 9035(a).

Secondly, the same Report recommended that the Commission vote to close the file with regard to the partnership of Heard, Goggan, Blair & Williams, but did not contain the prior recommendation that the Commission find no probable cause to believe that this firm violated 2 U.S.C. § 441a(a)(1)(A). Therefore, this Office now recommends that the Commission reopen the file in this matter with regard to Heard, Goggan, Blair & Williams, find no probable cause to believe that the firm violated 2 U.S.C. § 441a(a)(1)(A), and close the file as to this respondent. (See discussion of the basis of this recommendation at pages 17-18 of the Report).

RECOMMENDATIONS

1. Ratify the Commission's previous findings of reason to believe that S. Lee Kling, as treasurer of the Gephardt for President Committee, violated 2 U.S.C. § 441a(f), 441a(b)(1)(A), 434(b)(3)(B), and 441b(a) and 26 U.S.C. § 9035(a).
2. Reopen the file in this matter with regard to Heard, Goggan, Blair & Williams, find no probable cause to believe that this respondent violated 2 U.S.C. § 441a(a)(1)(A), and close the file as to this respondent.

Staff Assigned: Anne Weissenborn

5043644182

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Gephardt for President Committee.) MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 10, 1995, the Commission decided by a vote of 4-0 to take the following actions in MUR 3342:

1. Ratify the Commission's previous findings of reason to believe that S. Lee Kling, as treasurer of the Gephardt for President Committee, violated 2 U.S.C. § 441a(f), 441a(b)(1)(A), 434(b)(3)(B), and 441b(a) and 26 U.S.C. § 9035(a).
2. Reopen the file in this matter with regard to Heard, Goggan, Blair and Williams, find no probable cause to believe that this respondent violated 2 U.S.C. § 441a(a)(1)(A), and close the file as to this respondent.

Commissioners Aikens, Elliott, McGarry and Potter voted affirmatively for the decision; Commissioners McDonald and Thomas did not cast votes.

Attest:

2/10/95
Date

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

Received in the Secretariat: Mon., Feb. 06, 1995 4:31 p.m.
Circulated to the Commission: Tues., Feb. 07, 1995 11:00 a.m.
Deadline for vote: Fri., Feb. 10, 1995 4:00 p.m.

bjr

25043644183



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 16 9 04 AM '95

February 16, 1995

SENSITIVE

MEMORANDUM

TO: The Commission
FROM: Lois G. Lerner *LL*
Associate General Counsel
SUBJECT: Shorter Voting Deadline in MUR 3342

Pursuant to the Circulated Vote Procedures of Directive 52, the Office of the General Counsel is circulating the attached memorandum on a 24 hour tally vote basis, so that respondents will be afforded the most expeditious notice under the circumstances.

Attachment

Memorandum

Staff Assigned: Anne Weissenborn

250443644184



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 16, 1995

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel *[Signature]*

SUBJECT: MUR 3342 - Gephardt for President Committee

BACKGROUND

On January 31, 1995, the Commission made a series of findings with regard to the Gephardt for President Committee ("the Committee") and S. Lee Kling, as treasurer, and other respondents in the above-cited matter, based upon recommendations in the General Counsel's Report in this matter dated January 13, 1995. It has come to the attention of this Office that there was an error in the basis stated for one of the recommendations in the January 13 Report. Specifically, Recommendation #9 stated that the basis for finding probable cause to believe the Committee and its treasurer violated 2 U.S.C. § 434(b)(3)(B) was "by failing to report an in-kind contribution from the Gephardt in Congress Committee in the amount of \$50,000." In fact, the basis for this recommendation was the Committee's failure to report an in-kind contribution from the Iowa Democratic Party (Federal Division) in the amount of \$5,000. The conciliation agreement approved by the Commission contains the correct language.

In order to rectify this situation, this Office recommends that the Commission rescind its earlier determination that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Gephardt in Congress Committee in the amount of \$50,000, and find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Iowa Democratic Party (Federal Division) in the amount of \$5,000.

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RECOMMENDATIONS

1. Rescind the Commission's finding of probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Gephardt in Congress Committee in the amount of \$50,000.
2. Find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Iowa Democratic Party (Federal Division) in the amount of \$5,000.

Staff Assigned: Anne Weissenborn

05043644136

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Gephardt For President Committee.)

MUR 3342

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 21, 1995, the Commission decided by a vote of 6-0 to take the following actions in MUR 3342:

1. Rescind the Commission's finding of probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Gephardt in Congress Committee in the amount of \$50,000.
2. Find probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer, violated 2 U.S.C. § 434(b)(3)(B) by failing to report an in-kind contribution from the Iowa Democratic Party (Federal Division) in the amount of \$5,000.

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

Attest:

2-21-95
Date

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

Received in the Secretariat: Thurs., Feb. 16, 1995 9:04 a.m.
Circulated to the Commission: Thurs., Feb. 16, 1995 11:00 a.m.
Deadline for vote: Fri., Feb. 17, 1995 4:00 p.m.

lrd

5043644187



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 22, 1995

R. Laurence Macon, Esquire
James P. Robinson, III, Esquire
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

RE: MUR 3342
Heard, Goggan, Blair &
Williams

Dear Mr. Macon and Mr. Robinson:

This is to advise you that on February 10, 1995, the Federal Election Commission found that there is no probable cause to believe your client, Heard, Goggan, Blair & Williams, violated 2 U.S.C. § 441a(a)(1)(A). Accordingly, the file in this matter has been closed as it pertains to your client.

The file will be made part of the public record within 30 days after it has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

MAY 3 11 34 AM '95

In the Matter of)

Gephardt for President Committee)

S. Lee Kling, as treasurer)

Gephardt in Congress Committee)

John R. Tumbarello, as treasurer)

Richard A. Gephardt)

Richard Hughes)

SENSITIVE

MUR 3342

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Robert F. Bauer, counsel for the Gephardt for President Committee and S. Lee Kling, as treasurer, ("the Presidential Committee"); the Gephardt in Congress Committee and John R. Tumbarello, as treasurer, ("the Congressional Committee"); and Richard Gephardt.

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A check for the civil
penalty has not been received.

The one remaining individual respondent in this matter is Richard Hughes. Although this Office has been in touch by telephone with Mr. Hughes regarding the Commission's proposed conciliation agreement, he has not returned our most recent calls despite a message left at his home. His present lack of cooperation would be sufficient to warrant continued pursuit; however, given the time frame of this matter and the relatively small amount of his excessive in-kind contribution (\$2,407.54), this Office recommends that the Commission vote to take no further action in his regard. The letter informing Mr. Hughes of this

action will contain an admonishment regarding the making of such advances in the future.

This Office also recommends that the entire file in this matter be closed.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Gephardt for President Committee and S. Lee Kling, as treasurer; the Gephardt in Congress Committee and John R. Tumbarello, as treasurer; and Richard A. Gephardt.
2. Take no further action with regard to Richard Hughes.
3. Close the file.
4. Approve the appropriate letters.

5/2/95
Date

Lawrence M. Noble (LH2)
Lawrence M. Noble
General Counsel

Attachment
Conciliation Agreement

Staff Assigned: Anne A. Weissenborn

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MUR 3342

CERTIFICATION

1. Accept the conciliation agreement with the Gephardt for President Committee and S. Lee Kling, as treasurer; the Gephardt in Congress Committee and John R. Tumbarello, as treasurer; and Richard A. Gephardt, as recommended in the General Counsel's Report dated May 2, 1995.
2. Take no further action with regard to Richard Hughes.

(continued)

3. Close the file.
4. Approve the appropriate letters, as recommended in the General Counsel's Report dated May 2, 1995.

Commissioners Aikens, Elliott, McDonald, McGarry, and Potter voted affirmatively for the decision; Commissioner Thomas did not cast a vote.

Attest:

5-9-95

Date

for Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Wed., May 03, 1995	11:34 a.m.
Circulated to the Commission:	Wed., May 03, 1995	4:00 p.m.
Deadline for vote:	Mon., May 08, 1995	4:00 p.m.

bjr

25043644193



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

May 15, 1995

Ken Davis, Esquire
1102 North Gadsden Street
Tallahassee, FL 32303

RE: MUR 3342
F.P. Blank

Dear Mr. Davis:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If your client wishes to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over the typed name.

Anne A. Weissenborn
Senior Attorney

05043644194



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

May 15, 1995

Judith Richards Hope, Esquire
Mary T. Boyle, Esquire
Paul, Hastings, Janofsky & Walker
1050 Connecticut Avenue, NW
Washington, DC 20008

RE: MUR 3342
William D. Rollnick

Dear Ms. Hope and Ms. Boyle:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If your client wishes to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over a horizontal line.

Anne A. Weissenborn
Senior Attorney

504364195



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1995

Gail N. Wise, Esquire
Barham & Arceneaux
Poydras Center, Suite 2700
650 Poydras Street
New Orleans, LA 70130-6101

RE: MUR 3342
Mack E. Barham

Dear Ms. Wise:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn".

Anne A. Weissenborn
Senior Attorney

05043644196



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 15, 1995

Edmund M. Reggie
Reggie, Harrington and Reggie
526 North Parkerson Avenue
P.O. Drawer D
Crowley, Louisiana 70527-6004

RE: MUR 3342

Dear Mr. Reggie:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, which appears to read "Anne A. Weissenborn", is written over a horizontal line.

Anne A. Weissenborn
Senior Attorney

050443644197



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1995

James C. Robinson
Giles & Robinson, P.A.
390 N. Orange Avenue
Suite 800
Orlando, Florida 32802

RE: MUR 3342

Dear Mr. Robinson:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely, . =

A handwritten signature in cursive script, which appears to read "Anne A. Weissenborn", is written over a horizontal line.

Anne A. Weissenborn
Senior Attorney

25043644198



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1995

Daniel L. Watkins, Esquire
211 East 8th Street
Suite C
Lawrence, Kansas 66044

RE: MUR 3342
Slattery for Congress
Committee

Dear Mr. Watkins:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, which appears to read "Anne A. Weissenborn", is written above the typed name.

Anne A. Weissenborn
Senior Attorney

05043644199



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 15, 1995

Edward E. Haddock, Jr.
390 N. Orange Avenue
Orlando, FL 32802

RE: MUR 3342

Dear Mr. Haddock:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

05043644200



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1995

Joseph Hickey, Treasurer
Beryl Anthony for Congress
Campaign Committee
Compton, Prewett, Thomas & Hickey, P.A.
423 North Washington
El Dorado, Arkansas 71731

RE: MUR 3342

Dear Mr. Hickey:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written above the typed name.

Anne A. Weissenborn
Senior Attorney

05043644201



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1995

Allan J. Katz, Esquire
Katz, Kutter, Haigler, Alderman, Davis
Marks and Rutledge
106 East College Avenue, Suite 1200
Tallahassee, Florida 32301

RE: MUR 3342

Dear Mr. Katz:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, which appears to read "Anne A. Weissenborn", is written over a horizontal line.

Anne A. Weissenborn
Senior Attorney

05043644202



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

May 15, 1995

R. Todd Johnson, Esquire
Jones, Day, Reavis & Pogue
1450 G Street, NW
Washington, DC 20005-2088

RE: MUR 3342
Trammell Crow Asset Company

Dear Mr. Johnson:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Anne A. Weissenborn", is written over the typed name.

Anne A. Weissenborn
Senior Attorney

5043644203



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 15, 1995

J.D. Hartung, Esquire
Crawford Law Firm
6943 Vista Drive
West Des Moines, Iowa 50266

RE: MUR 3342
Iowa Democratic Party
Mary Maloney, as
treasurer

Dear Mr. Hartung:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If your clients wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

5043644204



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1995

R. Laurence Macon, P.C.
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1500 NationsBank Plaza
300 Convent Street
San Antonio, Texas 78205

RE: MUR 3342
Heard, Goggan, Blair
& Williams

Dear Mr. Macon:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote.

If your client wishes to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn
Senior Attorney

5043644205



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 15, 1995

Richard H. Hughes
7232 S. Atlanta Place
Tulsa, Oklahoma 74136

RE: MUR 3342

Dear Mr. Hughes:

As you were previously informed, on January 31, 1995, the Federal Election Commission found probable cause to believe that you violated 2 U.S.C. 441a(a)(1)(A). After considering the circumstances of this matter, however, the Commission on May 8, 1995, determined to take no further action against you, and closed the file in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

The Commission reminds you that by incurring expenses on behalf of the Gephardt for President Committee, you apparently violated 2 U.S.C. § 441a(a)(1)(A). You should take steps to insure that this activity does not occur in the future.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne A. Weissenborn".

Anne A. Weissenborn
Senior Attorney

5043644206



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1995

Robert F. Bauer, Esquire
B. Holly Schadler, Esquire
Perkins Cole
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President
Committee
S. Lee Kling, as treasurer
Gephardt in Congress
Committee
John R. Tumbarello, as
treasurer
Richard Gephardt

Dear Mr. Bauer and Ms. Schadler:

On May 8, 1995, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 441a(f), 434(b)(3)(B), 441b(a), 441a(a)(1)(A) and 441a(b)(1)(A) and 26 U.S.C. § 9035(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and of Chapter 96 of Title 26, U.S. Code. Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil

5043644207

Robert F. Bauer, Esquire
B. Holly Schadler, Esquire
Page 2

penalty is due within 30 days of the conciliation agreement's effective date, as is the making of the cited refunds. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Anne A. Weissenborn

Anne A. Weissenborn
Senior Attorney

Enclosure
Conciliation Agreement

25043644208

APR 20 5 00 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Gephardt for President Committee
S. Lee Kling, as treasurer; Richard Gephardt;
Gephardt in Congress Committee
John R. Tumbarello, as treasurer

MUR 3342

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that the Gephardt for President Committee and S. Lee Kling, as treasurer ("GPC"); Richard Gephardt ("the candidate"); and Gephardt in Congress Committee, John R. Tumbarello, as treasurer ("GIC") (hereinafter collectively "Respondents") violated 2 U.S.C. §§ 441a(f), 434(b)(3)(B), 441b(a), and 441a(b)(1)(A) and 26 U.S.C. § 9035(a); 26 U.S.C. § 9035(a); and 2 U.S.C. § 441a(a)(1)(A), respectively.

NOW, THEREFORE, the Commission and Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Richard Gephardt was a candidate for nomination to the office of President of the United States in 1988.
2. GPC is a political committee within the meaning of 2 U.S.C. § 431(4). The Committee was the authorized committee of Richard A. Gephardt for his campaign for the office of President of the United States in 1987-88.
3. S. Lee Kling is the treasurer of the Gephardt for President Committee.
4. GIC is a political committee within the meaning of 2 U.S.C. § 431(4). It served as the principal campaign committee of Richard A. Gephardt for his 1987-88 campaign for reelection to the United States House of Representatives.
5. John R. Tumbarello is the treasurer of the GIC.
6. 2 U.S.C. § 441a(a)(1)(A) limits to \$1,000 per election the amount which any person may contribute to a candidate and his authorized committee for the purpose of influencing a federal election. 2 U.S.C. § 431(11) defines "person" to include an individual, partnership, committee, association, . . . or any other organization or group of persons"
7. 11 C.F.R. §§ 103.3(b) and 110.1 permit committees to seek redesignations or reattributions of deposited excessive contributions, when appropriate, or to refund such contributions within sixty days of receipt.
8. 2 U.S.C. § 441a(f) prohibits candidates and their committees from knowingly accepting contributions in excess of the limitations established at 2 U.S.C. § 441a(a).
9. GPC accepted a total of \$72,980 in contributions from 132 individuals which exceeded their respective \$1,000 limitations. Of this amount \$50,010 has been refunded, but not within the sixty days permitted; \$22,970 has been reattributed to other contributors, but the dates of such reattributions are not known.

10. Transfers of funds between authorized candidate committees are generally subject to the \$1,000 limitation on contributions set forth at 2 U.S.C.

§ 441a(a)(1)(A). Knowing acceptance of transfers in excess of these limitations results in violation of 2 U.S.C. § 441a(f).

11. In 1988 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R § 110.3(a)(2)(v) permitted unlimited transfers between the principal campaign committees of a candidate for two federal offices in the same election cycle as long as: such transfers were not made while the candidate was actively seeking election to more than one office; the contributions making up the transfer would not, when aggregated with contributions from the same person to the committee receiving the transfer, result in excessive contributions; and the candidate had not received funds pursuant to Title 26, U.S. Code.

12. The 1988 general election was held on November 8. On December 12, 1988, GIC declared a surplus and transferred \$50,000 to the GPC.

13. A portion of the \$50,000 transfer came from funds totaling \$50,000 which had been transferred to GIC by the Gephardt Committee, the candidate's joint fundraising committee. These transfers included one of \$10,000 on November 8, 1988, and one of \$40,000 on December 2, 1988.

14. The allocation formula in the joint fundraising agreement which established the Gephardt Committee required that, unless a contributor specifically designated his or her contribution to GIC, the contribution would be allocated to GPC to the extent of the contribution limitations established by 2 U.S.C. § 441a(a). Any amounts in excess of the statutory limitation were to be allocated to the GIC.

15. The recipient candidate, Richard A. Gephardt, received presidential primary matching funds, pursuant to 26 U.S.C § 9031, et seq. in 1988.

16. By the terms of the joint fundraising agreement, the total of \$50,000 transferred by GIC to the GPC contained funds in excess of the amounts which individual contributors could have given directly to GPC.

17. The \$50,000 transfer by GIC to GPC did not meet the requirements of 2 U.S.C. § 441a(a)(5)(C)(ii) and (iii) and 11 C.F.R. § 110.3(a)(2)(v)(B) and (C) (1988), thereby taking the transfer outside the exception to the contribution limitations.

18. Respondents contend that the law regarding transfers between affiliated committees as it existed at that time did not clearly prohibit the \$50,000 transfer by GIC to GPC and that the committees arranged the transfer in the belief that it fully satisfied the requirements of the Act.

19. Pursuant to 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7(a)(1), a contribution includes any gift, subscription, loan, advance, or deposit of money or anything of value made for purposes of influencing a federal election. "Anything of value" includes an in-kind contribution. 11 C.F.R. § 100.7(a)(1)(iii). In-kind contributions are deemed to have been made on the date the goods or services were provided. 11 C.F.R. § 110.1(b)(6).

20. Pursuant to 2 U.S.C. § 431(9)(A) and 11 C.F.R. § 100.8(a)(1), an expenditure or qualified campaign expenditure includes any "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value" "Anything of value" includes in-kind contributions. 11 C.F.R. § 100.8(a)(1)(iv)(A).

21. GPC accepted advances, and thus in-kind contributions, totaling \$14,850.37 from six individuals in 1987 and early 1988. These advances, minus exempt personal transportation and subsistence costs, plus direct contributions from the same individuals, resulted in a combined total of \$15,521.41 in contributions, or \$9,521.41 in

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excess of individuals' combined limitations. GPC reimbursed \$3,919.78 of this amount in late 1988 and 1989, leaving \$5,601.63 in excessive contributions outstanding.

22. Respondents contend that GPC accepted advances made by individuals and political committees in the ordinary and customary course of presidential campaign activity in the good faith and reasonable belief that GPC would promptly reimburse them and satisfy all relevant requirements of the Act.

23. GPC accepted advances, and thus in-kind contributions, totaling \$11,523.53 from three political committees in June, 1987 and March, 1988, resulting in \$8,523.53 in excessive contributions. GPC reimbursed \$952.36 to the three committees in September, 1988 and \$3,324.17 to one on October 29, 1993, leaving \$4,247 in excessive contributions outstanding.

24. 2 U.S.C. § 434(b)(3)(B) requires reports identifying all political committees which make contributions to a reporting committee.

25. GPC did not report the receipt of a \$5,000 in-kind contribution from the Iowa Democratic Party (Federal Division).

26. GPC accepted advances, and thus in-kind contributions, totaling \$8,384.67 from two incorporated law firms. GPC reimbursed \$1,010.58 of this amount, leaving \$7,374.09 in prohibited contributions outstanding.

27. Respondents contend that GPC accepted these advances from law firms in the good faith and reasonable belief that such advances did not violate the Act.

28. GPC accepted the use of a corporate airplane on February 19, 1988. The value of the flight was \$3,936, based upon first-class quotations of \$656 per passenger. GPC reimbursed \$393.60 of this amount, leaving \$3,542.40 of the prohibited contribution outstanding.

29. Pursuant to 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c) and 26 U.S.C. § 9035, no candidate for the office of President of the United States, who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury, may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000.00, as adjusted by changes in the Consumer Price Index. Except for expenditures exempted pursuant to 11 C.F.R. § 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular state shall be allocated to that state. 11 C.F.R. § 106.2(a)(1).

30. For the 1988 presidential primary election, the expenditure limitation for the State of Iowa was \$775,217.60. GPC exceeded this limitation by \$457,543.95.

31. 26 U.S.C. § 9035(a) and 11 C.F.R. § 9035.2(a)(1) require that a candidate for nomination to the office of President, who elects to accept public matching fund payments pursuant to 26 U.S.C. § 9034, not knowingly make expenditures from personal funds or from the personal funds of his immediate family in connection with his campaign for nomination in excess of \$50,000.

32. Pursuant to 11 C.F.R. § 9035.2(a)(2), expenditures made using a credit card for which the candidate is jointly or solely liable will count against the \$50,000 limitation to the extent that the full amount due, including any finance charge, is not paid by the candidate's authorized committee within 60 days after the closing date of the billing statement on which the charges first appear.

33. On February 5, 1988, the candidate made a direct contribution to his campaign of \$50,000.

34. In addition, by July 15, 1988, \$104,935.11 in credit card charges had been incurred on the candidate's credit card but were not paid by GPC within 60 days of the closing dates on the respective billing statements.

35. The GPC paid all of the credit card charges at issue by September 30, 1989.

V. GPC accepted \$72,980 in excessive contributions from 132 individuals, in violation of 2 U.S.C. § 441a(f). All necessary refunds or reattributions have been made.

VI. GPC accepted a \$50,000 transfer from GIC which did not meet the requirements of 2 U.S.C. § 441a(a)(5)(C) and 11 C.F.R. § 110.3(a)(2)(v)(B) and (C) (1988), resulting in receipt of an excessive contribution of \$49,000, in violation of 2 U.S.C. § 441a(f). No refund has been made. By making a \$50,000 transfer to the GPC, GIC violated 2 U.S.C. § 441a(a)(1)(A).

VII. GPC accepted in-kind contributions in the form of advances from six individuals which, when added to direct contributions from the same persons, resulted in the receipt of \$9,521.41 in excessive contributions, in violation of 2 U.S.C. § 441a(f). \$5,601.63 remains unrefunded.

VIII. GPC accepted in-kind contributions in the form of advances from three political committees, resulting in \$8,523.53 in excessive contributions, in violation of 2 U.S.C. § 441a(f). \$4,247 remains unrefunded.

IX. GPC did not report the receipt of a \$5,000 in-kind contribution from the Iowa Democratic Party (Federal Division), in violation of 2 U.S.C. § 434(b)(3)(B).

X. GPC accepted in-kind contributions in the form of advances from two incorporated law firms, resulting in receipt of a total of \$8,384.67 in prohibited contributions, in violation of 2 U.S.C. § 441b. \$7,374.09 remains unrefunded.

XI. GPC accepted an in-kind contribution from a corporation in the form of the use of a corporate aircraft, resulting in receipt of a \$3,936 prohibited contribution, in violation of 2 U.S.C. § 441b. \$3,542.40 remains unrefunded.

XII. GPC exceeded the primary campaign expenditure limitations for the state of Iowa by a total of \$457,543.95 in violation of 26 U.S.C. § 9035(a) and 2 U.S.C. § 441a(b)(1)(A).

XIII. As a result of \$104,935.11 in charges incurred on a credit card of the candidate, for which GPC failed to make payment within 60 days, the candidate exceeded his expenditure limit in violation of 26 U.S.C. § 9035(a).

XIV. GPC will refund all outstanding excessive and prohibited contributions. These required refunds total approximately \$70,000.

XV. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eighty Thousand Dollars (\$80,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

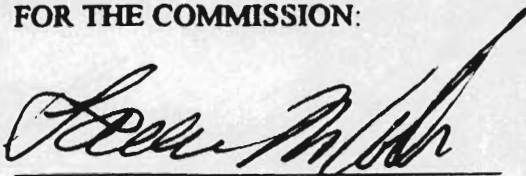
XVI. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XVII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XVIII. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XIX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.


FOR THE COMMISSION:



Lawrence M. Noble
General Counsel

5/12/95
Date

FOR THE RESPONDENTS:



Robert F. Bauer
Counsel to Respondents

4/28/95
Date

250443644217



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE END OF MUR # 3342

DATE FILMED 6/16/75 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Date: 7/7/95

☒ Microfilm
☐ Public Records
☐ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED NUR 3342

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CONFIDENTIAL

PRIVILEGED

PERKINS COLE - WASHINGTON, D.C.

FAX NUMBER: (202) 434-1890

IF THERE ARE PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL:

(202) 628-6600

ADDRESSEE Federal Election Commission
(CONTRACT)Fax No. 212-3923Abigail Sheline, Esq.
(INDIVIDUAL)Direct Dial 212-3400FROM Robert F. BauerDate July 6, 1995Pages (including Cover Sheet) 2Client Number 15850-0001Return to Sadie M. Bone/ 4451 /8

NAME

EXT.

OFFICE LOCATION

MESSAGE:

Sent By _____

This Fax contains confidential, privileged information intended only for the addressee. Do not read, copy or disseminate it unless you are the addressee. If you have received this Fax in error, please call us (collect) immediately at (202) 628-6600, and mail the original Fax to Perkins Cole, 607 Fourteenth St., N.W., Washington, D.C. 20005-3811.

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION
 607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
 TELEPHONE: (202) 628-6600 • FACSIMILE: (202) 434-1690

Robert F. Baner
 (202) 694-4000

July 6, 1995

Abigail Shaine, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3342

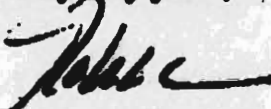
Dear Abby:

I'm writing this letter to confirm and request a review of the arrangements currently underway to meet the obligations of the Gephardt for President Committee and related respondents under the recently concluded conciliation agreement.

As I advised you the current circumstances require more effort and time to complete the necessary arrangements for the payment of the civil penalty (\$80,000) and required refunds (\$70,000). Following review today we have concluded that we should have successfully completed and will be able to deliver to the Commission by hand payment in full of both penalty and refund by the last working day of this month (Monday, July 31).

We look forward to working with the Commission in taking all the steps necessary for full compliance with the conciliation agreement. Please call with any comments or suggestions that you have.

Very truly yours,



Robert F. Baner
Counsel to Respondents

RFB:smb

[13830-0001/DA951870.052]

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 COMMISSION
 OFFICE OF GENERAL
 COUNSEL

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OFFICE OF GENERAL
COUNSEL

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FEDERAL ELECTION
COMMISSION
MAIL ROOM

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June 29, 1995

Ms. Anne A. Weissenborn
Senior Attorney
Federal Election Commission
Washington, D.C. 20463

RE: MUR 3342

Dear Ms. Weissenborn:

I am in receipt of your letter of May 15, 1995, outlining the Federal Election Commission's actions of May 8, 1995, relative to the Commission's belief that I violated 2 U.S.C. 441a(a)(1)(A). Unfortunately, since I have moved to Texas, this correspondence was only recently received.

As I have continuously mentioned to you and your associates, I do not agree with the charges made and the facts outlined in the Commission's charge that I violated 2 U.S.C. 441a(a)(1)(A). Unfortunately, the Commission did not determine to seek the truth. I offered to meet with the Commission, legal counsel, or testify under oath about the issue. The Commission chose not to hold a hearing. I also suggested that the Commission resolve the issue with the Gephardt for President Committee, since it was the Gephardt for President Committee that failed to make the appropriate payments and advised us that they were virtually "bankrupt". To the best of my knowledge, the Commission did not attempt to resolve this issue with the Gephardt for President Committee.

The companies and related entities to the February 1988 issue were put in bankruptcy in 1992 and 1993. Consequently, all records, documents, and information regarding the allegations are not available to be presented to the Commission. The statement "in February 1988 Respondent made an advance in the amount of \$3,807.54 to the Committee in the form of payment for flights between Iowa and Washington, D.C., on which representative of the Gephardt for President Committee and Respondent were passengers" is not correct. First, the Gephardt for President Committee was billed for the appropriate cost of the flight. Secondly, to the best of my knowledge, the majority of passengers were not members of the Gephardt for President Committee, but members of Congress and individuals working in the Washington, D.C., area that the Gephardt for President wanted for various reasons returned to Washington after the Iowa caucuses.

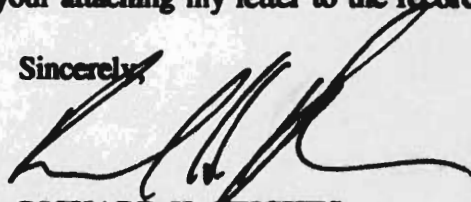
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In any case, the Committee was billed, and expected to pay, the appropriate amount for the flight between Iowa and Washington, D.C. There was no intention to violate any rules, regulations, laws, or acts. In my opinion, in fact, excessive contribution was not made to the Gephardt for President Committee in 1988. We chose not to pay the legal and financial costs of collection when advised that the Gephardt for President Committee could not pay. There was no violation of the Federal Election Campaign of 1971, as amended. The invoice was presented to the Gephardt for President Committee for transporting certain members of Congress and other individuals back to Washington. This was "not a contribution", or "made for the purpose of influencing a federal election".

The unilateral decision made the by the Federal Election Commission in this case, without hearing, without testimony, without - to the best of my knowledge - soliciting information from the Gephardt for President Committee, is not only capricious, but certainly slanderous to my character and reputation. The action by the Federal Election Commission to place these charges in the public record is not what I call due process.

Consequently, I would appreciate your attaching my letter to the record.

Sincerely,



RICHARD H. HUGHES

RHH/rh



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 7/24/95

☒ Microfilm
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☐ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED NUR 3342

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011
TELEPHONE: (202) 628-6600 FACSIMILE: (202) 434-1690

ROBERT F. BAUER
(202) 434-1602

July 6, 1995

JUL 10 12 44 PM '95
FEDERAL ELECTION
COMMISSION
OFFICE OF THE
GENERAL COUNSEL

Abigail Shaine, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3342

Dear Abby:

I'm writing this letter to confirm and request a review of the arrangements currently underway to meet the obligations of the Gephardt for President Committee and related respondents under the recently concluded conciliation agreement.

As I advised you the current circumstances require more effort and time to complete the necessary arrangements for the payment of the civil penalty (\$80,000) and required refunds (\$70,000). Following review today we have concluded that we should have successfully completed and will be able to deliver to the Commission by hand payment in full of both penalty and refund by the last working day of this month (Monday, July 31).

We look forward to working with the Commission in taking all the steps necessary for full compliance with the conciliation agreement. Please call with any comments or suggestions that you have.

Very truly yours,



Robert F. Bauer
Counsel to Respondents

RFB:smb

[15850-0001/DA951870.052]



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 12, 1995

Robert F. Bauer, Esquire
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3342
Gephardt for President
Committee, et al.

Dear Bob:

We have received your letter of July 6, 1995 regarding compliance by your clients with the conciliation agreement signed in the above-cited matter. It is our understanding that the Commission will receive a check for the \$80,000 civil penalty by July 31, 1995.

With regard to refunds, we would like to draw your attention to the provisions in the conciliation agreement regarding repayments of outstanding excessive and prohibited in-kind contributions. Your letter seems to indicate that your clients are planning to send the \$70,000 in refunds to the Commission; however, such payments are to be sent directly to the respective makers of the in-kind contributions.

If you have any questions, please call me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne A. Weissenborn", is written over a faint rectangular stamp.

Anne A. Weissenborn
Senior Attorney

95043661942



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 9/14/95

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THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3342

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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COMMISSION
SECRETARIAT

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July 19, 1995

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel *LM*

SUBJECT: MUR 3342 - Compliance by Gephardt for President
Committee with Provisions of Conciliation Agreement

On May 8, 1995, the Commission approved a conciliation agreement with the Gephardt for President Committee, the Gephardt in Congress Committee and Richard A. Gephardt. The agreement was signed on behalf of the Commission on May 12, 1995 and sent to counsel for these respondents. Therefore, by the terms of the agreement, compliance with its provisions was to have been accomplished by June 12, 1995.

In response to telephone inquiries as to the status of such compliance, this Office received on July 6, 1995, a letter from counsel stating that more effort and time than expected had been required to raise the funds needed to pay the civil penalty of \$80,000 and to make the approximately \$70,000 in refunds provided for in the conciliation agreement. Counsel stated that his clients should be able to meet the requirements of the agreement by July 31, 1995.

Based upon these representations, this Office does not at this time recommend that the Commission authorize the filing of suit for non-compliance with the conciliation agreement in this matter. Should the respondents fail to comply fully with the agreement by the beginning of August, we will inform the Commission.

95043685105



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20543

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *KCS*
DATE: July 19, 1995
SUBJECT: MUR 3342-Memo to the Commission

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

72 Hour Tally Vote []
Sensitive []
Non-Sensitive []

24 Hour Tally Vote []
Sensitive []
Non-Sensitive []

24 Hour No Objection []
Sensitive []
Non-Sensitive []

Information [X]
Sensitive [X]
Non-Sensitive []

Other []

DISTRIBUTION

Compliance [X]

Audit Matters []

Litigation []

Closed Letters []

MUR []

DSP []

Status Sheets []

Advisory Opinions []

Other (See Distribution
below)

95043685106