



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

BS002457

June 18, 1991

MEMORANDUM

TO: FRED S. EILAND
PRESS OFFICER

FROM: ROBERT J. COSTA *Mr FWRJC 6/18/91*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

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

Attached please find a copy of the Final Audit Report on the Gephardt for President Committee, Inc. which was approved by the Commission on June 10, 1991.

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

Attachment as stated

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

*/ Also refer to Agenda Document #91-48 considered by the Commission at the meeting of 5-23-91. Agenda Document #91-48 includes the legal analyses performed by the Commission's Office of General Counsel relative to the subject final audit report.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

BS002433
6/10/91

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

I. Background

A. Overview

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

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

The Committee registered with the Federal Election Commission on March 9, 1987. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from the Committee's inception, November 17, 1986, through May 31, 1988.**/ During this period, the Committee reported an opening cash balance of \$0,

*/ The Gephardt Committee, a joint fundraising committee authorized by the Candidate, is currently being audited. The Gephardt Committee functioned as the fundraising representative for the Gephardt for President Committee and the Gephardt in Congress Committee. Findings and recommendations resulting from same will be addressed in a separate audit report.

**/ The audit period includes the financial activity contained in the disclosure reports filed by the Gephardt Presidential Exploratory Committee (11/17/86-12/31/86).

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total receipts of \$12,293,921.88, total disbursements of \$12,268,385.69 and a closing cash balance of \$25,536.19. In addition, certain financial activity was reviewed through November 9, 1990, for purposes of determining the Committee's remaining matching fund entitlement based on its net outstanding campaign obligations. Under 11 C.F.R. §9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

B. Key Personnel

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

C. Scope

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

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

Matters Referred to the Office of General Counsel

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

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

A. Calculation of Repayment Ratio

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

Section 9038.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the amount of any

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repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

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

Total Matching Funds Certified through the
Date of Ineligibility - 3/28/88

Numerator plus Private Contributions Received
through 3/28/88

\$2,340,696.53

= .262834

\$2,340,696.53 + \$6,564,900.02

Thus, the repayment ratio for non-qualified campaign expenses is 26.2834 percent.

B. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days of the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs.

In addition, 11 C.F.R. §9034.1(b) states, in part, that if on the date of ineligibility a candidate has net outstanding obligations as defined under 11 C.F.R. §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

The Statement of Net Outstanding Campaign Obligations (NOCO) is the basis for determining further matching fund entitlement. Congressman Gephardt's date of ineligibility was March 28, 1988. Consequently, he may only receive matching fund payments to the extent that he has net outstanding campaign obligations as defined in 11 C.F.R. §9034.5.

The Committee filed a NOCO statement which reflected the Committee's financial position at April 8, 1988*/ and revised statements with each subsequent matching fund request. The Audit staff analyzed the Committee's April 8, 1988 NOCO statement and made adjustments to reflect the Committee's actual cash position. The Committee's NOCO as adjusted by the Audit staff appears below.

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*/ The Committee's NOCO statement should have been filed as of March 28, 1988.

Gephardt for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations
as of April 8, 1988
as Determined Through November 9, 1990

Assets		
Cash in Bank	\$	62,819.94
Accounts Receivable		48,913.59
Capital Assets		<u>45,861.00</u>
Total Assets		\$157,594.53
 Liabilities		
Accounts Payable for Qualified Campaign Expenses	1,373,343.92*/	
Refunds of Excessive Contributions Due	43,575.00	
Actual Winding Down Cost (4/9/88 to 11/9/90)	247,437.33	
Estimated Winding Down Cost (11/10/90 to 5/10/91)		
Salaries/Consulting	\$8,000.00	
Occupancy	2,400.00	
Telephone	2,400.00	
Office Expenses	300.00	
Travel	500.00	
Postage and Delivery	<u>200.00</u>	
Total Estimated Winding Down Cost	<u>13,800.00</u>	
Total Liabilities		<u>\$1,678,156.23</u>
Net Outstanding Campaign Obligations		<u>(\$1,520,561.70)</u>

*/ The Committee's accounts payable figure has been reduced by the amount of accounts payable allocable to the Iowa spending limit, which represent non-qualified campaign expenses, and the forgiven/unpaid portion (\$987,457) of debt settlements approved by the Commission on October 30, 1990.

Therefore, as of April 8, 1988, the Candidate's remaining entitlement was \$1,520,561.72. Using the Commission's matching fund records and Committee disclosure reports for the period April 9, 1988 through September 14, 1989 it was determined that the Committee received \$1,514,257.76 in contributions and matching funds. As a result, the Candidate's remaining entitlement, as of September 14, 1989 was \$6,303.96 (\$1,520,561.72 - 1,514,257.76).

Conclusion

As of September 14, 1989, the Candidate had not received matching funds in excess of his entitlement. However, as previously stated, the Commission, on October 30, 1990, approved debt settlements totaling \$987,457 (forgiven amount). One of the approved debt settlements was for a debt owed to a law firm which provides legal representation to the Candidate/Committee. The settlement related to an invoice, dated April 7, 1989, in the amount of \$100,005.44 the unpaid balance of which equaled \$75,005.44. This invoice was for legal services rendered from September, 1987 through December, 1988. The Committee offered and the law firm agreed to settle the amount owed (\$75,005.44) for \$32,795.44 which resulted in \$42,210 being forgiven. On September 26, 1990 the law firm billed the Committee for services rendered from January, 1989 through August, 1990 (a period of 20 months), in the amount of \$114,750.66.

It should be noted that the Audit staff does not doubt the legitimacy of this invoice, and has included this amount in the NOCO accounts payable for qualified campaign expenses. However, it should be noted that when the Committee and the law firm settled the previously mentioned debt of \$75,005.44 on September 20, 1989 for \$32,795.44, a period of almost 9 months of the 20 month billing period relative to the September 26, 1990 invoice had lapsed, and on March 30, 1990, when the law firm submitted all debt settlements on behalf of the Committee to the Commission, 15 months of the 20 months covered by the September 26, 1990 invoice had lapsed.

It is our opinion that the Committee and the law firm had to have been aware that additional amounts were owed to the law firm at the time the debt settlements were submitted for Commission approval. It is also our opinion that if the Committee and the law firm decide to debt settle the September 26, 1990 bill, a repayment of matching funds pursuant to 26 U.S.C. § 9038(b)(1) will be required.

Further, on October 30, 1990, the Commission did not approved 28 debt settlements totaling \$65,920 (forgiven amount) but required the Committee to submit additional information. If some portion of the \$65,920 is debt settled, forgiven, considered exempt under 11 C.F.R. § 100.7(b)(8), and/or paid in-kind, a repayment of matching funds pursuant to 26 U.S.C. § 9038 (b)(1)

may be required. To date, the Committee has not responded to the Commission's request for the additional information.

The Audit staff recognizes that the Committee may identify additional qualified campaign expenses not included in the NOCO statement which also would have a bearing on any future repayment determination.

C. 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

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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

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.

"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

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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

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.

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.

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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.

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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.

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.

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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.

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(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

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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

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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

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.

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.

On May 23, 1991, the Commission determined that the consulting fees (\$93,250) were not allowable to Iowa. Based on the above, the Audit staff has allocated an additional \$19,288.08 in travel related expenditures to the Iowa expenditure limitation.

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.

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,

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).

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

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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 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.

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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.

In response to the interim audit report, the

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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

*/ The correct amount of the invoice and the amount allocated by the Audit staff to Iowa is \$109.20.

fundraising efforts, mailing dates, coded responses, etc., should be available for review prior to making any additional fundraising adjustment.*/

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

*/ 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.

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.

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.

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Upon discussing this matter with Committee officials, they provided an unsigned/undated copy of an amendment*/ to its original Agreement. The amendment, in part, 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.

*/ On March 6, 1989, the Committee submitted a signed copy of the amendment which was dated January 18, 1988.

**/ December 26, 1987 is the earliest date on which media time buys for Iowa were broadcast.

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 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;
- ° 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.

^{*/} 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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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.

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 42 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 apparent that Doak and Shrum had struck for itself a remarkably good deal.

It should be noted that the Audit staff's position with respect to the 15 percent agency commission has not changed. The allocation was based on the media time buys allocable to Iowa. The 15 percent agency commission is documented in the original agreement. The amendment to that agreement deletes the 15 percent agency commission. Accordingly, the Commission has determined that, absent a showing by the Committee as to why the agency commission should not be 15 percent, agency commissions totaling \$52,593.33 are allocable to Iowa.

The Audit staff has identified an additional \$21,642.44 allocable to Iowa. This amount represents media time buys for which the Committee has taken a 50 percent fundraising exemption. However, the media buys were either broadcast within 28 days of the caucus which precludes the use of the exemption or the broadcast dates with respect to certain media buys were not known.

As a result, media time buys and agency commissions totaling \$74,235.77 (\$21,642.44 + 52,593.33) require allocation to Iowa.

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.

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."

*/ Interacts are live question-and-answer sessions between a candidate and the local TV anchor people.

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 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 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 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

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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 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). 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.

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	\$178,910.11	
Exemption		
Telephone Related Charges	44,055.82	
Salaries, Employer FICA,	36,624.02	
Consulting Fees and Staff		
Benefits		
Intra-State Travel and	19,898.59	
Subsistence		
Car Rentals	22,486.08	
Polling	19,288.08	
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	4,691.98	
Allocations		
Accounts Payable	25,221.06	
Rental Apartments/Houses	7,371.46	
Exempt Compliance and	(19,191.90)	
Fundraising Expenditures		
 Total Allocations by Audit		<u>\$531,456.77</u>
Staff		
 Total Allocable Amount		\$1,270,935.75
 Less Iowa Expenditure		<u>775,217.60</u>
Limitation		
 Amount in Excess of the Iowa		<u>\$ 495,718.15</u>
Expenditure Limitation		

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

June 12, 1992

MEMORANDUM

TO: Fred Eiland
Chief, Press Office

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

Carmen R. Johnson *CJ*
Assistant General Counsel

SUBJECT: Public Issuance of the Statement of Reasons
for the Final Repayment Determination for
Gephardt for President Committee, Inc.

Attached please find a copy of the above mentioned
Statement of Reasons which the Commission approved on
May 21, 1992.

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

Attachment as stated

cc: Audit Division
FEC Library
Public Disclosure
Reports Analysis Division

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Congressman Richard A. Gephardt)
and the Gephardt for President)
Committee, Inc.)

STATEMENT OF REASONS

On May 21, 1992, the Commission made a final determination that Congressman Richard A. Gephardt and the Gephardt for President Committee ("Committee") must repay \$118,943.94 to the United States Treasury. The Committee's final repayment determination was based on it exceeding the Iowa expenditure limitation by \$452,543.95. See 11 C.F.R. § 9038.2(b)(2)(ii)(A). The Committee's repayment ratio as calculated under 11 C.F.R. § 9038.2(b)(2)(iii) is .262834. Therefore, the Committee is ordered to repay \$118,943.94 ($\$452,543.95 \times .262834$) to the United States Treasury within 30 days receipt of this determination. 11 C.F.R. § 9038.2(d)(2). Pursuant to 11 C.F.R. § 9038.2(c)(4), this Statement sets forth the legal and factual basis for the Commission's determination.^{1/}

^{1/} Throughout the Statement of Reasons, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455, and "Matching Payment Act" refers to the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031-9042.

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I. BACKGROUND

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The Gephardt for President Committee, Inc. is the principal campaign committee of Congressman Richard A. Gephardt, a candidate for the Democratic presidential nomination in 1988. On June 10, 1991, the Commission made an initial determination that the Committee must repay \$126,383.37 to the United States Treasury. The issues relevant to the repayment determination first arose in the Interim Audit Report which was approved by the Commission on October 4, 1989. See Attachment 1. The Committee responded to the Interim Audit Report on February 16, 1990. See Attachment 2. The Commission issued the Final Audit Report on June 10, 1991. See Attachment 3. The Committee responded to the Final Audit Report on July 18, 1991.^{2/} See Attachment 4. As part of its response, the Committee requested an opportunity to address the Commission in open session regarding the Final Audit Report and the initial repayment determination pursuant to 11 C.F.R. § 9038.2(c)(3). See Attachment 5. The Commission granted the Committee's request for an oral presentation on September 19, 1991. Counsel for the Committee made an oral presentation before the Commission on November 6, 1991. See Attachment 7.

^{2/} The Committee's response to the Final Audit Report incorporates by reference its response to the Interim Audit Report. Therefore, references to the Committee's response includes both its responses to the Interim Audit Report and the Final Audit Report.

II. EXPENDITURES IN EXCESS OF THE IOWA LIMITATION

Section 441a(b)(1)(A), Title 2 of the United States Code establishes national and state expenditure limitations for candidates seeking the presidential nomination who receive public financing. The Commission's regulations, as set forth at 11 C.F.R. § 106.2, govern the allocation of expenditures by publicly-financed primary candidates to particular states. The Iowa expenditure limitation for the 1988 election cycle was \$775,217.60. See 2 U.S.C. § 441a(b)(1)(A). The Final Audit Report found that the Committee exceeded the Iowa expenditure limitation by \$480,848.63. Since the Committee's repayment ratio is .262843, the Commission made an initial determination that the Committee repay \$126,383.37 ($\$480,843.63 \times .262834$) to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii)(A).

The Committee contends that it was entitled to a 25% national exemption of all of its Iowa expenditures. In addition, the Committee contests the allocation of the following expenses to the Iowa expenditure limitation: (1) telephone charges of Northwestern Bell and MCI; (2) salaries, employer FICA, consulting fees and staff benefits; (3) intrastate travel and subsistence expenses; (4) telemarketing expenses; (5) media expenses; and (6) event expenses.

Based on the additional information submitted by the Committee in response to the Final Audit Report and the initial repayment determination, the Commission has determined that the Committee exceeded the Iowa expenditure limitation by

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\$452,543.95.^{3/} Therefore, the Commission has reduced the amount the Committee must repay to the United States Treasury from \$126,383.37 to \$118,943.94 ($\$452,543.95 \times .262834$).^{4/}

The reduction in the amount allocable to the Iowa expenditure limitation is the result of several adjustments. First, the amount was reduced to account for \$1,051.88 in expenditures the Committee erroneously allocated to the Iowa limitation. The Commission also reduced the amount allocable to the Iowa expenditure limitation to account for \$642.84 in refunds for telephone base charges. Similarly, the amount allowed for the 10% compliance exemption was reduced by a proportional amount. In addition, the amount allocable to the Iowa limitation was reduced by \$967.20 for certain accounts

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^{3/} An addendum audit report will be issued pursuant to 11 C.F.R. 9038.1(e)(4). The amount in excess of the Iowa expenditure limitation may be increased to account for expenses found to be applicable to the Iowa limit in the Final Addendum Audit Report. Therefore, the Committee may owe an additional amount to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii); see also 11 C.F.R. § 9038.2(f).

^{4/} The Committee may be required to make an additional repayment to the United States Treasury for receiving public funds in excess of its entitlement. See 11 C.F.R. 9038.2(f). The Final Audit Report found that the Committee had a remaining entitlement of \$6,303.96. The Committee submitted information documenting additional accounts payable in the amount of \$14,104.57. Accordingly, the Committee's remaining entitlement is increased to \$20,408.53 ($\$6,303.96 + 14,104.57$). See Attachment 7. The Committee submitted a debt settlement request, DSR 90-16, on March 30, 1990. The Committee submitted additional information related to the request on May 1, 1990 and December 11, 1991. On February 25, 1992, the Commission made several determinations with respect to DSR 90-16 that may reduce the Committee's net outstanding campaign obligations by more than its remaining entitlement. See Attachment 10. The difference between the Committee's remaining entitlement and its net outstanding campaign obligations is repayable to the United States Treasury. See 11 C.F.R. §§ 9038.2(b)(1)(i) and (v).

payable and \$2,248.16 in miscellaneous expenses. See Attachment 9. Finally, the Commission adjusted the amount of media expenses allocable to the Iowa expenditure limitation. See infra p. 27. The issues raised by the Committee are addressed in the following discussion.

A. Twenty Five Percent National Exemption

The Committee contends that it is entitled to a "25% national exemption" because many of the expenditures incurred in Iowa were unrelated to the Iowa effort, but were directly related to maintaining a national campaign. Committee's response at 32. The Committee argues that its Iowa primary and national campaigns were "inextricably intertwined." Id. at 32. According to the Committee, at least 25% of the funds incurred in Iowa were related to its campaign efforts nationwide. Id. at 34. The Committee's argument is based on the historical development of the Iowa primary as the initial election with unquestionable national significance. Transcript of Committee's Oral Presentation ("Transcript") at 39. The Committee contends that from the 1976 election to the 1988 campaign, Iowa became the focal point of the primary elections with a disproportionate significance in the presidential nominating process. Transcript at 8.

The Committee cautions that it is not contending that it is entitled to the 25% exemption because of the nationwide impact of the Iowa primary. Committee's Response at 17; Transcript at 6. Rather, the Committee asserts that as a result of the national importance of the Iowa primary, the national campaign

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and the Iowa primary begin to "blur to a degree, which makes determining which expenditures are made for the purpose of influencing the Iowa voters and which expenditures are made in Iowa for the purpose of influencing the national voters, a very difficult determination to make." Transcript at 6. In support of its position, the Committee submitted affidavits of campaign staff detailing the amount of time they spent addressing the concerns and inquiries of the national press. In addition, the Committee intimates that its Iowa budget was prepared in recognition of the fact that a substantial portion of its expenditures would be incurred to influence voters nationwide. Id. at 11.

In view of its efforts to focus on the demands of a national campaign, the Committee exempted 25% of the expenditures incurred in connection with the Iowa primary and asks that the Commission allow it to take this exemption in order to address the political and financial realities of the Iowa primary. The Committee contends that to do otherwise would impose an undue burden on it to stay within the expenditure limitation in Iowa, possibly affecting the candidate's guarantee of political speech under the first amendment. Committee's Response at 33. The Committee further argues that the Commission has a constitutional obligation to administer the Iowa expenditure limitation in a manner that accounts for the political realities of the initial primary and, therefore, the Commission cannot reject an exemption based on any percentage. Transcript at 10 and 79.

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Although the Committee concedes that the selection of the percentage of exempt expenditures was arbitrary, it asserts that a fixed percentage is an effective way to apportion those expenditures incurred to influence the voters of Iowa and the voters nationwide. Committee's Response at 35-36. In support of this argument, the Committee states that the Commission has often selected an arbitrary percentage to deal with similar problems in the area of campaign finance. As an example, the Committee states that the 10% compliance and fundraising exemptions set forth at 11 C.F.R. § 106.2(c)(5) are arbitrary percentages. Id. at 36.

The Commission rejects the Committee's position that it is entitled to exempt 25% of the expenditures it incurred in Iowa. At the heart of the Committee's position is an attack on the concept of state-by-state limits. While the Commission has recommended that Congress eliminate the state-by-state limits, Congress has never chosen to eliminate them. Thus, as long as the state expenditure limitations remain in effect, the Commission is required to administer the law and make its determinations accordingly. See 11 C.F.R. § 437c(b)(1).

The Committee's position essentially requires the Commission to administer the Matching Payment Act and the regulations based on the whims of the political process. For example, in the 1992 presidential election cycle, Iowa appears to have had less national significance than it did in the 1988 election cycle. Therefore, the Committee's argument would not apply in that instance, but other campaigns could argue that

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expenditures incurred in other states with a greater national significance in the 1992 election cycle should be exempt from state allocation.

The congressional mandate that the Commission is required to follow, as expressed at 2 U.S.C. § 441a(b)(1)(a), is to calculate the state expenditure limitations based on the voting age population and not according to a candidate's belief that a specific state's relative significance to his or her national campaign causes the committee to incur expenditures to influence the voters in that state and the voters nationwide. The Commission is required to follow this congressional mandate even if the candidate's belief is based on strategic political reasoning, media reports or historical information suggesting that the Iowa primary campaign and the national campaign are "inextricably intertwined."

While the Committee contends that certain expenditures incurred in Iowa were actually for the purpose of influencing voters nationwide, the Commission believes that every expenditure incurred in the entire primary process has a national component that is not necessarily measurable or separable from the state component. The primary elections are not held to elect a candidate to a particular state office. Rather, they are held for the purpose of nominating a candidate for the office of President of the United States. See 11 C.F.R. § 106.2(a)(1). Therefore, it is anticipated that the expenditures will have a national component and the presidential committee receiving public funds will make the necessary

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financial adjustments to accommodate a process by which state-by-state elections are held to nominate a candidate to a national office.

Moreover, the Commission does not believe that the candidate's right to political speech is abridged by the denial of the 25% national exemption. Nor does the Commission believe that it has a constitutional obligation to grant the Committee's exemption. The intent of Congress in enacting the public financing provisions was to facilitate political speech and not to abridge it. See Buckley v. Valeo, 424 U.S. 1, 92 (1976). However, in order to be eligible to receive public funding, the candidate must satisfy several conditions and make certain certifications to the Commission. See 26 U.S.C. § 9033(a),(b). The candidate certified to the Commission that he would not exceed the state expenditure limitation. 26 U.S.C. § 9033(b)(1). The candidate was not compelled to accept the public funds and to make the certification to the Commission. See Republican National Committee v. Federal Election Commission, 487 F. Supp. 280, 284 (S.D.N.Y. 1980), aff'd 616 F.2d 1 (2d Cir. 1980), aff'd 445 U.S. 955 (1980); see also John Glenn Presidential Committee, Inc. v. Federal Election Commission, 822 F.2d 1097 (D.C. Cir. 1987)(The court rejected the committee's argument that the state-by-state expenditure limitations violated the first amendment). The Commission notes that the Iowa expenditure limitation was the same for all of the presidential candidates receiving public funds under the Matching Payment Act. Therefore, the Commission is not

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constitutionally obligated to grant the candidate a special exemption from the Iowa expenditure limitation that the other candidates receiving public funds did not enjoy.

Furthermore, the Commission does not believe the Committee is justified in arbitrarily selecting the percentage of expenditures exempt from the Iowa limitation without documentation supporting this method of allocation. When the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate has the burden of demonstrating, with supporting documentation, that the proposed method of allocation or claim of exemption is reasonable. See 11 C.F.R. § 106.2(a)(1). Since the Committee has not based its claim for an exemption on actual figures, but on a theoretical figure couched in terms of a national exemption, the candidate has not met his burden of proving that the claim of exemption is reasonable. See id.

Finally, the Committee's claim for a 25% national exemption is not analogous to the 10% compliance and fundraising exemptions. Unlike these exemptions, which focus on special areas of concern in the financial management of political campaigns, the Committee's proposal for a national exemption is state specific. The Commission has never and cannot adopt an exception to the state expenditure limitations based on one state's order in the primary election process or its relative importance to the candidate's national campaign.

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B. Telephone Charges

1. Northwestern Bell Charges

The Committee contends that \$78.00 in calls that were classified on its Northwestern Bell bill as "Interstate, Canada, and/or 908 Directory Assistance Usage" are not allocable to the Iowa expenditure limitation. Committee's Response at 39. The Committee argues that these calls were interstate calls placed outside of Iowa and therefore, should not be allocated to that state's limitation. Id. The Committee also contends that \$172.15 in charges for intrastate calls made after the Iowa primary are not allocable to the Iowa expenditure limitation. Committee's Response at 40. Since these calls were made after the Iowa primary, the Committee asserts they did not have any influence on the primary. Id. The Committee notes that these calls are distinguishable from the debt retirement activities that take place after an election. Id.

The Commission's regulations exempt charges for interstate telephone calls from allocation to any state. 11 C.F.R. § 106.2(b)(2)(v). However, in its response to the Interim Audit Report, the Committee submitted documentation to support exempting only \$28.20 in telephone charges from the Iowa expenditure limitation. See 11 C.F.R. § 106.2(a)(1). Accordingly, the Final Audit Report reduced the amount allocable to the Iowa expenditure limitation by \$28.20. Since the Committee provided no further evidence that an additional amount

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in telephone charges should be exempt from allocation, the remainder of the charges are allocable to the Iowa expenditure limitation.

Moreover, the Commission believes that the calls made after the Iowa primary are allocable to that state's expenditure limitation. Intrastate charges are overhead expenditures which must be allocated to the particular state where the office is located. 11 C.F.R. § 106.2(b)(2)(iv)(A). Expenditures that are made in a state after the primary election, which relate to that primary election are allocable to the state's expenditure limitation. 11 C.F.R. § 110.8(c)(1); cf. FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988). Since the Committee did not demonstrate that these calls were unrelated to the Iowa primary, the charges are allocable to that state's expenditure limitation. See 11 C.F.R. § 106.2(a)(1).

2. MCI Charges

The Final Audit Report allocated \$6,756.19 in MCI charges to the Iowa expenditure limitation. The Committee objects to the allocation of \$2,628.56 of these charges to the limitation. Committee's Response at 42. The Committee's MCI service allowed campaign staff to place calls by using the MCI card 800 access code. Id. According to the Committee, the system's access code could identify the location to which the call was made, but not where the call originated. Id. The Committee contends that it was inappropriate for the Audit staff to allocate the calls placed to a location in Iowa to that state's expenditure limitation. Committee's Response at 43. The Committee notes

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that many of the calls in question were reflected on its MCI bill from the national headquarters and, therefore, would be exempt from allocation to the Iowa limit under the interstate call exemption. Id. The Committee concludes that since it cannot be determined where the calls originated, the most reasonable approach is to allocate only 50% of the charges to the Iowa expenditure limitation. Id.

The Final Audit Report noted that the 800 access code could be traced to certain MCI card numbers and the documentation indicates that the individuals in possession of the MCI cards with these numbers were in Iowa during the billing cycle in question. The Committee has not submitted any documentation demonstrating that the individuals using the MCI cards were calling from outside of Iowa; nor has it submitted documentation to support its assertion that some of the calls were placed from the national headquarters. Therefore, the Committee is not entitled to exempt these costs from state allocation under 11 C.F.R. § 106.2(b)(2)(v).

C. Salaries, Employer FICA, Staff Benefits and Consultant Fees

The Final Audit Report allocated an additional \$30,075.40 to the Iowa expenditure limitation. This additional allocation was the result of the Committee's failure to allocate the cost of life and health insurance and employer FICA.^{5/} This

^{5/} FICA refers to the tax imposed on both employers and employees to fund the Social Security programs pursuant to the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101-3126. Under FICA, the employer and the employee pay matching amounts. 26 U.S.C. § 3101; 26 U.S.C. § 3111.

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additional allocation was based on the fact that the Committee improperly allocated certain salaries and consultant fees as 100% exempt compliance costs.

With respect to the additional allocation for employer FICA, the Committee contends that the Commission's regulations do not require the allocation of such payments. The Committee argues that only the Financial Control and Compliance Manual ("Compliance Manual") imposes such an obligation and, therefore, concludes that the Compliance Manual and the regulations are inconsistent. Committee's Response at 56. Thus, the Committee asserts that it was correct in using the regulations as guidance and not allocating employer FICA to Iowa. Id. The Committee further argues that, unlike salary, employer FICA payments are not a benefit to the employee. Id. at 54. Rather, FICA is the employer's legal obligation to pay taxes and the benefit runs entirely to the federal government. Id. Consequently, the Committee contends that these expenditures were not incurred to influence the nomination, but to satisfy its legal obligation to contribute to the FICA. Transcript at 15.

The Committee raises similar arguments with respect to its failure to allocate its costs for health and life insurance for its staff. Specifically, the Committee contends that neither the Commission's regulations nor the Compliance Manual require it to allocate the cost of health and life insurance. Committee's Response at 57. The Committee also argues that the cost of such benefits, unlike employee salaries, does not have any direct relationship to the campaign's activities to

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influence the nomination. Id. The Committee further contends that in consideration of the "high stakes battle" in Iowa and the relatively small expenditure limitation available in that state, campaigns may choose not to offer insurance benefits to campaign staff in order to avoid allocating such expenses to that state's limitation. Transcript at 15. The Committee argues that committees should be encouraged to offer insurance benefits to their staffs. Id. at 16.

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Finally, the Committee contends that it is entitled to take a 100% compliance exemption for certain Iowa staff salaries and still maintain the standard 10% compliance exemption for the remainder of the Iowa staff salaries without establishing an allocation percentage for each individual in the state. Committee's Response at 47. The Committee submits that requiring presidential committees to establish an allocation percentage for each individual in a state to be entitled to the 100% compliance exemption is not in line with the realities of political campaigns. Transcript at 50. The Committee intimates that one of the realities is that during the course of the campaign most of the staff will be charged to perform compliance tasks at one time or another. Id. The Committee asserts that another political reality is that certain individuals are employed solely for the purpose of ensuring compliance. Id. Therefore, the Committee believes that it is entitled to exempt 100% of their salaries to compliance and it contends that there is no constitutional or statutory bar to this method of allocation. Id. at 51.

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The Commission believes that these expenses are allocable to the Iowa expenditure limitation. In general, the regulations do not require that any specific expenditures be allocated to the state limitations. Rather, the regulations merely set forth a general rule that expenditures incurred for the purpose of influencing the nomination of a candidate with respect to a particular state are allocable to that state. 11 C.F.R. § 106.2(a)(1). The regulations also set forth a general rule for the method of allocating expenses and specific rules for the method of allocating certain enumerated expenditures. 11 C.F.R. § 106.2(b). In addition, the regulations provide for specific expenses that are exempt from state allocation. 11 C.F.R. § 106.2(c). Therefore, unless the expenditure is expressly exempt from state allocation under 11 C.F.R. § 106.2(c), the Commission is not precluded from applying such an expenditure to the state limitation.

Contrary to the Committee's assertion, the Commission's regulations and the Compliance Manual are not inconsistent in their approach to allocating employer FICA. Rather, the regulations and the Compliance Manual complement one another. The Compliance Manual elaborates on areas which are not specifically addressed in the regulations to assist candidates in the financial management of campaigns which are publicly financed. See Compliance Manual, pg. xiii. (Introduction). The fact that the Committee chose to "follow the [r]egulations to the letter" does not negate its obligation to allocate employer

FICA as required by the Compliance Manual. Moreover, the Committee concedes that it relied on the Compliance Manual in other circumstances throughout the campaign.

In any event, the Committee's argument that employer FICA payments are not allocable to the Iowa expenditure limitation because the payments do not benefit the employee is misplaced. The threshold inquiry, for purposes of determining whether the cost is allocable to the Iowa expenditure limitation, is whether the FICA payments are expenditures incurred for the purpose of influencing the nomination. See 11 C.F.R. § 106.2(a)(1). Salary is an expense that is allocable to the state expenditure limitation. See 11 C.F.R. § 106.2(b)(2)(ii). Pursuant to 26 U.S.C. § 3111, every employer covered by FICA is required to pay these taxes for individuals in their employ. As a result, employer FICA payments are ancillary to the employer-employee relationship. Since salary is a committee expense that arises out of the employer-employee relationship, employer FICA payments must be allocated to the state expenditure limitation in the same manner as salary. See 11 C.F.R. § 106.2(b)(2)(ii).

Moreover, the Commission believes that employer FICA payments were incurred to influence the nomination. The Committee employed the individuals to engage in activity to influence the Iowa primary election. The cost to the Committee was staff salary, benefits, employer FICA and other taxes. The fact that employer FICA was paid into a fund established by the federal government as opposed to a campaign employee, the lessor of the property where the campaign office was located, or the

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vendor of campaign buttons, for example, does not change the nature of the expense. Employer FICA payments are merely one of the many expenses a committee will incur in the course of conducting a campaign and influencing the nomination.

Furthermore, the Committee's costs for the staff's health and life insurance are allocable to the Iowa expenditure limitation. Salaries must be allocated to each state in proportion to the amount of time each employee spends in the State. 11 C.F.R. § 106.2(b)(2)(ii). While the Commission's regulations do not specifically state that costs for health and life insurance must be allocated, the Compliance Manual, page 124, does state that a committee must allocate such costs. Moreover, health and life insurance benefits are the same as salary in that they are all part of the compensation package offered to employees in consideration for their services. The form of the compensation does not change the nature of the expense as allocable to the Iowa expenditure limitation. See 11 C.F.R. § 106.2(b)(2)(ii).

Finally, the Commission believes that the Committee is not entitled to a 100% compliance exemption for certain employees if it does not establish an allocation percentage for each individual in the state. The Commission's regulations provide that "[a]n amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular [s]tate may be excluded from allocation to that [s]tate as an exempt compliance cost." 11 C.F.R. § 106.2(c)(5). However, "[i]f the candidate wishes to

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claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual working in that state." Id.

D. Intrastate Travel and Subsistence Expenses

1. Expenses of Campaign Staff

The Audit staff allocated an additional \$19,898.59 to the Iowa expenditure limitation to account for intrastate travel and subsistence expenses of campaign staff who were in the state for 5 or more consecutive days. See 11 C.F.R. § 106.2(b)(2)(iii). The Committee contends that \$1,705.88 of this amount is not allocable to the limitation. Committee's Response at 66. The Committee raises four points with respect to the allocation of these expenditures. First, the Committee contends that the rule requiring the allocation of intrastate travel and subsistence expenses of campaign staff in a state for 5 or more consecutive days should be interpreted using 24-hour periods. The Committee argues that there is no regulatory policy for the Commission using calendar days. Transcript at 20; Committee's Response at 63. Alternatively, the Committee argues that the Explanation and Justification for 11 C.F.R. § 106.2(b)(2)(iii) does not require the allocation of such expenditures to a particular state if a committee can demonstrate that the individuals in question were working on its national campaign strategy. Committee's Response at 64. The Committee notes that the tasks performed by the staff in question in Iowa were more akin to "national campaign strategy meetings" than the tasks that were for the purpose of influencing the voters of Iowa. Id. at 63.

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Third, the Committee submits that at least 25% of these expenditures should not be applied to the Iowa limit under its national exemption theory. Id. at 64; see supra at 4. Finally, the Committee contends that it cannot be "reasonably expected to document in painstaking detail that these individuals were not in the state on the fifth day." Id. at 65 (emphasis in original). The Committee argues that the Commission's regulations cannot be read to require such a burden on the campaign without first amendment infringements. Id.

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The Commission interprets 11 C.F.R. § 106.2(b)(2)(iii) by determining whether a person spent any portion of 5 or more consecutive days in a state, rather than whether he or she spent 5 or more consecutive 24-hour periods in a state. See Explanation and Justification of 11 C.F.R. § 106.2(b)(2), 48 Fed. Reg. 5225 (February 4, 1983); see also Compliance Manual at Chapter I, section C.2.b(2)(c), page 32.6/ While the Committee contends that the individuals in question were performing tasks that were akin to its national campaign strategy, the Committee has not submitted any documentation to support its assertion. See 11 C.F.R. § 106.2(a)(1). Moreover, the Commission has

6/ The Compliance Manual, at Chapter I, Section C.2.b(2)(c), page 32, states in relevant part:

Salary, per diem and/or subsistence costs incurred by persons traveling to a State who remain four (4) consecutive calendar days or less, and for national headquarters staff traveling on business other than the campaign in that State, do not require allocation to the State. 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.

rejected the Committee's argument that it is entitled to a 25% national exemption. See supra at 7. Furthermore, although the Committee contends that it is unreasonable to require it to document whether the individuals at issue were in the state on the fifth day, in cases where the Commission disputes a committee's proposed method of allocation, the committee has the burden of demonstrating, with supporting documentation, that its method of allocating was reasonable. 11 C.F.R. § 106.2(a)(1); see John Glenn Presidential Committee, Inc. v. Federal Election Commission, 822 F.2d 1097, 1103 (D.C. Cir. 1987). The Committee has not submitted any supporting documentation in this case. Therefore, the intrastate travel and subsistence expenses of the campaign staff who were in Iowa for 5 or more consecutive days are allocable to that state's expenditure limitation.

Finally, as a condition for receiving public funds under the Matching Payment Act, the candidate certified that he would not incur expenditures in excess of the state limitations. 11 C.F.R. § 9033.2(b)(2). In addition, the candidate agreed to comply with the applicable requirements of the FECA, the Matching Payment Act and the regulations promulgated thereunder. 11 C.F.R. § 9033.1(b)(9). The Commission's regulations require candidates to submit documentation if his or her method of allocation is disputed. 11 C.F.R. § 106.2(a)(1). Imposing these requirements on candidates who choose to receive public

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financing does not violate the first amendment. See Republican National Committee v. Federal Election Commission, 487 F. Supp. 280, 284 (S.D.N.Y 1980), aff'd 616 F.2d 1 (2d Cir. 1980), aff'd 445 U.S. 955 (1980).

2. Vendor Expenses

The Final Audit Report allocated \$19,288.08 in travel expenses the Committee paid to a vendor, Kennan Research and Consulting, Inc. ("Kennan Research"). Part of this allocation was based on the Commission's determination that the Committee could not exclude the intrastate travel and subsistence expenses for the Kennan Research consultants under the 5-day rule as set forth at 11 C.F.R. § 106.2(b)(2)(iii).

First, the Committee contends that a portion of the amount in question was undocumented expenditures, which it had in fact documented and another portion was related to expenses for certain surveys conducted by Kennan Research that the Audit Division counted twice. Committee's Response at 91. The Commission notes that the Final Audit Report reflects the fact that the amount allocable to the Iowa expenditure limitations has been reduced by \$7,374.41 to account for these two categories of expenses.

Second, the Committee argues that \$18,797.31 in intrastate travel and subsistence expenses for its consultants should be excluded from state allocation because the consultants at issue did not remain in the state for 5 consecutive days on any Iowa

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surveys. Committee's Response at 94. The Committee contends that there is no regulatory purpose for applying the 5 day-rule to employees and not consultants. Transcript at 29.

The Commission rejects the Committee's contentions. The Commission's regulations, at 11 C.F.R. § 106.2(b)(2)(vi), require expenditures incurred for the purpose of taking public polls to be allocated to the state(s) in which the polls are taken, except in the case of nationwide polls. The individuals at issue were employees of Kennan Research who traveled for the purpose of conducting polling activity directed at Iowa. Accordingly, such costs are related to polling and, therefore, are allocable to the Iowa expenditure limitation under 11 C.F.R. § 106.2(b)(2)(vi).

E. Telemarketing Expenses

1. Lewis and Associates Telemarketing, Inc.

The Committee entered into a telemarketing services agreement with Lewis and Associates Telemarketing, Inc. ("Lewis and Associates"). Lewis and Associates was paid \$100,541.75 in exchange for its services. Lewis and Associates considered 9% of this amount to be profit. The Committee was charged \$.75 per call for completed calls and a reduced rate of \$.20 per call for calls placed to wrong and disconnected numbers. The Final Audit Report allocated both the profit and the costs of the wrong and disconnected numbers to the Iowa limitation. The Committee does not dispute the allocation of the profit to Iowa. However, the Committee contends that the cost for wrong and incomplete calls

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should not be allocated to Iowa because these calls did not influence the nomination process. Committee's Response at 97.

The Committee's focus is misplaced in this instance. The focus should be on the contract and Lewis and Associates' performance under the contract. Pursuant to the contract, the Committee was charged for all calls, including those made to wrong and disconnected numbers. The intent of the parties in contracting for the services was to influence the voters of Iowa. The fact that some of the calls were not completed is merely one of expenses for conducting a telemarketing operation. This situation is analogous to the Committee purchasing goods for the campaign and not using everything that was purchased, yet contending that the only allocable cost is for the goods that were actually used by the Committee. Neither argument has any merit if the intent of the parties in bargaining for the goods or services was to influence the voters of Iowa. Therefore, the expenditures incurred for incomplete calls are allocable to the Iowa expenditure limitation.

2. Voter Contact Services

The Final Audit Report allocated \$28,511.89 in fees arising out of a contract that the Committee entered into for goods and services with Voter Contact Services ("VCS"). The Committee contends that under this contract, VCS was the exclusive provider of voter files and voter services to the Committee. Committee's Response at 101. The vendor charged the Committee a 100% mark-up on its products. Id. at 101. According to the Committee, this mark-up was the result of VCS's commitment to

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provide its services and products exclusively to the Committee.

Id. The Committee argues that this exclusive bilateral arrangement was representative of VCS's commitment to a long-term national campaign. Id. The Committee further contends that had the fees been limited to providing goods and services for the Iowa campaign, the fees charged would have been lower and related only to the actual services provided in Iowa. Id. Consequently, the Committee believes that the fees related to this long-term objective are not allocable to Iowa. Id.

The Committee's exclusive arrangement in the contract does not necessarily entitle it to allocate the respective fees to the national limitation. The Final Audit Report notes that detailed invoices provided by the Committee indicated that the goods and services provided were directed at Iowa. Therefore, the costs for the goods and services are allocable to the Iowa expenditure limitation, despite the fact that the Committee contends that VCS was committed to a long-term national campaign. See 11 C.F.R. § 106.2(a)(1).

F. Media Expenditures

On June 24, 1987, the Committee entered into a contract with the firm of Doak and Shrum to place its advertisements during the course of Congressman Gephardt's presidential campaign. The original contract called for a consulting fee of \$120,000.00 and a 15% agency commission on the first one million dollars of media time buys. The term of the original agreement was July 1, 1987 until November 8, 1988. The contract was subsequently amended to delete the 15% commission for the period

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covering December 26, 1987 through the date of the New Hampshire primary. In addition, the amendment required the Committee to pay an additional consulting fee of \$110,000.00. The parties signed the amendment on January 18, 1988. The Final Audit Report allocated \$52,593.33 of the consulting fee, the amount representative of the allocable portion of the 15% commission, to the Iowa expenditure limitation.

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The Committee's argument against applying this amount to the Iowa limitation is twofold. The first part of the Committee's argument focuses on an analysis of the type of services Doak and Shrum rendered in comparison to its arrangement for compensation. The Committee asserts that Doak and Shrum's services were not limited to media buys. Transcript at 122. According to the Committee, Doak and Shrum analyzed polls, prepared scripts, consulted with Congressman Gephardt, and reviewed media strategy. Transcript at 58. The Committee contends that a commission on media buys does not have any real relationship to these services. Id. The Committee asserts that making the media buys was not labor or skill intensive. Transcript at 122. Therefore, the Committee argues it was more appropriate to revise the form of Doak and Shrum's compensation as a fee for consulting services. Id.

Secondly, the Committee contends that as a result of the array of services now offered by consultants, there is a trend toward not compensating consultants through commissions for media placement. Transcript at 122. The Committee asserts that political clients expect consulting firms to perform media

placement as a part of their general consulting services. Id. Accordingly, the Committee argues that any compensation for media placement is incorporated in the fee for general consulting services and, therefore, it is not identifiable. Id. The Committee contends that its renegotiations with Doak and Shrum and the subsequent amendment to the contract allowed it to compensate Doak and Shrum in this manner for its media placement. Id. at 59.

In view of the fact that the original agreement recognized and required the Committee to pay a 15% commission on media buys, the Commission has determined that the amount of the consulting fee representative of the 15% media commission for media placed prior to the signing of the amendment on January 18, 1988, \$28,102.96, is allocable to the Iowa limitation. See 11 C.F.R. § 106.2(b)(i)(B). However, since the Committee is entitled to amend its contract to properly reflect the fee for consulting services rendered, the Commission concludes that the compensation for services rendered subsequent to January 18, 1988 is not allocable to the Iowa expenditure limitation.

G. Event Expenses - Jefferson/Jackson Dinner

The Final Audit Report identified \$27,918.34 that the Committee incurred in connection with the Jefferson/Jackson Dinner ("Dinner") hosted by the Iowa Democratic Party on November 7, 1987. The Committee incurred expenditures for buses, tents, banners, caps and food. The Committee excluded 75% of these expenditures as exempt fundraising. The Committee

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argues the Dinner had two purposes: 1) to recruit hosts for a subsequent fundraising house party event called "America First: December First," by distributing host information packets at the Dinner; and 2) to lay the groundwork for future donations by prospective contributors. Committee's Response at 125.

The Final Audit Report found that these expenditures were not exempt fundraising and, therefore, an additional \$21,156.96 was allocated to the Iowa limitation.^{7/} The Committee is not entitled to exempt these expenses as fundraising. The regulations provide that exempt fundraising expenditures are those expenses associated with the solicitation of contributions. 11 C.F.R. § 106.2(c)(5)(ii). The Committee concedes that there was no actual solicitation at the Dinner. The mere distribution of information packets for the recruitment of hosts for a future fundraising event, without any actual solicitation, does not justify the exclusion of the Dinner expenditures as exempt fundraising. See Final Audit Report on Paul Simon for President Committee, approved October 22, 1991.^{8/} Moreover, the Committee's attempts to demonstrate that fundraising increased because of its initial contact with prospective contributors at the Dinner is not persuasive.

7/ The Committee had already allocated \$6,761.38 (\$27,918.34 - \$21,156.96) of the expenditures incurred in connection with the Dinner to the Iowa limitation.

8/ The Paul Simon for President Committee claimed that its commercials, which did not include a fundraising appeal, were a part of its "multi-tiered fundraising strategy." The Committee asserted that the commercials were followed by direct mail and telemarketing appeals. The Commission rejected the Committee's argument.

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Therefore, the Commission has determined that the Committee may not exempt these expenses and has allocated them to its Iowa expenditure limitation.

III. FINAL REPAYMENT DETERMINATION

Therefore, the Commission has made a final determination pursuant to 11 C.F.R. § 9038.2(c)(4) that for the foregoing reasons, Congressman Richard A. Gephardt and the Gephardt for President Committee, Inc. must repay \$118,943.94 to the United States Treasury.

ATTACHMENTS

1. Interim Audit Report on the Gephardt for President Committee, Inc., approved October 4, 1989 (portions omitted).
2. Response of the Gephardt for President Committee, Inc. to the Interim Audit Report, February 16, 1990 (portions omitted).
3. Final Audit Report on the Gephardt for President Committee, Inc., approved June 10, 1991.
4. Response of the Gephardt for President Committee, Inc. to the Final Audit Report, July 18, 1991.
5. Gephardt for President Committee's request for an oral presentation, July 18, 1991.
6. Memorandum to the Commission on the Oral Presentation of the Gephardt for President Committee, Inc., October 31, 1991, (attachments omitted).
7. Transcript of Oral Presentation to the Commission on November 6, 1991 on behalf of the Gephardt for President Committee, Inc.
8. Memorandum to Robert J. Costa, Re: Gephardt for President Committee's Response to the Final Audit Report, July 26, 1991.

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9. Memorandum to Lawrence M. Noble, Re: Analysis of the Gephardt for President Committee's Response to the Final Audit Report, August 6, 1991.

10. Memorandum to Lawrence M. Noble, Re: Updating Statement of Net Outstanding Campaign Obligations, April 6, 1992 (portions omitted).

11. Memorandum to Lawrence M. Noble, Re: Update of Amount In Excess of the Iowa Expenditure Limitation, May 4, 1992.

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FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

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

I. Background

A. Overview

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

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

The Committee registered with the Federal Election Commission on March 9, 1987. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from inception, November 17, 1986, through this period, the Committee reported \$0, total receipts of \$12,293,921.8 \$12,268,385.69 and a closing cash balance. In addition, certain financial activities

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^{*}/ The Gephardt Committee, a joint committee authorized by the Candidate, will be addressed in a separate report, and findings and recommendations

^{**}/ The audit period includes the period in the disclosure reports filed by the Exploratory Committee (11/17/8

31, 1989 for purposes of determining the Committee's remaining matching fund entitlement based on its net outstanding campaign obligations. Under 11 C.F.R. §9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

B. Key Personnel

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

C. Scope

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

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

A. Allocation of Expenditures to States

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

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allocated an additional \$19,833.55 to Iowa covering activity from April to November 30, 1988. As a result, the Committee has disclosed \$749,425.37 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 \$749,425.37 as allocable to the Iowa expenditure limitation. 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 \$179,234.81 (((\$992,831.90 - \$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 provided for a "national campaign" exemption as applied by the Committee in arriving at its calculation of the total amount allocated to the Iowa spending limit, as of November 30, 1988.

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

"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.

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.

Based upon this review, the Audit staff determined that an additional \$44,249.53 should be allocated to Iowa (Northwestern Bell - \$35,096.46, Central Telephone - \$2,396.88, 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.

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

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 \$179,234.81 should be allocated to Iowa.

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.

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

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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.

4. Intra-State 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.

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.

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(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 \$31,243.93, 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 (\$13,378.89). 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).

Committee officials stated that if an individual spends virtually all of his time on compliance related matters, his salary and/or consulting fee need not be allocated to a particular state and that the "either/or" option^{*/} was not supported in the Regulations. Further, the Committee stated that the Audit staff's position discourages a campaign from establishing much needed compliance positions in a state.

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.

^{*/} The "either/or" option referred to by the Committee relates to the Audit staff's position that the Committee allocate as exempt compliance costs either 100 percent of salaries paid to individuals who work solely on compliance matters or 10 percent of all campaign workers' salaries in a particular state.

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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))."

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).

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 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.

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

Committee officials stated that this matter would be addressed in their response to the interim audit report.

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 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.

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

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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))."

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).

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 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.

*/ 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 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.

Based on the above, the Audit staff has allocated an additional \$155,913.87 to Iowa (Survey #2133 - \$36,001.38, travel - \$26,662.49, and consulting - \$93,250.00).

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 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.

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.

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Committee officials stated that it is their opinion that incompleated calls have no relationship to Iowa.

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, 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.

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

The Committee states that "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 Barbeque 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 (see scripts at Attachment 1). 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.

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.l. 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.

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.

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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 Repro 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.

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.

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, 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 (see Attachment 2).

Presented below are certain 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.

^{*}/ On March 6, 1989, the Committee submitted a signed copy of the amendment which was dated January 18, 1988.

^{**}/ December 26, 1987 is the earliest date on which media time buys for Iowa were broadcast.

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 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, specifically, "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

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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;
- 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.

^{*/} 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.

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.

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 Dick 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

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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).

11. Other Deposits

The Audit staff identified \$1,482.61 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.

As a result, the Audit staff has allocated an additional \$1,482.61 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.

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.

13. Miscellaneous Expenses

Our review also indicated that expenditures were incurred in Iowa for rents, supplies, shipping, hotels, equipment and other miscellaneous expenses.

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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.

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.

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.

16. 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 (see Finding II.A.1. Twenty-Five Percent 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.

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§106.2(b)(2)(iv). 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 (see Finding II.A.3.) and determined that the Committee is entitled to an additional compliance and fundraising exemption of \$19,447.86.

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		\$749,425.37
Additional Allocations by Audit Staff		
Twenty-Five Percent National Exemption	\$179,234.81	
Telephone Related Charges	44,249.53	
Salaries, Employer FICA, Consulting Fees and Staff Benefits	37,792.55	
Intra-State Travel and Subsistence	19,898.59	
Car Rentals	22,486.08	
Polling	155,913.87	
Telemarketing Related Services	52,866.32	
Printing	19,839.00	
Media	74,235.77	
Jefferson/Jackson Dinner	21,156.96	
Other Deposits	1,482.61	
Other Media	5,635.00	
Miscellaneous	28,035.57	
Adjustments to Previous Iowa Allocations	7,498.71	
Accounts Payable	23,047.59	
Exempt Compliance and Fundraising Expenditures	<u>(19,447.86)</u>	
 Total Allocations by Audit Staff		<u>\$673,925.10</u>
 Total Allocable Amount		\$1,423,350.47
 Less Iowa Expenditure Limitation		<u>775,217.60</u>
 Amount in Excess of the Limitation		<u>\$ 648,132.87</u>

Recommendation #1

The Audit staff recommends that within 30 calendar days of service of this report, the Committee submit the following:

- ° a detailed accounting with supporting documentation of all long distance telephone charges associated with the telemarketing program noted in II.A.7.c.1. above;
- ° a detailed accounting with supporting documentation of all costs associated with Iowa projects noted in II.A.7.c.2. above; and
- ° evidence demonstrating that they have not exceeded the Iowa spending limitations or amend their disclosure reports to reflect the proper allocations.

B. Request for Additional Information

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 documentatiton 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 a number of apartments and houses rented by the Committee in Des Moines, Iowa. For example, the Committee rented seven apartments located at 717 4th Street, and at least one apartment at the Normandy Terrace apartment complex for the Candidate's use. It is possible another apartment may have been rented for the Candidate's family. The Committee also 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 Audit staff was unable to determine, and 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, was annotated one-sixth rent Gephardt staff house, however, it was not known who paid the remaining five-sixth (\$500) of the monthly rent.

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

Recommendation #2

The Audit staff recommends that, within 30 calendar days of service of this report, 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 apartments/houses, to include their length of stay and their job titles.

Based upon our review of the documentation submitted, further recommendations will be forthcoming including additional amounts allocable to the Iowa state spending limit (see Finding II.A.).

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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.

Recommendation #5

The Audit staff recommends that within 30 calendar days of service of this report the Committee provide the billing statements and supporting documentation for all charges on the Candidate's American Express card for the period October, 1986 through December 31, 1988.

Based on our review of the documentation presented additional recommendations will be forthcoming.

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

A. Calculation of Repayment Ratio

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

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

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

Total Matching Funds Certified through the
Date of Ineligibility - 3/28/88

Numerator plus Private Contributions Received
through 3/28/88

\$2,340,696.53

= .264704

\$2,340,696.53 + \$6,501,983.02

Thus, the repayment ratio for non-qualified campaign expenses is 26.4704 percent.

B. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days of the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs.

In addition, 11 C.F.R. §9034.1(b) states, in part, that if on the date of ineligibility a candidate has net outstanding obligations as defined under 11 C.F.R. §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

The Statement of Net Outstanding Campaign Obligations (NOCO) is the basis for determining further matching fund entitlement. Congressman Gephardt's date of ineligibility was March 28, 1988. Consequently, he may only receive matching fund payments to the extent that he has net outstanding campaign obligations as defined in 11 C.F.R. §9034.5.

The Committee filed a NOCO statement which reflected the Committee's financial position at April 8, 1988^{*/} and revised statements with each subsequent matching fund request. The Audit staff analyzed the Committee's April 8, 1988 NOCO statement and made adjustments to reflect the Committee's actual cash position. The Committee's NOCO as adjusted by the Audit staff appears below.

^{*/} The Committee's NOCO statement should have been filed as of March 28, 1988.

Gephardt for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations
as of April 8, 1988

Assets		
Cash in Bank	\$	62,819.94
Accounts Receivable		48,913.59
Capital Assets		<u>45,861.00</u>
Total Assets		\$157,594.53
Liabilities		
Accounts Payable for Qualified Campaign Expenses	1,622,756.44*/	
Refunds of Excessive Contributions Due	53,715.35	
Contingent Liabilities Estimated Winding Down Cost	250,000.00	
Salaries/Consulting	\$198,150.00	
Occupancy	18,960.00	
Telephone	10,800.00	
Office Expenses	61,535.00	
Travel	<u>6,000.00</u>	
Total Estimated Winding Down Cost	<u>295,445.00</u>	
Total Liabilities		<u>\$2,221,196.79</u>
Net Outstanding Campaign Obligations		<u>(\$2,064,322.26)</u>

*/ The Committee's accounts payable figure has been reduced by the amount of accounts payable allocable to the Iowa spending limit, which represent non-qualified campaign expenses.

Therefore, as of April 8, 1988, the Candidate's maximum remaining entitlement was \$2,064,322.26. Using the Commission's matching funds records and Committee disclosure reports for the period April 9, 1988 through March 31, 1989 it was determined that the Committee received \$1,154,879.46 in private contributions and matching funds.*/ As a result, the Candidate's remaining entitlement, as of March 31, 1989, was \$909,442.80 (\$2,064,322.26 - \$1,154,879.46).

Conclusion

As of March 31, 1989, the Candidate had not received matching funds in excess of his entitlement. However, the Audit staff is aware of a major debt settlement effort being pursued by the Committee. Although the results of the Committee's efforts have not been submitted to the Commission for approval as of July 31, 1989, it is believed that approximately \$1,000,000 in accounts payable may be submitted for debt settlement approval. The result of which may effect the Committee's entitlement to the matching funds it has received. Should a repayment of matching funds pursuant to 11 C.F.R. §9038.2(b)(1) be required, an addendum to this report will be issued.

C. 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.

As noted in Finding II.A., the Audit staff determined that the Committee has exceeded the expenditure limitation in Iowa by at least \$648,132.87. Shown below is the calculation of the amount repayable to the United States Treasury as a result of the expenditures in excess of the Iowa state limitation.

*/ In addition, the Committee received matching fund payments of \$106,110.42 on April 14, 1989, \$10,711.37 on July 19, 1989 and \$277,215.25 on September 11, 1989.

Amount in Excess of the Limitation (\$648,132.87 - 19,651.18 (outstanding A/P at 3/31/89 plus Iowa portion of settled debt))	\$628,481.69
Repayment Ratio from Finding III.A.	x <u>.264704</u>
Preliminary Calculation of the Repayment Amount	<u>\$166,361.62</u>

Recommendation #6

The Audit staff recommends that within 30 calendar days of service of this report, the Committee demonstrate that it has not exceeded the Iowa state expenditure limitation. Absent such a showing, the Audit staff will recommend that the Commission make an initial determination that \$166,361.62 (\$628,481.69 x .264704) be repaid to the United States Treasury.*

*/ The repayment amount may increase as a result of the final disposition of the Iowa accounts payable outstanding as of March 31, 1989, the rental properties noted at Finding II.B., and any other amounts determined to be allocable to the Iowa state spending limitation which may result from additional fieldwork conducted pursuant to 11 C.F.R. §9038.1(e)(4).

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ATTACHMENT 1 SCRIPT #
P102

- 0 1 Hello, is this the ___ household? (IF NO, PRESS F10)
- 0 2
- 0 3 Is this ___? (A PERSON WHOSE NAME APPEARS ON THE SCREEN.)
- 0 4
- 0 5 IF YOU CONTACT A PERSON ON THE SCREEN PRESS THEIR NUMBER AND THEN <RETURN>
- 0 6
- 0 7 IF NOT, ASK Are you a registered voter? (YOU MAY SPEAK TO ANY REGISTERED VOTER)
- 0 8
- 0 0 IF A REGISTERED VOTER IS REACHED PRESS 1 AND <RETURN> — IF NOT PRESS F10

- 1 1 RECORD: Type of person contacted
- 1 1 NAME ON SCREEN
- 1 2 OTHER REGISTERED VOTER IN HOUSEHOLD

- 4 1 My name is ___ and I'm calling on behalf of the Gephardt for President Campaign
- 4 2 Committee. We're calling Iowa Democrats to ask them a few questions about the
- 4 3 current presidential campaign. First, how likely are you to attend the Iowa
- 4 4 Democratic caucuses next February—very likely, somewhat likely, or not very
- 4 5 likely?
- 4 1 VERY LIKELY
- 4 2 SOMEWHAT LIKELY
- 4 3 NOT VERY LIKELY
- 4 4 NOT AT ALL, NOT A DEMOCRAT
- 4 9 I DON'T KNOW, REFUSED

- 5 1 How about the Iowa Democratic party's Jefferson/Jackson Day Dinner in Des Moines
- 5 2 on November 7th—are you very likely, somewhat likely, or not very likely to
- 5 3 attend?
- 5 1 VERY LIKELY
- 5 2 SOMEWHAT LIKELY
- 5 3 NOT VERY LIKELY
- 5 4 NEED MORE INFORMATION
- 5 9 I DON'T KNOW, REFUSED

- 6 1 How about you—which of the Democratic candidates for president are you
- 6 2 currently supporting?
- 6 1 GEPHARDT
- 6 2 BABBITT
- 6 3 BIDEN
- 6 4 DUKAKIS
- 6 5 GORE
- 6 6 JACKSON
- 6 7 SINGH
- 6 8 SCHROEDER
- 6 9 HAVEN'T DECIDED YET
- 6 10 REFUSED
- 6 99 SOMEONE ELSE

- 7 1 Currently, who do you lean to?
- 7 1 GEPHARDT (VERIFY ADDRESS)
- 7 2 BABBITT
- 7 3 BIDEN
- 7 4 DUKAKIS
- 7 5 GORE
- 7 6 JACKSON

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00 10 20 TEXT

- 7 0 SCHROEDER
- 7 9 HAVEN'T DECIDED YET (VERIFY ADDRESS)
- 7 99 SOMEONE ELSE

8 1 As you know, Congressman Richard Gephardt has spent many days in Iowa during the
 8 2 past year. He has traveled throughout the state telling Iowans about his vision
 8 3 of what our country should be. Gephardt believes that the United States must be
 8 4 strong while pursuing peace & disarmament. He knows we must provide the very
 8 5 best education possible for our young people.
 8 1 END OF QUESTIONS
 8 9 CONTINUE

9 1 He thinks we need a new approach to solving the problems of America's farmers
 9 2 and revitalizing America's industries. You may have heard of Gephardt's strong
 9 3 position on dealing with America's trading partners—he says we must demand
 9 4 access to their markets to help reduce the trade deficit. Have you had a chance
 9 5 to hear or meet Congressman Gephardt, Mr./Ms. ____?
 9 1 YES
 9 2 NO
 9 9 DON'T REMEMBER, REFUSED
 9 99 OTHER:

10 1 Dick will continue to travel throughout Iowa and we hope you'll be able to see
 10 2 him soon.
 10 9 9 TO EXIT

11 1 Would you be willing for the Gephardt campaign to use your name on our list of
 11 2 supporters? (VERIFY ADDRESS)
 11 1 YES
 11 2 NO
 11 3 NEED MORE INFORMATION
 11 99 OTHER:

12 1 Someone will call or send you some information about this.
 12 9 9 TO CONTINUE

13 1 Would you be willing to volunteer to help in the campaign in your area?
 13 1 YES
 13 2 NEED MORE INFORMATION
 13 3 NO
 13 99 OTHER:

14 1 Someone will call or send you some information about this.
 14 9 9 TO CONTINUE

15 1 It is important that we take the Gephardt message to every household in Iowa.
 15 2 To help us do this, we are asking supporters for contributions. Can we count
 15 3 on you for \$50 or \$25 or a smaller contribution, Mr./Mrs. _____.
 15 1 \$50
 15 2 \$25
 15 3 \$15
 15 4 \$10
 15 5 \$5
 15 6 NOTHING NOW
 15 99 OTHER AMOUNT:

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Script # 2
 P. of 2 ATTACHMENT

00 10 00 TEXT

- 16 9 9 TO EXIT

- 17 1 Following the debate with Mike Dukakis in Des Moines this Saturday, Dick and
- 17 2 some of the other candidates will be in Cedar Rapids for the Linn County
- 17 3 Democratic Barbeque and Rally in Thomas Park. There is a \$10 ticket needed to
- 17 4 eat at this event but anyone can attend to hear the candidates speak. The
- 17 5 barbeque starts at 5 PM and Dick will be arriving about 6 PM. Would you be able
- 17 6 to attend this event to show your support of Congressman Gephardt, Mr/Mrs ___ ?
- 17 1 YES
- 17 2 NO, CAN'T MAKE IT
- 17 3 MAYBE, WILL SEE
- 17 4 NEED MORE INFORMATION

- 18 1 That's great. There will be other Gephardt supporters and staffers there to
- 18 2 meet you and show you the best place to see and hear Dick.
- 18 9 9 TO CONTINUE

- 19 1 We're sorry you won't be able to make this but will keep you posted about other
- 19 2 events in your area that Dick will attend.
- 19 9 9 TO CONTINUE

- 20 1 We hope you'll be able to make it. Dick would love to see you there.
- 20 9 9 TO CONTINUE

- 21 1 (IF YOU CANNOT ANSWER THE QUESTIONS) You can call our headquarters in Des Moines
- 21 2 at 515-285-1988 to get that information.
- 21 9 9 TO CONTINUE

- 22 1 Following the debate with Mike Dukakis in Des Moines this Saturday, Dick and
- 22 2 some of the other candidates will be in Cedar Rapids for the Linn County
- 22 3 Democratic Barbeque and Rally in Thomas Park. There is a \$10 ticket needed to
- 22 4 eat at this event but anyone can attend to hear the candidates speak. The
- 22 5 barbeque starts at 5 PM and Dick will be arriving about 6 PM. Would you be able
- 22 6 to attend this event to show your support of Congressman Gephardt, Mr/Mrs ___ ?
- 22 1 YES
- 22 2 NO, CAN'T MAKE IT
- 22 3 MAYBE, WILL SEE
- 22 4 NEED MORE INFORMATION

- 23 1 That's great. There will be other Gephardt supporters and staffers there to
- 23 2 meet you and show you the best place to see and hear Dick.
- 23 9 9 TO CONTINUE

- 24 1 We're sorry you won't be able to make this but will keep you posted about other
- 24 2 events in your area that Dick will attend.
- 24 9 9 TO CONTINUE

- 25 1 We hope you'll be able to make it. Dick would love to see you there.
- 25 9 9 TO CONTINUE

- 26 1 (IF YOU CANNOT ANSWER THE QUESTIONS) You can call our headquarters in Des Moines
- 26 2 at 515-285-1988 to get that information.
- 26 9 9 TO CONTINUE

- 99 1 Thank you for talking to me today. Goodbye.

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ATTACHMENT 2
P. 1 of 5

AFFIDAVIT OF DAVID DOAK

District of Columbia)
) ss

I, David Doak, being duly sworn according to law, hereby
depose and state as follows:

1. I have personal knowledge of the facts set forth herein
and if called on to testify in this matter, I would testify as
set forth herein.

2. I am employed by Doak and Shrum Associates, Inc.
("Doak and Shrum") as its President.

3. Doak and Shrum is a corporation organized to provide
media, strategic and general political consulting services to
candidates for public office and political organizations.

4. In 1987, Doak and Shrum agreed to provide full-service
consulting to the Gephardt for President Committee ("Gephardt
Committee"), the principal campaign committee organized on
behalf of Richard A. Gephardt's candidacy for President of the
United States. The services included message development;
media production; time-buy services and strategy;
speech-writing; assistance with polling analysis; debate
preparation; travel with the candidate; and any and all other

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advice and support the campaign might require.

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.

6. The Agreement between Doak and Shrum and the Gephardt Committee called in the first instance for consulting fees and a commission payable on time purchased from broadcast stations. This was one of a number approaches Doak and Shrum has followed in structuring contracts for clients, not the only one.

7. In particular Doak and Shrum regards time-buy commissions as no more than one method of payment, appropriate to some contracts involving the purchase of media time but not to all.

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.

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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 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 conflict 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.

13. The increase in fees payable for general consulting was accomplished by a one-time additional payment, owing immediately, of \$110,000.00. This was intended to provide some guarantee to Doak and Shrum against serious financial loss on the Gephardt Committee account in the near term.

14. Doak and Shrum also offered to eliminate the commissions on early state primary time-buys in Iowa and New Hampshire, in recognition that the undecided levels of those buys would leave the precise amount of the campaign's obligation in doubt and by contributing to budgetary uncertainty, contribute also to the very uncertainty of payment that the Amendment was designed to address. This was a concern in light of unpredictable cash flow experienced by the Gephardt Committee to that time.

15. The Agreement, accepted by the Gephardt Committee, was fashioned by Doak and Shrum within the general parameters it observed in fashioning all of its contracts for consulting services. It was a commercially reasonable arrangement, particularly in the unique circumstances surrounding the

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ATTACHMENT 2
P. 5 of 5

performance of services for a "dark horse" Presidential campaign short on funds and presenting considerable business risk.



David Doak

SUBSCRIBED AND SWORN TO BEFORE ME
this 8th day of March, 1989.

Dina Powell
Notary Public

DINA FOWLE
Notary Public, Washington, D.C.

My Commission Expires:

My Commission Expires on October 31st 1993

0700Z

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I. INTRODUCTION: FACTUAL AND CONSTITUTIONAL CONTEXT OF THE GEPHARDT FOR PRESIDENT COMMITTEE'S RESPONSE

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

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with adequate funds the national challenge and national cost of the Iowa campaign.

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The virtual insignificance of delegates in the battle for Iowa -- and the true national significance of the caucuses -- is plain from the nature of major Iowa "victories" in recent years. In 1976, Jimmy Carter won a little over 27 percent of the total caucus vote, second to "undecideds," which received over 37 percent of the vote, entitling Carter to 13 delegates. This number of delegates left him with nothing less than 1,492 delegates (99.1 percent of the total) still required for nomination. Still, his national campaign had begun; his front-runnership was established. More striking, Senator Gary Hart won slightly more than 16 percent of the total caucus vote in the 1984 caucuses, and this showing netted him only a projected two delegates. He was on his way, however, to a major challenge to Walter Mondale. From virtual obscurity, he found the credibility, finances and support to carry New Hampshire and compete seriously for the nomination, through the last day of the primary election season.

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

name "national" component -- or the same 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.

The Commission has openly acknowledged that because of Iowa's national prominence, applying the statutory expenditure limits to this state creates a "nightmare" situation. This is a regulatory bad dream for the Commission, but it is a burden far worse for candidates. Necessarily, the restrictions on Iowa spending impede candidates' abilities to wage national campaigns, and by doing so adversely affect protected speech and political activity. The legal framework within which they must function is in this sense a creation worthy of Vonnegut or Heller. Iowa is treated as a small-state primary with low (delegate) stakes and a low limit; whereas California, offering a huge delegate harvest, has virtually faded into irrelevancy with an expansive spending limit of no use to anyone. The world of the limits is in crucial respects, in contemporary political life, a make-believe world, but the consequences for speech are real and they are grave.

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A. THE REGULATORY TASK

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The Commission cannot by fiat ignore the enforcement of these limits. And the Gephardt campaign does not urge any such approach. The Commission must, however, take care to interpret application of the limits to particular cases with great sensitivity to these larger concerns with protected speech. This is an urgent requirement. Also urgent is the need to reevaluate this question in contemporary terms, in the political world as it exists today and not in 1972 or 1976. The experience of years has taught the true meaning of Iowa which, in 1990, cannot be denied or properly ignored. What matters in this case is not McGovern's experience in 1972, or even Mondale's in 1984, but Gephardt's in 1988 as it was conditioned by the history of the caucus up to that time. This is because Gephardt's speech in 1988 is the proper focus; his rights in his time on the campaign trail.

This point bears particular emphasis. A regulatory agency charged with the regulation of political conduct must, where it can, give life to the law in the light of actual experience. Where fundamental rights are involved, a responsible guide cannot lie in abstraction, or in a rigid refusal to consider facts -- the record -- and its implication for the conduct of legitimate political life. The Supreme Court in Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612 (1976), examined the Act in

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precisely this spirit, offering "tentative judgments. . . . subject to revision and exemption, in the light of experience." Leventhal, Courts and Political Thickets, 77 Col. L. Rev. 345, 358 (1977). Its decision reflected on crucial issues a "pragmatic tone, experimental outlook, and fact-and-record-oriented discussion." Id. No less is demanded of this Commission in addressing the issues relative to the Iowa spending limit by the Audit staff in its Interim Audit Report.

There is no answer to this challenge in suggesting that this is a duty only of the courts; that should the Commission err, the court upon review will identify and correct any constitutional infirmity. The Commission has made every effort, and with no small success, to persuade the courts to defer to the Commission on complex issues of statutory construction. See, e.g., FEC v. Democratic Senatorial Campaign Comm. ("FEC v. DSCC"), 454 U.S. 35, 102 S. Ct. 38 (1981) ("the [Federal Election] Commission is precisely the type of agency to which deference should presumptively be afforded"); Buckley, 424 U.S. at 112 n.153, 96 S. Ct. at 679 n.153 (the Commission "has the sole discretionary power 'to determine' whether or not a civil violation has occurred or is about to occur, and consequently whether or not informal or judicial remedies will be pursued"). The issues affected by the principle of deference include any number with a constitutional dimension.

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at least from the perspective of the private parties to the contest. See, e.g., California Medical Association v. FEC, 453 U.S. 180, 101 S. Ct. 2712 (1981); FEC v. National Right to Work Committee, 459 U.S. 197, 103 S. Ct. 552 (1982); FEC v. National Conservative Political Action Comm., 470 U.S. 480, 105 S. Ct. 1459 (1985).

And the Commission has relied in heavy measure on the argument that Congress structured a membership capable by background and experience to provide a political -- a nonpartisan political -- expertise that the courts do not possess. As described by the Supreme Court in FEC v. DSCC,

Congress has vested the Commission with "primary and substantial responsibility for administering and enforcing the Act," Buckley v. Valeo, 424 U.S. 1, 109, 96 S.Ct. 612, 677, 46 L.Ed.2d 659 (1976), providing the agency with "extensive rulemaking and adjudicative powers." Id., at 110, 96 S.Ct., at 678. It is authorized to "formulate general policy with respect to the administration of this Act," § 437d(a)(9)

Moreover, the Commission is inherently bipartisan in that no more than three of its six voting members may be of the same political party, § 437c(a)(1), and it must decide issues charged with the dynamics of party politics, often under the pressure of an impending election. For these reasons, Congress wisely provided that the Commission's dismissal of a complaint should be reversed only if "contrary to law." § 437g(a)(8).

Also of no account is the defense that the FEC cannot change the law, that this is a task of the Congress. A change

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in the law is not the goal urged here, but rather regulatory strategies on complex issues which draw on close consideration of the record in maintaining a balance between appropriate enforcement and respect for basic rights. Congress delegated to the Commission broad rulemaking and advisory authority in this regard. In addition, the Commission has staked out even broader ground in rendering binding interpretations of the law in particular cases, often on issues of "first impression," in enforcement matters and presidential audits. So long as there are state limits, they must be enforced; but the enforcement of those limits in widely varying circumstances over time is the Commission's obligation, not Congress'. This obligation must be discharged with care and attention to experience.

Throughout this brief, the Gephardt for President Committee will address specific areas in which the ambiguous, illogical, inconsistent or unaddressed areas of the Commission's own regulations require close review and analysis to avoid the harsh effects on political speech, while still maintaining both the spirit and the letter of the FECA's proscriptions, including the Iowa spending limit.

**B. THE UNIQUE IOWA SITUATION: A NATIONAL CAMPAIGN
WITHIN A STATE CAMPAIGN**

Buckley's emphasis on the free speech implications of campaign spending has become more relevant in the fourteen

years since it was written. In this regard, and also in its concern with a proper balance between these speech rights and a governmental concern with corruption, it was prescient and insightful. It did not achieve a comparably careful analysis of the significance of this doctrine for presidential primary state spending limits. And it did not anticipate, and thus did not analyze, Iowa's role.

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Buckley could not have foreseen that in Iowa and New Hampshire, which hold the first caucus and primary in the country, presidential campaigns would be required to seek, not delegates, but national standing. Iowa, and for some candidates, New Hampshire, operate to "winnow" the field of candidates. The Iowa caucuses in particular have become a "do or die" contest. This is a major national weekly news magazine (Newsweek) commenting on the role of Iowa in July of 1987, seven months before the actual caucus:

Before Iowa's caucuses, there will be over a dozen contenders; no more than six or seven will survive the judgment of Iowans. . . .

The problem isn't that Iowa, being first, has "disproportionate influence." Barring a national primary, someplace has to be first, and whichever place it is will have disproportionate influence. Iowa's influence is especially disproportionate this year, thanks to the huge, mainly Southern, primary just a month later on March 8. Candidates desperately need press hype coming out of Iowa (and New Hampshire, a week later) to stand a chance on "Mega-Tuesday." If you run in Iowa and don't finish at the top of your party, it's generally believed, you might as well book a cruise on the Monkey Business.

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The article from which this part is excerpted was entitled, "Far Too Much Ado About Little Iowa," Kaus, McCormick and Fineman, Newsweek, July 6, 1987, at 20. The suggestion that there was "far too much" ado about Iowa was partly editorial. That there is so much ado about Iowa is explained and accepted in this piece as a fact of political life.^{1/}

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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 Bread 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

^{1/} The auditors suggest that another state in Iowa's "make or break" position could also have disproportionate influence for a candidate. This is pure speculation, lacking any record of facts to show which state, in what circumstances, for which candidates, might have this impact. Iowa holds this power for all candidates.

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"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 circumstance 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.

These are the facts of Gephardt's situation; and they demonstrate, as Newsweek's piece hinted, that for candidates like him, Iowa is a "national primary." The media coverage of

^{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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Iowa was certainly national, as it was for no other state except New Hampshire. The sheer number of print and electronic media stories focused on the caucuses overwhelms coverage of all other states. Exhibit ___ compares relative national coverage of the Iowa caucuses to the coverage of other state primaries, including several of the large states: Illinois, Texas, and Florida, and other states comparable in size to Iowa. Iowa dwarfs them all. Newspapers with a broad readership, from every major city in the country, sent reporters to cover the state caucuses; reporters also arrived from numerous foreign countries. Papers from such far-flung places as Los Angeles, Baltimore, Chicago, Philadelphia, New York, and Dallas ran major front-page stories covering the build-up to and the results of the caucuses in overwhelming detail. Furthermore, the national media, ranging from Time, Newsweek, U.S. News & World Report, The Wall Street Journal, and The National Journal in print, to all three major networks and the Cable News Network and National Public Radio, covered the caucuses extensively.

No primary other than New Hampshire drew so much attention from so many media outlets for so sustained a period of time. The Washington Post admitted, in a front page article in early 1987, that it had "dispatched six reporters to follow the trail" of a number of presidential hopefuls in Iowa a full "year in advance of the Iowa caucuses (Feb. 8, 1988) and the

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New Hampshire primary (Feb. 16, 1988).” Taylor, Campaign '88: Full Throttle Along an Uncharted Course, Washington Post, Feb. 15, 1987, at A1. New technology, such as satellite hook-ups, enabled information in one state to be disseminated across the country instantly.

The substance of the news stories explicitly documented the national nature of the Iowa campaign. Iowa, it was widely reported, was “the launching pad,” or the “point of departure” for presidential campaigns. Going Courting In Iowa, National Journal, Aug. 8, 1987, at 2020; Borger, Plattner & Wells, Campaign '88: Why Iowa is Bad for American Politics, U.S. News & World Report, July 6, 1987 at 22, 24. National media attention focused intensively, almost to the exclusion of all else, on the question of who would survive this first and crucially important contest, able then to take his campaign to New Hampshire and beyond:

Any not bunched near [the] top [in Iowa] are in trouble,” Barnett, Oh, What a Screw System, Time, Jan. 25, 1988, at 20.

For [Gephardt, Simon, and Dole], winning Iowa could make the difference between going on or going home.” George F. Will, The Rheostat Rule -- and More, Newsweek, Feb. 15, 1988, at 84.

The “way to be elevated to top-dog status is to grab the lead in Iowa, which holds 1988's first Democratic presidential contest on Feb. 8.” Fly & Dryden, The Democrats are Playing “Front-Runner For a Day”, Business Week, Aug. 10, 1987, at 35.

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[F]or Democrats especially, the early test here [in Iowa] is more important than usual," because of governor Michael Dukakis' "favorite-son status in New Hampshire," and the huge "Super Tuesday" vote on March 8; "Iowa's voice will still be echoing while many of the national convention delegates are being chosen." Dionne, Candidates Already Driving Hard in Iowa for First Big Test of 1988, New York Times, May 3 1987, at 1.

The local Iowa press, as well as any, understood that its caucuses were not a local matter. The day after the caucuses, The Des Moines Register ran front page headlines such as "Gephardt Victory Gives Him Stature," and, describing then-Vice President Bush's loss to Senator Robert Dole in the Republican caucuses, "'Devastating Loss' Seen For the Vice President." Des Moines Register, Feb. 9, 1988, at 1A.

If winning gives you stature, Congressman Richard Gephardt is the dwarf who grew up in Iowa Sunday night," the front page article on the primary results began, and noted that the poor showings by Hart and Babbitt in Iowa "were devastating . . . [and] will cripple their ability to raise the money needed to continue their campaigns." Id.

One other aspect of the Iowa caucuses -- their sheer length of active political life -- caused the state purpose and the national campaign-building purposes to blur into each other. Presidential campaigns begin early, in some sense after the last presidential election has ended. They are pressed in earnest in the "off-year," the year before the election year (in this case, 1987). Iowa is then the focus of campaign efforts for many months, maybe, for some candidates, for well

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over a year. (The time between other campaigns -- e.g., between New Hampshire and South Dakota, is days or at most weeks.) The Iowa "limit" hardly accommodates this reality.

For candidates with limited resources, this is a profound problem. Their dilemma is this: they seek to build a national effort with less than national-sized financial support. Concentration on one state, Iowa, is a necessity, because this is (along with New Hampshire) the functional equivalent of a national primary. But these campaigns cannot ignore other states, such as New Hampshire, and so their task is to maintain an Iowa focus but still attempt to build beach-heads in other states. As a result, every attempt is made to make efficient use of every dollar spent to achieve simultaneously Iowa and national goals in other states. Ads prepared for Iowa are examined for suitability in other states; staff in Iowa are assigned tasks necessary for other states, and national staff are assigned frequently Iowa-related responsibilities, and every opportunity is sought to broadcast the campaign nationally through free media.

C. ACTUAL IMPACT ON THE CAMPAIGN

This state of affairs is profoundly affected by the limits and directly affects the expenditure of resources in Iowa. According to Steve Murphy, who was the Iowa state director for

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the Gephardt campaign, his time was substantially devoted to dealing with the national press in Iowa. The national press demands on his time were so great that he instituted a policy of meeting with their representatives only in groups of three-to-four, refusing, with some exceptions, one-on-one interviews. See Murphy Affidavit, attached as Exhibit _____. This was a demand that one way or another he was required to meet because the media coverage in Iowa relayed nationally, in virtually pervasive fashion, Gephardt's name, message, and the impression of him as a man. Iowa was, in this sense, a larger broadcast message, the "set" for a nationwide transmission to voters in print and electronic media.

This was the effect on Murphy's time, and necessarily also the effect on spending for his position (salary and expenses). Those assisting Murphy with the administration and logistics of his office were similarly affected.^{4/} As a concrete example of this national dimension, Murphy relates a decision to conduct a series of daily farm rallies around the state, each of which could be expected to attract no more than 200-250 Iowans. The expense was substantial, but the strategic purpose, in full, was to increase the chances that a national

^{4/} Laura Nichols, the Iowa State Press Director, devoted approximately 50 percent of her time to national press, 50 percent to the "locals." See Murphy Affidavit.

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news network would cover one of these rallies. On the same operating theory, major speeches of Gephardt were scheduled for delivery in Iowa because this was the location, of anywhere in the country, where the press would cover them thoroughly for national distribution. Press coverage on any meaningful national scale was not attracted to candidate activities in Texas or Louisiana or New York -- until after February 8, 1988.

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Appeals to Iowa voters were cast in this way as appeals to voters nationwide, with real impact on spending. This was true for another reason, equally significant. As both Murphy and National Campaign Director Bill Carrick attest, the development of the "message" in Iowa could not be concerned narrowly with Iowa voters but required a full national focus. Iowa appeals received national attention for a period unparalleled for any other primary or caucus. The end of Iowa brought on a tumble of other state primaries, one after the other; this left no time to alter the message and to communicate something different to New Hampshire voters than had been communicated to the voters in Iowa. See Carrick Affidavit.

A campaign argument fashioned in Iowa, transmitted nationally by the press, had to stand the test of the other state contests of February and March. This was particularly required of campaigns with limited resources which, had they chosen to shift approach, could not afford to remake their media.

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D. CAMPAIGN RESPONSES TO THE IOWA PROBLEM

How, then, is a campaign properly to respond in this circumstance? The Commission has noted one response over the years, apparently very common, which is evasion. See Federal Election Commission, Annual Report 1988, at 32 (1989) (where the Commission recommended to Congress that state-by-state spending limits be abolished). This is the response of campaigns whose representatives gloat in the press about their "off-budget" spending in Iowa and New Hampshire; that is, they gloat after the fact, when Commission audits are completed, the years have passed, and enforcement is no longer possible. One such representative of a 1984 Iowa campaign advised counsel to Gephardt, in whose cause he briefly enlisted in 1988, that his candidate of four years before paid "virtually nothing" for his New Hampshire primary effort. Hotels, car rentals, meals, travel on private plane -- all of those were, in his account, paid from other sources and not reflected in the Committee's books or reports to the Commission. See also Schmidt, L.A. Hotel Wrote Off Jackson Campaign Debt: \$30,000 in Expenses Not Reported to FEC, Washington Post, Feb. 2, 1990 at A1, col. 5 (describing the release, without report, of the Jackson Campaign from over \$30,000 in expenses incurred during the 1988 presidential campaign).

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This is one response to the pressure of the Iowa limits. The Gephardt campaign took a different course, which was to exercise its best judgment in different conditions and confront the matter squarely at audit. This meant some substantial trial and error over the course of the campaign. For example, in early 1988, when a Commissioner in open session regarding A.O. 1988-6 stated without dissent from colleagues that direct mail fundraising was always allocable to fundraising alone, not to fundraising and to persuasion (which would require allocation to the limit), allocations of such mail were adjusted retroactively 100 percent to fundraising to obtain fair advantage of this position. Similarly, the 25 percent "national exemption" was taken in mid-course, when the indistinct line between national and Iowa efforts threatened to overwhelm the campaign financially and administratively and it was apparent that case-by-case documentation posed for staff insurmountable problems of conceptualization and administration.

At no time did the Gephardt campaign "cook the books," seeking advantage from sharp recordkeeping practice or document alteration. In the course of this audit, the auditors frequently commended the campaign on the completeness and condition of its financial records. So Gephardt will take his stand on the merits of his position. Paradoxically, the auditors' findings reflect a large measure of distrust. It cannot be known how this came to pass, but it was evident

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throughout this field audit. This attitude produced findings remarkable for their narrowness of viewpoint, or for the factual misunderstandings underlying them.

But now the field audit is over, and the real issues presented by this audit can, at last, come to the forefront. This is not in Gephardt's view a game of cat and mouse, in which auditors look for tricks and the campaign seeks to conceal them from view. This audit is about a presidential campaign by a serious candidate with 20 years of public service who today holds high public office. It is about the tension between law made 18 years ago and the political life of the country today. And, finally, it is about protected rights of speech and association, and the unintended consequences for those rights of the law setting limits for spending, in the pursuit of delegates, in the Iowa caucuses.

E. FIRST AMENDMENT CONSIDERATIONS IN THE ADMINISTRATION OF THE IOWA SPENDING LIMIT

First Amendment rights are presented in the administration of the Iowa spending limits, as they are in the application of political expenditure limits generally. Buckley, 424 U.S. at 39, 96 S.Ct. at 644. This is plain enough, but its meaning for a matter such as this should be clearly understood. The Gephardt campaign does not challenge the constitutionality of the FECA's limitations on total expenditures made by primary

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election presidential candidates receiving public financing. See Buckley, 424 U.S. at 57 n.65, 96 S. Ct. at 653 n.65 ("Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations."), and a second circuit decision in Republican National Committee v. Federal Election Comm'n, 487 F. Supp. 280 (S.D.N.Y.) (three-judge court), 616 F.2d 1 (2d Cir.) (en banc), aff'd mem., 445 U.S. 955, 100 S. Ct. 1639 (1980) (upholding against First Amendment challenge overall spending limitations prescribed for public financing of general election presidential candidates). Nor does the Gephardt campaign contend that the state-by-state limitations imposed on primary candidates accepting public funds are facially unconstitutional. See, e.g., John Glenn Presidential Comm. v. Federal Election Comm'n, 822 F.2d 1097 (D.C. Cir. 1987). The Gephardt campaign specifically resists the state-by-state limitation as applied in the Interim Audit Report to certain campaign activities,^{5/} in a manner which impermissibly burdens certain rights of speech and association.

^{5/} It is noted that there is the potential here for imposition of the Matching Payment Act's authorization of penalties on private funds. See 26 U.S.C. §§ 9035, 9042; 2 U.S.C. § 437g. The D.C. Circuit explicitly noted in Glenn that the constitutionality of these Matching Payment Act provisions would be brought into question "if construed to penalize state-by-state expenditures from nonpublic purses," 822 F.2d at 1100.

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It is a well-established legal principle that an otherwise constitutional statute may be found to violate a constitutional right through the manner in which it is implemented. See, e.g., 16 Am. Jur. 2d at § 228; United States v. Spector, 343 U.S. 169, 72 S. Ct. 591, reh'g denied, 343 U.S. 951, 72 S. Ct. 1040 (1952). Thus, even if prior case law has suggested that expenditure limits are theoretically or generally constitutional, these limits nevertheless must be managed with a view toward their practical impact as First Amendment rights.

The Buckley Court acknowledged that ceilings on expenditures by candidates impose "a substantial restraint on the ability of persons to engage in protected First Amendment expression." 424 U.S. at 52, 96 S. Ct. at 651. It then balanced this right against the competing state interest served by imposing such limitations, finding such an interest in "the prevention of actual and apparent corruption of the political process." Id. The state interest, however, was not sufficient to justify certain far-ranging restrictions, such as the independent expenditure limitations or direct spending by

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candidates, which suppressed direct speech.^{6/} Nor did the state's "ancillary interest in equalizing the relative financial resources of candidates competing for elective office" justify such expenditure ceilings. Id.

In this matter, involving direct candidate spending on presidential primaries, no state interest can support a state limit which is administered rigidly or irrationally in disregard of evidence of far-reaching impact on speech and association. The peculiar but distinct role of the Iowa spending limit projects this problem, a problem of rights, in a way unique to no other primaries or caucuses (other than perhaps New Hampshire).^{7/} Iowa's is the peculiar situation

^{6/} The Buckley Court concluded: "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech." Buckley, 424 U.S. at 19, 96 S.Ct. at 634.

^{7/} New Hampshire limits are "stretched" by a Boston media market in which New Hampshire media buys must be made. Any such buys, allocated for limits purposes only in relation to the estimated New Hampshire audience, are only proportionately allocated to the New Hampshire limit. Such fortuities are the stuff of which crucial differences, bearing on the latitude for political expression, are made. Also, New Hampshire media is bought in the space of a week to ten days right after Iowa. This also limits its expenses and any pressure on the state limit.

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of (1) a low state limit in a sparsely populated state because of the limitation's dependence on voting population size in setting the amount, combined with (2) the disproportionate national and state campaign nexus, that places enormous pressure on campaigns required to spend under a limit geared to delegates, not to the exigencies of a national campaign. If, instead of Iowa, a large state such as Texas or New York held the first caucus, the expenditure limitations in the state would be sufficient to allow for maintenance of a campaign on a national as well as a state scale. But this is not our case.

The Glenn case presented the question of whether the fact that the Gephardt campaign accepted public funds should nevertheless allow the government to impose any limitations, by statute or in administrative interpretation, however unreasonable. This obviously cannot be so, for two reasons. First, a party cannot contract away a valid constitutional right; if the state, for example, allocated public funds only to candidates who supported funding for the MX missile, such a law could not stand, notwithstanding the acknowledged legitimacy of a state's "decision not to subsidize the exercise of a fundamental right," see Reagan v. Taxation With Representation, 461 U.S. 540, 545; Harris v. McRae, 448 U.S. 297, 316, 317 n. 19, (1980). See also Glenn, 822 F.2d at 1100.

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Second, and more importantly, this case involves more than mere state refusal to subsidize a constitutional right. This is a case in which state-by-state expenditures could be penalized "from nonpublic purses," see Glenn at 1100 (citing Buckley, 424 U.S. at 54-59). The threat of such a penalty and indeed even the threat of public opprobrium resulting from a Commission "finding" of substantial "illegal spending," is sufficient to destroy any state claims of "mere retraction of an entitlement." This case involves very real potential private penalties for exercise of a First Amendment right.

The result is a candidate forced in certain circumstances to an impossible choice between speech and legal liability, but only if the Commission by its enforcement approach insists on such a choice. The Gephardt campaign does not assume now, nor did it at any time, that it could make this choice in favor of unlimited Iowa spending -- all the speech it could afford. The evidence is that the campaign made difficult resource allocation decisions because the limit required that those decisions be made. See Murphy Affidavit. Where this choice was presented, in extreme form, is set out at length in this response, and it was made in the context of careful consideration of law and regulations and their uncertain application to real-life and always changing political circumstances. The campaign contends that these choices were made responsibly, rationally and in a fair construction of what

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the law demands, to achieve appropriate conformance without undue infringement of basic rights.

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In more than one way, this constitutional analysis bears directly upon the choices confronted by the Commission in addressing the issues in this Interim Audit Report. The first such way is the importance of the Commission's careful attention to the special conditions of the Iowa caucuses which directly affect free speech rights. The second concerns the rule of law prohibiting an agency from acting in an arbitrary or capricious manner when interpreting a congressional statute. One indication of the reasonableness of agency action is the consistency with which the agency operates. See NLRB v. United Food & Commercial Workers Union, 108 S. Ct. 413, 421 n. 20; King Broadcasting Co. v. Federal Communications Commission, 860 F.2d 465, 469 (D.C. Cir. 1988).

The Commission is repeatedly on record, both in judicial and administrative fora, as recommending elimination of the state-by-state limits. See, e.g., Federal Election Commission, Annual Report 1985, at 45-46 (1986); Federal Election Commission, Annual Report 1986, at 48-49 (1987); Federal Election Commission, Annual Report 1988, at 32 (1989); John Glenn Presidential Committee v. Federal Election Commission, 822 F.2d 1097, 1099 n. 1 (D.C. Cir. 1987):

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Our experience has shown that the limitations have little impact on campaign spending in a given State, with the exception of Iowa and New Hampshire. In most other States, campaigns are unable or do not wish to expend an amount equal to the limitation. In effect, then, the administration of the entire program results in limiting disbursements in these two primaries alone.

If the limitations were removed, the level of disbursements in these States would obviously increase. With an increasing number of primaries vying for a campaign's limited resources, however, it would not be possible to spend very large amounts in these early primaries and still have adequate funds available for the later primaries. Thus, the overall national limit would serve as a constraint on State spending, even in the early primaries. At the same time, candidates would have broader discretion in the running of their campaigns.

Our experience has also shown that the limitations have been only partially successful in limiting expenditures in the early primary States. The use of the fundraising limitation, the compliance cost exemption, the volunteer service provisions, the unreimbursed personnel travel expense provisions, the use of a personal residence in volunteer activity exemption, and a complex series of allocation schemes have developed into an art which when skillfully practiced can partially circumvent the State limitations.

Finally, the allocation of expenditures to the States has proven a significant accounting burden for campaigns and an equally difficult audit and enforcement task for the Commission.

Given our experience to date, we believe that this change to the Act would be of substantial benefit to all parties concerned.

It may be, as the FEC has indicated, that the State-by-State limits are unwise in principle and inordinately difficult to administer. The policy judgment, whether the limits should be deleted, however, is one no court is positioned to make.

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cops-and-robbers. This is a case involving real rights of real campaigns in our presidential politics.

Most FEC regulations were promulgated with sound, pragmatic justification. For example, the national overhead exemption recognized the difficulty of allocating costs of the machinery, staff, and resources at the national headquarters between states. See the remarks of Pete DuPont for President Committee Counsel Glenn C. Kenton, transcript at 27-28 in Oral Presentation to the Federal Election Commission on behalf of the Pete DuPont for President Committee, Wednesday, June 28, 1989.

However, the Commission itself has openly acknowledged that there is no sound, practical reason for a wooden, formalistic enforcement of the state by state limits. Common sense would argue for a closely reasoned application so as to avoid further unfairness to the campaigns that choose to try to adhere to the rules without surrendering fundamental rights.

Furthermore, and most importantly, it is fundamentally inconsistent for the Commission to condemn the statutory limits and then enact and interpret its own regulations in ways that exacerbate the very harms it publicly deploras. As stated by FEC ex-officio member Dave Gartner for the U.S. Senate at the Pete DuPont oral argument,

I think the Commission's staff, and I am referring to the Office of General Counsel and the Audit staff, has done a good job in coming forward to the Commission with its recommendations.

Having said that, however, I will hasten to add that, in my judgment, they have come forward with recommendations based on a very strict interpretation of the statute and of the regulations thereunder.

I think it is my judgment that the Commission is faced with a surely simply stated issue, and that is whether or not it wishes to give an even broader interpretation, I guess, to the rules and the statute than it gave under the Gore AO.

The Commission, as the Chairman noted and others have noted, has said repeatedly that it is not satisfied with the state-by-state limits. And as we know, the Gore interpretation was a broad interpretation of both the statute and the regulations.

I think they are both written in such a way that they probably could be interpreted to allow or not take place the expenditures under the Iowa spending limits.

I think that the question really before the Commission is whether or not it wishes to place that broad interpretation on it.

See id. at 51-52.

The Commissioners should not accept the Audit staff's rigid construction of its rules on certain major spending limit issues in this audit. In fact, the Commission has a responsibility to both of its constituencies -- Congress, and the campaigns bound by the FECA and governed and policed by the FEC -- not to interpret its regulations rigidly and with scant regard for affected rights. The responsibility to the

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campaigns is to act on the recognition that the limits are inherently problematic, ill-served to their original purpose, and to make them more workable. Moreover, no useful enforcement purpose is served if, in ill-advised application of a rule with potentially unconstitutional ramifications, the Commission dooms the statute to constitutional failure. Cf. California Medical Ass'n v. FEC, 453 U.S. 182, 194 n.14, 101 S. Ct. 2712, 2720 n.14 (1981)(citing FEC v. Central Long Island Tax Reform Immediately Comm., 616 F.2d 45, 51-53 (2d Cir. 1980); Nixon v. Administrator of General Services, 433 U.S. 425, 438, 97 S. Ct. 2777, 2787 (1977); Thorpe v. Housing Authority, 393 U.S. 268, 283-284, 89 S. Ct. 518, 527 (1969); Crowell v. Benson, 285 U.S. 22, 62, 52 S. Ct. 285, 296 (1932)).

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II. FINDINGS AND RECOMMENDATIONS RELATED TO TITLE 2 OF
THE UNITED STATES CODE

A. ALLOCATION OF EXPENDITURES TO STATES

1. 25 Percent National Exemption

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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

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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

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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 higher and lower. 11 C.F.R. § 106.2(c)(5), 11 C.F.R. § 106.2(b)(2)(iv).

^{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.

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 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.

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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.

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Should the Commission be concerned about allowing a "new" exemption during the course of an adjudication, it should consider the well-settled proposition of administrative law that an agency may engage in adjudication rather than formal rulemaking when it deems the circumstances appropriate, and no injustice will be done. See Securities and Exchange Commission v. Chenery Corp., 332 U.S. 194, 201-02, 67 S.Ct. 1575 (1947); Federal Communications Comm. v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 98 S.Ct. 2096 (1978); National Ass'n for the Advancement of Colored People v. Federal Power Comm'n., 425 U.S. 662, 96 S.Ct. 1806 (1976); National Labor Relations Board v. Bell Aerospace Co., 416 U.S. 267, 94 S.Ct. 1757 (1974). Furthermore, an agency's wide discretion to utilize an adjudicatory proceeding for applying a new standard of conduct is especially appropriate in a case such as this one, in which fundamental constitutional rights may be violated -- without serving core enforcement purposes -- unless the agency takes action. Cf. National Labor Relations Board v. Bell Aerospace Co. The Commission has a duty not to let administrative and/or bureaucratic concerns preempt concrete speech rights. This is an affirmative duty.

Accordingly, the 25 percent exemption should stand, and \$179,234.81 applied by the Audit staff should be removed from the limit.

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2. Telephone-Related Charges

a. Northwestern Bell

After a review of the Audit staff's findings related to telephone charges not discussed in the Interim Audit Report,^{1/} the Gephardt campaign contests two matters related to the allocation of Northwestern Bell telephone charges to the Iowa spending limit. The AT&T portion of the Northwestern Bell bills included charges for directory assistance calls made in Iowa for out-of-state numbers. At the top of each phone bill, these charges are clearly identified as "Interstate, Canada, and/or 809 Directory Assistance Usage." An example of these charges is attached as Exhibit 2-A. These charges were included by the auditors in their Iowa totals.

Because these charges clearly relate to interstate calls outside the state of Iowa, these charges should not have been allocated to the Iowa spending limit, and the \$78 represented by these calls should be removed from the allocation.

The Iowa caucuses were held on February 8, 1988. The Audit staff included in its allocation to the Iowa spending limit

^{1/} The Gephardt campaign does not contest the findings of the Audit staff in subsection 2a of the Interim Audit Report with respect to the application of deposits and monthly service charges to the Iowa spending limit.

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intrastate Iowa calls made after February 8. These calls could have no election-influencing purpose, since they were initiated after the date of the caucuses in the state of Iowa and represented only "winding-down" costs. These specifically did not relate to further delegate selection activities, which was at all times a minimal concern of the Committee and discontinued altogether after the caucuses.

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The relevant regulations on allocation of overhead expenditures require that expenditures must be allocated. The definition of "expenditure" requires that the payment be made "for the purpose of influencing an election." 2 U.S.C. § 431(8). This argument can be distinguished from the Commission's position on debt retirement activities undertaken after the date of an election. There, the debt-retirement activities taking place after the election are related to obligations incurred prior to the date of the election for which a benefit was received prior to the date of the election. Debt retirement is, thus, related to activities which had an election-influencing effect. Here, as noted, there is no such election-influencing effect since the entire transaction, the telephone call, took place after the date of the election.

As a result, those calls made after February 8, 1988 in Iowa, totaling \$172.15 as reflected on the Northwestern Bell

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bills for this period, should be removed from the Iowa spending limit.

b. Central Telephone Company

In calculating the amounts allocable to the Iowa spending limit during the months of January and February of 1988, the auditors have overstated the allocable amount by \$165.51. The auditors attributed to the Iowa spending limit \$2,396.88 for the months of January and February. As shown in the calculations contained in Exhibit 2-B, the amount attributable to Iowa during the months of January and February should have been only \$2,231.37. The amount of \$165.51, therefore, should be removed from the Iowa spending limit.

The Audit staff notes in the Interim Audit Report (page 5) that the Committee provided only summary pages of the February 25, 1988 and March 25, 1988 billing statements for Central Telephone. In fact, the Committee provided the auditors with complete statements for both months. (One of the statements was missing a single page.) In the interest of cooperation, the Committee submits again the entire billing statements for these two months as Exhibit 2-C.

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c. MCI

The Audit staff attributed \$6,044.14 of the Committee's final MCI telephone bills to the Iowa spending limit. Included within this amount was \$2,628.56 in calls made using an 800 access code number. Samples of these MCI bills for both the national headquarters and for the Iowa field office are attached as Exhibit 2-D.

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.

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.

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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 - the Audit staff has determined that all of these 800-access - 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

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"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.

d. Telecom USA

The Audit staff included in its allocation to the Iowa spending limit certain calls billed by Telecom USA as part of its Teleconnect Division that were, in fact, interstate telephone calls.^{1/}

On the Teleconnect bills, certain calls were coded "U *All-Call*." As explained in the enclosed letter from Carly Johnson, customer service representative of Telecom USA, *All-Call* calls were those made with calling cards issued to the Gephardt campaign. Exhibit 2-E. On its billing statements, Teleconnect does not provide the identification of the city from which an *All-Call* call originated, only the city and state to where the call was made. See example of billing statement. Teleconnect does, however, indicate on *All-Call* calls whether the call was intrastate or

^{1/} It should be noted that the Committee used the auditor's total allocable number for reporting purposes. At that time, we had not determined that the auditors' total was overstated.

interstate. Those *All-Call* calls preceded by the letter "I" are calls made within the state of Iowa. Those preceded by the letter U are interstate, either calls made from Iowa to another state, or calls made from another state to Iowa. The auditors included on the Iowa spending limit all "U" calls to a city in Iowa.

As a result, the U *All-Call* calls to cities in Iowa shown on the Teleconnect bills, a sample of which is attached as Exhibit 2-F, for a total of \$1,298.80, should be removed from the Iowa spending limit.

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

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The Audit staff notes that, in Iowa, the Gephardt campaign allocated certain salaries and consulting fees paid to certain Iowa staff as 100 percent-exempt compliance costs, while it allocated the standard 10 percent for compliance costs for the remainder of the Iowa payroll. The Audit staff contends that under the terms of the Control and Compliance Manual the Committee must choose either the standard 10 percent method for all employees or must document a different allocation method for all employees. This "either/or" option is contained nowhere in the Regulations, and its application results in requiring, for no sound cause, more unnecessary pressure on a state limit. In fact, the "either/or" option is irrational, operating as a tax on compliance activities which, in hotly contested primaries like Iowa, are extraordinary important and extraordinarily difficult.

The Commission regulations on the exemption of compliance (and fundraising) expenditures provide as follows:

An amount equal to 10 percent of campaign workers' salaries and overhead expenditures in a particular state may be excluded from allocation to that state as an exempt compliance cost If the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual

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working in that state . . . Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance . . . exemption.

11 C.F.R. § 106.2(c)(5). There is no suggestion of an "either/or" requirement here. The first sentence cited clearly allows a blanket 10 percent allowance for all "campaign workers' salaries." Then the regulation notes the availability of a "larger compliance exemption for any person" -- now referring to allowances made to reflect individual cases.

There then follows -- and therein is presented the issue -- the suggestion that if a larger compliance exemption is claimed for any person, the candidate must work specific allocation percentages for "each individual working in that state."

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. Thus, the Commission is invited to assume that a campaign retains full-time accounting staff members and, with good reason, claims a 100 percent exemption for their related services. By the reading urged by the auditors, it is now

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required, for some entirely unexplained reason, that every other individual in the state has to be reviewed for a separate and different allocation percentage. This percentage could be higher than 10 percent, 10 percent, or lower than 10 percent, but it would have to be separately "established" for each individual working in the state on whatever activities they were charged with conducting.

How this task could be accomplished in any reasonable or well-documented fashion for (as examples) fundraisers, field organizers, receptionists, secretaries, advance staff, or paid workers without a defined mandate is left entirely unstated. In fact, it cannot be done with any useful certainty, other than on an entirely arbitrary basis. Effectively, the auditors are arguing that if, for complete justification, larger exemptions are claimed with individuals hired solely to perform compliance responsibilities, there follows a raw exercise in gamesmanship to "establish allocation percentages for each individual working in that state."

Do the auditors also mean to suggest that if 100 percent is claimed for individuals with only compliance responsibilities, a 10 percent figure retained for all other employees is somehow by law excluded? And is it only 10 percent which is prohibited, or does this mean also that the auditors have in

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mind that the 100 percent exemption claimed for compliance staff requires that percentages less than 10 percent have to be established for all other staff? The Gephardt campaign could not assume that this is what the Regulations contemplated, because there was neither a basis on which to meet this requirement with anything other than arbitrary number-picking, nor any purpose served by that requirement.

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The Gephardt campaign read the Regulations as it did for the simple reason that if an individual is retained solely to perform a compliance function, then the compliance exemption should apply in full. All other individuals who must in one form or another support that compliance function could properly be treated under the 10 percent exemption -- a number no more arbitrary than any other that the Audit's staff either/or reasoning would require to be selected. In the context of Iowa, this 10 percent number for all staff (other than compliance) was perfectly reasonable.

The compliance effort in Iowa, the first primary running for year and a half, was a vast and time-consuming undertaking. All of the staff retained to work in Iowa, including staff which would later be assigned to other states, had to be fully briefed on the requirements of the Act and their role in ensuring the campaign's compliance with those

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requirements.^{1/} The investment in training was made, indeed, had to be made, before Iowa; there was no time to repeat the exercise later, and no reason to do so with staff in Iowa who moved on to other states. By relying on a 10 percent exemption for all staff other than the purely compliance staff, the Gephardt campaign -- looking precisely to the guidance of Commission Regulations -- concluded that the 10 percent number was reasonable in the circumstances, for non-compliance staff.

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The auditors' reading of the Regulations would work another irrational harm on a campaign. It operates to discourage campaigns from undertaking to hire compliance-related individuals who could be treated as 100 percent-exempt, because upon hiring this staff, the campaign would be required to "establish" separate allocation percentages, on some arbitrary basis, for all other staff.^{2/} The inhibitive impact on Iowa compliance from this result would be severe. Iowa was pure chaos for an extended period of time: it was unquestionably,

^{1/} For example, many Iowa staff received a copy of the Gephardt Field Manual, attached as Exhibit 3-A, prepared by campaign counsel to train staff in assisting the campaign in its compliance responsibilities.

^{2/} This only serves to open campaigns' questions at audit staff, about how those percentages, other than on an arbitrary basis, were established.

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what precisely is the purpose served by this approach? The reading of the Regulation advanced here by the Gephardt campaign and utilized in making exempt compliance allocations was sound, and it should stand.

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The Audit staff's either/or position affected four Gephardt campaign staff who were in Iowa at various times principally to perform compliance duties. The responsibilities of all four are summarized in the compliance job description in Exhibit 3-B. The auditor refusal to accept the Gephardt campaign's compliance allocation resulted in substantial sums being allocated to the Iowa spending limit unnecessarily. The arguments above show that the Committee's original allocation was reasonable and the appropriate amounts should be removed from the spending limit. Figures for three of the compliance staff, Jim Humlicek, Sheila Corsbie, and Paula Dickson are summarized in Exhibits 3-C (Payroll), 3-D (Payroll Taxes), and 3-E (Health Benefits).

Audit staff treatment of the fourth compliance staffer, Maria Varner, is addressed in Exhibit 3-F. Finally, the Audit staff attributed the salary of staffer Donna Starr during the October pay period to the Iowa spending limit. Ms. Starr, while originally an Iowa staff member (from February 15, 1987 until September 30, 1987), was transferred to the fundraising

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staff as of October 1, 1987, to concentrate on the organization and preparation for the December: America First fundraising project. The documents in Exhibit 3-G outline this transfer (as well as a subsequent transfer, in January 1988) Ms. Starr's salary is an exempt fundraising cost and should not be attributed to the Iowa spending limit.

FICA and Health Insurance Benefits

The Audit staff determined that in some instances employer FICA and the employer cost of health and life insurance for Iowa staff was not allocated by the Committee to Iowa. The considerations applied by the campaign in each of these expenses are discussed, separately, below.

FICA. 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 an allocation method for FICA.

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

sense. The payment of taxes on salaries to the federal government has no impact on the communication with voters facilitated by the participation of paid staff members. And in response to the objection that there are other costs allocable to the limit which also do not have some proximate or immediate relationship to voter-influencing activities, there is a decisive answer: that in other cases the campaign has some choice over whether to budget for those costs or to eliminate them altogether out of concern for pressure on the limits. In the matter of FICA, this choice is altogether absent.

The campaign consulted the Manual for guidance throughout the course of Gephardt's active primary activities. The discussion presented in the Compliance Manual on any regulatory issue is plainly more extensive than that contained in the Code of Federal Regulations. And the Commission obviously had in mind that the Compliance Manual would supply this additional explanation, advising in its Introduction that it had " . . . undertaken to organize, in this Manual, the essential compliance and financial control considerations in the hope that it will provide helpful guidance to those person required to file reports." Compliance Manual at page xiii. Where the Manual departs in significant respect on a fundamental issue from the Regulations, what is produced is not guidance but inconsistency. The Gephardt campaign approached those

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questions of inconsistency with some care, examining in each instance, and first and foremost, whether the inconsistency was material. Thus, for example, if the additional clarification provided by the Manual followed logically from the related Regulations, then the guidance of the Manual -- even in detailed respects -- was closely followed.

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This is not such a case. There is an enormous difference in impact on the limits between allocation of salaries paid to Iowa staff and the allocation in addition of related FICA obligations. The Committee cannot contest the rules set out in the Regulations on salaries, and it cannot argue that this rule bears no plausible logical relationship to the enforcement goals associated with the spending limitation. For the reasons set out previously, the same cannot be said for the Manual's suggestion that FICA obligations are also allocable.

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.

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Health and Life Insurance Benefits. The auditors have objected to the Gephardt campaign's failure to allocate to the Iowa limits amounts spent for health and life insurance benefits for staff. This allocation was not made, because the Regulations do not require it. Moreover, the Manual makes no mention whatsoever of health and life insurance benefits in the discussion of costs allocable to the limit. The omission of this discussion does not appear inadvertent because the Manual does address in Chapter VII precisely such benefits, and thus the Commission was aware that in some campaigns at least those benefits are provided. The discussion in the Manual, however, is limited to observations on the difficulty of administering such programs in political campaigns which must address "a variety of employment arrangements" presenting difficulties for the administration of an insurance plan. This is all that the Manual offers on this subject.

The Gephardt campaign assumed that if the Commission was aware that health and life insurance programs were offered in some campaigns but did not require the benefits to be allocated to the limit, then this could be appropriately accepted as guidance that allocation was not required. As noted earlier in the discussion of FICA, there is no reason to assume that this is an illogical choice. The payment of health insurance benefits for employees is for their benefit, to be sure, but it

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does not have any direct relationship to the campaign's activities to influence voters in a particular state.^{3/}

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It was noted earlier that the payment of FICA obligations was not a matter of choice with the campaign, and that it did not represent in any event a benefit to the staff within the meaning of "salary." The acceptance of health and life insurance benefits by an employee plainly represents a benefit to that employee, and the campaign certainly has a choice of whether to offer this insurance. This is an instance where any decision to require allocation of these costs to the limit would have the most perverse discouraging effect on campaigns' willingness to offer this type of benefit. Many federal campaigns do not offer this benefit, and virtually none would if the cost of insurance placed additional burdens on an already modest spending limitation. In this day and age, when insurance plans are increasingly expensive and their conditions restrictive, there may be few campaigns prepared -- in the early small states, at least -- to offer this benefit and lose ground under the spending limitation.

^{3/} That is, unless one assumes that in order for the staff to conduct these activities they must remain healthy and also protected psychologically against fear of loss of both health and life. There is no indication that this strained line of reasoning has been considered, much less adopted, by the Commission

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The campaign notes also that the benefit to an employee of health insurance programs in actual dollars may come long after the employee leaves one state and takes up service in another. Insurance represents protection against future financial risk, whenever that risk materializes during the life of the policy. In many campaigns, the staff serving in Iowa relocate to another state as soon as the caucuses are over. Any claims they make on the policy, and thus any concrete benefits paid to them, may come at irregular times, either in all states, in some, or in none at all. The campaign, for its part, has no way of determining when those claims will be made or their dollar amounts.

In summary, the Gephardt campaign did not allocate health and life insurance benefits to the Iowa spending limit, because there was no suggestion in the Regulations or the Manual that this was required. This was obviously not a question which had never arisen before the Commission because the Manual made mention of health insurance benefits in one section, but no mention of them at all in any treatment of the spending limits. Additionally, the Committee could properly conclude that there was good and sufficient reason why allocation was not required.

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4. Intrastate Travel and Subsistence Expenditures

In a number of instances, the Audit staff alleges that it identified persons who had incurred expenses in Iowa for five or more consecutive days in January or February of 1988. Thus, the Audit staff reasoned that under 11 C.F.R. § 106.2(b)(2)(iii), these Iowa expenses had to be attributed to the Iowa spending limit. These Regulations state clearly that intrastate travel and subsistence expenditures can only be attributed to a state's ceiling for persons working in a state for five consecutive days or more.^{1/}

Close review of some of these allocations indicate that for certain individuals there were only four consecutive days documented in Iowa, but the Audit staff nevertheless attributed a fifth day, and therefore a portion of these staff intrastate travel and subsistence expenditures, toward the Iowa spending limit. All of the staff members for whom a fifth day was attributed without documentation were members of the national campaign staff, and therefore, their expenses would not otherwise be allocated to any state. Specifically, the Gephardt campaign challenges the Audit staff's attribution of

^{1/} Of course, the same five-day rule applies to proportions of staff salaries paid, as well as travel and subsistence, under 11 C.F.R. § 106.2(b)(2)(ii). This point is not relevant here, because there was no payroll made to Gephardt staff for the months of January and February 1988, the period in question.

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portions of intrastate travel and subsistence expenditures for four members of the Gephardt campaign national campaign staff even though the documentation evidenced that they were only in the state for four consecutive days, rather than the requisite five.

The Gephardt campaign assumes that the Audit staff attributed five days in a state to people for whom documentation shows only four nights because of the Compliance Manual's statement that "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). 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).

In response to this allocation, the Gephardt campaign asks that the Commission consider several issues. First, the Commission's formal regulations are notably silent (and ambiguous) on the point of how to measure a "day." Only the Compliance Manual addresses the point, and then with the caveat "generally." Perhaps this qualifier was added because of the

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danger stated above, that less than 96 hours could nevertheless be categorized as five days under the "calendar-day" rule.

The Gephardt campaign is sensitive to the fact that the Commission implemented a 24-hour period measuring guide on the five-day rule so as to avoid bald circumvention of the rule by staffers merely leaving a state for a few hours every fifth day. See Fed. Reg. 5225 (Feb. 4, 1983). Indeed, the rule was apparently designed to allow advance staff, who are properly categorized as a national expense, to be exempted from state spending limits. Id.

All of the people for whom we challenge the five-day allocations are of precisely the same "national" stripe as are advance staff. Specifically, we address the cases involving the following four national campaign staffers: Bill Carrick, the National Campaign Manager; Brad Harris, Gephardt's Personal Assistant and National Travel Aide; Debra Johns, the Traveling Press Secretary; and Ally Webb, the National Press Secretary. We have attached the documentation from which the Audit staff worked, as well as summaries of this documentation, in the Exhibits portion of this section. Like advance staff, these aides' expenses in the state are better categorized as national expenses than local ones, because their tasks are primarily national. Thus, staffers such as these are the very type of individuals for whom a general "calendar-day" rule would be

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inappropriate: Those who travel so frequently that adhering to a calendar-day rule would subsume the whole and render all travel by that individual allocable against a state limit. 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.

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through an appropriate interpretation of a 24-hour period. 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 discussed in Section 1, reflecting the true national nature of these staff efforts.

For your convenience, we summarize the documentation of these four staffers here:

- For Bill Carrick, the Audit staff attributes to his activities five consecutive days when the documentation in January shows only that Carrick stayed in hotels in Iowa for four consecutive days; the same situation applies to February. Moreover, in February, the "fifth day" that the Audit staff includes is February 9th, the day after the caucuses. Surely time spent in a state after the caucus has taken place cannot be for the purpose of influencing that state's caucus voters.
- For Brad Harris, the attribution of his February allowances cannot stand when his hotel rooms were booked only for four days consecutively.

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- Traveling Press Secretary Debra Johns was in and out of Iowa repeatedly during the month of January, sometimes leaving the state only for a day or two between trips. However, this is a completely legitimate travel schedule for a traveling press secretary; the Audit staff is without foundation to infer the fifth day in between these stays (i.e., January 13, 16, 18, or 29). Thus, although Debra Johns admittedly spent a total of 16 nights in Iowa during January, none of the associated costs may be allocated against the limit because there is no basis for applying the five-day rule to require allocation.
 - For National Press Secretary Ally Webb, records indicate that she was in the state of Iowa for one day, left for 24 hours, and then returned for three days. The Audit staff has apparently inferred that Webb was in the state on January 4, the 24 hours between the one-day stay and the three-day stay.

Nor can the Gephardt campaign be reasonably expected to document in painstaking detail that these individuals were not in the state on the fifth day. The regulations cannot be read to require this burden on the campaign without potential First Amendment infringements because, extended to its logical conclusion, it translates into a requirement that every member

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of the national staff be accounted for, day-by-day, for every day before an Iowa primary, even when there is no good cause to suspect attributable costs to a state. This would be an unacceptable result, and even campaigns prepared to undertake the task could not expect to fulfill it successfully in the high-velocity conditions of a campaign when travel plans change constantly. This problem is one of documentation after-the-fact, when it is impossible to know what facts would be important before the fact.

The total intrastate travel and subsistence that should be removed from the Audit staff's allocation to the Iowa spending limit under this reasoning amount to \$1,705.88.

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Exhibit 4-A Summary

BILL CARRICK
National Campaign Manager

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/12/88	Holiday Inn, South Dakota	\$55.22
1/13/88	Hotel Savery, Des Moines	
1/14/88	Hotel Savery, Des Moines	\$151.35
1/15/88	Hotel Savery, Des Moines	
1/14/88	Stouffers, Cedar Rapids	\$88.29

Two rooms in two separate cities for 1/14/88 included.

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
2/5/88	Marriott	
2/6/88	Marriott	\$492.40
2/7/88	Marriott	
2/8/88	Marriott	

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Exhibit 4-B Summary

BRAD HARRIS
National Travel Aide
Personal Assistant to Cong. Gephardt

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
2/4/88	Hotel Fort, Des Moines	\$224.34
2/5/88	Hotel Fort, Des Moines	
2/6/88	Holiday Inn, Davenport	\$97.83
2/7/88	Holiday Inn, Waterloo	\$76.41

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Exhibit 4-C Summary

DEBRA JOHNS
Traveling Press Secretary

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<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/5/88	Hotel Savery, Des Moines	\$41.62
1/6/88	Village Inn, Cedar Rapids	\$26.40
1/7/88	Hotel Savery, Des Moines	\$25.48
1/8/88	Best Western, Sioux City	\$30.62
1/11/88	Best Western, Sioux City	\$134.68
1/12/88	Howard Johnson	\$42.80
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1/14/88	Stouffer, Cedar Rapids	\$43.85
1/15/88	Holiday Inn, Waterloo	\$65.40
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1/17/88	Marriott, Des Moines	\$152.20
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1/19/88	Hotel Savery, Des Moines	\$287.48
1/20/88	Hotel Savery, Des Moines	
1/21/88	Marriott, Des Moines	\$267.16*
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* Actual stay through the night of 1/22/88. Auditors included charges for this night, but did not extend her stay in Iowa through the 23rd.

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DEBRA JONES (cont)

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/27/88	Best Western, Newton	\$61.28
1/28/88	Hotel Savery	\$101.19
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1/30/88	Heartland Inn, Dubuque	\$34.34
1/31/88	Stouffer, Cedar Rapids	\$95.13

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Exhibit 4-D Summary

ALLY WEBB
National Press Secretary

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/3/88	Lilac Motel, West Union	\$31.08
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1/5/88	Hotel Savery, Des Moines	\$41.63
1/6/88	Village Inn, Cedar Rapids	\$26.40*
1/7/88	Hotel Savery, Des Moines	\$25.47

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5. Car Rentals

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In the five-day rule and car rental allocations, the Audit staff started with a presumption that anything "questionable" or "suspicious" should be allocated against the Iowa spending limit. This is untenable. It imposes harsh injustices on the campaign, apparently on some audit theory that adding dollars to the Iowa spending limit is the object of this exercise. To the contrary, applying the law fairly to the campaign, based on rigorous standards of accounting and evidence, is the only true and appropriate objective. In the interests of fairplay, the concern that there be some sound basis for disputing the Committee's cost allocations before shifting the burden of proving otherwise to the campaign must be the overarching consideration for the Commission in ruling on these disputes.

The Audit staff attributed an additional \$22,486.08 to Iowa to account for cars rented outside of Iowa that were nevertheless used within the state. Under 11 C.F.R. § 106.2(a)(1), any expenditures incurred for the purpose of influencing the nomination in a state shall be allocated to that state, and thus these car rentals, the Audit staff alleges, should be applied to the limit.

However, documentation for several car rentals does not indicate that these cars were, indeed, used in Iowa. Documents

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pertaining to these car rentals are attached as the Exhibits portion of this section. It appears that these questioned rentals have been attributed to the Iowa spending limit solely on inferences made by the Audit staff which are outside the scope of its authority. The Gephardt campaign contests certain attributions made to Iowa on this basis, much in the same way as it challenged attributions of intrastate travel and subsistence costs to the states when the documentation does not indicate that staff members were in the state for five consecutive days.

Doubtless, 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 of this matter, for every car leased, on the facts. Without facts, there is only suspicion, and suspicion cannot establish legal liability.

Specifically, the total amount determined by the campaign to be not attributable to the Iowa spending limit for car rentals is \$3,780.79.

First, a car rented by Adam Anthony in Minnesota from Thrifty Car Rental, for a total of \$849.95, seems to have been

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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 loss or emergency. This is not nearly so revealing as imagined by the Audit staff: Iowa had the only campaign office in the region to which a phone call could be made. Staff on the road -- and there were many -- were inaccessible. These jalopies did not come equipped with car phones.

There is no notation that the Anthony car was for use in Iowa, and the car was rented in Minnesota and returned in Minnesota. Furthermore, Adam Anthony was not an Iowa staffer, nor were any of his expenses attributed to Iowa according to the Audit staff's own calculations. In fact, there is no indication that the car was used in Iowa whatsoever, save for the circumstantial evidence of it being rented from early January through early February of 1988. Needless to say, this circumstantial evidence cannot be sufficient to attribute a car to Iowa; if every car rented by the Gephardt for President Committee in the early months of 1988 were attributed to the Iowa spending limit, it is clear that this would be grossly inappropriate. Therefore, we challenge the attribution of the \$849.95 charge to the Iowa spending limit.

Second, a car rented to James Edgar Thomason from Thrifty Rent-a-Car in Milan, Illinois, totaling \$935.21, similarly has

no documentation whatsoever that it was used in Iowa. It was rented in Illinois; returned in Omaha, Nebraska, and Thomason gave a Michigan address and driver's license for himself. The only remote connection to Iowa was an Iowa phone number given in case of emergency, which made perfect sense for the reasons stated. Thomason was not an Iowa staffer, nor is there any indication that the car was ever used in Iowa.

Here again, circumstantial evidence of the timing of a car rental -- the month of January through early February of 1988 -- is not enough, standing alone to create an inference that the car was in Iowa. The Audit staff must present proof that a car was in Iowa. It may not infer assumptions detrimental to the Gephardt campaign's legal rights. Thus, we submit that the \$935.21 charge for the Thomason car should also be removed from the Iowa spending limit calculation.

Third, and finally, three cars rented by Gephardt staff who, according to the Audit staff's own calculations were only in Iowa for a week or less, nevertheless were attributed in full amount 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. These staff cars were rented by Courtenay L. Miller, Rick Torres, and Steve Dimunico/Alida De Brauwere (both on the contract). Courtenay Miller's car was rented in Minnesota for explicit use in Minnesota and Iowa according to the car rental contract. The total amount of the

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car rental was \$575.10. Also, according to the Audit staff's own calculations, Courtenay Miller was only attributed to having been in Iowa from February 3 to February 8, 1988. Thus, only a portion of Miller's expenses were attributed to Iowa; it is not explained why the entire car rental fee is nevertheless allocated in full in Iowa. We submit that only five days of the month for which the car was rented should be attributed to the Iowa spending limit. This means that only \$92.75 should be attributed against the Iowa spending limit, and \$482.35 -- 25-days worth of the rental fee for which there is absolutely no evidence that the car was anywhere near Iowa, and most likely in Minnesota -- should be removed from the Iowa spending limit.

Similarly, Rick Torres was shown to have been in Iowa for only seven days from January 4, 1988 to January 10, 1988. His car was rented for 30 days, from January 8, 1988 to February 7, 1988, for a total cost of \$617.70, which the auditors allocated entirely to Iowa. However, the prorated Iowa portion should be \$144.13. The same reasoning also applies to the Dimunico/De Brauwere car. Steve Dimunico was in Iowa from January 2 to January 8, and January 23 to January 29; Alida De Brauwere was in Iowa from January 2 to January 7 and January 19 to January 29. The car rental period was from January 8 to February 9, 1988, for a total cost of \$1,330.69, which the Audit staff allocated entirely to Iowa. Only the prorated portion for

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January 23-29 should have been allocated to Iowa, for a total of \$291.08.

The allocations of the entire amounts of these rentals to Iowa is further evidence of an all too quick readiness on the part of the Audit staff, without documentation, to attribute expenses to Iowa.

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6. Polling

a. Focus Groups

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The Audit staff reviewed expenditures by the campaign for certain "focus groups" conducted in May of 1987, and allocated the total amount -- \$36,001.38 -- to the Iowa spending limit. This allocation was based on the judgment that a focus group is a "state poll" under § 106.2(b)(2)(vi) which, if conducted with focus group members drawn from the same state, is allocable in full to that state. Because the focus groups in question consisted of Iowa men and women, the Iowa spending limit was charged for their full cost. These focus group interviews were conducted by Kennan Research and Consulting, Inc., under the cost center 2133.

A focus group conducted in one state, however, 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 voters, a focus group survey elicits attitudinal information for use without regard to geographic boundaries. The product of a focus group has broad national application. The results are as valuable to a campaign for planning its message in other parts of the country as they are

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the result. While focus groups may be conducted in several states, this is by no means necessary in order for a focus group interview to have national application.

The objective of a focus group is to probe far deeper than a traditional poll into the emotions behind the attitudes people have on issues. Through a focus group, a campaign can understand the language that people use to talk about their concerns and issues. This added dimension is valuable in planning virtually every aspect of the campaign, including message development, speeches, media and how the candidate is talking day-to-day to voters about particular issues.

By contrast, opinion polls derive quantitative data from balanced and representative samples selected from the entire demographic and geographic area being tested. So, for example, a sample of Iowa residents is selected for an Iowa poll and a nationwide sample is required for a national opinion poll. The results of an Iowa poll are useless outside of Iowa, and a national poll does not supply meaningful survey research data for Iowa. A poll tests attitudes on specific issues with a carefully selected number and demographic range of people within limited geographic areas.

Another crucial difference, going to the heart of the matter, is the time-sensitivity of each type of survey. As FEC

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regulations recognize, a poll's value declines with time. 11
C.F.R. § 106.4. A poll is a "snapshot" of opinion in the
market under study, and in a matter of weeks, it is no longer
reliable, and thus no longer useful. This is not a feature of
the focus group, which has a continuing value because it probes
far more enduring root beliefs and attitudes. The focus groups
in question were conducted in May of 1987, almost a year prior
to the Iowa caucuses; the results shaped an approach to issues
followed around the country, in Iowa and elsewhere, by Dick
Gephardt for the balance of the campaign. See Affidavits from
William Carrick, David Petts, and Edward Reilly.

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 perceptions of
politics and also to ascertain if, and to what extent, the
presence of men would alter what women said. Historically
women constitute the majority of undecided voters and,
therefore, represent a critical and potentially receptive group
of voters among whom the Gephardt campaign sought to build
support. In fact, the focus groups were conducted alongside a
series of other initiatives to identify issues of concern to
women voters nationally. In February of 1987, the campaign
hired a Senior Consultant whose primary responsibility was to
design and implement a campaign initiative to appeal to women
voters and integrate the women's message into the campaign.

Gephardt traveled for several weeks with a public relations consultant who listened to and advised the candidate, based in part on the focus group research, on the language and approach he used to discuss issues. In addition, the heads of major women's groups were invited to talk to Richard Gephardt about the campaign and the formation of a Women's Advisory Council.

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The result of these efforts was a national campaign message, developed and communicated by Richard Gephardt through speeches and issue papers, and delivered throughout the country, on these issues. The message was communicated, of course, 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. See Exhibit 6-A. Indeed, the focus groups dealt in large part with broad themes such as leadership, attitudes toward political figures in general and specific individuals, foreign policy and international relations; and the information relating to them derived from the focus groups was used by the campaign, before and after the Iowa caucuses throughout the country.

A reknoned use of a focus group conducted in a particular state to develop a national message occurred in connection with the Bush campaign's formulation of its "Willie Horton" ad. The focus groups on which this message was based were conducted in

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New Jersey entirely with residents of New Jersey. The Bush campaign translated the results of this effort into a major national message with implications for New Jersey, to be sure, but also for all other states. Media reflecting this message was shown in a broad range of states, including but not limited to New Jersey, and on national network buys. See Exhibit 6-8.

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The campaign's decision to allocate these focus group costs to national message development was fully justified. These were not, as the auditors maintain, "state polling" costs limited in significance to Iowa. While current Commission regulations do not address focus groups per se, they do not by the same token require that such costs be treated as different from other forms of research and message development financed by the national campaign for national purposes. Therefore focus groups are more appropriately given treatment equivalent to a national poll because of their utility nationwide, and should be exempt from allocation to a state limit. See 11 C.F.R. § 106.2(c)(1)(iii).²

2/ Focus groups are also properly analogized to exempt broadcast and media production costs. 11 C.F.R. § 106.2(c)(2). According to the Financial Control and Compliance Manual, examples of production costs which may be excluded are "script preparation, filming, and editing." These three, taken together, certainly describe the type of research constituting a "focus group."

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— 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) ("Compliance Manual"), limits the five-day rule's applicability only to "campaign staff persons." See Interim Audit Report at 9 (emphasis in original). This interpretation of the Compliance Manual is wrong. The Compliance Manual itself states that it applies equally for "persons traveling to a State . . . and for national headquarters staff" Compliance Manual at 32 (emphasis added). The mere fact that, as a shorthand, the Compliance Manual subsequently refers back to "campaign staff" certainly cannot negate the fact that the Compliance Manual explicitly foresaw the five-day rule applying both to campaign staff and to others working in or traveling to a state. Thus, the Audit staff's opinion that the rule only applies to campaign staff cannot be sustained.

In any event, the distinction between "persons working in a state" and "campaign staff" is only a semantic one for the immediate purposes, because the most sensible reading of the regulations, consistent both with their core purpose and with reality, would equate consultants such as Ed Reilly with campaign staff. "Consultants" and "staff" work under the same constraints and for the same purposes. Consultants function as do any other staff people on a presidential campaign, and this is particularly true of primary consultants in charge of media

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strategy and polling. They spend the huge majority of their waking hours on the campaign: they consult daily, often hourly, with the candidate and senior staff, travel with the candidate, and formulate a national plan for the campaign to follow with the candidate and campaign manager.

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Mr. Reilly was a general strategist who was a member of the campaign's core management team, see Carrick Affidavit, and rendered services and gave advice wholly unrelated to a particular poll in a particular state. See Reilly Affidavit. He was retained for his expertise in New England politics, where he made his name; for the support he provided to Gephardt in national message development and debate preparation; for the counsel he could provide to supporters of Gephardt in the Congress and private sector; and for the hours spent in Washington, D.C. and New York on campaign management planning. The Audit staff discovered in the records that his own personal travel to Iowa was limited and infrequent.

There is no useful distinction to be drawn in this context between a consultant and an employee. The difference is fundamentally only one of federal tax law, since a campaign has withholding obligations toward employees and not consultants. Moreover, it would be virtually impossible for campaigns to retain any experienced top management if they did not resort to the hiring of consultants. Experienced campaign workers

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breaks down the consulting fees" between Iowa and the national campaign, or other states. This allocation is simply erroneous. Just as the salaries of national campaign staff will not be attributed against the Iowa spending limit unless a national staff member spent more than four days in Iowa, see 11 C.F.R. § 106.2(b)(2)(ii), Ed Reilly's consulting fees (i.e., his salary) cannot be attributed to Iowa. Reilly was a national strategist, not an Iowa strategist. His fees were paid for advice on the widest range of strategy issues in the campaign. His affidavit attests to the fact that his consulting fee was in addition to the consulting/analysis fee attached to a particular poll, because such consulting fees are "built in" to the cost of individual polls. In other words, any consulting fees which should be allocated to Iowa have already been so allocated as part of the polls properly allocated against Iowa's spending limit.^{3/}

c. Kennan Travel Expenses

Erroneous allocations by the Audit staff in Kennan Research's travel expenses also relate in part to the Audit staff's refusal to analyze the Kennan staff under the terms of

^{3/} This same argument is properly applied as well to the \$6,750 in consulting fees charged by Ned Kennan, Ed Reilly's partner at Kennan Research, on December 10, 1987. For these purposes, Kennan and Reilly functioned interchangeably on the Gephardt campaign.

the five-day rule. Given that the Kennan consultants were clearly "persons working in a state," their expenses can only be attributable for periods in which they were in the state five days or more. However, as is shown on the attached documentation, the Audit staff attributed \$26,662.49 in travel to Iowa, when only \$447.77 could be so attributed under the five-day rule.

Exhibits account for all of the \$26,662.49 in travel expenses added to the Iowa spending limit by the Audit staff. This falls into two categories: \$7,865.18 in expenses, for which we previously had inadequate documentation; and \$18,797.31, in which we challenge the reasoning of the Audit staff's adjustments. We now can account for all expenses in both categories.

(1) Undocumented Travel Expenses. We have reviewed the auditors' tape of documented expenses prepared from the expense statements provided on March 6, 1989. With the help of the attached letters prepared by Kennan Research Comptroller Susan Worth during 1987 and 1988, we have been able to determine that additional expense statements not previously identifiable as 2004 documentation can now be removed from the auditors' total of \$7,865.18 in undocumented expenses. Through the reconciliation included in Exhibit 6-F, we have determined that only \$2,595.95 remains unsupported with expense statements

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and/or Kennan Research letters. Detailed reconciliations and photocopies of documents are attached.

Two points of explanation must be made regarding what we have labeled "Missing Expense Statements." First, although we do not have formal expense vouchers for the listed expenses from Paula Child and Ed Reilly, we have letters from Kennan Research which adequately document these expenses absent formal statements. These letters, attached, show that Child's trip was to Washington, D.C. and thus should not go on the Iowa spending limit; and Ed Reilly's trip, although it was to Iowa, should have the airfare cost for interstate travel removed from the Iowa spending limit under 11 C.F.R. § 106.2(c)(4). Thus, only \$657.50 of this expense is allocable against the Iowa state limit.

Second, although we do not have detailed documentation of Ned Kennan's \$2,595.95 invoice, we note that the information we do have lists these as expenses for February 1988. The Iowa caucus was held on February 8, 1988, after which Ned Kennan immediately did a great deal of work for the Gephardt campaign in New Hampshire and southern states. At a minimum, this expense should be proportionately prorated so that only eight days in the month of February count against Iowa's spending limit. Although we acknowledge our burden of production under 11 C.F.R. § 106.2(a)(1) in presenting evidence that proves our

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allegation, when such documentation is unavailable in good faith, the Commission simply cannot, in fairness, assume that this entire expense was attributable to Iowa when even the circumstantial evidence does not support such a finding. Concerns of simple fairness dictate that the Commission must have a sound basis for disputing the Gephardt campaign's cost allocations, and, further, that the Commission at least generally consider responses made even in the absence of documentation.

(2) Kennan Research Travel Related to Iowa. We have reviewed the schedule of 2004 travel allocable to Iowa prepared by the auditors, and dispute their total of \$18,797.31 for several reasons. First, travel clearly coded either 2181 or 2133 per the expense statements is also included in the auditors' schedule of 2004 travel allocable to Iowa, resulting in double counting in the amount of \$5,552.66. This double counting includes: (a) 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; as well as (b) travel coded 2181 on the expense statements, not included as 2004 documentation in the auditors' calculation of documentation received, and therefore included in undocumented expenses, yet again included in the schedule of 2004 Iowa travel.

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Documentation of these errors, and summaries, are attached as Exhibit 6-G.

Of course, as explained in Section 6.a, supra, we emphatically dispute the allocation of any of the costs of the focus groups which comprise the 2133 code. Thus, we argue that these expenses erroneously double-counted by the Audit staff should be removed the Iowa adjustments twice, since they have been added on to the spending limit twice.

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The rest of the expenses on the Audit staff's chart, with one exception that will be addressed, should be removed from the Iowa state limit either because they reflect costs of exempt interstate travel, under 11 C.F.R. § 106.2(c)(4); or because they reflect costs of travel to the state for periods of less than five days. Since, as delineated in Section 6.b, supra, Kennan staff should be measured under the five-day rule, these expenses cannot properly be attributed to Iowa.

Only one trip on this summary, by Ed Reilly in January 1988, lasted five days or more to Iowa. Of the \$1,115.77 attributed to this trip, \$668.00 was for interstate travel, in the form of airfare to the state. Thus, only \$447.77 of this Iowa trip is properly allocable against the Iowa spending limit.

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To summarize, therefore, \$25,997.22 that the Audit staff
improperly allocated against the Iowa spending limit should be
removed.

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7. Telemarketing-Related Services

a. Lewis & Associates Telemarketing, Inc.

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The Lewis & Associates Telemarketing, Inc. ("Lewis") contract originally contemplated the provision of telemarketing services in a wide range of states, including but not limited to Iowa. The other states which would have been included in the original program, identified in the contract are: Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Louisiana, Maryland, Missouri, Massachusetts, Mississippi, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, and Washington. As it happened, Lewis provided services principally in Iowa, and its activities in other states were limited. This development overtook the original assessment of the campaign that it could properly allocate 91 percent of the cost of the Lewis contract to the particular state in which calling was made, but treat the 9 percent considered "profit" or consulting "fees" as a multi-state expense which should not require allocation to any one state.^{1/}

^{1/} This breakdown of cost versus fees is reflected in the Lewis invoices and correspondence from the vendor. In particular, in a letter from Lewis dated February 18, 1988, Lewis stated: "We have calculated that 91 percent of the cost of our calling on behalf of the Gephardt for President Committee, Inc. ("the Gephardt campaign" or "the Committee") consists of actual incurred costs such as labor expense, telephone and long-distance expense and other fixed costs such as rent, utilities, etc., and the remaining 9 percent can be considered as our profit or fees for services rendered."

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Because the original intention of the contract was not fulfilled, and the substantial part of Lewis' services involved Iowa telemarketing, the original theory of allocation cannot stand. The Gephardt campaign acknowledges that with this change of circumstances, the auditors' conclusion that these amounts are allocable to the Iowa spending limit is correct.^{2/}

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The Committee does dispute the allocability of costs for calls made by Lewis to wrong and disconnected numbers in Iowa. Only expenditures incurred by a candidate's committee for the purpose of influencing the nomination in that state are allocable to that state. 11 C.F.R. § 106.2(a)(1). If a call is not completed, because the phone number is wrong or disconnected, there is clearly no influence on the nominating process. Moreover, there is no benefit to the candidate in that state and, necessarily, costs incurred in making such calls should be allocated as a national expense without impact on any state limit.

Lewis called from a list of registered Democratic voters to identify voters favorable to Richard Gephardt and determine

^{2/} It should be specifically understood that there was no time frame within which Lewis was expected to conduct services in any of the states other than Iowa. Only toward the very end of the campaign, when as a practical matter it made no difference, did it become clear that Lewis would no longer perform the multi-state telemarketing function which was originally envisioned for it.

the voters' opinions on a number of issues. If the call was actually answered by the voter, the call is considered completed. The cost of every one of these completed calls made in Iowa was allocated to the Iowa campaign.^{3/} However, any call made to a wrong or disconnected number, where the phoner made no contact with a voter and, therefore, had no influence on the nominating process in Iowa, is properly not allocable.

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The Committee is not contending that if a call was completed but "unsuccessful" that it is not allocable to the Iowa campaign. If, for example, the respondent indicated a clear preference for another candidate, or that he or she was moving from the state or would not be participating in the caucuses, or even hung up on the caller, these contacts were considered expenditures allocable to Iowa. But, if the phoner never even makes contact, it cannot be deemed activity influencing voters in the state.

The National Republican Senatorial Committee (the "NCSC"), in Matter Under Review 2282, argued that the costs for "nonresponsive solicitations" were not allocable to the candidates for which they were sent. But, in that case, letters were sent to prospective contributors who, having presumably received and

^{3/} As discussed above, the Committee acknowledges that 100 percent of these costs are allocable.

possibly read them, did not to respond. As the General Counsel's Report points out, the solicitation letters contained an electioneering message. The contact was made with the targeted person, but produced no result, i.e., a contribution to the NRSC. Nevertheless, the candidate did benefit by at least getting the message into the recipient's household.

This case is quite different -- no contact is ever made with the voter. The point is not that the speech was ineffective, but that it was not made at all. There is no electioneering message, no opportunity at all to influence the voter or benefit the candidate.

Moreover, the Commission would certainly not allocate to a state limit telephone scripts drafted at some expense to the campaign, but never used, or media spots produced for use in a particular state, but never shown. A call made to a disconnected or wrong number is not distinguishable.

In this case, the cost of wrong or disconnected calls is not a built-in expense of the overall marketing program or the price charged for each call. Section 2 of the Lewis contract clearly distinguishes between the cost per completed call (75 cents) and the charge for a wrong or disconnected call (20 cents). If the contract instead charged 85 cents per completed call, thus building into the rates the cost of calls where no

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contact was made, the exact amount of wrong or disconnected calls would be impossible to determine. But here charges for these calls is precisely specified. See Exhibit 7-A, "Summary". The Committee has a record of exactly how much was spent on Lewis Telemarketing activity which had no influence on the nominating process in Iowa.

The Committee does not claim that the costs incurred for calls to wrong and disconnected numbers need not be paid, but simply that their purpose is not to influence Iowa voters. Therefore, they are non-allocable campaign costs.

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

Voter Contact Services ("VCS") contracted with the Gephardt campaign to provide voter file products and services, and it did so with the understanding that it would be the exclusive supplier of these services to the Committee for its duration, both primary and general. Thus, the first paragraph of the Agreement states: "VCS is hereby retained and appointed as the principal vendor and provider to the client of computerized registered voter file products and services." This arrangement meant that VCS intended a contractual arrangement for the long term as well as for the near term, and the fees that it charged reflected both objectives. Certain of these fees, related to long-term objectives which would encompass all activities after

Iowa and projects unrelated to Iowa, were properly excluded by the Committee from the spending limit.

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The way in which this contractual relationship worked is specifically apparent from the balance of the Agreement between the Committee and VCS. Thus, in paragraph 5 of the Agreement, VCS agreed that it would charge "no access fees" to the client for state voter files or special files and committed to perform initial standard conversions and enhancements on voter tapes supplied by the client . . . at no charge to the client," provided that VCS would have unrestricted right to use such voter tapes or copies for clients other than presidential candidates competing with Dick Gephardt for the presidential nomination. There were specific charges for specific products, for example, for "format and record conversion, and matching fees and keypunching fees," and for other "standard products" in accordance with a suggested retail price list attached to the Agreement. Accordingly, certain products were specifically charged, and when so charged, the costs should be allocated to the appropriate state limit.

Most significant, 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 task 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 very substantial one) on the commitment that it had made to the Gephardt campaign. Attached as Exhibit 7-B is an invoice which reflects specific charges for specific products, but concludes with a "Fee proportionate to card product," which reflects this 100 percent mark-up. The Committee understood that it was paying a high price in support of the exclusive arrangement that it 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.

There is nothing improper about this arrangement and, in fact, it was one which VCS made with its own financial benefit in mind. As the Committee understood it, had the contract with VCS focused exclusively on Iowa, the fee schedule would have been significantly different in character. Indeed, the fees charged would have been lower, narrowly related to the actual services provided in the state in question (Iowa). It was appropriate, therefore, for the Committee to account for a fee intended to secure a financial return to VCS for its commitment to a national campaign as national overhead, rather than allocate this fee to the Iowa spending limit.

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The Audit staff concludes that a "second script" with no fundraising solicitation was used by TCI to invite supporters to the Linn County Democratic Barbeque and Rally, and therefore this expenditure is fully allocable to the Iowa campaign. The staff's conclusion is incorrect. There was no "second script" -- Linn County Barbecue script started with the 16 basic questions and continued on to questions 17 through 26. There was one script for these contacts with sequential questions 1 through 26. Exhibit 7-C, Script.

Background on TCI's Telecommunications System. TCI's phone banks are fully computerized with CRT's connected to a mainframe system. The callers used to phone voters are experienced telemarketers. Therefore, all instructions prior to calling are given verbally and are usually done the first night of calling a new script. The software program used by the computers is custom software designed to be "user friendly". There are no written instructions for callers because the calling process is straightforward and fully prompted on the scripts.

The scripts are entered into the system in the form of a "quedit", or a question edit list. This enables callers to select numbers listed on the screen by the voters responses. Once a caller enters a particular number on the screen and enters it into the CRT, it is stored in the system and the

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screen then jumps to the next appropriate question based on the voter's responses entered by the caller. While scripts may vary in length, they are always composed of numerical lists of questions which follow one after another and are asked in the order set forth on the script.

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Linn County Barbeque Script. By simply analyzing the Linn County Barbeque Script, it is evident that it is one unified script. The caller begins on question # 0 (Q#) by identifying the person being called. Then the caller has a series of questions and statements which determine whether the person is a registered voter and introduce the caller. Each time a question is answered the caller keys in the answer by using a coded number and goes on to the next question (shown as "NXTQ" on the script). Without the introductory questions, there would be no record to establish who was contacted or other vital information about the person. Therefore, if, as the Audit staff concluded, the script started on question #17 the caller would have no prompt for the introductory questions and no record of who had been called. Thus, beginning a survey on question #17 does not make sense.

The caller exits by using Code #99 following question #26. The sworn affidavit of Joyce Aboussie, President of Telephone Contact, Inc., confirms the Committee's statements on this matter.

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Contrary to the Audit staff's conclusion, the Linn County Barbeque script did include a fundraising solicitation at question #15. Because the report states that the core script including only questions #1 thru 16 is fundraising in nature, and thus requires no allocation to Iowa, the same result follows for the Linn County script. Both scripts had precisely the same fundraising component, question #15. Therefore the Linn County script is not allocable to the Iowa campaign.

Vendor Long Distance Charges. The Audit staff questions the vendor's estimate of \$12,000 to \$19,000 for long distance fees related to the telemarketing program. TCI Contract, Section VI. These figures are exactly as they are portrayed in the contract - an estimate. It is the business judgment of the vendor that it is far better to overestimate costs to a client than underestimate and risk annoying the client or not getting paid for disbursements. See Aboussie Affidavit.

More importantly, however, the Audit staff states that long distance fees totaled only \$4,714.11. In fact, the Committee has submitted documentation on long distance fees totaling \$6,021.28 for this program, which is not far off the original estimated range. See Invoices 115-87, 121-87, 109-88.

Additional TCI Invoices. The Audit staff has identified five invoices from TCI for which additional information is

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requested. These invoices are for list development, programming time, general consulting services and long distance telephone charges. Below is a more detailed description of the services and charges for each invoice.

(1) Invoice #103-88. The only charge allocable to Iowa from this invoice is that for programming time in the amount of \$595. The other charges are related to work in other states, including principally Missouri.

(2) Invoice #118-87. The following charges are allocable to Iowa:

Labels for Iowa Women's Political Caucus:	\$ 12.69
Running of List from Iowa calls ^{4/} : (25 hours/\$20 per hour)	500.00
Programming hours (39.06%):	<u>136.71</u>
Total:	\$649.40

(3) Invoice #121-87. These charges are: (1) for long distance call fees directly related to the Iowa telemarketing contract; and (2) for long distance calls made to New Hampshire under a similar contract. The Iowa calls, which

^{4/} The balance of time went to exempt fundraising activities which are detailed on the vendor invoice: sending a letter and response envelope to prospective contributors; running a list for the California telemarket fundraising program and the National Finance Office in Washington, D.C. See Exhibit 7-D, Vendor Breakdown.

total \$1,084.18, were placed between 9/25/87 and 10/24/87. The MCI Invoice reflects these calls. Because these charges are for calls done under the telemarketing contract, and thus fall under the fundraising exemption, they are not allocable to the Iowa expenditure limit.

(4) Invoice #108-88. These charges, in the amount of \$1,836.09, are for calls made to Iowa between 1/25/88 - 2/24/88 and are allocable to the Iowa campaign.

(5) Invoice #109-88. Out of the total of this invoice, only \$82.25 is allocable to the Iowa spending limit -- this amount reflects phone calls and related charges including tax, service charge and vendors' commission. See Exhibit 7-E, Vendor Invoice.

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8. Printing Expenses

a. Carter Printing Company, Inc.

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Carter Printing Co., Inc. ("Carter") supplied the campaign with newsletters, position papers and other printed materials. After reviewing Carter's invoices, the Audit staff concluded, based on "a certain pattern," that materials listed on invoices with no shipping charges must have been picked up by Iowa staff and, thus, expenditures for these materials are properly allocable to Iowa. This conclusion "evolved" despite the fact that the Committee used Carter for much of its national printing because it was significantly cheaper than other printers. Moreover, even the auditors admit that "the focus of these materials with respect to state allocations is not always obvious." Nevertheless, it appears that they decided that because Carter is in Iowa, all materials printed by Carter must have been used exclusively in Iowa.

While the Audit staff agreed with the Committee's allocation of 16,000 "Dear Fellow 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 maintains that the amounts reflected on Invoices 25182, 25237, and 25366

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are not allocable to Iowa. These materials were used in Iowa and in a number of other states for fundraising purposes; therefore their costs should be allocated to exempt fundraising.

The invoices cover the following items:

290,000	Issue Papers	\$9,749.44
16,000	"Dear Demo" Letters	280.00
260,000	Fundraising Solicitation	
	Postcards (Exhibit 8-A)	2,304.00
260,000	Envelopes	3,640.00
16,000	Speech "Rural America"	613.00
	Total	\$16,586.44
	Tax	663.45
		\$17,249.89

The campaign ordered these materials in large quantities in preparation for a national fundraising project. The campaign developed 12 issue papers setting forth Richard Gephardt's position on particular issues and planned to distribute these papers with a contributor card soliciting funds for the campaign. Therefore, approximately the same number -- 260,000 -- of issue papers, contributor cards, and envelopes were ordered. The Audit staff agreed that the initial 16,000-piece agriculture mailing in Iowa, sent with a "Dear Demo" letter (and the "Rural America" speech), was clearly a fundraising expense.^{1/}

^{1/} The Committee did not specifically state in the materials presented earlier that the reprint of the "Rural America" speech was also included in this first mailing. Because the 16,000 copies printed were used in this mailing, the amount should be allocated to exempt fundraising.

The campaign did subsequent fundraising mailings in Iowa, each with one of the series of issue papers and the contributor card.^{2/} These subsequent mailings, therefore, also clearly qualify for the fundraising exemption.

These materials were also used in other states for a similar fundraising purpose. According to the staff person in charge of this fundraising program, the initial order instructed Carter to distribute the issue papers to the following states: Washington, D.C., Iowa, New Hampshire, Missouri, Georgia, Texas, Minnesota, North Carolina, Florida, and West Virginia. While there appear to be no records of shipping charges, campaign workers frequently transported these materials to other states, as well as Washington, D.C.. Further evidence of the intention for these materials to be used outside Iowa is that the contributor card has a return address to the national headquarters. Why would the Iowa campaign print a return contribution card directed to the national headquarters if the exclusive, or even primary, focus of the mailing was Iowa? Several former campaign staff state that they had supplies of and distributed these materials from Washington, D.C. and other state offices.

^{2/} While 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.

The Committee believes that these facts establish that the entire amount paid for these materials is not allocable to Iowa. To the extent that these materials were used in Iowa, they were distributed in a series of fundraising mailings which included the solicitation postcard. According to former staff, in the letter sent to Carter ordering the issue papers, there were explicit instructions that these materials were ordered for use in other states (and Washington, D.C.) outside Iowa.

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The Audit staff also placed on the Iowa spending limit two additional Carter invoices: Invoice # 25035, in the amount of \$1,814.80, for 25,000 Labor Newsletters; and Invoice # 23350, in the amount of \$189.20, for 7,500 Flyers. Exhibits 8-B and 8-C. Prior to receiving a sample of the labor newsletters, the Committee allocated the expenditure to Iowa. But upon reviewing the copy, the Committee has confirmed that this newsletter was a reprint of the newsletter referenced on Invoice # 24946, which the Audit staff recognized as exempt fundraising costs. Therefore this invoice is also allocable to exempt fundraising.

Invoice # 23350 represented printing costs of a flyer promoting Congressman Gephardt's announcement-day activities. As discussed in Section 14, announcement-day activities should not be placed under the Iowa spending limits. These activities

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were considered as part of a one-day swing designed for national media coverage.

b. Brown, Inc.

The Audit staff allocates to Iowa an additional \$2,380.59 reflected in three Brown, Inc. invoices. Of this amount, \$135.00 from Invoice # 8799 is incorrectly allocated. This charge was for shipping 50 banners to Iowa. As Invoice 8799F indicates, the campaign received a credit from the vendor of \$135.00 because no freight bill was rendered to Brown, Inc. as of December 31, 1987. This amount of \$135.00 should be deducted from the Iowa campaign.

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9. Media Expenditures

The auditors have developed an argument that Gephardt's principal media advisors, Doak and Shrum, Inc. ("Doak and Shrum"), agreed to "waive" a 15 percent agency commission on Iowa media buys in order to assist the campaign in "circumventing" the Iowa state limit. This produces a recommendation that 15 percent of the total buy be added to the limit. This reasoning is absolutely incorrect -- factually and legal incorrect -- on virtually every count.

The original Agreement between the campaign and Doak and Shrum did call, as the auditor notes, for the payment of both consulting fees and an agency commission. There is no magic in the charging of an agency commission. Doak and Shrum's arrangements with its various clients are very different, one from the other. In some instances there is significant emphasis placed on the payment of a commission; in other cases there is not, and the consulting fee assumes central importance.

Doak and Shrum's choice of different agreements for different types of clients, in different situations, is hardly unusual for a business. It is particularly common in relatively new businesses such as Doak and Shrum which, at the time, had offered media production and placement services since

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only 1986. The affidavit provided by David M. Doak, President of Doak and Shrum, makes particular note of this point; but it is for some reason ignored by the auditors. The affidavit states specifically that the payment of a commission as well as consulting fees is "one of a number of approaches [it] has followed in structuring contracts for clients, not the only one." Also: ". . . Doak and Shrum regards time-buy commissions as no more than one method of payment, appropriate to some contracts involving the purchase of media time, but not to all." These statements were brushed aside by the auditors, without explanation and without reason.

While Doak and Shrum can supply examples of these varying financial arrangements it has concluded for different clients, it is reluctant to place these examples on the permanent written record for obvious proprietary and competitive reasons. The Audit staff and members of the Office of General Counsel are invited, however, to meet with officers of Doak and Shrum and review in detail these other arrangements, provided that there is some agreement on confidentiality in the treatment of this information.

The Audit staff's refusal to address this point is compounded by other analytical errors of roughly the same type. Doak and Shrum has noted that it amended its original Agreement with the Committee in response to certain of the

difficulties it had experienced in representing a "dark horse" campaign. These were (in the words of the Doak Affidavit) "the heavy demands of the campaign and cash flow problems which resulted in delayed and unpaid performance"; and also, the demands of the campaign which caused problems for the attraction and management of other clients. In the exercise of perfectly reasonable business judgment, Doak and Shrum requested an amendment in early 1987 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.

There was one additional concern of Doak and Shrum which prompted the request for an amendment to the original agreement. Toward the end of 1987, though the first payment of matching funds was rapidly approaching, the Gephardt campaign suffered (in the words of the Washington Post) a "loss of altitude." This was in part because of perceived weaknesses in his performance in a televised debate, on December 1, 1987, among Democratic presidential candidates. It was widely reported thereafter and perceived within the campaign that Gephardt had lost much of the ground earlier gained in Iowa.

This loss of momentum led (as it so often does) to an adverse impact on fundraising, loss of apparent interest on the part of potential recruits into the campaign, and widely voiced doubts within the press about Gephardt's continued viability as a candidate.^{1/}

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 the 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 auditor, however, has not analyzed any of the facts that he asserts in pages 14-18 of the Interim Audit Report in the proper context. He also mishandles the relevant facts. One such error stands out. He is particularly disturbed to learn that in December of 1987 the Committee paid Doak and Shrum in excess of \$600,000, "only to have Doak and Shrum return \$300,000 (at the Committee's request) on December 31, 1987" This suggests to the auditor that Doak and

^{1/} As noted in Section 1, while it might be pretended that this was not the case, the principal cause for this premature burial of Richard Gephardt was the belief that he would not fare well in Iowa and by not faring well there, would lose his ability altogether to sustain his presidential campaign.

Shrum could not have been concerned about the financial solvency of the campaign or it would never have risked the return of \$300,000 on some unenforceable commitment by the campaign to repay it. What the auditor fails to recognize is that the \$300,000 that Doak and Shrum returned to the campaign did not represent compensation to Doak and Shrum. Instead it was funds provided by the campaign to Doak and Shrum for deposit into a escrow account from which media buys were made in the name of the campaign. See David M. Doak Affidavit. Doak and Shrum would make buys only on this basis: with funds on-hand provided by the Gephardt campaign. In fact the escrow account into which Gephardt for President funds were deposited for this purpose was clearly denominated as such in a Doak and Shrum account in Century National Bank. This is a copy of the check:

160211

DOAK, SHRUM & ASSOCIATES

GEPHARDT FOR PRESIDENT
1200 ETON COURT PH. 202-333-7901
WASHINGTON, D.C. 20007

722

18-183/340

PAY
TO THE
ORDER OF

19

\$

DOLLARS

Century
NATIONAL BANK

Washington, D.C. 20008

FOR

⑆000722⑆ ⑆054001534⑆ 001 001728 9⑆

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As the "Gephardt for President" designation denotes, immediately below the name of the firm, this was a holding account for media buy advances of the campaign. It was not a checking account of Doak and Shrum from which funds were withdrawn by Doak & Shrum for compensation to the firm.

Accordingly, when the campaign requested the return of the \$300,000, Doak and Shrum had no pecuniary interest in any response other than compliance. Essentially it had no choice in the matter, because the funds were the Gephardt campaign's, not Doak and Shrum's. Also, as Doak and Shrum noted in a letter to the Committee Comptroller dated August 8, 1988, Doak and Shrum had no need for the funds in the immediate future, because it did not anticipate making any additional media buys from December 31, 1987 through January 4, 1988. Exhibit 9-B. And had it been required to make such expenditures, the campaign would have been required, in turn, to provide the money or lose the buys. Doak and Shrum never advanced funds for this purpose and media buys could only be made if the Gephardt campaign had provided funds in advance. Thus, the eventual "return" by the Gephardt campaign of the \$300,000 for its intended purpose was self-enforcing.

The errors of fact in the Report run on. The auditor appears influenced in some fashion by the Committee's ostensibly improved financial fortunes in December of 1987 and

January of 1988. He notes that in December, 1987 the Committee obtained an increase in its bank line of credit; and in the following month a substantial payment of matching funds, \$1,737,216.22, was received. This suggests to the auditor that Doak and Shrum had no reason for concern that it would not be paid on the original contract, and no motivation for an amendment.

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But this again wholly misapprehends the nature of the Gephardt campaign in December of 1987 and early January of 1988. The campaign understood for some time that the matching funds would become due, but with fundraising in decline and Gephardt's political position in peril this long awaited disbursement of \$1.7 million would hardly suggest financial durability for the campaign over the long run.^{2/} The Committee had, moreover, already entered into a considerable number of obligations, including bank loans against which \$1.7 million in matching funds would have to be in substantial part applied. How those matching fund entitlements -- much less the \$400,000 increase in a line of credit -- could have been expected to allay Doak and Shrum's concerns in these circumstances is inconceivable.

^{2/} By long run is meant a period of perhaps 30 - 60 days, nationally.

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Then there is the matter of the total compensation paid to Doak and Shrum by the campaign from January 1, 1988 to March 25, 1988, which is the entire length of the active Gephardt campaign. The auditor notes that the campaign paid Doak and Shrum \$1.7 million. It does not note very clearly the significance of this finding for the rest of its analysis. Is the thought here that the Gephardt campaign was more solvent than the campaign or Doak and Shrum now pretend, thus making a sham of the December 1987 amendment? On this point, as on others, the real world has passed by the Audit staff completely. Gephardt's position in December of 1987 and his standing and fundraising prospects in mid-February were worlds apart. December of 1987 were the dark days of the campaign; by mid-February, Gephardt was the winner of Iowa and second -- and closing fast -- in New Hampshire in polling conducted at the time.

When the campaign had ended, it is apparent that Doak and Shrum had struck for itself a remarkably good deal. As the auditor notes, it was paid a significant sum of money for its consulting services. And their strategic and media advice brought this relatively new firm national recognition: the key commercial it had fashioned for Gephardt -- the "Hyundai" advertisement -- catapulted the firm into the top ranks of

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American media strategists.^{3/} Far from there being anything questionable in this business arrangement, it was a reasonable and well-crafted arrangement in the circumstances, contributing greatly to the fortunes of Doak and Shrum. The auditor's conclusions to the contrary cannot stand on any fair reading of the facts.

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^{3/} The Washington Post, for example, ran a glowing front-page Style section article, featuring Doak and Shrum, the "Geohardt Team." See Exhibit 9-C.

10. Jefferson-Jackson Dinner

It is the opinion of the Audit staff that the expenditures associated with the Jefferson-Jackson Dinner were made for the "sole" purpose of influencing Iowa voters. The auditors ignore the affidavits and materials that the Committee submitted which establish that the Dinner was used to launch a fundraising campaign that continued for months after the event, and even after the Iowa caucuses were concluded. The staff views the events subsequent to the Dinner -- the December First: Iowa First parties, and the telemarketing and direct mail programs -- as "distinctly different efforts". And it believes that although the Dinner was used to prepare for and build toward these events, the small amount raised on the day of the Dinner demonstrates that it cannot qualify as a fundraising effort. This conclusion follows from both an unduly pinched reading of the Commission Regulations governing the fundraising exemption, as well as from a lack of familiarity with the fundraising process.

Section 106.2(c)(5)(ii) of the Regulations states that exempt fundraising expenditures are those expenses associated with the solicitation of contributions. Certain fundraising expenses are identified as examples of costs that may be included, but neither this regulation, nor the Compliance Manual, suggests in any way that this is an exhaustive list of

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exempt fundraising costs. The term "expenses associated with the solicitation of funds" is far broader in scope than the auditors' interpretation would admit and it would include the costs incurred by the Committee in order to launch a successful fundraising campaign in Iowa.

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It is not at all unusual in fundraising, in fact quite standard, to establish initial contact with prospective contributors without an actual solicitation. Rather this first contact lays the groundwork for future giving, by encouraging commitment by the prospective contributor to the candidate. This "courting" is often accompanied by an invitation to the potential donor to join the "team," in this case the fundraising network of the Gephardt campaign, rather than a bald appeal for contributions on a "one-time" basis.

This is the process that the fundraising staff of the Gephardt campaign was attempting to initiate at the Dinner. The Committee has stated to the Audit staff that this was not the original focus of its planning for the Jefferson-Jackson Dinner. It had expected to concentrate efforts on busing supporters to the event to participate in a "straw poll" which had, in years past, held considerable significance in the view of campaigns, for voter persuasion. When the Iowa Democratic Party cancelled the straw poll, the Committee attempted to turn

its considerable effort and investment into a fundraising effort.

As explained by the Committee in its original submission, and confirmed in sworn affidavits, the fundraising strategy had two objectives: (1) to enlist supporters of Richard Gephardt to serve as and recruit hosts for house parties in connection with NBC's presidential debate, and (2) to expand the fundraising base in Iowa for future fundraising programs, including telemarketing and direct mail activities planned for the Spring. The Gephardt Finance Director stated in his affidavit:

As Finance Director, I saw the J-J Dinner, and the large number of Richard Gephardt supporters who planned to attend, as an opportunity for the Committee to broaden its Iowa contributor-base. In fact, as it turned out, we did obtain a list of the substantial number of Iowa J-J Dinner attendees which was used in subsequent fundraising efforts conducted by the Committee through direct mail or telemarketing. This was a group with a history of involvement in politics which held much promise for future fundraising. In that sense, the J-J Dinner presented a unique fundraising opportunity.

See Exhibit 10-A.

In fact, the Finance Director, whose sole responsibility was to raise funds for the campaign, attended the J-J Dinner. There would be absolutely no reason for him to attend a "political event" unless it had a key fundraising component.

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While quite different in scale and program, the Dinner occurred during a time that the campaign staff was using virtually every organized event of the campaign to recruit hosts for the America First: December First parties. See Exhibit 10-B, Organizing Schedule for America First: December First. Therefore, it is not surprising that the staff saw the Dinner as a golden opportunity to build fundraising support, particularly in a state where Richard Gephardt was rapidly developing a receptive audience. In fact, with the elimination of the straw poll, there would have been in campaign management terms no other conceivable justification for making this level of financial investment in an event of this nature.

The Committee submitted to the Audit staff the materials for the America First: December First parties which were distributed to each participant at the Dinner. The America First: December First parties were one of the principal fundraising activities of the entire campaign. It was planned over the course of three months and drew on a vast amount of campaign resources. See Exhibit 10-B. Therefore, the financial commitment of over \$20,000 to recruit hosts and financial contributors at the Dinner was not unreasonable or disproportionate to the expectation of success.

In addition, the Committee also viewed its expenditures for the Dinner as an investment for future fundraising

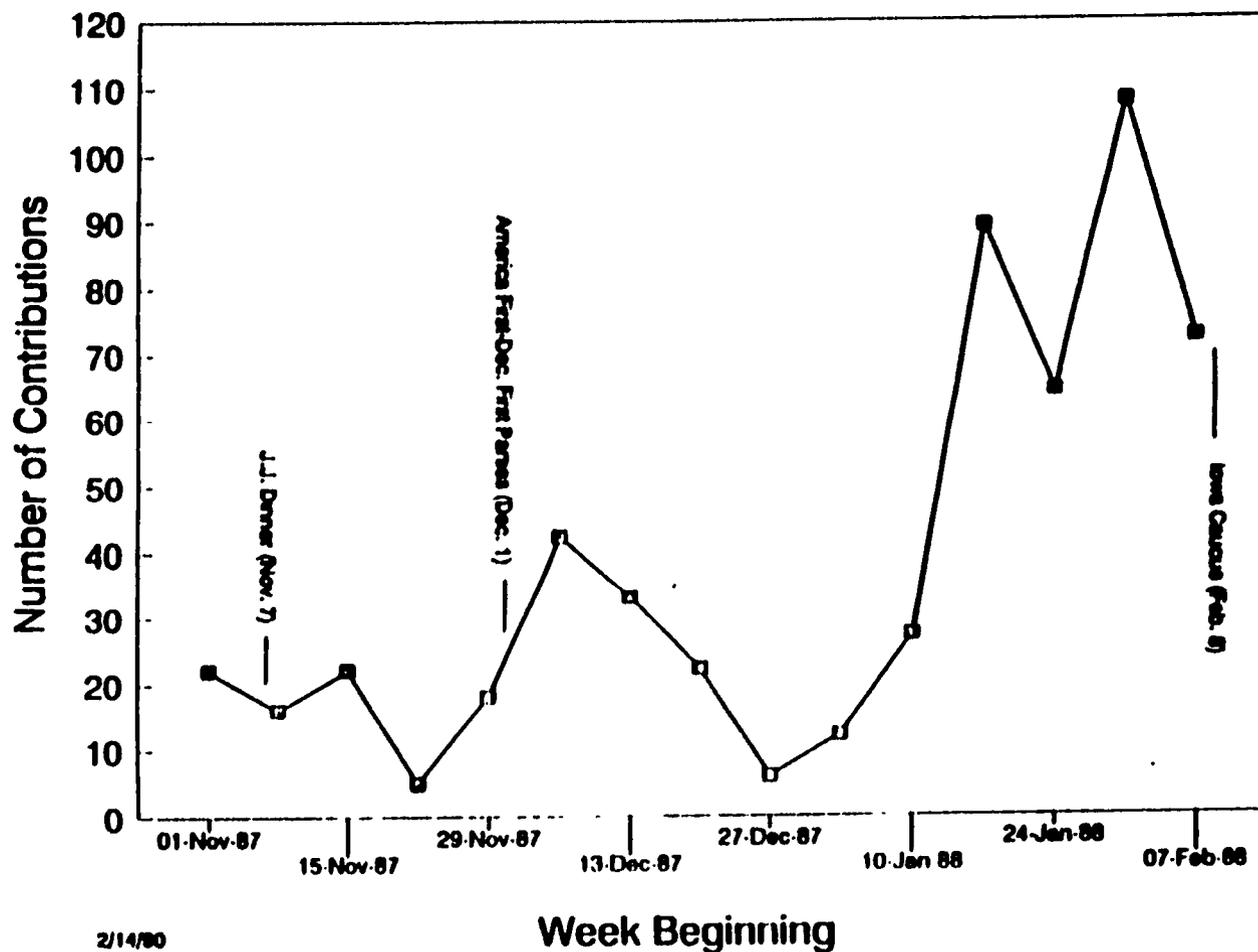
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opportunities with direct mail and telemarketing. The Committee targeted Iowa and Missouri for direct mail and telemarketing fundraising, and used the lists built through the Dinner and the America First: December First parties to launch these fundraising efforts. It is not at all unusual for political committees to pay as much as \$1.50 per name for a list for fundraising purposes, and even more for a list of tested donors. The list generated at the Dinner and added to and refined from the America First: December First parties were unquestionably a valuable asset to the campaign; far more valuable than a commercial list purchased from a vendor and used for the purpose of raising funds for the Campaign.

The fundraising results demonstrate the value of the Committee's efforts to recruit and build fundraising support in the state. The number of contributors doubled from about 20 contributors per week in November, 1987 to approximately 40 contributors during the week of the America First: December First parties, then shot up to 190 in a two-week period in January, 1988. In April, 1988, two months after the initial caucus, 1,096 individuals contributed, principally in response to the telemarketing efforts, using Dinner lists. Financial support in Iowa went from \$2,390 in November, 1987 to \$12,833 for December, 1987 and January, 1988. The returns increased still more in April, 1988 to \$16,749 in one month during the telemarketing campaign. See Charts 1-3, Fundraising Results.

Gephardt for President Committee Iowa Contributions by Week

CHART 1

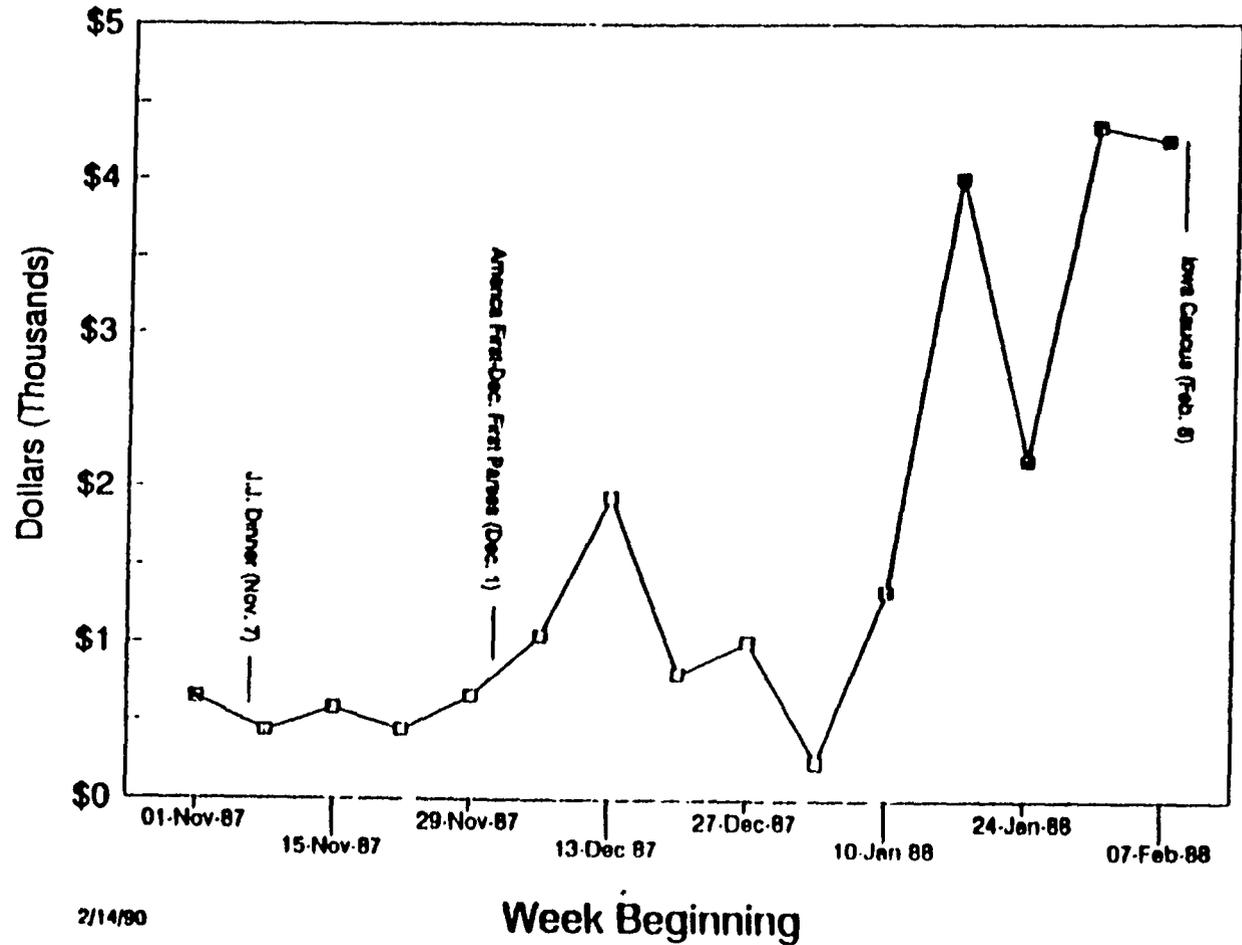


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Gephardt for President Committee Iowa Contributions by Week

CHART 2

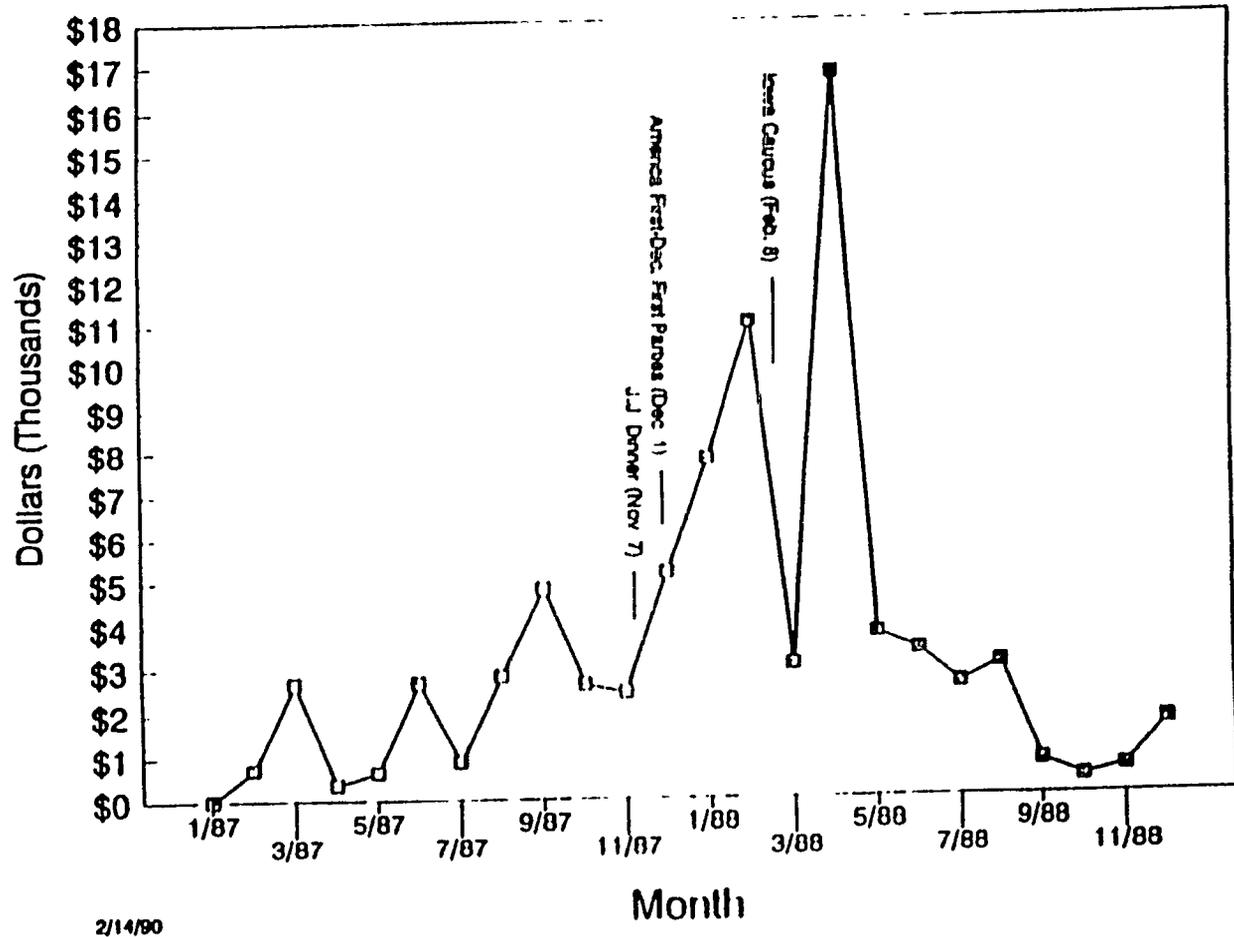


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Gephardt for President Committee Iowa Contributions by Month

CHART 3



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Fundraising is a long, and rarely an immediately rewarding process, particularly for a political candidate who is scarcely known, and has to build from scratch a base of popular, as well as fundraising support. As a consequence, opportunities are sought to court contributors for hope of future return. In addition, occasionally a campaign will choose to reward supporters by entertaining them for past or future work. The Gephardt campaign saw the Dinner as a perfect opportunity for these efforts. In a state with a longstanding reputation for difficult fundraising, the Gephardt campaign clearly succeeded in attracting contributors.

All fundraising events conceivably influence voters, in the way direct mail fundraising has a persuasive as well as fundraising impact. This fact does not change the fundamental fundraising character of the efforts which brings the fundraising exemption into play. The Audit staff's conclusion that the "sole" purpose, or even primary purpose, and that was to influence voters and the subsequent fundraising events were "distinctly different" is simply not borne out by the facts.

11. Other Remarks

The Gopherdt campaign does not contest the Audit staff's findings in this section.

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12. Other Media

a. Conus Satellite

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The Audit staff alleges that a payment to Conus Communications, in the amount of \$5,635, for satellite links and associated services for a broadcast of the debate between Congressman Gephardt and Congressman Kemp, should be allocated against the Iowa ceiling. The circumstances surrounding this broadcast, however, could not indicate more clearly that the purpose of this broadcast was to influence voters nationwide rather than for the purpose of influencing Iowa voters, and thus is properly only attributable to the national, not the state, spending limit.

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. While the Audit staff reaches the "opinion" that "the debate was a created news event which was directed toward Iowa voters," it bases this "opinion" on absolutely nothing aside from the fact that the location from which the nationwide telecast was made happened to be in Des Moines. If the Audit staff's analysis is to be accepted, it would be virtually impossible to hold a debate anywhere within the United States without the costs of such debate being allocated against the state's ceilings. Clearly, there are debates with national audiences rather than local ones; to deny

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this fact would be to deny a political reality. As we will show, the facts surrounding this debate clearly indicate its national scope, and thus its exemption from state allocation under 11 C.F.R. § 106.2(c)(1)(ii).

The marketing of the debate by the candidates themselves to local television stations nationwide gives a clear indication of what Gephardt and Kemp thought they were doing when they agreed to each pay \$5,635 in order to have the debate broadcast via satellite. As documented by the letters attached as the Exhibits of this section, Conus provided the Kemp and Gephardt campaigns with a list of all the commercial television stations in the continental United States. The campaigns split the list, so each took responsibility for notifying approximately 475 stations about how to access the satellite feed, offering the stations data such as date, time, and satellite coordinates. Any station having the electronic capability to receive a satellite signal such as the one Conus offered was given the opportunity to "downlink" the debate. Additionally, stations in selected markets were phoned to arrange for live "interacts" with the candidates after the debate. Interacts are live question-and-answer sessions between a candidate and the local TV anchor people.

Unfortunately, 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, because the signal could be obtained independently and free of cost by local stations once they were informed of the satellite coordinates. We can verify, however, that the Gephardt campaign paid for the downlinking of the signal into the Washington, D.C. area for broadcast to the media in Washington, in the hopes that the even national reporters who had not been sent to Iowa would cover the debate. Attached receipts show the extra \$250 per campaign paid for this service.

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A letter from Conus Satellite Services Representative Woody Hubbell to Debra Johns, attached, documents that he recalls seven or eight live interacts done after the debate, in media markets including Atlanta, Georgia; St. Louis, Missouri; Springfield, Missouri; and Kansas City, Missouri. He also states in a separate letter, also attached, that the live audience was made up of 200-250 students at Drake University, where the debate was held. This letter also reports that all the stations that elected to broadcast interacts would have to broadcast the debate itself, otherwise the interact would not make sense.

We also can verify that national newspapers did cover the debate. Andrew Rosenthal of the New York Times wrote an

article on the use of satellites generally in campaigns, using the debates as a jumping-off point. The article notes that the use of new satellite technology allows candidates to deliver their messages to a national audience without having to rely on the major networks. This article is attached to the Exhibits portion of this section and was supplied to the Audit staff.

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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 that 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. Of course, the debate could have been broadcast from anywhere. This is, as noted by Andrew Rosenthal, the real beauty of satellite technology: that it makes the "principal resource" of any campaign, the candidate, available nearly everywhere at once. Ironically enough, if the intended audience of the debate was Iowa voters, there would have been no need for the satellite hook-up to broadcast the debate nationwide!

With all due respect, the Audit staff's analysis of these expenditures is simply unfair. For example, while the Audit staff notes that "the campaign arranged live five-minute interviews via satellite with the participants for 12 stations in Iowa," it fails to also note that, according to Rosenthal in the New York Times, these five-minute interviews were also

arranged for broadcast in other states holding early primaries, the candidates' home towns, and also to industrial areas interested in the topic of the debate -- trade. The omission of this information is grossly distortive of the facts surrounding the satellite debate.

Similarly, the Audit staff notes that "Committee officials stated that they attempted to expand the debate to a national audience via the satellite, and not merely to Iowa voters." This, again, misrepresents the purpose of the satellite hook-up. Describing satellite feeds openly aimed at a national audience as a mere "attempt" to expand coverage is as distortive as the inaccurate reporting of the broadcasting of the interacts. The Iowa audience was minute compared to the huge audience nationwide. If a local rather than a national audience was intended, why would the committees not arrange for a much larger live audience? Similarly, if the intent was to reach a local audience, why would the committees have each spent nearly \$6,000 making the debate available nationwide? A much more prudent use of funds, if the intent were really to influence Iowa voters, would have been to spend that money on advertising of the debate in Iowa.

The Audit staff's unrealistic and distortive analysis cannot stand; the expenses in question should be removed from the limit.

13. Miscellaneous Expenses

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.

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14. Committee Adjustments to Previous Iowa Allocations

The Interim Audit Report notes that the Audit staff reviewed the Committee's general ledger allocations and found 25 instances where expenditures originally allocated to Iowa were reversed, and subsequently allocated to other cost centers. The Committee contests the following expenditures which were included again by the auditors on the Iowa spending limit.

- The Audit staff allocated \$2,076.83 to the Iowa spending limit as a result of an invoice for a newsprint brochure by Garner Publishing, an Iowa printer. As indicated in Exhibit 14-A, this brochure was used as part of a fundraising mailing on behalf of the Committee. Mailing services for this fundraising letter were provided by Finserv Computer Corp. This amount is exempt under the fundraising exemption. Documentation includes a letter from Finserv outlining the mailing distribution which explains the Committee's original allocation.
- The Audit staff allocated to the Iowa spending limit \$29.97 for the purchase of a Pace Membership Warehouse calculator, \$97.39 related

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to Kelly Services data entry services, and \$51.44 of a reimbursement to Sheila Corsbie for the purchase of a filing cabinet and related office supplies for the Iowa office. All of these expenditures should be removed from the Iowa spending limit as exempt legal and accounting expenses. Sheila Corsbie, as noted elsewhere in this brief, was responsible for compliance activities in the Iowa office. The purchase of the filing cabinet was directly related to the Iowa compliance staff's duties in this respect. The Kelly Services data entry services were provided in connection with the compliance activities of the Iowa office. The calculator was also used by the Iowa compliance staff in performing their duties. See Exhibit 14-B.

- The Audit staff included \$16.90 of a reimbursement to William Fleming on the Iowa spending limit. This reimbursement represented payment for meals for the candidate and for traveling national staff, none of whom were in the state for more than four days on this particular trip. Thus, the expense should be removed from the Iowa spending limit as exempt under the five-day rule. See Exhibit 14-C.

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- The Audit staff also allocated \$499.23 to the Iowa spending limit for a reimbursement to Bill Fleming for three travel and operating advances: (1) Check No. 002186, 4/24/87, \$500; (2) Check No. 002200, 5/6/87, \$2,000; (3) Check No. 002251, 5/15/87, \$2,000. The auditors apparently believed the advances were overdocumented, resulting in an in-kind contribution. As shown in Exhibit 14-D, however, these three advances were actually underdocumented and no contribution in-kind was made.
 - The Audit staff attributed \$213.77 for a van rental for Holmes Downtown Rent-A-Car to the Iowa spending limit. As shown in the schedule and related documents in Exhibit 14-E, the van was used in connection with Congressman Gephardt's travel in the state for a period of less than five consecutive days. The expenditure should be exempt, therefore, under the five-day rule.
 - The Audit staff also included the following expenses in the Iowa spending limit:

<u>Vendor</u>	<u>Purpose</u>	<u>Amount</u>
The Freeman Co.	Equipment rental	\$36.93
Des Moines Audio Services	Equipment rental	\$216.00
Garner Publishing	Logo, design and mechanicals for brochure	\$925.30
West Des Moines Dixieland Band	Entertainment	\$300.00
Barry E. Piatt	Copies of press release	\$31.46
Barry E. Piatt	Equipment rental	\$122.72
Dobbs House, Inc.	Food	\$171.36

See Exhibit 14-F. All of the above expenses were related to the candidate's announcement day activities in February 1988. The program was one aimed at obtaining the maximum national coverage possible. Announcement activities were held in St. Louis, Missouri; Des Moines, Iowa; and Washington, D.C., on the same day. Des Moines was included in the announcement-day schedule because, as noted throughout this brief, the national press coverage of activities in Iowa was overwhelming, beginning around this time and continuing through the date of the caucuses. Any swing to attract national press on announcement date had to include Iowa. On this date, Gephardt did not speak to Iowa voters, but rather, before camera, to the nation. Gephardt no more traveled to Iowa to influence Iowa voters than he stopped in St. Louis to influence Missouri

voters he knew he could count on. This is a ritual event,
meant for national press consumption.

Based on the above discussion, \$4,789.00 should taken off
the Iowa spending limit.

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15. Accounts Payable

The Committee has reviewed the calculations by the Audit staff for accounts payable to be allocated to the Iowa spending limits and contests the following entries. Documentation is provided at Exhibit 15-A.

<u>Amount Not Allocable to Iowa</u>	<u>Explanation</u>
\$179.80	<u>AT&T Account No. 319/363-6767.</u> The Audit staff included, as part of this phone bill allocable to Iowa, four charges of \$44.95 each for unrecovered telephone equipment. These charges were for desk phones that were stolen from Committee headquarters. The Committee had intended to return the telephones for credit, as is demonstrated by the fact that until this bill, it had been leasing the phones.
\$56.62	<u>AT&T Account No. 319/354-9285.</u> The Audit staff included, as allocable to the Iowa spending limit, two amounts for this account: \$189.46 from the July 1, 1988 bill, and \$98.07 from the April 1, 1988 bill. The \$189.46 amount, however, represented the cumulative total of bills since April and, therefore, included the \$98.07. This amount was, thus, counted twice.
\$24.99	<u>Cedar Rapids Water Department.</u> The Audit staff allocated in the Iowa spending limit an invoice for \$24.99. This invoice was paid by the Committee on December 29, 1988. A refund was issued by the water department, stating that the "deposit took care of any outstanding bills."
\$230.35	<u>Drake University.</u> The Audit staff placed in the Iowa spending limit this invoice from Drake University, which was for the cost of hall rental at the university to conduct the debate between Congressman Gephardt and Congressman Kemp. As

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discussed elsewhere in this brief, the Gephardt/Kemp debate was made available nationwide through the Conus Satellite System. As an expense related to the distribution of this debate, it should also be taken off the Iowa spending limit.

\$23.00

Federal Express. This use of Federal Express was to send copies of the monthly payroll records prepared by Maria Varner in Iowa on behalf of the New Hampshire staff. As part of her compliance and administrative responsibilities, Ms. Varner prepared the payroll for New Hampshire, even though she was located in Iowa.

\$240.76

Funds 'n Games. The Audit staff included in the Iowa spending limit supplies provided by this company. As shown in the attached schedule, however, it is clear that the supplies were used in connection with media production. On the dates reflected on the invoice, Friday and Saturday, December 11-12, 1987, Congressman Gephardt was in Iowa for all-day shoots. The enclosed invoices from Doak and Shrum also reflect this activity.

\$1,026.48

Graham Investment Co. The Audit staff did not calculate the amount paid on this account as of October 31, 1988. The amount allocated to Iowa, therefore, should have been \$1,099.14.

\$4.39

Tom Grau. The Audit staff included in their allocation an interstate call from Mr. Grau's personal telephone bill.

\$63.77

Iowa Public Television. This invoice was for the dubbing of the Election '88 presidential candidates debate video tape and qualifies as media production expenses, exempt from the Iowa spending limit.

\$15.00

Lynden Peter. The Audit staff attributed to the Iowa spending limit two gas receipts from Fairmont, Minnesota and Elmore, Minnesota. Although the individual requesting reimbursement for these gas slips was an Iowa field staff person, the expenditures were made outside the state of Iowa, and should not be placed in the Iowa spending limit.

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\$184.58

Joanne Symons. The Audit staff attributed certain expenses made by Ms. Symons in Iowa to the Iowa spending limit. Ms. Symons was a campaign staff member paid a monthly consulting fee to perform services for the Committee, as demonstrated in the attached letters of agreement. As such, she is subject to the five-day rule exemption. In the case of the expenses in question here, Ms. Symons was not in the state of Iowa for more than four days and, therefore, the expenses should not be attributed to the Iowa spending limit.

\$50.23

Synar for Congress. Congressman Mike Synar served as an agent of the Committee, making appearances around the country on behalf of Congressman Gephardt. His activity on behalf of the Committee was frequent and, as a person working in the state, the five-day rule should apply to his activities. Therefore, his hotel charge in Cedar Rapids should not be allocated to the Iowa spending limit, since he was only in the state for a single day.

\$1,305.49

Best Western Starlight Village. The Audit staff attributed several expenses to the Iowa spending limit that were made in connection with caucus night activities. As shown in the attached documentation, the expenses were for a caucus night victory party and for the provision of a press room for the ABC network on caucus night. The caucus night victory party and the ABC press room were not related to any efforts to influence voters in Iowa, since the caucuses were over by the time these events took place. The expenditures by the Committee for this purpose should not be attributed to the Iowa spending limit.

\$2,608.55

John Crosby. As discussed in Section D below (Apparent Excessive Contributions), John Crosby served as an agent of the Gephardt campaign in paying a deposit on hotel rooms to be used in connection with a reception on behalf of Congressman Gephardt and other Members of Congress. The rooms were never used. The Committee regarded the payment of the deposit as an obligation

owed by it to Mr. Crosby, and did not consider it as a contribution in-kind. The rooms were to be used by Members of Congress who traveled with, or on behalf of, Congressman Gephardt on a regular basis. As "surrogates" for the Congressman for his staff, these Members represented the Gephardt for President Committee in the appearances and events in the states. As such, the five-day rule should apply to the expenses in connection with their activities and, therefore, the expenses by John Crosby for surrogate activities should not be attributed to the Iowa spending limit.

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Post-Caucus Activity. The Audit staff allocated numerous expenditures to the Iowa spending limit in connection with expenditures by the Committee after the date of the Iowa caucuses. These expenditures could, by definition, have no intent to, or effect of, influencing voters in Iowa, since the election had already been held. Furthermore, these expenses were incurred after the date of the caucuses and not merely paid by the Committee after the date of the caucuses. Finally, these examples are "winding-down" costs, also unrelated to any delegate recruitment in maintenance activities (which were in any event not a substantial effort in Iowa and were discontinued after the election.) This is distinguishable, for example, from the situation in debt retirement after the date of an election, where a committee receives the benefit of the activities before the date of the election but raises funds and retires the debt after the date of the election. Here, as noted in the list below and documented in Exhibit 15-B, the use

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of telephone or utilities after the date of the caucus should not be attributed to the Iowa spending limit. The Audit staff should have prorated the invoices to remove from the spending limit those amounts attributable to expenses after February 8, 1988.

<u>Amount</u>	<u>Payee</u>
\$3.89	AT&T Account No. 319/243-5380
\$20.01	AT&T Account No. 319/354-9285
\$3.68	AT&T Account No. 712/732-3910
\$23.03	AT&T Account No. 319/566-3545
\$6.05	AT&T Account No. 515/246-1988
\$14.65	Kirk, Inc. (telephone bill) ^{1/}
\$3.42	New Hampshire Utilities Department

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Jefferson-Jackson Day Dinner. As argued in Section 10 of this brief, expenses incurred in connection with the Jefferson-Jackson Day Dinner should be exempt fundraising expenses and not attributed to the Iowa spending limit. The following disbursements, documented in Exhibit 15-C related to the J-J Dinner were attributed by the Audit staff to the Iowa limit:

^{1/} The Audit staff also attributed to the Iowa spending limit certain interstate calls reflected on this telephone reimbursement.

<u>Amount</u>	<u>Payee</u>
\$80.34	Ed Garner's Autorama RV Center, Inc. (RV rental for J-J Dinner)
\$434.06	Hawkeye Tours, Inc. (buses for J-J Dinner)
\$79.84	George Mize (car rental for J-J Dinner)

Payable Reduction Calculation. The Audit staff initially identified accounts payable in connection with the Committee's NOCO statement dated 4/8/88. After the conclusion of his field work, however, he reduced the accounts payable allocated to the Iowa spending limit by those vendors that had been paid by the Committee through November 30, 1988. This avoided the items being counted twice toward the Iowa spending limit, once in the overall allocated expenditures, and a second time in the accounts payable section. The Audit Staff failed, however, to include the following expenditures, documented in Exhibit 15-D, in the payable reduction calculation even though these vendors had been paid before November 30, 1988:

<u>Amount</u>	<u>Payee</u>
\$497.33	Gartner Printing Company, Inc.
\$33.83	Burlington Municipal Water Works
\$658.40	Joselyn Office Supplies & Furniture
\$55.95	Craig Krueger
\$97.85	Sheryl Mason
\$549.85	Mason City Business Systems
\$274.30	Maxwell's
\$80.74	Pheasant Run
\$3.14	Professor Dennis Yergler

As a result of these adjustments to the accounts payable computations by the Audit staff, a total of \$8,934.37 should be removed from the allocation to the Iowa spending limits. Documentation for each of the items discussed above is provided behind the tab for Exhibits for this section.

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16. Exempt Compliance and Fundraising Expenditures

The Audit staff rightly notes that the Gephardt Committee only applied the 10 percent compliance and fundraising exemptions of 11 C.F.R. § 106.2(c)(5) and 11 C.F.R. § 106.2(b)(2)(iv) to the 75 percent of its state office payroll and overhead because it had previously exempted 25 percent of all Iowa allocations as a national exemption. Because the Audit staff refused to allow the 25 percent national exemption, it reviewed all payroll and overhead expenses associated with the Iowa state offices, and determined that the Gephardt Committee was entitled to an additional compliance and fundraising exemption of \$19,447.86.

As discussed in greater detail earlier in this brief, we emphatically argue that the Commission should permit the 25 percent national exemption from the Iowa limits for the reasons set forth above. The calculation that the Committee made in this context of the allowance for compliance and fundraising was correct, and should stand.

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B. REQUEST FOR ADDITIONAL INFORMATION

The Audit staff requests additional information on several houses and apartments rented in Iowa. The auditors identified these houses and apartments from final utility bills paid by the Gephardt campaign. From this, the auditors conclude that the Committee itself rented the houses and apartments in question.

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The Committee did rent an apartment at the Normandy Terrace Apartments, 1800 Grand Avenue, West Des Moines, Iowa 50265, for use by Congressman Gephardt and his family during the month of July and the first two weeks of August. The Committee made a \$300 deposit and two rental payments -- \$585 to cover the month of July, and an additional \$292.50 to cover the first two weeks in August, as shown in Exhibit B-1. The deposit was subsequently refunded. See Exhibit B-2. The Committee has been unable to locate any rental agreement with respect to this apartment, but will supplement the record if such a rental agreement is found. Also included as Exhibit B-3 is documentation of furniture rentals for this apartment.

In addition, Mrs. Loreen Gephardt, Congressman Gephardt's mother, rented an apartment in the same complex. Mrs. Gephardt paid all expenses incurred in connection with the rental of the apartment from her personal funds, as evidenced by the

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cancelled checks provided in Exhibit B-4. As a volunteer for the campaign, none of these payments are appropriately included in the Iowa spending limit.

Various Gephardt staff rented apartments at the Century Park apartment complex, 717 Fourth Street, Des Moines, Iowa. These apartments were rented by the 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 Gephardt campaign has attempted to obtain documentation related to these apartments, and what has been made available is provided as Exhibit B-5.

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As far as the Committee can determine, the following individuals rented apartments in this complex for the periods indicated below.

<u>Name</u>	<u>Rent</u>	<u>Period of Occupancy</u>
Scheve	\$280.00	1/26 - 2/15
Powell	\$360.00	1/11 - 2/11
Cutler	\$844.00	12/7 - 2/15
Nooney	\$908.00	12/8 - 2/15
Begala*	\$315.00	1/11 - 2/11
Branum*	\$315.00	1/24 - 2/15
Chastain	\$500.00	1/4 - 2/15
Morikawa	\$420.00	1/1 - 2/15
Wyatt	\$420.00	1/1 - 2/15
Scovitch*	\$345.00	1/17 - 2/15
Butler	\$325.00	1/7 - 2/9

* Not identified in auditors' write-up.

It is noted that in the Audit staff's calculations for the amounts related to apartments, the \$65.50 related to Barry Wyatt's rental of an apartment should be reduced by \$4.56 due to a credit from the power company on this amount. See Exhibit B-5.

The Committee has been unsuccessful in its attempt to obtain documentation of the "Gephardt staff house," located at 3430 Forest Avenue, Des Moines, Iowa. While the Committee has contacted the Jim Vogel Agency, which was apparently the rental agent involved, it has not provided us with any documentation. It is, however, the Committee's understanding that only one staff house was rented on Forest Avenue, and we are unable to

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explain why the records appear to reflect two separate addresses. The Gephardt staff house was, like the Century Park Apartments, occupied at various times by numerous different staff. The staff paid the majority of the expenses, such as rent and utilities, from personal funds. The Gephardt campaign has no record of who stayed in the house or which expenses were paid by whom. Should the Committee be successful in obtaining more information about this house, the Committee will provide it to you. Once again, this house was occupied primarily during the period when individuals were serving as volunteers for the Gephardt campaign.

The Committee has been able to obtain any information for 17 East Durham Street.

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AFFIDAVIT OF JOYCE ABOUSSIE

St. Louis, Missouri) ss.
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I, Joyce Aboussie, being duly sworn according to law, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if called on to testify in this matter, I would testify as set forth herein.

2. I am the President of Telephone Contact, Inc. ("TCI").

3. TCI is a corporation organized to provide telemarketing services to candidates for public office and political organizations.

4. In 1987, TCI agreed to design and conduct for the Gephardt for President Committee a telemarketing program for the purpose of contacting likely caucus attendees and primary voters in several states in order to identify Gephardt supporters and solicit contributions to the campaign.

5. The full telephone script used for the Linn County Democratic Barbeque and Rally during the period of August, 1987 was composed of questions numbered 1 through 26. See script attached.

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6. Question 15 of the Linn County script solicited funds for the Gephardt campaign.

7. The agreement signed by the Gephardt Committee on July 30, 1987 estimated certain costs, including long distance telephone fees, because there was no way to determine these charges precisely at the time I prepared the proposal.

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6. Question 15 of the Linn County script solicited funds for the Gephardt campaign.

7. The agreement signed by the Gephardt Committee on July 30, 1987 estimated certain costs, including long distance telephone fees, because there was no way to determine these charges precisely at the time I prepared the proposal.

Joyce Aboussie

Joyce Aboussie

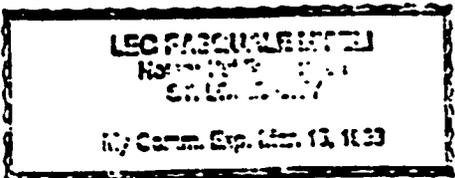
11909113

SUBSCRIBED AND SWORN TO BEFORE ME
this 14 day of Feb, 1990.

L. Donald Peters

Notary Public

My Commission Expires:



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AFFIDAVIT OF WILLIAM A. CARRICK

Los Angeles, California)
) ss.
)

I, William A. Carrick, being duly sworn according to law, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if called to testify in this matter, I would testify as set forth herein.

2. I was the National Campaign Manager from January, 1987 to March, 1988 for the Gephardt for President Committee ("Gephardt Committee"), the principal campaign committee organized on behalf of Richard A. Gephardt's candidacy for President of the United States.

3. My responsibilities as National Campaign Manager included formulating a national message; coordinating and implementing the campaign strategy nationwide; briefing national press about the campaign; managing campaign resources; supervising campaign staff; and ensuring that Richard Gephardt was briefed on all significant campaign developments throughout the national campaign.

4. From early 1987 through the date of the Iowa caucuses, the vast majority of questions from the national press were on Richard Gephardt's standing in Iowa. Gephardt's position in Iowa was projected to the campaign and judged by supporters and

sources of financial support as the sole test of the viability of his national candidacy.

5. During this period, the national networks' evening news reported on the Gephardt campaign extensively, virtually always through the prism of Iowa.

6. These broadcasts of Gephardt's Iowa campaign gave the national public their first impression of Gephardt and developed their image of Gephardt and his message. At no other time, in connection with no other primary, was coverage of the campaign by national media so intensive. Because of this intense coverage and the compression of the primary schedule, the campaign had no choice but to craft a national campaign with a national message in Iowa. The national campaign and the Iowa campaign could not be run separately or distinctly.

7. A campaign, particularly one with limited and fluctuating resources, has no opportunity to change its message after Iowa; the time before the subsequent primaries is too short, and the voters throughout the country have heard and read the message from Iowa for months in the national media.

8. The women's focus groups conducted in May of 1987 were an essential part of developing the national strategy.

9. This research assisted the campaign in identifying its core constituency, and the campaign strategy to appeal to these voters, while first implemented in Iowa, was used, and was intended to be used, throughout the national campaign in every state.

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10. The success of the campaign's national fundraising and field organizing was wholly dependent on national perceptions generated by the media of Gephardt's campaign and message.

11. Prospective contributors from states as far from Iowa as Florida, Texas and New York wanted to know, before contributing, how Gephardt was doing in Iowa, and always reflected in this question was familiarity with national press perceptions.

12. When the campaign recruited state volunteer coordinators for key states such as New Jersey, these recruits also approached their agreement from the standpoint of Gephardt's standing in Iowa, operating on an understanding developed from the national press reports.

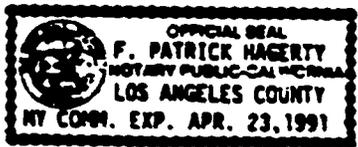
13. I worked on a daily basis with Ed Reilly, who was a campaign strategist and member of the Gephardt Committee's core management team.

William A. Carrick 2-14-90
William A. Carrick

SUBSCRIBED AND SWORN TO BEFORE ME
this 14 day of FEB., 1990.

F. Patrick Hagerty
Notary Public

My Commission Expires:
23 April 1991



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AFFIDAVIT OF DAVID M. DOAK

District of Columbia

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ss.

I, David M. Doak, being duly sworn according to law, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if called on to testify in this matter, I would testify as set forth herein.

2. I am employed by Doak and Shrum, Inc. ("Doak and Shrum") as its President.

3. Doak and Shrum is a corporation organized in 1986 to provide media, strategic and general political consulting services to candidates for public office and political organizations.

4. In 1987, Doak and Shrum agreed to provide full-service consulting to the Gephardt for President Committee ("Gephardt Committee"), the principal campaign committee organized on behalf of Richard A. Gephardt's candidacy for President of the United States. The services included message development; media production; time-buy services and strategy; speech-writing; assistance with polling analysis; debate preparation; travel with the candidate; and any and all other advice and support the campaign might require.

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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.

6. Doak and Shrum returned \$300,000 advanced to it by the campaign in December 1987 from the escrow account that the firm maintains at the Century National Bank for media buys. None of these funds were ever to be used by Doak and Shrum for consulting fees or commissions, and Doak and Shrum had no proprietary or other legal interest in these funds.

7. I have been provided and have reviewed the portion of the Gephardt campaign's response to the Commission's Interim Audit Report that addresses the circumstances surrounding the Amendment to Doak and Shrum's original agreement with the Gephardt Committee, and such response accurately and truthfully states the business reasons why Doak and Shrum sought that Amendment at the time.

8. The compression of the Presidential nominating process in the 1988 election, leaving candidates even less time than in prior Presidential campaigns to develop a national campaign, caused the Iowa caucuses to rise to even greater significance in 1988.

9. As a result, Richard Gephardt's national campaign and his Iowa campaign were often indistinguishable. National press coverage of Iowa in particular required all candidates

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AFFIDAVIT OF STEVEN G. MURPHY

District of Columbia

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ss.

I, Steven G. Murphy, being duly sworn according to law, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if called on to testify in this matter, I would testify as set forth herein.

2. I served as the Iowa state Campaign Director from October, 1987 to February, 1988 for the Gephardt for President Committee ("Gephardt Committee"), the principal campaign committee organized on behalf of Richard A. Gephardt's candidacy for President of the United States.

3. My responsibilities as State Director included: meeting with members of the national press; preparation of the campaign plan; oversight and management of campaign activities in Iowa; administration and staff supervision of the Iowa campaign headquarters.

4. A major component of my role as State Director was to work with the staff in Iowa and national campaign headquarters to design and implement a national press and communications strategy.

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5. Members of the national press requested interviews with me at the Iowa headquarters with such frequency that the Iowa state Press Director was forced to schedule them in groups of three or four.

6. According to my best estimate, Ms. Laura Nichols, who was the Iowa state Press Director, devoted approximately 50 percent of her time to the Iowa press, and 50 percent of her time to the national press. In the final weeks of the campaign, she devoted 75% of her time to the national news media.

7. The Gephardt campaign in Iowa drew constant and intensive national press coverage, and this fact dominated much of the effort in that state. Iowa offered less than 1.5 percent of the delegates needed to win the nomination but was critical to any effort to make Richard Gephardt a credible national presidential candidate.

8. In planning the Iowa strategy, I cannot recall a single discussion about Iowa delegates during my tenure as State Director.

9. From 1987 through February 8, 1988 the national news coverage of the 1988 presidential campaign was principally from or about Iowa.

10. The national significance of Iowa for the rest of the presidential campaign caused time and effort to be devoted there at the expense of efforts in other states.

11. The campaign scheduled virtually all of Richard Gephardt's national campaign speeches in Iowa because this

assured, as in no other state, that they would attract national press coverage.

12. National reporters would periodically travel throughout Iowa contacting Gephardt precinct captains and coordinators in order to determine Gephardt's delegate count and support level and verify the campaign headquarters reports. The campaign's management of these contacts consumed enormous time and expense.

13. Day-to-day activities of the campaign were focussed in substantial part on attracting national press coverage. The campaign strove for the highest level of national media coverage in every instance, and the national media's particular focus in Iowa left the campaign with no choice in this matter.

14. The campaign originally planned a series of 15 farm rallies throughout Iowa. Solely for the purpose of attracting national press coverage, the campaign started holding them on a daily basis. Each rally attracted no more than 250 Iowans, but the strategy was to increase the chances, by sheer volume, that the national media would cover one of them. To get Gephardt on national television with a scenic backdrop delivering his national message was the goal.

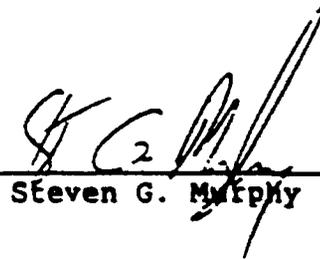
15. The July 20, 1987 debate between Gephardt and Kemp at Drake University in Des Moines was geared towards a national press audience, not a local one.

16. Decisions on message in Iowa were necessarily

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decisions on national media. This, too, was a product of a year and a half press focus in Iowa, and because the other primaries followed immediately thereafter, the message in Iowa had to be transferable to all other states.

17. The Iowa spending limits significantly depressed the amount of money I was able to spend in Iowa. Because of the limits, I was forced to cancel a series of mailings in the last month of the campaign. Similarly, I could not afford to use radio as an advertising medium because of the spending limits.



Steven G. Murphy

SUBSCRIBED AND SWORN TO BEFORE ME
this 14 day of February, 1990.



Notary Public

My Commission Expires:

2-14-94

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2/14/90

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AFFIDAVIT OF DAVID L. PETTS

District of Columbia) ss.
)

I, David L. Petts, being duly sworn according to law, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if called on to testify in this matter, I would testify as set forth herein.

2. I am a Partner in the firm Donilon and Petts Research, Inc., which provides polling and consulting services to candidates for public office and political organizations. I have prepared for and conducted focus groups and am professionally qualified to speak as to the theory and practice of focus group research.

3. From December, 1987 to March, 1988, I served as Director of Operations for the Gephardt for President Committee ("Gephardt Committee"), the principal campaign committee organized on behalf of Richard A. Gephardt's candidacy for President of the United States. My responsibilities included national message development; analysis of polling and other public opinion research; and coordination of the field staff, advance, and press operations.

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4. A focus group is very different from a public opinion poll in both its objectives and methodology. Where a poll seeks precise quantitative information about a geographic and demographic sample of voters, focus group interviews explore voters' attitudes and emotions about issues.

5. The product of focus groups can have broad national application, while the results of a poll have little use beyond the area from which the representative sample is taken.

6. Focus groups are never comprised of a national "sample" consisting of individuals selected from all parts of the country. This is logistically impossible. These interviews are conducted on the state or local level, with generalizations made to the general public.

7. The thematic research derived from a focus group is valuable in virtually every aspect of a national campaign including message development, speeches, media, and advising the candidate on how to speak to voters during day-to-day campaigning. Indeed, one of the primary objectives of the Gephardt focus groups was to determine a slogan for the campaign which was then used for the duration of the campaign.

8. Unlike a poll, which is time sensitive and rapidly decreases in its utility and reliability, a focus group has continuing value because it identifies enduring and fundamental beliefs of the participants.

9. Most public opinion polls simply show whether people approve or do not approve of a particular issue or public

policy, or whether they like or dislike a candidate presented to them by the poll. Focus groups provide a campaign with information on why people care about certain issues, and test themes and messages to determine how voters react.

David L. Petts
David L. Petts

SUBSCRIBED AND SWORN TO BEFORE ME
this 15th day of February, 1990.

Dina Powell

DINA POWELL
Notary Public, Washington, D.C.

Notary Public

My Commission Expires:

~~My Commission Expires~~ June 1993

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WE ARE SUBMITTING AN UNRECORDED COPY OF MR. BERRY'S
AFFIDAVIT. WE WILL SUBMIT A NORMALIZED COPY AS SOON
AS IT IS RECEIVED.

AFFIDAVIT OF EDWARD J. REILLY

New York, New York)
) ss.
)

I, Edward J. Reilly, being duly sworn according to law, hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if called to testify in this matter, I would testify as set forth herein.

2. I was a Senior Advisor and national campaign consultant to the Gephardt for President Committee ("Gephardt Committee"), the principal campaign committee organized on behalf of Richard A. Gephardt's candidacy for President of the United States.

3. I served as general national advisor to Richard Gephardt and frequently traveled to Washington, D.C. to participate in the campaign management "team" meetings for the Gephardt Committee.

4. I worked extensively with Richard Gephardt on debate preparation for the North Carolina, Florida, New Hampshire and NBC network presidential debates.

5. I had extensive experience in Massachusetts and New England politics which was of special relevance to the campaign in New Hampshire in addressing the challenge of a major primary

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opponent there, Massachusetts Governor Michael Dukakis. In addition, my direct experience on behalf of former political opponents of Dukakis was particularly useful in developing the overall national strategy of the Gephardt campaign.

6. I participated in national field staff meetings in Washington, D.C. to brief staff on the campaign message.

7. I frequently met with prospective contributors to the campaign to brief them on the campaign's national strategy and message.

8. On a number of occasions, I briefed Members of the United States Congress on the Gephardt campaign.

9. Approximately 25 percent of my time working for the campaign was spent briefing journalists who were reporting on the presidential campaign.

10. The consulting fees charged by Kennan Research and Consulting, Inc. ("Kennan") for my services covered the activities identified in paragraphs 3 through 9. Any charge for time I spent on analysis of a poll or survey research conducted by Kennan was built into the cost to the campaign for such research.

11. As evidenced by my travel records submitted under separate cover, I spent very little time in Iowa during the campaign.

12. The Gephardt Committee hired my firm, Kennan, in May, 1987 to conduct focus group interviews on women and politics.

Edward J. Reilly

SUBSCRIBED AND SWORN TO BEFORE ME
this ____ day of _____, 1990.

Notary Public

My Commission Expires:

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

BS002433
6/10/91

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

I. Background

A. Overview

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

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

The Committee registered with the Federal Election Commission on March 9, 1987. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from the Committee's inception, November 17, 1986, through May 31, 1988.**/ During this period, the Committee reported an opening cash balance of \$0.

*/ The Gephardt Committee, a joint fundraising committee authorized by the Candidate, is currently being audited. The Gephardt Committee functioned as the fundraising representative for the Gephardt for President Committee and the Gephardt in Congress Committee. Findings and recommendations resulting from same will be addressed in a separate audit report.

**/ The audit period includes the financial activity contained in the disclosure reports filed by the Gephardt Presidential Exploratory Committee (11/17/86-12/31/86).

total receipts of \$12,293,921.88, total disbursements of \$12,268,385.69 and a closing cash balance of \$25,536.19. In addition, certain financial activity was reviewed through November 9, 1990, for purposes of determining the Committee's remaining matching fund entitlement based on its net outstanding campaign obligations. Under 11 C.F.R. §9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

B. Key Personnel

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

C. Scope

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

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

Matters Referred to the Office of General Counsel

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

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

A. Calculation of Repayment Ratio

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

Section 9038.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the amount of any

repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

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

Total Matching Funds Certified through the
Date of Ineligibility - 3/28/88

Numerator plus Private Contributions Received
through 3/28/88

\$2,340,696.53

= .262834

\$2,340,696.53 + \$6,564,900.02

Thus, the repayment ratio for non-qualified campaign expenses is 26.2834 percent.

B. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days of the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs.

In addition, 11 C.F.R. §9034.1(b) states, in part, that if on the date of ineligibility a candidate has net outstanding obligations as defined under 11 C.F.R. §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

The Statement of Net Outstanding Campaign Obligations (NOCO) is the basis for determining further matching fund entitlement. Congressman Gephardt's date of ineligibility was March 28, 1988. Consequently, he may only receive matching fund payments to the extent that he has net outstanding campaign obligations as defined in 11 C.F.R. §9034.5.

The Committee filed a NOCO statement which reflected the Committee's financial position at April 8, 1988^{*/} and revised statements with each subsequent matching fund request. The Audit staff analyzed the Committee's April 8, 1988 NOCO statement and made adjustments to reflect the Committee's actual cash position. The Committee's NOCO as adjusted by the Audit staff appears below.

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^{*/} The Committee's NOCO statement should have been filed as of March 28, 1988.

Gephardt for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations
as of April 8, 1988
as Determined Through November 9, 1990

Assets			
Cash in Bank		\$	62,819.94
Accounts Receivable			48,913.59
Capital Assets			<u>45,861.00</u>
Total Assets			\$157,594.53
Liabilities			
Accounts Payable for			1,373,343.92*/
Qualified Campaign			
Expenses			43,575.00
Refunds of Excessive			
Contributions Due			247,437.33
Actual Winding Down Cost			
(4/9/88 to 11/9/90)			
Estimated Winding Down Cost			
(11/10/90 to 5/10/91)			
Salaries/Consulting	\$8,000.00		
Occupancy	2,400.00		
Telephone	2,400.00		
Office Expenses	300.00		
Travel	500.00		
Postage and Delivery	<u>200.00</u>		
Total Estimated			<u>13,800.00</u>
Winding Down Cost			
Total Liabilities			<u>\$1,678,156.25</u>
Net Outstanding Campaign Obligations			<u>(\$1,520,561.72)</u>

The Committee's accounts payable figure has been reduced by the amount of accounts payable allocable to the Iowa spending limit, which represent non-qualified campaign expenses, and the forgiven/unpaid portion (\$987,457) of debt settlements approved by the Commission on October 30, 1990.

Therefore, as of April 8, 1988, the Candidate's remaining entitlement was \$1,520,561.72. Using the Commission's matching fund records and Committee disclosure reports for the period April 9, 1988 through September 14, 1989 it was determined that the Committee received \$1,514,257.76 in contributions and matching funds. As a result, the Candidate's remaining entitlement, as of September 14, 1989 was \$6,303.96 (\$1,520,561.72 - 1,514,257.76).

Conclusion

As of September 14, 1989, the Candidate had not received matching funds in excess of his entitlement. However, as previously stated, the Commission, on October 30, 1990, approved debt settlements totaling \$987,457 (forgiven amount). One of the approved debt settlements was for a debt owed to a law firm which provides legal representation to the Candidate/Committee. The settlement related to an invoice, dated April 7, 1989, in the amount of \$100,005.44 the unpaid balance of which equaled \$75,005.44. This invoice was for legal services rendered from September, 1987 through December, 1988. The Committee offered and the law firm agreed to settle the amount owed (\$75,005.44) for \$32,795.44 which resulted in \$42,210 being forgiven. On September 26, 1990 the law firm billed the Committee for services rendered from January, 1989 through August, 1990 (a period of 20 months), in the amount of \$114,750.66.

It should be noted that the Audit staff does not doubt the legitimacy of this invoice, and has included this amount in the NOCO accounts payable for qualified campaign expenses. However, it should be noted that when the Committee and the law firm settled the previously mentioned debt of \$75,005.44 on September 20, 1989 for \$32,795.44, a period of almost 9 months of the 20 month billing period relative to the September 26, 1990 invoice had lapsed, and on March 30, 1990, when the law firm submitted all debt settlements on behalf of the Committee to the Commission, 15 months of the 20 months covered by the September 26, 1990 invoice had lapsed.

It is our opinion that the Committee and the law firm had to have been aware that additional amounts were owed to the law firm at the time the debt settlements were submitted for Commission approval. It is also our opinion that if the Committee and the law firm decide to debt settle the September 26, 1990 bill, a repayment of matching funds pursuant to 26 U.S.C. § 9038(b)(1) will be required.

Further, on October 30, 1990, the Commission did not approve 28 debt settlements totaling \$65,920 (forgiven amount) but required the Committee to submit additional information. If some portion of the \$65,920 is debt settled, forgiven, considered exempt under 11 C.F.R. § 100.7(b)(8), and/or paid in-kind, a repayment of matching funds pursuant to 26 U.S.C. § 9038 (b)(1)

may be required. To date, the Committee has not responded to the Commission's request for the additional information.

The Audit staff recognizes that the Committee may identify additional qualified campaign expenses not included in the NOCO statement which also would have a bearing on any future repayment determination.

C. 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

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.

"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 .-

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 of administration would be prohibitive, and the

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.

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.

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.

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.

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.

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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 (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

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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 (\$5,552.56 + \$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

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.

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.

On May 23, 1991, the Commission determined that the consulting fees (\$93,250) were not allowable to Iowa. Based on the above, the Audit staff has allocated an additional \$19,288.08 in travel related expenditures to the Iowa expenditure limitation.

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 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 whereby, 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 :

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).

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 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.

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.l. 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 Rapiet 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.

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

*/ The correct amount of the invoice and the amount allocated by the Audit staff to Iowa is \$109.20.

fundraising efforts, mailing dates, coded responses, etc., should be available for review prior to making any additional fundraising adjustment.*/

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

*/ 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.

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.

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, 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.

*/ On March 6, 1989, the Committee submitted a signed copy of the amendment which was dated January 18, 1988.

**/ December 26, 1987 is the earliest date on which media time buys for Iowa were broadcast.

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 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;
- 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.

*/ 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.

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.

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 42 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 apparent that Doak and Shrum had struck for itself a remarkably good deal.

It should be noted that the Audit staff's position with respect to the 15 percent agency commission has not changed. The allocation was based on the media time buys allocable to Iowa. The 15 percent agency commission is documented in the original agreement. The amendment to that agreement deletes the 15 percent agency commission. Accordingly, the Commission has determined that, absent a showing by the Committee as to why the agency commission should not be 15 percent, agency commissions totaling \$52,593.33 are allocable to Iowa.

The Audit staff has identified an additional \$21,642.44 allocable to Iowa. This amount represents media time buys for which the Committee has taken a 50 percent fundraising exemption. However, the media buys were either broadcast within 28 days of the caucus which precludes the use of the exemption or the broadcast dates with respect to certain media buys were not known.

As a result, media time buys and agency commissions totaling \$74,235.77 (\$21,642.44 + \$52,593.33) require allocation to Iowa.

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.

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."

*/ Interacts are live question-and-answer sessions between a candidate and the local TV anchor people.

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, this 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 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 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, leasor, 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 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). 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 \$19,447.96

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.

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	19,288.08	
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>\$531,456.77</u>
 Total Allocable Amount		 \$1,270,935.75
 Less Iowa Expenditure Limitation		 <u>775,217.60</u>
 Amount in Excess of the Iowa Expenditure Limitation		 <u>\$ 495,718.15</u>

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

Amount in Excess of the Limitation (\$495,718.15 - \$14,869.52 outstanding A/P at 10/25/89*/	\$480,848.63
Repayment Ratio from Finding III.A.	<u>.262834</u>
Repayment Amount	<u>\$126,383.37</u>

Recommendation #1

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, as calculated by the Audit staff, is repayable to the United States Treasury within 90 calendar days of service of this report in accordance with Section 9038.2(d) of Title 11 of the Code of Federal Regulations.

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

Repayment Amount: \$126,383.37**/

*/ October 25, 1989 represents the last day matching funds remained in the Committee's account.

**/ The repayment amount may increase as a result of the submission and review of documentation for a rental property which has not been made available to date, as well as the disposition a one additional matter which has not been resolved.

PERKINS COIE

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

91 JUL 19 PM 5:20

July 18, 1991

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Gephardt for President Committee -
Final Audit Report

Dear Commissioners:

Pursuant to 11 C.F.R. § 9038.2(c) of the Commission regulations, The Gephardt for President Committee ("the Committee") herewith requests a hearing before the Commission on the initial repayment determination made in the course of the recently completed audit of its 1988 presidential campaign.

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I. Scope of Issues Contested

The report of the Audit Division sets out the issues in contention. The Committee will specifically address the Commission on the following matters:

- (1) The 25% national exemption, a discussion of which, along with the auditor's conclusions, may be found at page 8 of the final audit report.
- (2) Telephone charges of Northwestern Bell and MCI, a discussion of which, along with the auditor's conclusions, may be found at pages 15 and 16 of the final audit report.
- (3) Salaries, employee FICA, consulting fees and staff benefits, a discussion of which, along with the auditor's conclusions, may be found at page 18 of the final audit report.
- (4) Intrastate travel and subsistence expenditures, a discussion of which, along with the auditor's conclusions, may be found at page 22 of the final audit report.

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Page - 1

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July 18, 1991

- (6) **Telemarketing services**, a discussion of which, along with the auditor's conclusions, may be found at pages 31-34 of the final audit report.
- (7) **Media expenses**, a discussion of which, along with the auditor's conclusions, may be found at page 40 of the final audit report.
- (8) **Event expenses**, a discussion of which, along with the auditor's conclusions, may be found at page 45 of the final audit report.

II. Position of Gephardt Committee

The position of the Committee on each of these matters is set out in its response to the interim audit report which was filed with the Commission in February 1990. Nonetheless, for the convenience of the Commission, relevant extracts from its response to each issue are set out in the same order. (Exhibit A.)

The Committee reserves the right to rely upon transcripts of the open Commission meeting when the report of the Audit Division was considered for additional information about the auditors' positions on these issues. References to that transcript will be made as appropriate in the course of the hearing.

In addition, the Committee is submitting additional documentation on certain items identified by the auditors on which the Committee does not request a hearing. (Exhibit B.)

Should you have any questions or need additional information, please contact the undersigned.

Respectfully submitted,



Robert F. Bauer
General Counsel
Gephardt for President Committee

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Exhibit A

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**B. THE UNIQUE IOWA SITUATION: A NATIONAL CAMPAIGN
WITHIN A STATE CAMPAIGN**

**Backus's emphasis on the free speech implications of
campaign spending has become more relevant in the fourteen**

The article from which this part is excerpted was entitled, "Far Too Much Ado About Little Iowa," Kaus, McCormick and Fineman, Newsweek, July 6, 1987, at 20. The suggestion that there was "far too much" ado about Iowa was partly editorial. That there is so much ado about Iowa is explained and accepted in this piece as a fact of political life.^{1/}

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

^{1/} The auditors suggest that another state in Iowa's "make or break" position could also have disproportionate influence for a candidate. This is pure speculation, lacking any record of facts to show which state, in what circumstances, for which candidates, might have this impact. Iowa holds this power for all candidates.

"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.

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Gary Hart's withdrawal from the race added to Gephardt's circumstance 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.

These are the facts of Gephardt's situation; and they demonstrate, as Newsweek's piece hinted, that for candidates like him, Iowa is a "national primary." The media coverage of

^{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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Iowa was certainly national, as it was for no other state except New Hampshire. The sheer number of print and electronic media stories focused on the caucuses overwhelms coverage of all other states. Exhibit ___ compares relative national coverage of the Iowa caucuses to the coverage of other state primaries, including several of the large states: Illinois, Texas, and Florida, and other states comparable in size to Iowa. Iowa dwarfs them all. Newspapers with a broad readership, from every major city in the country, sent reporters to cover the state caucuses; reporters also arrived from numerous foreign countries. Papers from such far-flung places as Los Angeles, Baltimore, Chicago, Philadelphia, New York, and Dallas ran major front-page stories covering the build-up to and the results of the caucuses in overwhelming detail. Furthermore, the national media, ranging from Time, Newsweek, U.S. News & World Report, The Wall Street Journal, and The National Journal in print, to all three major networks and the Cable News Network and National Public Radio, covered the caucuses extensively.

No primary other than New Hampshire drew so much attention from so many media outlets for so sustained a period of time. The Washington Post admitted, in a front page article in early 1987, that it had "dispatched six reporters to follow the trail" of a number of presidential hopefuls in Iowa a full "year in advance of the Iowa caucuses (Feb. 8, 1988) and the

New Hampshire primary (Feb. 16, 1988)." Taylor, Campaign '88: Full Throttle Along an Uncharted Course, Washington Post, Feb. 15, 1987, at A1. New technology, such as satellite hook-ups, enabled information in one state to be disseminated across the country instantly.

The substance of the news stories explicitly documented the national nature of the Iowa campaign. Iowa, it was widely reported, was "the launching pad," or the "point of departure" for presidential campaigns. Going Courting In Iowa, National Journal, Aug. 8, 1987, at 2020; Borger, Plattner & Wells, Campaign '88: Why Iowa is Bad for American Politics, U.S. News & World Report, July 6, 1987 at 22, 24. National media attention focused intensively, almost to the exclusion of all else, on the question of who would survive this first and crucially important contest, able then to take his campaign to New Hampshire and beyond:

Any not bunched near [the] top [in Iowa] are in trouble," Barnett, Oh, What a Screwed System, Time, Jan. 25, 1988, at 20.

For [Gephardt, Simon, and Dole], winning Iowa could make the difference between going on or going home." George F. Will, The Rheostat Rule -- and More, Newsweek, Feb. 15, 1988, at 84.

The "way to be elevated to top-dog status is to grab the lead in Iowa, which holds 1988's first Democratic presidential contest on Feb. 8." Fly & Dryden, The Democrats are Playing "Front-Runner For a Day", Business Week, Aug. 10, 1987, at 35.

{F}or Democrats especially, the early test here [in Iowa] is more important than usual," because of governor Michael Dukakis' "favorite-son status in New Hampshire," and the huge "Super Tuesday" vote on March 8; "Iowa's voice will still be echoing while many of the national convention delegates are being chosen." Dionne, Candidates Already Driving Hard in Iowa for First Big Test of 1988, New York Times, May 3 1987, at 1.

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The local Iowa press, as well as any, understood that its caucuses were not a local matter. The day after the caucuses, The Des Moines Register ran front page headlines such as "Gephardt Victory Gives Him Stature," and, describing then-Vice President Bush's loss to Senator Robert Dole in the Republican caucuses, "'Devastating Loss' Seen For the Vice President." Des Moines Register, Feb. 9, 1988, at 1A.

If winning gives you stature, Congressman Richard Gephardt is the dwarf who grew up in Iowa Sunday night," the front page article on the primary results began, and noted that the poor showings by Hart and Babbitt in Iowa "were devastating . . . [and] will cripple their ability to raise the money needed to continue their campaigns." Id.

One other aspect of the Iowa caucuses -- their sheer length of active political life -- caused the state purpose and the national campaign-building purposes to blur into each other. Presidential campaigns begin early, in some sense after the last presidential election has ended. They are pressed in earnest in the "off-year," the year before the election year (in this case, 1987). Iowa is then the focus of campaign efforts for many months, maybe, for some candidates, for well

over a year. (The time between other campaigns -- e.g., between New Hampshire and South Dakota, is days or at most weeks.) The Iowa "limit" hardly accommodates this reality.

For candidates with limited resources, this is a profound problem. Their dilemma is this: they seek to build a national effort with less than national-sized financial support. Concentration on one state, Iowa, is a necessity, because this is (along with New Hampshire) the functional equivalent of a national primary. But these campaigns cannot ignore other states, such as New Hampshire, and so their task is to maintain an Iowa focus but still attempt to build beach-heads in other states. As a result, every attempt is made to make efficient use of every dollar spent to achieve simultaneously Iowa and national goals in other states. Ads prepared for Iowa are examined for suitability in other states; staff in Iowa are assigned tasks necessary for other states, and national staff are assigned frequently Iowa-related responsibilities, and every opportunity is sought to broadcast the campaign nationally through free media.

C. ACTUAL IMPACT ON THE CAMPAIGN

This state of affairs is profoundly affected by the limits and directly affects the expenditure of resources in Iowa. According to Steve Murphy, who was the Iowa state director for

the Gephardt campaign, his time was substantially devoted to dealing with the national press in Iowa. The national press demands on his time were so great that he instituted a policy of meeting with their representatives only in groups of three-to-four, refusing, with some exceptions, one-on-one interviews. See Murphy Affidavit, attached as Exhibit ____.

This was a demand that one way or another he was required to meet because the media coverage in Iowa relayed nationally, in virtually pervasive fashion, Gephardt's name, message, and the impression of him as a man. Iowa was, in this sense, a larger broadcast message, the "set" for a nationwide transmission to voters in print and electronic media.

This was the effect on Murphy's time, and necessarily also the effect on spending for his position (salary and expenses). Those assisting Murphy with the administration and logistics of his office were similarly affected.^{4/} As a concrete example of this national dimension, Murphy relates a decision to conduct a series of daily farm rallies around the state, each of which could be expected to attract no more than 200-250 Iowans. The expense was substantial, but the strategic purpose, in full, was to increase the chances that a national

^{4/} Laura Nichols, the Iowa State Press Director, devoted approximately 50 percent of her time to national press, 50 percent to the "locals." See Murphy Affidavit.

news network would cover one of these rallies. On the same operating theory, major speeches of Gephardt were scheduled for delivery in Iowa because this was the location, of anywhere in the country, where the press would cover them thoroughly for national distribution. Press coverage on any meaningful national scale was not attracted to candidate activities in Texas or Louisiana or New York -- until after February 8, 1988.

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Appeals to Iowa voters were cast in this way as appeals to voters nationwide, with real impact on spending. This was true for another reason, equally significant. As both Murphy and National Campaign Director Bill Carrick attest, the development of the "message" in Iowa could not be concerned narrowly with Iowa voters but required a full national focus. Iowa appeals received national attention for a period unparalleled for any other primary or caucus. The end of Iowa brought on a tumble of other state primaries, one after the other; this left no time to alter the message and to communicate something different to New Hampshire voters than had been communicated to the voters in Iowa. See Carrick Affidavit.

A campaign argument fashioned in Iowa, transmitted nationally by the press, had to stand the test of the other state contests of February and March. This was particularly required of campaigns with limited resources which, had they chosen to shift approach, could not afford to remake their media.

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II. FINDINGS AND RECOMMENDATIONS RELATED TO TITLE 2 OF
THE UNITED STATES CODE

A. ALLOCATION OF EXPENDITURES TO STATES

1. 25 Percent National Exemption

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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

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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

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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 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

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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 higher and lower. 11 C.F.R. § 106.2(c)(5), 11 C.F.R. § 106.2(b)(2)(iv).

^{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.

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 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.

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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.

Should the Commission be concerned about allowing a "new" exemption during the course of an adjudication, it should consider the well-settled proposition of administrative law that an agency may engage in adjudication rather than formal rulemaking when it deems the circumstances appropriate, and no injustice will be done. See Securities and Exchange Commission v. Chenery Corp., 332 U.S. 194, 201-02, 67 S.Ct. 1575 (1947); Federal Communications Comm. v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 98 S.Ct. 2096 (1978); National Ass'n for the Advancement of Colored People v. Federal Power Comm'n, 425 U.S. 662, 96 S.Ct. 1806 (1976); National Labor Relations Board v. Bell Aerospace Co., 416 U.S. 267, 94 S.Ct. 1757 (1974). Furthermore, an agency's wide discretion to utilize an adjudicatory proceeding for applying a new standard of conduct is especially appropriate in a case such as this one, in which fundamental constitutional rights may be violated -- without serving core enforcement purposes -- unless the agency takes action. Cf. National Labor Relations Board v. Bell Aerospace Co. The Commission has a duty not to let administrative and/or bureaucratic concerns preempt concrete speech rights. This is an affirmative duty.

Accordingly, the 25 percent exemption should stand, and \$179,234.81 applied by the Audit staff should be removed from the limit.

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2. Telephone-Related Charges

a. Northwestern Bell

After a review of the Audit staff's findings related to telephone charges not discussed in the Interim Audit Report,^{1/} the Gephardt campaign contests two matters related to the allocation of Northwestern Bell telephone charges to the Iowa spending limit. The AT&T portion of the Northwestern Bell bills included charges for directory assistance calls made in Iowa for out-of-state numbers. At the top of each phone bill, these charges are clearly identified as "Interstate, Canada, and/or 809 Directory Assistance Usage." An example of these charges is attached as Exhibit 2-A. These charges were included by the auditors in their Iowa totals.

Because these charges clearly relate to interstate calls outside the state of Iowa, these charges should not have been allocated to the Iowa spending limit, and the \$78 represented by these calls should be removed from the allocation.

The Iowa caucuses were held on February 8, 1988. The Audit staff included in its allocation to the Iowa spending limit

^{1/} The Gephardt campaign does not contest the findings of the Audit staff in subsection 2a of the Interim Audit Report with respect to the application of deposits and monthly service charges to the Iowa spending limit.

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bills for this period, should be removed from the Iowa spending limit.

b. Central Telephone Company

In calculating the amounts allocable to the Iowa spending limit during the months of January and February of 1988, the auditors have overstated the allocable amount by \$165.51. The auditors attributed to the Iowa spending limit \$2,396.88 for the months of January and February. As shown in the calculations contained in Exhibit 2-B, the amount attributable to Iowa during the months of January and February should have been only \$2,231.37. The amount of \$165.51, therefore, should be removed from the Iowa spending limit.

The Audit staff notes in the Interim Audit Report (page 5) that the Committee provided only summary pages of the February 25, 1988 and March 25, 1988 billing statements for Central Telephone. In fact, the Committee provided the auditors with complete statements for both months. (One of the statements was missing a single page.) In the interest of cooperation, the Committee submits again the entire billing statements for these two months as Exhibit 2-C.

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c. MCI

The Audit staff attributed \$6,044.14 of the Committee's final MCI telephone bills to the Iowa spending limit. Included within this amount was \$2,628.56 in calls made using an 800 access code number. Samples of these MCI bills for both the national headquarters and for the Iowa field office are attached as Exhibit 2-D.

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.

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.

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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

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"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.

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

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The Audit staff notes that, in Iowa, the Gephardt campaign allocated certain salaries and consulting fees paid to certain Iowa staff as 100 percent-exempt compliance costs, while it allocated the standard 10 percent for compliance costs for the remainder of the Iowa payroll. The Audit staff contends that under the terms of the Financial Control and Compliance Manual the Committee must choose either the standard 10 percent method for all employees or must document any different allocation method for all employees. This "either/or" option is contained nowhere in the Regulations, and its application results in requiring, for no sound cause, more unnecessary pressure on a state limit. In fact, the "either/or" option is irrational, operating as a tax on compliance activities which, in hotly contested primaries like Iowa, are extraordinary important and extraordinarily difficult.

The Commission regulations on the exemption of compliance (and fundraising) expenditures provide as follows:

An amount equal to 10 percent of campaign workers' salaries and overhead expenditures in a particular state may be excluded from allocation to that state as an exempt compliance cost If the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual

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working in that state . . . Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance . . . exemption.

11 C.F.R. § 106.2(c)(5). There is no suggestion of an "either/or" requirement here. The first sentence cited clearly allows a blanket 10 percent allowance for all "campaign workers' salaries." Then the regulation notes the availability of a "larger compliance exemption for any person" -- now referring to allowances made to reflect individual cases.

There then follows -- and therein is presented the issue -- the suggestion that if a larger compliance exemption is claimed for any person, the candidate must work specific allocation percentages for "each individual working in that state."

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. Thus, the Commission is invited to assume that a campaign retains full-time accounting staff members and, with good reason, claims a 100 percent exemption for their related services. By the reading urged by the auditors, it is now

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required, for some entirely unexplained reason, that every other individual in the state has to be reviewed for a separate and different allocation percentage. This percentage could be higher than 10 percent, 10 percent, or lower than 10 percent, but it would have to be separately "established" for each individual working in the state on whatever activities they were charged with conducting.

How this task could be accomplished in any reasonable or well-documented fashion for (as examples) fundraisers, field organizers, receptionists, secretaries, advance staff, or paid workers without a defined mandate is left entirely unstated. In fact, it cannot be done with any useful certainty, other than on an entirely arbitrary basis. Effectively, the auditors are arguing that if, for complete justification, larger exemptions are claimed with individuals hired solely to perform compliance responsibilities, there follows a raw exercise in gamesmanship to "establish allocation percentages for each individual working in that state."

Do the auditors also mean to suggest that if 100 percent is claimed for individuals with only compliance responsibilities, a 10 percent figure retained for all other employees is somehow by law excluded? And is it only 10 percent which is prohibited, or does this mean also that the auditors have in

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mind that the 100 percent exemption claimed for compliance staff requires that percentages less than 10 percent have to be established for all other staff? The Gephardt campaign could not assume that this is what the Regulations contemplated, because there was neither a basis on which to meet this requirement with anything other than arbitrary number-picking, nor any purpose served by that requirement.

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The Gephardt campaign read the Regulations as it did for the simple reason that if an individual is retained solely to perform a compliance function, then the compliance exemption should apply in full. All other individuals who must in one form or another support that compliance function could properly be treated under the 10 percent exemption -- a number no more arbitrary than any other that the Audit's staff either/or reasoning would require to be selected. In the context of Iowa, this 10 percent number for all staff (other than compliance) was perfectly reasonable.

The compliance effort in Iowa, the first primary running for year and a half, was a vast and time-consuming undertaking. All of the staff retained to work in Iowa, including staff which would later be assigned to other states, had to be fully briefed on the requirements of the Act and their role in ensuring the campaign's compliance with those

requirements.^{1/} The investment in training was made, indeed, had to be made, before Iowa; there was no time to repeat the exercise later, and no reason to do so with staff in Iowa who moved on to other states. By relying on a 10 percent exemption for all staff other than the purely compliance staff, the Gephardt campaign -- looking precisely to the guidance of Commission Regulations -- concluded that the 10 percent number was reasonable in the circumstances, for non-compliance staff.

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The auditors' reading of the Regulations would work another irrational harm on a campaign. It operates to discourage campaigns from undertaking to hire compliance-related individuals who could be treated as 100 percent-exempt, because upon hiring this staff, the campaign would be required to "establish" separate allocation percentages, on some arbitrary basis, for all other staff. The inhibitive impact on Iowa compliance from this result would be severe. Iowa was pure chaos for an extended period of time: it was unquestionably,

^{1/} For example, many Iowa staff received a copy of the Gephardt Field Manual, attached as Exhibit 3-A, prepared by campaign counsel to train staff in assisting the campaign in its compliance responsibilities

^{2/} This only serves to open campaigns' questions at audit staff, about how those percentages, other than on an arbitrary basis, were established.

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for all candidates, the longest primary of the cycle. Moreover, precisely because of the complex interweaving of national and state campaigns, the accounting burden for the Gephardt campaign in Iowa was extraordinary, greater than in any other state. The campaign needed to make a substantial investment in compliance under these conditions, and the law should not be interpreted to discourage it.

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The Committee's reading of the Regulations is in any event fully consistent with the approach of those Regulations to other, analogous limits issues. Under the Commission's five-day rule provision, 11 C.F.R. § 106.2(b)(2)(ii), for example, the salary of any staff who works in a particular state for more than four days must generally be allocated to that state's limits, but the Explanation and Justification elaborates that: "While this section sets forth the basic rule for allocating salaries, a candidate may demonstrate that a particular individual or group of individuals is in a state five days or more to work on national campaign strategy." Thus, there is general support under the regulations for making room within a general exemption for specific cases requiring special treatment. There is no cause for abandoning this approach in an area as crucial as compliance.

The question here, as in all regulatory matters, and particularly those affecting a political spending limit, is:

what precisely is the purpose served by this approach? The reading of the Regulation advanced here by the Gephardt campaign and utilized in making exempt compliance allocations was sound, and it should stand.

The Audit staff's either/or position affected four Gephardt campaign staff who were in Iowa at various times principally to perform compliance duties. The responsibilities of all four are summarized in the compliance job description in Exhibit 3-B. The auditor refusal to accept the Gephardt campaign's compliance allocation resulted in substantial sums being allocated to the Iowa spending limit unnecessarily. The arguments above show that the Committee's original allocation was reasonable and the appropriate amounts should be removed from the spending limit. Figures for three of the compliance staff, Jim Humlicek, Sheila Corsbie, and Paula Dickson are summarized in Exhibits 3-C (Payroll), 3-D (Payroll Taxes), and 3-E (Health Benefits).

Audit staff treatment of the fourth compliance staffer, Maria Varner, is addressed in Exhibit 3-F. Finally, the Audit staff attributed the salary of staffer Donna Starr during the October pay period to the Iowa spending limit. Ms. Starr, while originally an Iowa staff member (from February 15, 1987 until September 30, 1987), was transferred to the fundraising

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staff as of October 1, 1987, to concentrate on the organization and preparation for the December: America First fundraising project. The documents in Exhibit 3-G outline this transfer (as well as a subsequent transfer, in January 1988) Ms. Starr's salary is an exempt fundraising cost and should not be attributed to the Iowa spending limit.

FICA and Health Insurance Benefits

The Audit staff determined that in some instances employer FICA and the employer cost of health and life insurance for Iowa staff was not allocated by the Committee to Iowa. The considerations applied by the campaign in each of these expenses are discussed, separately, below.

FICA. 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 an allocation method for FICA.

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

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manual do present material issues. On a rigorous regulatory analysis, for example, a "salary" to an Iowa staff member -- clearly allocable to the limits -- does not include related FICA payments. Those payments do not represent a benefit to the employee; they do not constitute part of his or her compensation. Nor does the campaign have any discretion in the matter of paying these taxes, as it does in the fundamental choice of whether to hire a particular staff member or how much of a salary should be paid to that member. The payment of taxes is a legal obligation, and the benefit runs entirely to the federal government.

On a construction of the Regulations that salary does not include taxes, there would appear no reason why this should not be the case. A spending limit bears the most direct and profound possible relationship to the ability of a campaign to function -- and to the ability of a candidate to reach voters with a persuasive message. Costs which are treated as allocable to limit are presumably so determined on a number of factors: 1) relationship to actual activities within the state to influence voters; 2) manageability, that is, a concern with establishing rules of allocation which can be followed by the campaign and then clearly audited by the Commission.

By these standards, the failure of the Regulations to make note of FICA obligations as an allocable expense makes clear

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sense. The payment of taxes on salaries to the federal government has no impact on the communication with voters facilitated by the participation of paid staff members. And in response to the objection that there are other costs allocable to the limit which also do not have some proximate or immediate relationship to voter-influencing activities, there is a decisive answer: that in other cases the campaign has some choice over whether to budget for those costs or to eliminate them altogether out of concern for pressure on the limits. In the matter of FICA, this choice is altogether absent.

The campaign consulted the Manual for guidance throughout the course of Gephardt's active primary activities. The discussion presented in the Compliance Manual on any regular issue is plainly more extensive than that contained in the Code of Federal Regulations. And the Commission obviously had in mind that the Compliance Manual would supply this additional explanation, advising in its Introduction that it had "undertaken to organize, in this Manual, the essential compliance and financial control considerations in the hope that it will provide helpful guidance to those persons required to file reports." Compliance Manual at page xiii. Where the Manual departs in significant respect on a fundamental issue from the Regulations, what is produced is not guidance but inconsistency. The Gephardt campaign approached those

does not have any direct relationship to the campaign's activities to influence voters in a particular state.^{1/}

It was noted earlier that the payment of FICA obligations was not a matter of choice with the campaign, and that it did not represent in any event a benefit to the staff within the meaning of "salary." The acceptance of health and life insurance benefits by an employee plainly represents a benefit to that employee, and the campaign certainly has a choice of whether to offer this insurance. This is an instance where any decision to require allocation of these costs to the limit would have the most perverse discouraging effect on campaigns' willingness to offer this type of benefit. Many federal campaigns do not offer this benefit, and virtually none would if the cost of insurance placed additional burdens on an already modest spending limitation. In this day and age, when insurance plans are increasingly expensive and their conditions restrictive, there may be few campaigns prepared -- in the early small states, at least -- to offer this benefit and lose ground under the spending limitation.

^{1/} That is, unless one assumes that in order for the staff to conduct these activities they must remain healthy and also protected psychologically against fear of loss of both health and life. There is no indication that this strained line of reasoning has been considered, much less adopted, by the Commission

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The campaign notes also that the benefit to an employee of health insurance programs in actual dollars may come long after the employee leaves one state and takes up service in another. Insurance represents protection against future financial risk, whenever that risk materializes during the life of the policy. In many campaigns, the staff serving in Iowa relocate to another state as soon as the caucuses are over. Any claims they make on the policy, and thus any concrete benefits paid to them, may come at irregular times, either in all states, in some, or in none at all. The campaign, for its part, has no way of determining when those claims will be made or their dollar amounts.

In summary, the Gephardt campaign did not allocate health and life insurance benefits to the Iowa spending limit, because there was no suggestion in the Regulations or the Manual that this was required. This was obviously not a question which had never arisen before the Commission because the Manual made mention of health insurance benefits in one section, but no mention of them at all in any treatment of the spending limits. Additionally, the Committee could properly conclude that there was good and sufficient reason why allocation was not required.

4. Intrastate Travel and Subsistence Expenditures

In a number of instances, the Audit staff alleges that it identified persons who had incurred expenses in Iowa for five or more consecutive days in January or February of 1988. Thus, the Audit staff reasoned that under 11 C.F.R. § 106.2(b)(2)(iii), these Iowa expenses had to be attributed to the Iowa spending limit. These Regulations state clearly that intrastate travel and subsistence expenditures can only be attributed to a state's ceiling for persons working in a state for five consecutive days or more.^{1/}

Close review of some of these allocations indicate that for certain individuals there were only four consecutive days documented in Iowa, but the Audit staff nevertheless attributed a fifth day, and therefore a portion of these staff intrastate travel and subsistence expenditures, toward the Iowa spending limit. All of the staff members for whom a fifth day was attributed without documentation were members of the national campaign staff, and therefore their expenses would not otherwise be allocated to any state. Specifically, the Gephardt campaign challenges the Audit staff's attribution of

^{1/} Of course, the same five-day rule applies to proportions of staff salaries paid, as well as travel and subsistence, under 11 C.F.R. § 106.2(b)(2)(iii). This point is not relevant here, because there was no payroll made to Gephardt staff for the months of January and February 1988, the period in question.

portions of intrastate travel and subsistence expenditures for four members of the Gephardt campaign national campaign staff even though the documentation evidenced that they were only in the state for four consecutive days, rather than the requisite five.

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The Gephardt campaign assumes that the Audit staff attributed five days in a state to people for whom documentation shows only four nights because of the Compliance Manual's statement that "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). 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).

In response to this allocation, the Gephardt campaign asks that the Commission consider several issues. First, the Commission's formal regulations are notably silent (and ambiguous) on the point of how to measure a "day." Only the Compliance Manual addresses the point, and then with the caveat "generally." Perhaps this qualifier was added because of the

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danger stated above, that less than 96 hours could nevertheless be categorized as five days under the "calendar-day" rule.

The Gephardt campaign is sensitive to the fact that the Commission implemented a 24-hour period measuring guide on the five-day rule so as to avoid bald circumvention of the rule by staffers merely leaving a state for a few hours every fifth day. See Fed. Reg. 5225 (Feb. 4, 1983). Indeed, the rule was apparently designed to allow advance staff, who are properly categorized as a national expense, to be exempted from state spending limits. Id.

All of the people for whom we challenge the five-day allocations are of precisely the same "national" stripe as are advance staff. Specifically, we address the cases involving the following four national campaign staffers: Bill Carrick, the National Campaign Manager; Brad Harris, Gephardt's Personal Assistant and National Travel Aide; Debra Johns, the Traveling Press Secretary; and Ally Webb, the National Press Secretary. We have attached the documentation from which the Audit staff worked, as well as summaries of this documentation, in the Exhibits portion of this section. Like advance staff, these aides' expenses in the state are better categorized as national expenses than local ones, because their tasks are primarily national. Thus, staffers such as these are the very type of individuals for whom a general "calendar-day" rule would be

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inappropriate: Those who travel so frequently that adhering to a calendar-day rule would subsume the whole and render all travel by that individual allocable against a state limit. 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.

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In this regard, we also note that the Commission itself recognized, when explaining the Regulations, see 48 Fed. Reg. 5225 (Feb. 4, 1983), that although the Regulations "set forth the basic rule for allocating salaries and expenses, a candidate may demonstrate that a particular individual or group of individuals is in a state for five days or more to work on national campaign strategy." The tasks performed by these national staff even when in Iowa are more akin to the "national campaign strategy meetings" listed as an example of a national expenses in the Explanation and Justification than they are to tasks for the purpose of influencing voters in Iowa. Why, for example, would a national press secretary ever need to travel to a state, when the state had its own press secretary, unless to carry out relevant national press strategies?

Therefore, because the Commission itself sought to exempt national expenses from the constraints of state limits through the five-day rule, these staffers should also be removed

through an appropriate interpretation of a 24-hour period. 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 discussed in Section 1, reflecting the true national nature of these staff efforts.

For your convenience, we summarize the documentation of these four staffers here:

- For Bill Carrick, the Audit staff attributes to his activities five consecutive days when the documentation in January shows only that Carrick stayed in hotels in Iowa for four consecutive days; the same situation applies to February. Moreover, in February, the "fifth day" that the Audit staff includes is February 9th, the day after the caucuses. Surely time spent in a state after the caucus has taken place cannot be for the purpose of influencing that state's caucus voters.
- For Brad Harris, the attribution of his February allowances cannot stand when his hotel rooms were booked only for four days consecutively.

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- Traveling Press Secretary Debra Johns was in and out of Iowa repeatedly during the month of January, sometimes leaving the state only for a day or two between trips. However, this is a completely legitimate travel schedule for a traveling press secretary; the Audit staff is without foundation to infer the fifth day in between these stays (i.e., January 13, 16, 18, or 29). Thus, although Debra Johns admittedly spent a total of 16 nights in Iowa during January, none of the associated costs may be allocated against the limit because there is no basis for applying the five-day rule to require allocation.
 - For National Press Secretary Ally Webb, records indicate that she was in the state of Iowa for one day, left for 24 hours, and then returned for three days. The Audit staff has apparently inferred that Webb was in the state on January 4, the 24 hours between the one-day stay and the three-day stay.

Nor can the Gephardt campaign be reasonably expected to document in painstaking detail that these individuals were not in the state on the fifth day. The regulations cannot be read to require this burden on the campaign without potential First Amendment infringements because, extended to its logical conclusion, it translates into a requirement that every mem-

of the national staff be accounted for, day-by-day, for every day before an Iowa primary, even when there is no good cause to suspect attributable costs to a state. This would be an unacceptable result, and even campaigns prepared to undertake the task could not expect to fulfill it successfully in the high-velocity conditions of a campaign when travel plans change constantly. This problem is one of documentation after-the-fact, when it is impossible to know what facts would be important before the fact.

The total intrastate travel and subsistence that should be removed from the Audit staff's allocation to the Iowa spending limit under this reasoning amount to \$1,705.88.

Exhibit 4-A Summary

BILL CARRICK
National Campaign Manager

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/12/88	Holiday Inn, South Dakota	\$55.22
1/13/88	Hotel Savery, Des Moines	
1/14/88	Hotel Savery, Des Moines	\$151.35
1/15/88	Hotel Savery, Des Moines	
1/14/88	Stouffers, Cedar Rapids	\$88.29

Two rooms in two separate cities for 1/14/88 included.

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
2/5/88	Marriott	
2/6/88	Marriott	
2/7/88	Marriott	\$492.40
2/8/88	Marriott	

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Exhibit 4-B Summary

BRAD HARRIS
National Travel Aide
Personal Assistant to Cong. Gephardt

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
2/4/88	Hotel Fort, Des Moines	
2/5/88	Hotel Fort, Des Moines	\$224.34
2/6/88	Holiday Inn, Davenport	\$97.83
2/7/88	Holiday Inn, Waterloo	\$76.41

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Exhibit 4-C Summary

DEBRA JOHNS
Traveling Press Secretary

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/5/88	Hotel Savery, Des Moines	\$41.62
1/6/88	Village Inn, Cedar Rapids	\$26.40
1/7/88	Hotel Savery, Des Moines	\$25.48
1/8/88	Best Western, Sioux City	\$30.62
1/11/88	Best Western, Sioux City	\$134.68
1/12/88	Howard Johnson	\$42.80
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1/14/88	Stouffer, Cedar Rapids	\$43.85
1/15/88	Holiday Inn, Waterloo	\$65.40
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1/17/88	Marriott, Des Moines	\$152.20
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1/19/88	Hotel Savery, Des Moines	\$287.48
1/20/88	Hotel Savery, Des Moines	\$267.16*
1/21/88	Marriott, Des Moines	\$267.16*
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* Actual stay through the night of 1/22/88. Auditors included charges for this night, but did not extend her stay in Iowa through the 23rd.

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DEBRA JOHNS (continued)

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/27/88	Best Western, Newton	\$61.28
1/28/88	Hotel Savery	\$101.19
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1/30/88	Heartland Inn, Dubuque	\$34.34
1/31/88	Stouffer, Cedar Rapids	\$95.13

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Exhibit 4-D Summary

ALLY WEBB
National Press Secretary

<u>Date</u>	<u>Documentation</u>	<u>Amount</u>
1/3/88	Lilac Motel, West Union	\$31.08
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1/5/88	Hotel Savery, Des Moines	\$41.63
1/6/88	Village Inn, Cedar Rapids	\$26.40*
1/7/88	Hotel Savery, Des Moines	\$25.47

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c. Kennan Travel Expenses

Erroneous allocations by the Audit staff in Kennan Research's travel expenses also relate in part to the Audit staff's refusal to analyze the Kennan staff under the terms of

the five-day rule. Given that the Kennan consultants were clearly "persons working in a state," their expenses can only be attributable for periods in which they were in the state five days or more. However, as is shown on the attached documentation, the Audit staff attributed \$26,662.49 in travel to Iowa, when only \$447.77 could be so attributed under the five-day rule.

Exhibits account for all of the \$26,662.49 in travel expenses added to the Iowa spending limit by the Audit staff. This falls into two categories: \$7,865.18 in expenses, for which we previously had inadequate documentation; and \$18,797.31, in which we challenge the reasoning of the Audit staff's adjustments. We now can account for all expenses in both categories.

(1) Undocumented Travel Expenses. We have reviewed the auditors' tape of documented expenses prepared from the expense statements provided on March 6, 1989. With the help of the attached letters prepared by Kennan Research Comptroller Susan Worth during 1987 and 1988, we have been able to determine that additional expense statements not previously identifiable as 2004 documentation can now be removed from the auditors' total of \$7,865.18 in undocumented expenses. Through the reconciliation included in Exhibit 6-F, we have determined that only \$2,595.95 remains unsupported with expense statements

and/or Kennan Research letters. Detailed reconciliations and photocopies of documents are attached.

Two points of explanation must be made regarding what we have labeled "Missing Expense Statements." First, although we do not have formal expense vouchers for the listed expenses from Paula Child and Ed Reilly, we have letters from Kennan Research which adequately document these expenses absent formal statements. These letters, attached, show that Child's trip was to Washington, D.C. and thus should not go on the Iowa spending limit; and Ed Reilly's trip, although it was to Iowa, should have the airfare cost for interstate travel removed from the Iowa spending limit under 11 C.F.R. § 106.2(c)(4). Thus, only \$657.50 of this expense is allocable against the Iowa state limit.

Second, although we do not have detailed documentation of Ned Kennan's \$2,595.95 invoice, we note that the information we do have lists these as expenses for February 1988. The Iowa caucus was held on February 8, 1988, after which Ned Kennan immediately did a great deal of work for the Gephardt campaign in New Hampshire and southern states. At a minimum, this expense should be proportionately prorated so that only eight days in the month of February count against Iowa's spending limit. Although we acknowledge our burden of production under 11 C.F.R. § 106.2(a)(1) in presenting evidence that proves our

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allegation, when such documentation is unavailable in good faith, the Commission simply cannot, in fairness, assume that this entire expense was attributable to Iowa when even the circumstantial evidence does not support such a finding. Concerns of simple fairness dictate that the Commission must have a sound basis for disputing the Gephardt campaign's cost allocations, and, further, that the Commission at least generally consider responses made even in the absence of documentation.

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(2) Kennan Research Travel Related to Iowa. We have reviewed the schedule of 2004 travel allocable to Iowa prepared by the auditors, and dispute their total of \$18,797.31 for several reasons. First, travel clearly coded either 2181 or 2133 per the expense statements is also included in the auditors' schedule of 2004 travel allocable to Iowa, resulting in double counting in the amount of \$5,552.66. This double counting includes: (a) travel clearly coded 2133 on the expense statements, already charged to the Iowa spending list as part of the focus group interviews, yet again included in the schedule of 2004 Iowa travel; as well as (b) travel coded 2181 on the expense statements, not included as 2004 documentation in the auditors' calculation of documentation received, and therefore included in undocumented expenses, yet again included in the schedule of 2004 Iowa travel.

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Documentation of these errors, and summaries, are attached as Exhibit 6-G.

Of course, as explained in Section 6.a, supra, we emphatically dispute the allocation of any of the costs of the focus groups which comprise the 2133 code. Thus, we argue that these expenses erroneously double-counted by the Audit staff should be removed the Iowa adjustments twice, since they have been added on to the spending limit twice.

The rest of the expenses on the Audit staff's chart, with one exception that will be addressed, should be removed from the Iowa state limit either because they reflect costs of exempt interstate travel, under 11 C.F.R. § 106.2(c)(4); or because they reflect costs of travel to the state for periods of less than five days. Since, as delineated in Section 6.b supra, Kennan staff should be measured under the five-day rule these expenses cannot properly be attributed to Iowa.

Only one trip on this summary, by Ed Reilly in January 1988, lasted five days or more to Iowa. Of the \$1,115.77 attributed to this trip, \$668.00 was for interstate travel in the form of airfare to the state. Thus, only \$447.77 of this Iowa trip is properly allocable against the Iowa spending limit.

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To summarize, therefore, \$25,557.22 that the Audit staff improperly allocated against the Iowa spending limit should be removed.

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7. Telemarketing-Related Entities

a. Lewis & Associates Telemarketing, Inc.

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The Committee does dispute the allocability of costs for calls made by Lewis to wrong and disconnected numbers in Iowa. Only expenditures incurred by a candidate's committee for the purpose of influencing the nomination in that state are allocable to that state. 11 C.F.R. § 106.2(a)(1). If a call is not completed, because the phone number is wrong or disconnected, there is clearly no influence on the nominating process. Moreover, there is no benefit to the candidate in that state and, necessarily, costs incurred in making such calls should be allocated as a national expense without impact on any state limit.

Lewis called from a list of registered Democratic voters to identify voters favorable to Richard Gephardt and determine

the voters' opinions on a number of issues. If the call was actually answered by the voter, the call is considered completed. The cost of every one of these completed calls made in Iowa was allocated to the Iowa campaign.^{3/} However, any call made to a wrong or disconnected number, where the phoner made no contact with a voter and, therefore, had no influence on the nominating process in Iowa, is properly not allocable.

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The Committee is not contending that if a call was completed but "unsuccessful" that it is not allocable to the Iowa campaign. If, for example, the respondent indicated a clear preference for another candidate, or that he or she was moving from the state or would not be participating in the caucuses, or even hung up on the caller, these contacts were considered expenditures allocable to Iowa. But, if the phoner never even makes contact, it cannot be deemed activity influencing voters in the state.

The National Republican Senatorial Committee (the "NCSC"), in Matter Under Review 2282, argued that the costs for "nonresponsive solicitations" were not allocable to the candidates for which they were sent. But, in that case, letters were sent to prospective contributors who, having presumably received and

^{3/} As discussed above, the Committee acknowledges that 100 percent of these costs are allocable

possibly read them, did not to respond. As the General Counsel's Report points out, the solicitation letters contained an electioneering message. The contact was made with the targeted person, but produced no result, i.e., a contribution to the NRSC. Nevertheless, the candidate did benefit by at least getting the message into the recipient's household.

This case is quite different -- no contact is ever made with the voter. The point is not that the speech was ineffective, but that it was not made at all. There is no electioneering message, no opportunity at all to influence the voter or benefit the candidate.

Moreover, the Commission would certainly not allocate to a state limit telephone scripts drafted at some expense to the campaign, but never used, or media spots produced for use in a particular state, but never shown. A call made to a disconnected or wrong number is not distinguishable.

In this case, the cost of wrong or disconnected calls is not a built-in expense of the overall marketing program or the price charged for each call. Section 2 of the Lewis contract clearly distinguishes between the cost per completed call (75 cents) and the charge for a wrong or disconnected call (20 cents). If the contract instead charged 85 cents per completed call, thus building into the rates the cost of calls where no

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contact was made, the exact amount of wrong or disconnected calls would be impossible to determine. But here charges for these calls is precisely specified. See Exhibit 7-A, "Summary". The Committee has a record of exactly how much was spent on Lewis Telemarketing activity which had no influence on the nominating process in Iowa.

The Committee does not claim that the costs incurred for calls to wrong and disconnected numbers need not be paid, but simply that their purpose is not to influence Iowa voters. Therefore, they are non-allocable campaign costs.

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

Voter Contact Services ("VCS") contracted with the Gephardt campaign to provide voter file products and services, and it did so with the understanding that it would be the exclusive supplier of these services to the Committee for its duration, both primary and general. Thus, the first paragraph of the Agreement states: "VCS is hereby retained and appointed as the principal vendor and provider to the client of computerized registered voter file products and services." This arrangement meant that VCS intended a contractual arrangement for the long term as well as for the near term, and the fees that it charged reflected both objectives. Certain of these fees, related to long-term objectives which would encompass all activities after

Iowa and projects unrelated to Iowa, were properly excluded by the Committee from the spending limit.

The way in which this contractual relationship worked is specifically apparent from the balance of the Agreement between the Committee and VCS. Thus, in paragraph 5 of the Agreement, VCS agreed that it would charge "no access fees" to the client for state voter files or special files and committed to perform initial standard conversions and enhancements on voter tapes supplied by the client . . . at no charge to the client," provided that VCS would have unrestricted right to use such voter tapes or copies for clients other than presidential candidates competing with Dick Gephardt for the presidential nomination. There were specific charges for specific products, for example, for "format and record conversion, and matching fees and keypunching fees," and for other "standard products" in accordance with a suggested retail price list attached to the Agreement. Accordingly, certain products were specifically charged, and when so charged, the costs should be allocated to the appropriate state limit.

Most significant, 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 task 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 very substantial one) on the commitment that it had made to the Gephardt campaign. Attached as Exhibit 7-B is an invoice which reflects specific charges for specific products, but concludes with a "Fee proportionate to card product," which reflects this 100 percent mark-up. The Committee understood that it was paying a high price in support of the exclusive arrangement that it 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.

There is nothing improper about this arrangement and, in fact, it was one which VCS made with its own financial benefit in mind. As the Committee understood it, had the contract with VCS focused exclusively on Iowa, the fee schedule would have been significantly different in character. Indeed, the fees charged would have been lower, narrowly related to the actual services provided in the state in question (Iowa). It was appropriate, therefore, for the Committee to account for a fee intended to secure a financial return to VCS for its commitment to a national campaign as national overhead, rather than allocate this fee to the Iowa spending limit.

Contrary to the Audit staff's conclusion, the Linn County Barbeque script did include a fundraising solicitation at question #15. Because the report states that the core script including only questions #1 thru 16 is fundraising in nature, and thus requires no allocation to Iowa, the same result follows for the Linn County script. Both scripts had precisely the same fundraising component, question #15. Therefore the Linn County script is not allocable to the Iowa campaign.

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9. Media Expenditures

The auditors have developed an argument that Gephardt's principal media advisors, Doak and Shrum, Inc. ("Doak and Shrum"), agreed to "waive" a 15 percent agency commission on Iowa media buys in order to assist the campaign in "circumventing" the Iowa state limit. This produces a recommendation that 15 percent of the total buy be added to the limit. This reasoning is absolutely incorrect -- factually and legal incorrect -- on virtually every count.

The original Agreement between the campaign and Doak and Shrum did call, as the auditor notes, for the payment of both consulting fees and an agency commission. There is no mass the charging of an agency commission. Doak and Shrum's arrangements with its various clients are very different from the other. In some instances there is significant emphasis placed on the payment of a commission; in other cases there is not, and the consulting fee assumes central importance.

Doak and Shrum's choice of different agreements for different types of clients, in different situations, is highly unusual for a business. It is particularly common in relatively new businesses such as Doak and Shrum which, at the time, had offered media production and placement services.

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only 1986. The affidavit provided by David M. Doak, President of Doak and Shrum, makes particular note of this point; but it is for some reason ignored by the auditors. The affidavit states specifically that the payment of a commission as well as consulting fees is "one of a number of approaches [it] has followed in structuring contracts for clients, not the only one." Also: ". . . Doak and Shrum regards time-buy commissions as no more than one method of payment, appropriate to some contracts involving the purchase of media time, but not to all." These statements were brushed aside by the auditors, without explanation and without reason.

While Doak and Shrum can supply examples of these varying financial arrangements it has concluded for different clients, it is reluctant to place these examples on the permanent written record for obvious proprietary and competitive reasons. The Audit staff and members of the Office of General Counsel are invited, however, to meet with officers of Doak and Shrum and review in detail these other arrangements, provided that there is some agreement on confidentiality in the treatment of this information.

The Audit staff's refusal to address this point is compounded by other analytical errors of roughly the same type. Doak and Shrum has noted that it amended its original Agreement with the Committee in response to certain of the

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difficulties it had experienced in representing a "dark horse" campaign. These were (in the words of the Doak Affidavit) "the heavy demands of the campaign and cash flow problems which resulted in delayed and unpaid performance"; and also, the demands of the campaign which caused problems for the attraction and management of other clients. In the exercise of perfectly reasonable business judgment, Doak and Shrum requested an amendment in early 1987 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.

There was one additional concern of Doak and Shrum which prompted the request for an amendment to the original agreement. Toward the end of 1987, though the first payment of matching funds was rapidly approaching, the Gephardt campaign suffered (in the words of the Washington Post) a "loss of altitude." This was in part because of perceived weaknesses in his performance in a televised debate, on December 1, 1987, among Democratic presidential candidates. It was widely reported thereafter and perceived within the campaign that Gephardt had lost much of the ground earlier gained in Iowa

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This loss of momentum led (as it so often does) to an adverse impact on fundraising, loss of apparent interest on the part of potential recruits into the campaign, and widely voiced doubts within the press about Gephardt's continued viability as a candidate.^{1/}

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 the 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 auditor, however, has not analyzed any of the facts that he asserts in pages 14-18 of the Interim Audit Report in the proper context. He also mishandles the relevant facts. One such error stands out. He is particularly disturbed to learn that in December of 1987 the Committee paid Doak and Shrum in excess of \$600,000, only to have Doak and Shrum return \$300,000 (at the Committee's request) on December 31, 1987" This suggests to the auditor that Doak and

^{1/} As noted in Section 1, while it might be pretended that this was not the case, the principal cause for this premature burial of Richard Gephardt was the belief that he would not fare well in Iowa and by not faring well there, would lose his ability altogether to sustain his presidential campaign.

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Shrum could not have been concerned about the financial solvency of the campaign or it would never have risked the return of \$300,000 on some unenforceable commitment by the campaign to repay it. What the auditor fails to recognize is that the \$300,000 that Doak and Shrum returned to the campaign did not represent compensation to Doak and Shrum. Instead it was funds provided by the campaign to Doak and Shrum for deposit into a escrow account from which media buys were made in the name of the campaign. See David M. Doak Affidavit. Doak and Shrum would make buys only on this basis: with funds on-hand provided by the Gephardt campaign. In fact the escrow account into which Gephardt for President funds were deposited for this purpose was clearly denominated as such in a Doak and Shrum account in Century National Bank. This is a copy of the check:

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DOAK, SHRUM & ASSOCIATES		722
GEPHARDT FOR PRESIDENT		
1200 ETOM COURT PH. 202-333-7901		
WASHINGTON, D.C. 20007		10-163/24
PAY TO THE ORDER OF		\$
		DOLLARS
Century NATIONAL BANK OF WASHINGTON, D.C. 20008		
FOR		
⑆000722⑆ ⑆054001534⑆ 001 001728 9⑆		

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As the "Gephardt for President" designation denotes, immediately below the name of the firm, this was a holding account for media buy advances of the campaign. It was not a checking account of Doak and Shrum from which funds were withdrawn by Doak & Shrum for compensation to the firm.

Accordingly, when the campaign requested the return of the \$300,000. Doak and Shrum had no pecuniary interest in any response other than compliance. Essentially it had no choice in the matter, because the funds were the Gephardt campaign's, not Doak and Shrum's. Also, as Doak and Shrum noted in a letter to the Committee Comptroller dated August 8, 1988, Doak and Shrum had no need for the funds in the immediate future, because it did not anticipate making any additional media buys from December 31, 1987 through January 4, 1988. Exhibit 9. And had it been required to make such expenditures, the campaign would have been required, in turn, to provide the money or lose the buys. Doak and Shrum never advanced for this purpose and media buys could only be made if the Gephardt campaign had provided funds in advance. The eventual "return" by the Gephardt campaign of the funds for its intended purpose was self-enforcing.

The errors of fact in the Report run on. appears influenced in some fashion by the Commission's ostensibly improved financial fortunes in December.

January of 1988. He notes that in December, 1987 the Committee obtained an increase in its bank line of credit; and in the following month a substantial payment of matching funds, \$1,737,216.22, was received. This suggests to the auditor that Doak and Shrum had no reason for concern that it would not be paid on the original contract, and no motivation for an amendment.

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E.: this again wholly misapprehends the nature of the Gephardt campaign in December of 1987 and early January of 1988. The campaign understood for some time that the matching funds would become due, but with fundraising in decline and Gephardt's political position in peril this long awaited disbursement of \$1.7 million would hardly suggest financial durability for the campaign over the long run.^{2/} The Committee had, moreover, already entered into a considerable number of obligations, including bank loans against which \$1.7 million in matching funds would have to be in substantial part applied. How those matching fund entitlements -- much less the \$400,000 increase in a line of credit -- could have been expected to allay Doak and Shrum's concerns in these circumstances is inconceivable.

^{2/} By long run is meant a period of perhaps 30 - 60 days nationally.

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Then there is the matter of the total compensation paid to Doak and Shrum by the campaign from January 1, 1988 to March 25, 1988, which is the entire length of the active Gephardt campaign. The auditor notes that the campaign paid Doak and Shrum \$1.7 million. It does not note very clearly the significance of this finding for the rest of its analysis. Is the thought here that the Gephardt campaign was more solvent than the campaign or Doak and Shrum now pretend, thus making a sham of the December 1987 amendment? On this point, as on others, the real world has passed by the Audit staff completely. Gephardt's position in December of 1987 and his standing and fundraising prospects in mid-February were worlds apart. December of 1987 were the dark days of the campaign; by mid-February, Gephardt was the winner of Iowa and second -- and closing fast -- in New Hampshire in polling conducted at the time.

When the campaign had ended, it is apparent that Doak and Shrum had struck for itself a remarkably good deal. As the auditor notes, it was paid a significant sum of money for its consulting services. And their strategic and media advice brought this relatively new firm national recognition: the key commercial it had fashioned for Gephardt -- the "Hyundai" advertisement -- catapulted the firm into the top ranks of

10. Jefferson-Jackson Dinner

It is the opinion of the Audit staff that the expenditures associated with the Jefferson-Jackson Dinner were made for the "sole" purpose of influencing Iowa voters. The auditors ignore the affidavits and materials that the Committee submitted which establish that the Dinner was used to launch a fundraising campaign that continued for months after the event, and even after the Iowa caucuses were concluded. The staff views the events subsequent to the Dinner -- the December First: Iowa First parties, and the telemarketing and direct mail programs -- as "distinctly different efforts". And it believes that although the Dinner was used to prepare for and build toward these events, the small amount raised on the day of the Dinner demonstrates that it cannot qualify as a fundraising effort. This conclusion follows from both an unduly pinched reading of the Commission Regulations governing the fundraising exemption, as well as from a lack of familiarity with the fundraising process.

Section 106.2(c)(5)(ii) of the Regulations states that exempt fundraising expenditures are those expenses associated with the solicitation of contributions. Certain fundraising expenses are identified as examples of costs that may be included, but neither this regulation, nor the Compliance Manual, suggests in any way that this is an exhaustive list.

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American media strategists.^{3/} Far from there being anything questionable in this business arrangement, it was a reasonable and well-crafted arrangement in the circumstances, contributing greatly to the fortunes of Doak and Shrum. The auditor's conclusions to the contrary cannot stand on any fair reading of the facts.

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^{3/} The Washington Post, for example, ran a glowing front-page Style section article, featuring Doak and Shrum, the "Gephardt Team." See Exhibit 9-C.

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its considerable effort and investment into a fundraising effort.

As explained by the Committee in its original submission, and confirmed in sworn affidavits, the fundraising strategy had two objectives: (1) to enlist supporters of Richard Gephardt to serve as and recruit hosts for house parties in connection with NBC's presidential debate, and (2) to expand the fundraising base in Iowa for future fundraising programs, including telemarketing and direct mail activities planned for the Spring. The Gephardt Finance Director stated in his affidavit:

As Finance Director, I saw the J-J Dinner, and the large number of Richard Gephardt supporters who planned to attend, as an opportunity for the Committee to broaden its Iowa contributor-base. In fact, as it turned out, we did obtain a list of the substantial number of Iowa J-J Dinner attendees which was used in subsequent fundraising efforts conducted by the Committee through direct mail or telemarketing. This was a group with a history of involvement in politics which held much promise for future fundraising. In that sense, the J-J Dinner presented a unique fundraising opportunity.

See Exhibit 10-A.

In fact, the Finance Director, whose sole responsibility was to raise funds for the campaign, attended the J-J Dinner. There would be absolutely no reason for him to attend a "political event" unless it had a key fundraising component.

exempt fundraising costs. The term "expenses associated with the solicitation of funds" is far broader in scope than the auditors' interpretation would admit and it would include the costs incurred by the Committee in order to launch a successful fundraising campaign in Iowa.

It is not at all unusual in fundraising, in fact quite standard, to establish initial contact with prospective contributors without an actual solicitation. Rather this first contact lays the groundwork for future giving, by encouraging commitment by the prospective contributor to the candidate. This "courting" is often accompanied by an invitation to the potential donor to join the "team," in this case the fundraising network of the Gephardt campaign, rather than a bald appeal for contributions on a "one-time" basis.

This is the process that the fundraising staff of the Gephardt campaign was attempting to initiate at the Dinner. The Committee has stated to the Audit staff that this was not the original focus of its planning for the Jefferson-Jackson Dinner. It had expected to concentrate efforts on busing supporters to the event to participate in a "straw poll" which had, in years past, held considerable significance in the course of campaigns, for voter persuasion. When the Iowa Democratic Party cancelled the straw poll, the Committee attempted to

opportunities with direct mail and telemarketing. The Committee targeted Iowa and Missouri for direct mail and telemarketing fundraising, and used the lists built through the Dinner and the America First: December First parties to launch these fundraising efforts. It is not at all unusual for political committees to pay as much as \$1.50 per name for a list for fundraising purposes, and even more for a list of tested donors. The list generated at the Dinner and added to and refined from the America First: December First parties were unquestionably a valuable asset to the campaign; far more valuable than a commercial list purchased from a vendor and used for the purpose of raising funds for the Campaign.

The fundraising results demonstrate the value of the Committee's efforts to recruit and build fundraising support in the state. The number of contributors doubled from about 20 contributors per week in November, 1987 to approximately 40 contributors during the week of the America First: December First parties, then shot up to 190 in a two-week period in January, 1988. In April, 1988 two months after the initial caucus, 1,096 individuals contributed, principally in response to the telemarketing efforts using Dinner lists. Financial support in Iowa went from \$2,390 in November, 1987 to \$12,833 for December, 1987 and January, 1988. The returns increased still more in April, 1988 to \$16,749 in one month during the telemarketing campaign. See Charts 1-3, Fundraising Results.

13 / 21 63 4 / 0

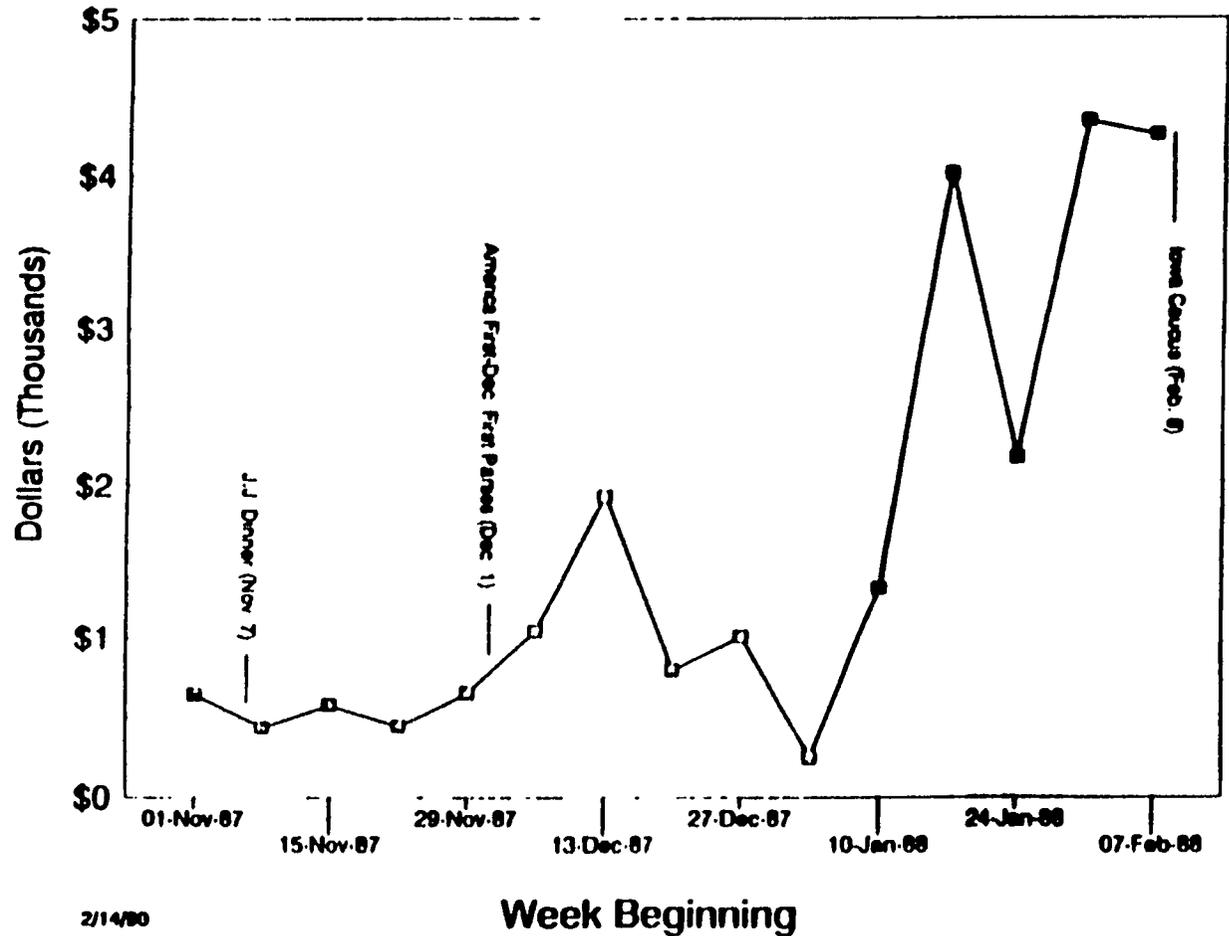
While quite different in scale and program, the Dinner occurred during a time that the campaign staff was using virtually every organized event of the campaign to recruit hosts for the America First: December First parties. See Exhibit 10-B, Organizing Schedule for America First: December First. Therefore, it is not surprising that the staff saw the Dinner as a golden opportunity to build fundraising support, particularly in a state where Richard Gephardt was rapidly developing a receptive audience. In fact, with the elimination of the straw poll, there would have been in campaign management terms no other conceivable justification for making this level of financial investment in an event of this nature.

The Committee submitted to the Audit staff the materials for the America First: December First parties which were distributed to each participant at the Dinner. The America First: December First parties were one of the principal fundraising activities of the entire campaign. It was planned over the course of three months and drew on a vast amount of campaign resources. See Exhibit 10-B. Therefore, the financial commitment of over \$20,000 to recruit hosts and financial contributors at the Dinner was not unreasonable or disproportionate to the expectation of success.

In addition, the Committee also viewed its expenditures for the Dinner as an investment for future fundraising

Gephardt for President Committee Iowa Contributions by Week

CHART 2

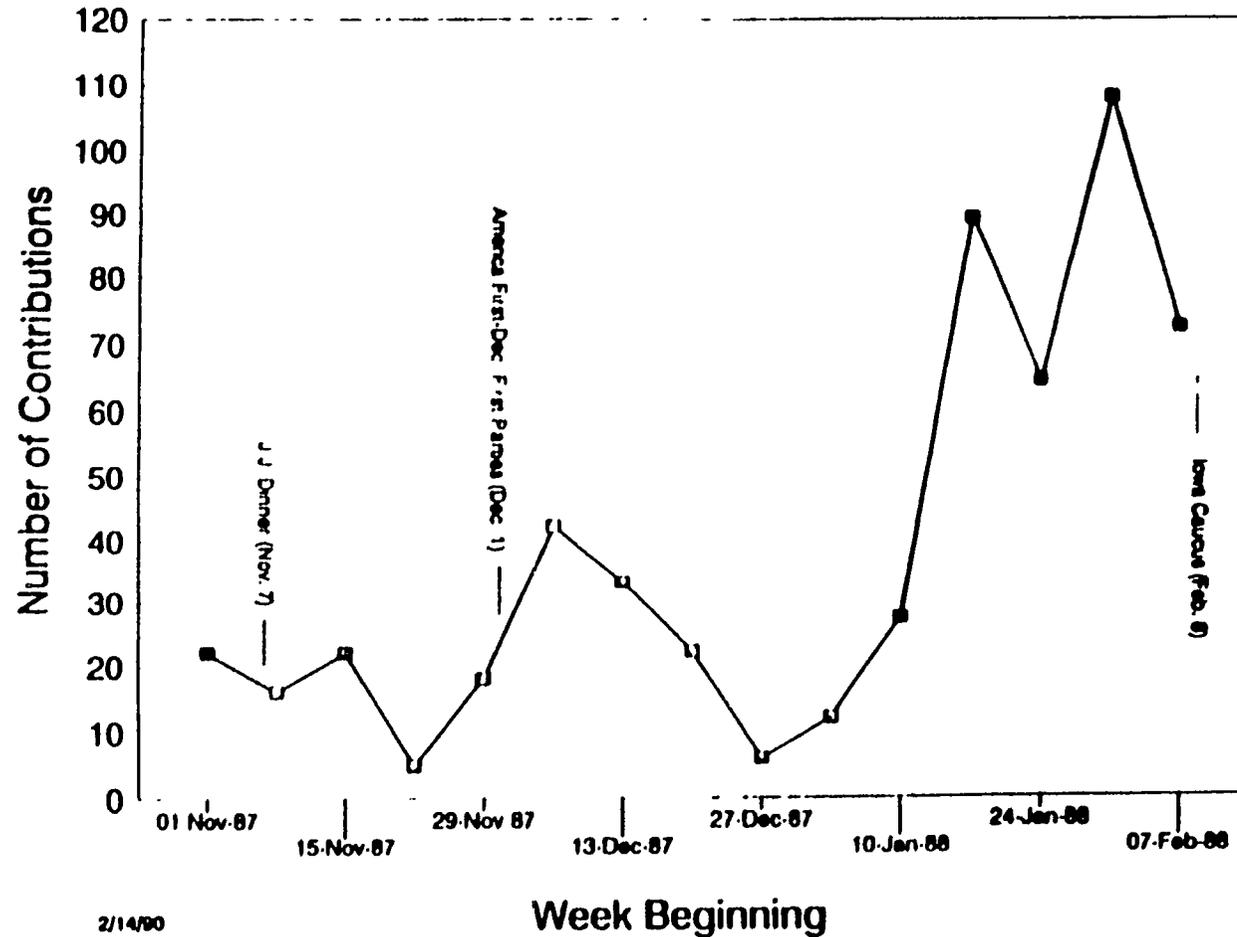


2/14/88

2 1 7 6 1 1 1 5 1 3 1 2

Gephardt for President Committee Iowa Contributions by Week

CHART 1



2/14/90

4 232

83

- 123 -

3 / 4 / 5 / 6 / 7 / 8 / 9

1
3
/

1
6
4
/

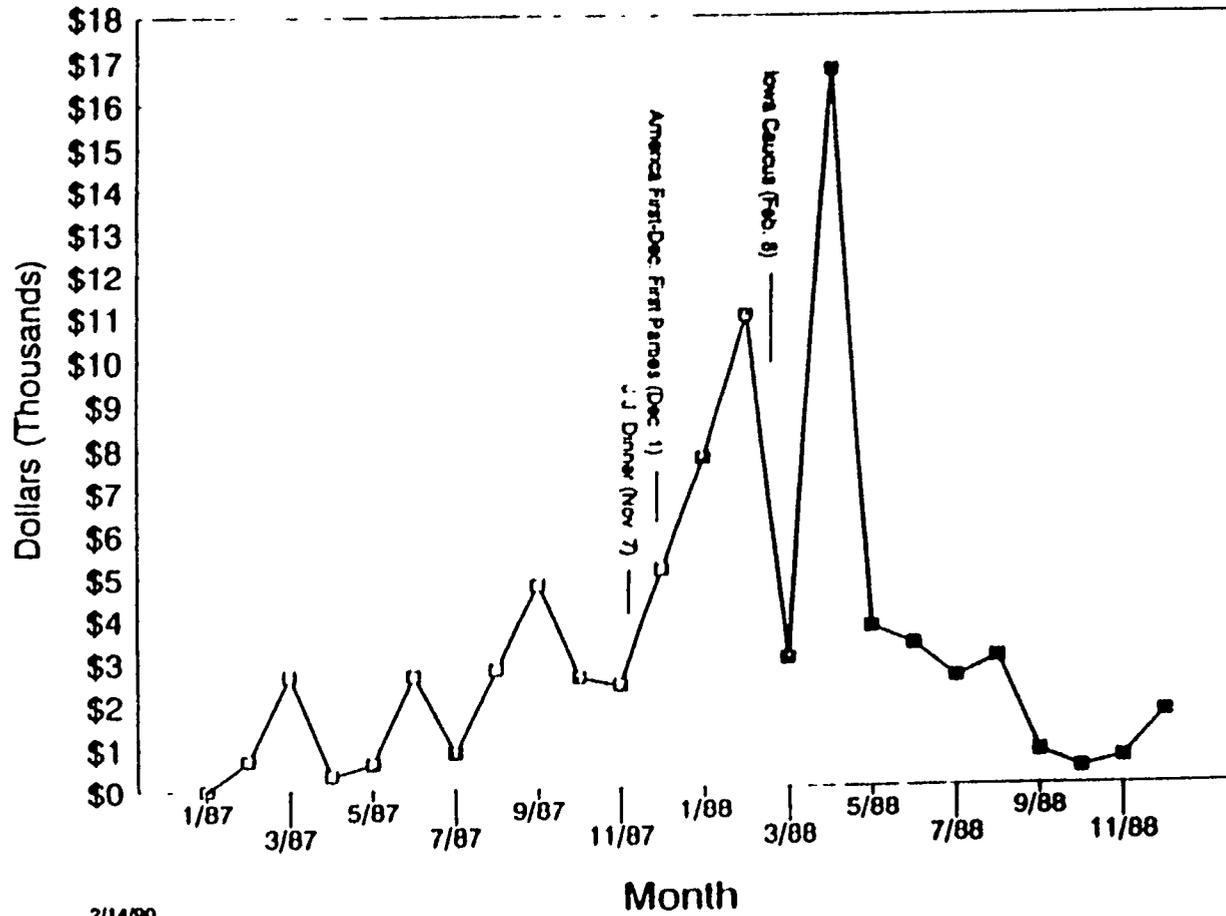
4

Fundraising is a long, and rarely an immediately rewarding process, particularly for a political candidate who is scarcely known, and has to build from scratch a base of popular, as well as fundraising support. As a consequence, opportunities are sought to court contributors for hope of future return. In addition, occasionally a campaign will choose to reward supporters by entertaining them for past or future work. The Gephardt campaign saw the Dinner as a perfect opportunity for these efforts. In a state with a longstanding reputation for difficult fundraising, the Gephardt campaign clearly succeeded in attracting contributors.

All fundraising events conceivably influence voters, in the way direct mail fundraising has a persuasive as well as fundraising impact. This fact does not change the fundamental fundraising character of the efforts which brings the fundraising exemption into play. The Audit staff's conclusion that the "sole" purpose, or even primary purpose, and that was to influence voters and the subsequent fundraising events were "distinctly different" is simply not borne out by the facts.

Gephardt for President Committee Iowa Contributions by Month

CHART 3



2/14/90

85-42

9 / 7 / 9 1

930701 65476

~~134~~ =
IT

23070165477

Exhibit B

4



JULY 14, 1988

GEPHARDT CAMPAIGN
555 NEW JERSEY AVE. N.W.
SUITE 265
WASHINGTON, D.C. 20001

RE: HELICOPTER SERVICE

09/26/87	1.6	GEBHARDT/GREY SUMMITT MISSOURI
11/09/87	3.8	OMAHA NEBRASKA
11/10/87	7.9	OMAHA/DUNLOP IOWA/KNOXVILLE IOWA/DES MOINES
01/20/88	1.3	CHRISTY PARK/ST. LOUIS/GEBHARDT GROUP
01/20/88	1.0	CHRISTY PARK/ST. LOUIS/GEBHARDT GROUP

TOTAL HOURS : 5.7 @ \$495.00 \$7771.50

HELICOPTERS

July 11, 1990

Gephardt Campaign
ATTN: Jackie Forte
80 F St. N.E.
8th Floor
Washington, D.C.
20001

Dear Ms. Forte,

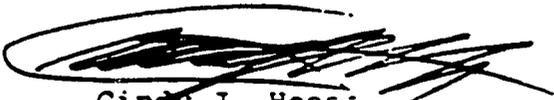
Per your request regarding a breakdown of the 7.9 hours flown on November 10 1987, they are as follows:

OMAHA TO DUNLOP IOWA	1.1
DUNLOP TO CLARINDA-	1.3
CLARINDA TO KNOXVILLE IOWA-	1.6
KNOXVILLE IOWA TO DES MOINES-	.8
DES MOINES IOWA TO ST. LOUIS	3.1

TOTAL	7.9

If further information is needed please don't hesitate to call.

Sincerely,


Cindy J. Hess
Corporate Secretary, Helicopters Inc.

JUL 18 '91 9:13 FROM DENVER CARE CTR AF

PAGE.002



Pitney Bowes

Customer Care Center
Copier Systems Division

JULY 19, 1990

ATTN: JACKIE FORTE, CONTROLLER
GEPHARDT FOR PRESIDENT, CMTE. 1988

PLEASE BE ADVISED, THAT INV.149155 ON ACC: 1508-7757-88-4, WAS VOIDED BECAUSE
SHIPMENT WAS NEVER, RECEIVED.

SINCERELY

CUSTOMER CARE REPRESENTATIVE
C. DALE HUNT

0
7
6
1
1
3
1

EXPENDITURE / CHECK REQUEST

S. W. E. M. K.

COST CENTER Scheduling/Advance DATE 8-15-88

REQUESTED BY Maria Varner

DATE TO BE PAID _____ AMOUNT \$7,771.50

PAYEE Helicopters Inc.

ADDRESS 8227 Gravois
St. Louis MO 63123

PURPOSE OF EXPENDITURE (DETAILS) helicopter service

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 10/12/88 CHECK # 000673 \$ 2,000.00

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # <u>0-2-311-3012</u>	\$ <u>2,883.38</u>
VOUCHER # _____	ACCOUNT # <u>0-2-411-3012</u>	\$ <u>1,930.50</u>
VOUCHER # _____	ACCOUNT # <u>0-2-431-3012</u>	\$ <u>2,957.62</u>
VOUCHER # _____	ACCOUNT # _____	\$ _____

TOTAL \$ 7,771.50

APPROVED: _____
FOR: 91-4

2377016432

MAR 11 1988

Salesman 6235	Branch 032	Comm. C-P	Invoice Date 03-02-88		Invoice No 149155
Purchase Order Number SUSAN			Ship Date 02-03-88	Customer Account No 1508 7757 82	
Quantity	Consumable Supply Products	List Price	Discount	Total	
30	8.5X11 BOND461-1	1,230.00	100.00	937.00	
Handling - Shipping		State Tax	County Tax	City Tax	Total Taxes And Delivery
		37.20			37.20
AMOUNT PAYABLE ▶					974.20

*Rec'd Pitney Bowes
11/24/89*

27036 MAY 87

If you have any questions regarding this invoice or if your name or address has changed please contact your local Pitney Bowes Branch Office
at **402-397-0110**

We certify that goods or services covered by this invoice were produced and performed in compliance with the Fair Labor Standards Act of 1938 as amended. To receive credit, stubs must be returned to your local Pitney Bowes office within 90 days of the date shipped.

Thank you for using Pitney Bowes Products and Services

PO BOX 14373 OMAHA NE 68124-2304
To insure proper credit, please return payment stub with check

GERHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

*Admin
of Det.*

COST CENTER Administration DATE 3-11-88

AMOUNT PAID _____ AMOUNT 967.20
PAID TO: Phney Bowes *Hand to:*
ADDRESS P.O. 38390 P.O. Box 14
Louisville, KY 40233 Unionville, NE

PURPOSE OF EXPENDITURE (DETAILS) ACT # 1508-7757-88-4

DOCUMENTATION ATTACHED:

RECEIPTS _____	INVOICE _____
PURCHASE ORDER _____	ORDER FORM <u>✓</u>
COST ESTIMATE _____	CONTRACT _____
PROPOSAL _____	

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE _____ CHECK # _____ \$ _____

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

TOTAL \$ _____

237 / 0165483

H

U.S. WEST COMMUNICATIONS U.S. WEST COMMUNICATIONS

1160879520
Pay to the order of
GEPHARDT FOR PRES
POLITICAL STAFF
PO BOX 5508
BISHARK ND 58502

Payable through
FIRST NATIONAL BANK
OMAHA, NE

Date 06/12/91
Void 6 months after issue
Pay \$ *****2.24*

U.S. WEST COMMUNICATIONS
David L. Laube
Authorized Signature

⑆ 1160879520 ⑆ ⑆ 104901076 ⑆ 09 10066 8 ⑆

U.S. WEST
COMMUNICATIONS ©

RR 1160879523 76-107/952

Date 06/12/91

1160879523
Pay to the order of
GEPHARDT FOR PRES
POLITICAL STAFF
PO BOX 5508
BISHARK ND 58502

Payable through
FIRST NATIONAL BANK
OMAHA, NE

Void 6 months after issue
Pay \$ *****10.72*

U.S. WEST COMMUNICATIONS ©
David L. Laube
Authorized Signature

⑆ 1160879523 ⑆ ⑆ 104901076 ⑆ 09 10066 8 ⑆

3 7 1 6 4

DEPOSIT TICKET

15-157
840

GEPHARDT FOR
PRESIDENT COMMITTEE, INC.



DATE 02/07/91 DOLLARS CENTS

CURRENCY

COIN

CHECKS LIST EACH SEPARATELY

U.S. West	8.03
U.S. West	37.48
U.S. West	3.10
U.S. West	34.87
U.S. West	270.41
U.S. West	34.87
U.S. West	21.13
U.S. West	29.90
U.S. West	36.18
U.S. West	37.48
U.S. West	17.78
U.S. West	34.87
U.S. West	29.93
U.S. West	21.98
U.S. West	11.87

opfeats / opening 01 002015 01 13

AMOUNT PAID

629.88

TOTAL FROM OTHER SIDE
OR ATTACHED LIST

TOTAL 629.88

Credits and other items are reserved for deposit
unless in the possession of the Uniform Commercial
Code or any applicable collection agreement

2370160436

3 1 / 0 1 6 5 4 3 7

Account	5-266-1988	668	Date	06/12/91
1986088	Sept 96	Swg for	U.S. for	Interest
TOTAL REFUND	MINUS UNPAID BAL	.00	NET REFUND	2.26

② 511 Lowell St
Des Moines

U.S. West Communications (formerly known as Northwestern Bell Telephone Company) is making refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U.S. West Communications, the Iowa Utilities Board and the Office of Consumer Advocates.

Your refund is attached. However, customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.
• Please detach this statement before presenting draft for payment •

Account	5-266-9868	663	Date	06/12/91
1986088	Sept 93	State for	U.S. for	Interest
TOTAL REFUND	MINUS UNPAID BAL	.00	NET REFUND	10.72

Sept 93 - 11/10/93 - 10.72
2-8-93
333.11

U.S. West Communications (formerly known as Northwestern Bell Telephone Company) is making refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U.S. West Communications, the Iowa Utilities Board and the Office of Consumer Advocates.

Your refund is attached. However, customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.
• Please detach this statement before presenting draft for payment •

07 00 -

USWEST
COMMUNICATIONS ☺

RR 1160714517 76-107/1059

Date 09/11/90

Void 6 months after issue

Pay to the order of **1160714517**
SEPHARDY FOR PRES
KMARILYN WEIKE
925 HIGH WESS
DES MOINES IA 50309

Pay \$ *****21.98*

USWEST COMMUNICATIONS ☺

Payable through **FIRST NATIONAL BANK**
OMAHA, NE

Post Office Box 200
 Post Office, Missouri

David R. Lube

Authorized Signature

⑆ 1160714517⑆ ⑆ 1049010761⑆ 09 10066 8 ⑆

237/016488

Account	5-682-8306	068	Date	09/11/90					
Year	1984-88	Service	20.33	State Tax	.83	U.S. Tax	.62	Interest	
TOTAL REFUND		MINUS UNPAID BAL		NET REFUND					
21.98		.00		21.98					

*© S. M. K. S.
 Attention*

U S West Communications (formerly known as Northwest Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Affairs.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customer had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before presenting draft for payment. •

USWEST
COMMUNICATIONS

RR 1160778461

76-107/101

Date 09/18/90

Valid 6 months after issue

Pay \$ *****11.87*

Pay to the order of **B** 1160778461 7
GEPHARDT FOR PRES
CHARILYN WITKE
925 HIGH ST RM 9M
DES MOINES IA 50309

USWEST COMMUNICATIONS

Payable through **FIRST NATIONAL BANK**
OMAHA, NE

For Cashier State Bank
 For Cashier, Missouri

Paul R. [Signature]

Authorized Signature

⑆ 1160778461 ⑆ ⑆ 1049010761 ⑆ 09 10066 8 ⑆

137/016549

Account	⁷⁴ 732-3190	088	Date	09/18/90
1984888	Service 11.08	State Tax .56	US Tax .56	Interest
TOTAL REFUND	MINUS UNPAID BAL	NET REFUND		
11.87	.00	11.87		

Ⓢ 23: W S. S
 State side

U S West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1989. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocates.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please attach this statement before presenting draft for payment •

4
99 3..

EXPENDITURE / CHECK REQUEST

COST CENTER Missouri DATE 7-17-88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT 3079.77

PAYEE GRU Printing Co 307.98

ADDRESS 9576 Grandis Ave
St Louis, MO 63123

PURPOSE OF EXPENDITURE (DETAILS) printing

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 8-11-88 CHECK # 002788 \$ 307.98

VENDOR # 039999 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-042-2302 \$ 307.98

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 307.98

123 4 312

GRW PRINTING CO.

INVOICE

(314) 631-3440

SHIP TO

Gephardt for President
Des Moines, IA

BILL TO

Dick Gephardt for President
304 Pennsylvania Ave. S.E.
Washington, DC 20003

INVOICE DATE		INVOICE NO	
02/09/88		7871	
CUSTOMER ORDER NO		OUR ORDER NO	
Joyce Aboussie			
CUSTOMER NO		SALESPERSON	
5199		GRW	
DATE SHIPPED	SHIP VIA	FOB	
02/03/88	PURULATOR	ST. LOUIS	
TERMS			
DUE UPON RECEIPT			

- GRAPHIC CRAFTSMEN**
- TYPESETTING**
- Layout and Design
 - Computerized Typesetting
- CAMERA**
- Negatives
 - Positives
 - Transparencies
 - Platemaking
- PRINTING**
- Offset
 - Thermography
- BINDERY**
- Folding
 - Cutting
 - Collating
 - Stapling
 - Perforating
 - Scoring
 - Drilling
 - Spiral Binding
 - Mailing Service

QUANTITY	DESCRIPTION	PRICE
1	Set type for flyers and posters	135.00
20000	Cards printed for Iowa Caucus	894.00
1	Clean-up charge for blue ink	30.00
1	14 x 20 Halftone for poster	75.00
2500	Fosters printed in 2 colors	925.00

ER

A 1,019.19 IA
1,163.35 MO/FR

\$ 2,182.54

PLEASE REMIT TO

GRW PRINTING CO.
9528 GRAVCOIS AVENUE
ST. LOUIS, MISSOURI, 63123

Thank You

SUB-TOTAL	2059.00
HANDLING CHARGE	0.00
SALES TAX	123.54
GRAND TOTAL	2182.54

GRW PRINTING CO.

"Graphic Craftsmen"



9526 Gravois Avenue
St. Louis, Missouri 63123
(314) 631-344C
FAX (314) 631-0020

June 4, 1991

Jackie Forte
Gephardt For President Committee
80 F. Street, NW
8th Floor
Washington, DC 20001

Dear Jackie,

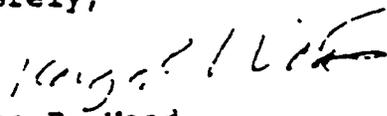
As per your request, the following is a detailed explanation of the printing charges itemized on invoice #7871:

Typesetting for flyers	\$	67.50
Typesetting for posters		67.50
Card/Flyers printed for Iowa Caucus		894.00
Clean-up for blue ink used on posters		30.00
14 x 20 Halftone for this poster job		75.00
Posters in 2 colors for MO Super Tuesday		<u>925.00</u>
		\$ 2,059.00

As I told you on the phone, we were asked to ship the order of 20,000 cards to Des Moines, Iowa, but we were too late for the UPS driver's pick-up and the entire job was delivered to the Gephardt Headquarters here in St. Louis. Therefore, 6% Missouri Sales Tax was applied to this invoice.

I hope that this clarifies things for you.

Sincerely,


George R. Wood

GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER Exempt Legal & Accounting DATE 05/20/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT 31.48

PAYEE Kinko's Copies

ADDRESS 611 Pennsylvania Avenue.. SE

Washington, DC 20003

PURPOSE OF EXPENDITURE (DETAILS) Copies of FEC report

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 05/20/88 CHECK # 002702 \$ 31.48

VENDOR # 049515 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-0-035-2302 \$ 31.48

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 31.48

3 3 1 6 5 4 1 3

? :

230/0165494

Kline's Copies
971 Pennsylvania Ave., N.E.
Washington, D.C. 20003
(202) 547-0421

2009

May 3,

1950

Ellis's Copies

104.43

One Hundred Four And 43/100

FEDERAL CITY

NOT NEGOTIABLE

RECEIVED IN PROCEEDINGS NO. 0010: 010

3070165425

L

139

GEPHARDT FOR PRESIDENT
COMMITTEE, INC.
304 PENNSYLVANIA AVE., S.E.
WASHINGTON, D.C. 20003

544-8088

2679

April 21, 1988

15-157
540

PAY
TO THE
ORDER OF

04-25-88 004 01 0525

505372094

Kinko's Copies

\$ 85.86

Eighty Five and 86/100

DOLLARS



FOR

Signature M. L...

#002679# 1:0540015761# #01 002015 01# #0000008586#

2-22
PAY ANY BANK P.E.G. 2-22
F.R.S. BALTIMORE MD 052000278
04-25-88 004 01:0525 505373094

22 A

06:15 902511

3 1 1 4 6

GEHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER LTA DATE 5/2/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 104.43

PAYEE Kinko's Copies

ADDRESS _____

PURPOSE OF EXPENDITURE (DETAILS) Copy - FEC Reports -
Amendments

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 5/3/88 CHECK # 002189 \$ 104.43

VENDOR = 049515 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT = G-2-015-2202 \$ 104.43

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT = _____ \$ _____

VOUCHER # _____ ACCOUNT = _____ \$ _____

TOTAL \$ 104.43

13160477

GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER Legals&Accounting DATE 4/21/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT 85.86

PAYEE kinko's copies

ADDRESS 611 pennsylvania Avenue., SE

Washington, dc 20003

PURPOSE OF EXPENDITURE (DETAILS) Copies of FDC Report

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 04/21/88 CHECK # 002679 \$ 85.86

VENDOR # 049515 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-1-015-2302 \$ 85.86

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 85.86

3
4
6
1

4
127 32

kinko's

Special Inctr / Pncing

2 copies _____%

Waiting

D/S 25 50 75 100 125 150 175 200 225 250 275 300 325 350 375 400 425 450 475 500

1 hr.

Paper Reg.

1350006

SB VB Cover _____

Key Op _____

Counter Arnie

Name J. Grace

23070165499

1 ad

POTOMAC ELECTRIC POWER COMPANY
1000 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20000

CREDIT COLLECTION ORDER

VE
33

ORDER NO
7107-2491-1-0-01

NAME

DEPARAT FOR PROTECT

SERVICE ADDRESS

308 PENN AV SE WASH DC

WASHINGTON DC 20003-1107

TOTAL ARREARS & DEPOSIT

PAYMENT

\$ *****

\$ 401.56

0-UNRECEIVED
1-DEPOSIT
2-CREDIT ADVISE

COLLECTED BY J.F.L.

DATE 12/1/76

CONSUMER'S RECEIPT

33101000

125 4

GEORGE W. BUSH PRESIDENT

2677

WASHINGTON, D.C. 20543

April 19,

88

PEPCO

401.56

Four Hundred One And 56/100



Acct. 0107849119

NOT NEGOTIABLE

⑆03227⑆ ⑆034001576⑆ ⑆0⑆ 002035 0⑆⑆

2370165501

4
- 426 322



Aviation Charter International

7142 MIDCOUR ST. - HOUSTON, TEXAS - 77061 • (713) 644 4111

Invoice no. 10761

Date 3/10/88

Trip date 3/09/88

Station

Trip itinerary

Type Aircraft

Jets

Dick Gephardt Campaign
304 Pennsylvania Ave. S.E.
Washington DC

Saint Louis - Augusta - Florence ago -
Greenville - Columbia

Lead Passenger: Congressman Gephardt

Total hours / miles	miles	
Charge per mile		16810.10
Hourly charge		
Landings		1200.00
Transportation tax		1527.96
Crew expenses		650.00
Layover charge		250.00
Fees & Permits		
Catering		
Miscellaneous	short leg	100.00

Amount due

Net due 14 days

Comments

\$

20538.06

4

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Admin. DATE 4/19/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 401.56

PAYEE PEPCO.

ADDRESS P.O. Box 2812
Washington, DC 20067

PURPOSE OF EXPENDITURE (DETAILS): utility / HQ

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 4/19/88 CHECK # 002677 \$ 401.56

VENDOR # 069895 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT = 0-2-021-1502 \$ 401.56
VOUCHER # _____ ACCOUNT = _____ \$ _____
VOUCHER # _____ ACCOUNT = _____ \$ _____
VOUCHER # _____ ACCOUNT = _____ \$ _____

2370165005

100'31-2

10:11 86. 11 27.



Aviation Charter International

7942 INDEPENDENCE ST - HOUSTON, TEXAS - 77061 • (713) 644 4111

Invoice no. 10760	Date 3/10/88	Trip date 3/8/88
Attention-	Trip Itinerary	Type Aircraft
Dick Gephardt Campaign 304 Pennsylvania Ave. S.E. Washington DC	Miami - Saint Louis	Jets
	Lead Passenger: Congressman Gephardt	

Total hours/ miles	miles	
Charge per mile		14181.00
Hourly charge		
Landings		500.00
Transportation tax		1254.49
Crew expenses		750.00
Layover charge		250.00
Fees & Permits		
Catering		
Miscellaneous		

Amount due	Net due 14 days
Comments	16935.49

3/10/88

THU 10:54

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Admin. DATE 4/12/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT # 484.92

PAYEE Chippewa First Financial Bank

ADDRESS 3803 S. Broadway
St. Louis MO 63118

PURPOSE OF EXPENDITURE (DETAILS) OP / Interest Expense

DOCUMENTATION ATTACHED:

RECEIPTS _____	INVOICE _____
PURCHASE ORDER _____	ORDER FORM _____
COST ESTIMATE _____	CONTRACT _____
PROPOSAL _____	

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA Operating Acct.

CHECK DATE 4/12/88 CHECK # wire transfer \$ 484.92

VENDOR # 113934 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # <u>111111 9723</u>	\$ <u>484.92</u>
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

TOTAL \$ 484.92

CHIPPEWA FIRST FINANCIAL BANK
3803 SOUTH BROADWAY
ST LOUIS MISSOURI 63118

DECEMBER 31, 198

GEPHARDT FOR PRESIDENT COMM.
LOUIS B SUSSMAN, ATT. IN FACT
304 PENNSYLVANIA AVE., SE
WASHINGTON DC 20003

EMPLOYER ID NUMBER 52149860

DEAR CUSTOMER
WE AT CHIPPEWA FIRST FINANCIAL BANK WOULD LIKE TO TAKE
THIS OPPORTUNITY TO THANK YOU FOR YOUR SUPPORT DURING THE
PAST YEAR. WE LOOK FORWARD TO YOUR CONTINUED PATRONAGE IN
THE YEAR TO FOLLOW.

THE INFORMATION BELOW WILL ASSIST YOU IN PREPARING YOUR
TAX RETURNS. IN ACCORDANCE WITH FEDERAL REGULATIONS, THE
INFORMATION CONTAINED ON YOUR FORM 1099-INT, 1099-R, AND
ANY INTEREST OVER \$600.00 PAID ON REAL ESTATE SECURED LOANS,
WHICH ARE INDICATED BELOW, WILL BE FURNISHED TO THE I.R.S.
THE BANK IS NOT REQUIRED TO REPORT OTHER LOAN INTEREST PAID.

TYPE	ACCOUNT NUMBER	INTEREST YOU PAID	REPORTED TO IRS	LOAN COLLATERAL DESCRIPTION
CL	9111529001	484.92	NO	SEC AGRMNT / PERSONAL GUARANTY

SINCERELY,

CLIFFORD A SCHMID
CHIEF EXECUTIVE OFFICER

65507
311

1/30/88 - end

WEEK ENDING

NAME	HOURS						TOTAL HOURS	RATE	EARNINGS		
	STP	STN	TRN	TRM	TRM	TRM			REGULAR	OVERTIME	OTHER
ANDERSON, Jennifer		④ 7.3			⑤ 7.3		13.8	✓			
ARINELLO, Diane				③ 6.3	④ 6.3		25.2	✓			
ARVIDSON, Cadi	③	⑦ 7.3	④ 7.3				30	✓	28.90		
ASHORN, Sandra		5.3	① 7.3	③ 6.3			18.9	✓			
BARSON, Kristen			① 7.3	④ 6.3			37.0	✓			
BOUCHIER, Dorothy		7.3	① 7.3	④ 7.3	④ 6.3		45.8	✓			
BURNHAM, Christina		① 7.3	⑤ 7.3	④ 7.3			105.8	✓	112.20		
BUTTON, Cindy		5.3	⑤ 7.3	④ 7.3			37.1	✓			
CADY, Paul		5.3	⑤ 7.3	④ 6.3			18.6	✓			
CANNEY, Ronald		5.3	⑤ 7.3	④ 7.3			41.0	✓			
CLARK, Jonathan		① 7.3		④ 7.3			21.9	✓			
CLOUTER, Margaret		① 7.3	④ 7.3				33.2	✓			
TOTALS		5.3	④ 7.3	④ 7.3	④ 7.3		471.8				

Diane M...

69
♦♦♦♦133.00♦♦

One hundred thirty three and 00/100♦♦♦♦♦♦♦♦♦♦

FEDERAL CITY
KENTON, KY

NOT NEGOTIABLE

⑈00⑈837⑈ ⑈004001570⑈ ⑈01 007015 01⑈

3 1 6 2



~~EXPENDITURE / CHECK REQUEST~~
EXPENDITURE / CHECK REQUEST

COST CENTER New Hampshire DATE 5-16-89

REQUESTED BY Maria Vorner

DATE TO BE PAID _____ AMOUNT \$133.00

PAYEE Diane Arianello

ADDRESS 6 Hazel Avenue

Nashua, NH 03062

PURPOSE OF EXPENDITURE (DETAILS) Casual labor -

NH phone bank

SSN 073-64-1121

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 5-16-89 CHECK # 2837 \$ 133.00

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ _____

Diane Arinello
6 Hazel Ave
Nashua, N.H.

\$133-

0306Z

Worked in Davis

claimed, worked
for.
Kate Hanson

37/0165511

USWEST
COMMUNICATIONS ©

RR 1160425042 76-107/9066

Date 09/07/90

Valid 6 months after issue

Pay to the order of **GERHARDT FOR. PRESI
X. MARILYN WITKE
925 HIGHMEZZ
DES MOINES IA 50309**

Pay \$ *****8.03*

USWEST COMMUNICATIONS ©

Payable through **FIRST NATIONAL BANK
OMAHA, NE**

Pay Contact Bank Name
Pay Contact Address

David R. Leube

Authorized Signature

⑆1160425042⑆ ⑆1049010761⑆ 09 10066 8 ⑆

0301016512

Account	310 263-1060	998	Date	09/07/90
1984-88	Service 7.50	State Tax .30	U.S. Tax .23	Interest
TOTAL REFUND	MINUS UNPAID BAL		NET REFUND	
8.03	.00		8.03	

Ⓢ
309 N 45
Jester-

U S West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocate.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before presenting draft to cashier •

113 4 323

USWEST COMMUNICATIONS

RR 1160425035

Form 229C
76-107/1059

Date 09/07/90

Valid 6 months after issue

Pay \$ *****3.10*

Pay to the order of B 1160625035.

GEHARDT FOR PRES
CHARILYN WITKE
925 HIGH ST RM 9M
DES MOINES IA 50309

USWEST COMMUNICATIONS

Pays through L FIRST NATIONAL BANK
OMAHA, NE

First National Bank
First National Bank

David L. Laube

Authorized Signature

⑆ 1160425035⑆ ⑆ 104901076⑆ 09 10066 8 ⑆

Account	3-233-6386	116	Date	09/07/90
Year	1986-88	Service	2.89	State Tax
				.12
			U.S. Tax	.09
			Interest	
TOTAL REFUND	3.10	MINUS UNPAID BAL	.00	NET REFUND
				3.10

U S West Communications (formerly known as Northeastern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocacy.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before presenting draft for payment •

13 / 0160114

4

USWEST COMMUNICATIONS

RR 1160425039 76-107/1066

Date 09/07/90

Valid 6 months after issue

Pay to the order of **1160425039**
SEPHARDY FOR PRES
SHARILYN WITKE
925 HIGH MEZZ
DES MOINES IA 50309

Pay \$ *****37.48*

USWEST COMMUNICATIONS

Payable through **FIRST NATIONAL BANK**
OMAHA, NE

FOR CASH OR DEPOSIT ONLY
 PER CASHIER'S RETURN

David L. Laube
 Authorized Signature

⑆1160425039⑆ ⑆104901076⑆ 09 10066 8 ⑆

Account **2-236-5380** 155 Date **09/07/90**

Year	Service	State Tax	US Tax	Interest
1984-88	35.01	1.64	1.06	
TOTAL REFUND	MINUS UNPAID BAL	NET REFUND		
37.68	.00	37.68		

*(u) 627 236-5380
 WITKE*

U S West Communications (formerly known as Northeastern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocacy.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customer had service during the refund period.

If you have any questions, please call your business office

• Please detach this statement before presenting cash to cashier •

1009111111

~

USWEST COMMUNICATIONS

RR 1160672756

78-107/1051

Date 09/11/90

Valid 6 months after issue

Pay to the order of **SEPHARDY FOR PRES**
PO BOX 3508
BISMARCK ND 58502

Pay \$ ****270,61*

USWEST COMMUNICATIONS

Payable through **FIRST NATIONAL BANK**
OMAHA, NE

Pay to Cashier, State Bank
 Pay to Cashier, Attention

David R. Leube

AUTHORIZED SIGNATURE

⑆ 1160672756 ⑆ ⑆ 104901076⑆ 09 10066 8 ⑆

1371169516

Account	⑆ 5-246-1988	648	Date	09/11/90
1984-88	Service	State Tax	U.S. Tax	Interest
	252.72	10.09	7.60	
TOTAL REFUND	MINUS UNPAID BAL	NET REFUND		
270.61	.00	270.61		

② *511 Paid to
 Mr. Mann*

U.S. West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U.S. West Communications, the Iowa Utilities Board and the Office of Consumer Advocacy.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before presenting draft for payment. •

USWEST COMMUNICATIONS

RR 1160425068 76-407/1050

Date 09/07/90

Void 6 months after issue

Pay to the order of **1160425068**
GERHARDT FOR PRES
MARILYN WETKE
DES MOINES IA 50309

Pay \$ *****36.87*

USWEST COMMUNICATIONS

Payable through **FIRST NATIONAL BANK**
OMAHA, NE

Pay Office Use Only
 Not Cash Withdrawal

David L. Laube
 Authorized Signature

⑆ 1160425068 ⑆ ⑆ 104901076 ⑆ 09 10066 8 ⑆

Account	^A 4-323-8006	065	Date	09/07/90
Year	Source	State Tax	U.S. Tax	Interest
1986-88	32.58	1.31	.98	
TOTAL REFUND	MINUS UNPAID BAL		NET REFUND	
34.87	.00		34.87	

*1500 - W
 (handwritten notes)*

U S West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocacy.

Your refund is estimated. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before presenting draft for payment •

USWEST COMMUNICATIONS

RR 1160626041 76-107/1086

Date 09/11/90

Valid 6 months after issue

Pay to the order of **B** 1160626041 **7**
 GEPHART FOR PRES
 MARILYN WITKE
 925 HIGH-MEZZ
 DES MOINES IA 50309

Pay \$ *****21.13*

USWEST COMMUNICATIONS

Payable through **L** FIRST NATIONAL BANK
 OMAHA, NE

Port Callers State Bank
 Port Callers, Missouri

David L. Leube

Authorized Signature

⑆ 1160626041 ⑆ ⑆ 1049010761 ⑆ 09 10066 8 ⑆

Account	⁵¹⁵ 8-292-2176	069	Date	09/11/90
1986-88	Specs 19,55	State Tax .99	U.S. Tax .59	Interest
TOTAL REFUND	MINUS UNPAID BAL	NET REFUND		
21.13	.00	21.13		

*207 Stanton Ave
 Ames*

U.S. West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U.S. West Communications, the Iowa Utilities Board and the Office of Consumer Advocacy.

Your refund is calculated. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before preparing draft for payment •

107 320

USWEST COMMUNICATIONS

RR 1160514158 76-107/105

Date 09/10/90

Valid 6 months after issue

Pay to the order of B 1160514158

GEPHARDT FOR PRES
 MARILYN WITKE
 925 HIGH ST RM 9H
 DES MOINES IA 50309

Pay \$ *****36.18*

USWEST COMMUNICATIONS

Payable through L FIRST NATIONAL BANK
 OMAHA, NE

Not Cashier Bank Name
 Not Cashier Address

David R. Loube
 Authorized Signature

⑆ 1160514158 ⑆ ⑆ 104901076 ⑆ 09 10066 8 ⑆

Account	34-363-6767	063	Date	09/10/90					
Year	1986-88	Service	33.80	State Tax	1.36	U.S. Tax	1.02	Interest	
TOTAL REFUND	36.18	MINUS UNPAID BAL	,00	NET REFUND	36.18				

U.S. West Communications (formerly known as Northwestern Bell Telephone Company) is pleased to refund to customers who had telephone service from June 1, 1986 to June 30, 1988. The refund is the result of an agreement between U.S. West Communications, the Iowa Utilities Board and the Office of Consumer Advocacy.

Your refund is attached. Individual customer refunds vary depending on the type of service and length of time customers had service during the refund period.

If you have any questions, please call:

• Please detach this

• business office.

• before presenting draft for payment •

105^H 32

USWEST
COMMUNICATIONS 

RR 1160714533

Form 1081
76-107/1081

Date 09/11/90

Valid 6 months after issue

Pay to the order of 1160714533
GEPHARDT FOR PRES
8 MARILYN WITKE
925 HIGH-MEZZ
DES MOINES IA 50309

Pay \$ *****36,87*

Payable through
FIRST NATIONAL BANK
OMAHA, NE

USWEST COMMUNICATIONS 

David L. Laube

Authorized Signature

⑆ 1160714533 ⑆ ⑆ 1049010761 ⑆ 09 10066 8 ⑆

Account	5: 753-9119	070	Date	09/11/90
1984 ^{Year} -88	Source 32.38	State Tax 1.31	U.S. Tax .98	Interest
TOTAL REFUND 36.87	MINUS UNPAID BAL .00		NET REFUND 36.87	

Michelle Town

U S West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocate.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before presenting draft for payment •

USWEST
COMMUNICATIONS ©

RR 1160514213 76-40719761

Date 09/10/90

Valid 6 months after issue

Pay \$ *****17.78*

Pay to the order of

1160514213
GEPHARDT FOR PRES
MARILYN WITKE
925 HIGH ST RM 9M
DES MOINES IA 50309

USWEST COMMUNICATIONS ©

Payable through

FIRST NATIONAL BANK
OMAHA, NE

Not Cashier, State Bank
Not Cashier, National

David R. Laube
Authorized Signature

⑆ 1160514213 ⑆ ⑆ 1049010761 ⑆ 09 10066 8 ⑆

Account 756-4887 090 Date 09/10/90

Year	Service	State Tax	US Tax	Interest
1984-88	16.61	.67	.50	
TOTAL REFUND	MINUS UNPAID BA.	NET REFUND		
17.78	.00	17.78		

Jefferson St
Wagon

U S West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocacy.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

Please detach this statement before presenting ora

103 4 32

USWEST
COMMUNICATIONS 

RR 1160714635 76-407/1061

Date 09/11/90

Valid 6 months after issue

Pay to the order of B 1160714635 7
GEPHARDT FOR PRES
MARILYN WIKKE
025 HIGH MEZZ
DES MOINES IA 50309

Pay \$ *****29,90*

USWEST COMMUNICATIONS 

Payable through L
FIRST NATIONAL BANK
OMAHA, NE

Part of this check is payable to the order of the payee.

David L. Lube

Authorized Signature

⑆ 1160714635⑆ ⑆ 104901076⑆ 09 10066 8 ⑆



Account	252-3151	089	Date	09/11/90
Year	Source	State Tax	U.S. Tax	Interest
1984-88	27.68	1.39	.83	
TOTAL REFUND	MINUS UNPAID BAL	NET REFUND		
29,90	.00	29,90		

*See it
now it.*

USWEST Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Federal Communications Commission, the Federal Trade Commission, the Federal Energy Regulatory Commission, the Federal Reserve Board and the Office of Consumer Advocates.

The refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

- For any questions, please call your business office.
- Please detach this statement before presenting draft for payment.

LL

USWEST COMMUNICATIONS

RR 1160514148 76-107/9081

Date 09/10/90

Valid 6 months after issue

Pay \$ *****29.93*

Pay to the order of **GEPHARDT FOR PRES
X MARILYN WITKE
925 HIGH-MEZZ
DES MOINES IA 50309**

USWEST COMMUNICATIONS

Payable through **FIRST NATIONAL BANK
OMAHA, NE**

Part Cashier State Bank
Part Cashier, Missouri

David L. Laube
Authorized Signature

⑈ 1160514148⑈ ⑆ 104901076⑆ 09 10066 8 ⑈

Account 4-354-8880 096 Date 09/10/90

1986-88	Service 27.97	State Tax 1.12	U.S. Tax .86	Interest
TOTAL REFUND	MINUS UNPAID BAL	NET REFUND		
29.93	.00	29.93		

*220 E. Burlington
Iowa City*

U.S. West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U.S. West Communications, the Iowa Utilities Board and the Office of Consumer Advocates.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

• Please detach this statement before presenting draft for payment •

520 E Burlington Iowa City

COL H

USWEST
COMMUNICATIONS 

RR 1160514200 76-1071056

Date 09/10/90

Valid 6 months after issue

Pay to the order of B 1160514200 7
 GEPHARDT FOR PRES
 MARILYN WITKE
 925 HIGH ST RM 9M
 DES MOINES IA 50309

Pay \$ *****37.68*

USWEST COMMUNICATIONS 

Payable through L FIRST NATIONAL BANK
 OMAHA, NE

J For Cashless State Draft For Cashless Withdrawal

 Authorized Signature

⑆1160514200⑆ ⑆1049010761⑆ 09 10066 8 ⑆

0317116524

Account	314-556-6535	156	Date	09/10/90
1984 Year	Service	State Tax	US Tax	Interest
88	33.01	1.67	1.08	
TOTAL REFUND	MINUS UNPAID BAL		NET REFUND	
37.68	.00		37.68	

② 1722 Central
 Schubert

U S West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications, the Iowa Utilities Board and the Office of Consumer Advocates.

Your refund is attached. Individual refunds vary depending on the type of service and the amount of time customers had service during the refund period.

If you have any questions, please call our toll-free office.

Please detach this statement and use it as a receipt for payment.



IMAGEEXPRESS

332 Pennsylvania Ave., S.E.
Washington, D.C. 20003
544-COPY (2679)

Date May 2 1988

Name _____

Address _____

SOLD BY	CASHIC B B	CHARGE/ENACCT.	DUDE DETS	PAID BY
1				
2				
3				
4				
5				
6				
7				
8				
Customer Order No				Rec'd By

13311 COPIES — 6199
12
13 TAX 42
15 TOTAL 741
16
7
8

KEEP THIS SLIP FOR REFERENCE

1 5 / 1 6 2 0

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2307016526



USWEST
COMMUNICATIONS

RR 1160714475 76-107/1069

Date 09/11/90

Valid 6 months after issue

Pay to the order of **1160714475**
GEHARDT FOR PRES
W. MARILYN MITKE
925 HIGH-MEZZ
DES MOINES IA 50309

Pay \$ *****34.87*

USWEST COMMUNICATIONS

Payable through **FIRST NATIONAL BANK**
OMAHA, NE

Pay Customer Bank Name
 Pay Customer Address

David L. Lube

Authorized Signature

⑈1160714475⑈ ⑆104906076⑆ 09 60066 8 ⑈

13019165527

Account 5-424-0113 064 Date 09/11/90

Year 1984-88 Service 32.38 State Tax 1.34 U.S. Tax .98 Interest

TOTAL REFUND 34.87 MINUS UNPAID BAL .00 NET REFUND 34.87

2
1.56
misc.

U S West Communications (formerly known as Northwestern Bell Telephone Company) is issuing refunds to customers who had telephone service from June 1, 1984 to June 30, 1988. The refund is the result of an agreement between U S West Communications and the Iowa Utilities Board, Office of Consumer Advocates.

Your refund is attached. Individual customer refunds vary depending on the type of service and the length of time customers had service during the refund period.

If you have any questions, please call your business office.

Please detach this statement before presenting draft for cash.

12-12-07
66

1:2038
16-46

~~Supplies~~

1:2038
16-46

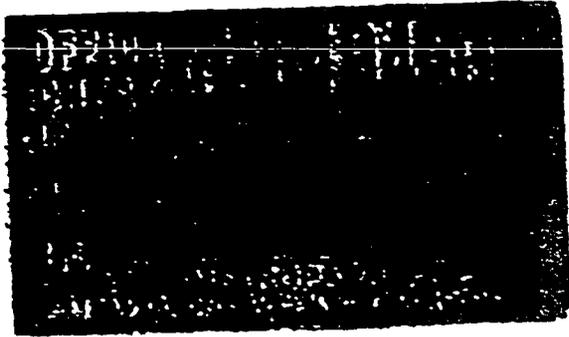
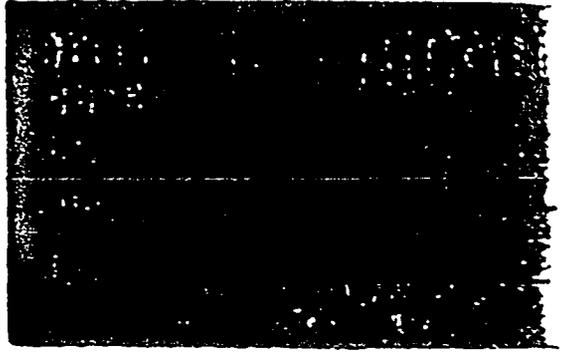
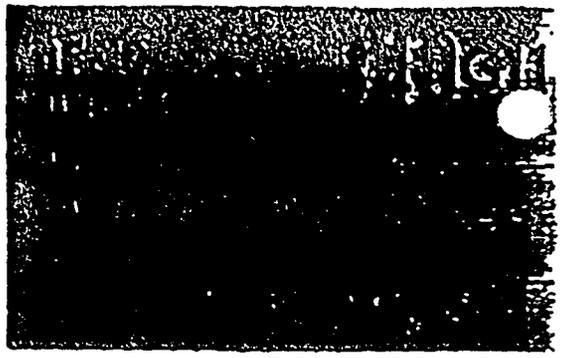
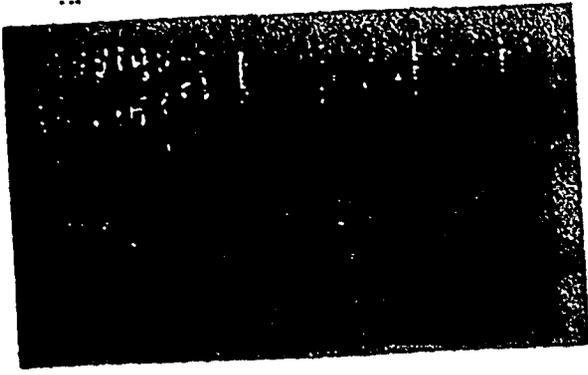
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2307016530



1 0 0 0 1

S PRINTING SERVICE

AVENUE, SOUTHEAST, WASHINGTON, D. C. 20003



• Invitations
• Stationery
• Copies...

Lincoln 4-6400

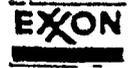
CASH SALE RECEIPT

Date: 1/29 1988

70 COPIES

Amount	2	-
Tax		12
Total	2	10
Deposit		
BALANCE		

Cash



CAPITOL HILL

8321179999 : 042288 7042560

339 PA AVE SE
WASHINGTON DC

ITEM	QTY	PRICE INC. TAX	AMOUNT	
ITEM			6.00	
TOTAL			6.00	

I agree to pay Shell or assigned Exxon Corporation, U.S.A. is division of Exxon Corporation; the total amount shown subject to the terms of the applicable agreement or the issuer of the card presented and hereby acknowledge and accept of such agreement BUYER'S SIGNATURE

APR

00500



CAPITOL HILL

8321179999 : 032788 7740235

39 PA AVE SE
WASHINGTON DC

ITEM	QTY	PRICE INC. TAX	AMOUNT	
ITEM			5.00	
TOTAL			5.00	

I agree to pay Shell or assigned Exxon Corporation, U.S.A. is division of Exxon Corporation; the total amount shown subject to the terms of the applicable agreement or the issuer of the card presented and hereby acknowledge and accept of such agreement BUYER'S SIGNATURE

X

PARKING RECEIPT

DATE 10/27/87

\$ 4.50

COLONIAL PARKING
3222 M STREET NW
WASHINGTON DC

12/13/87

4.10 CASH 10.00
1.40 CASH 10.00
CASH 10.00

TAXES 0.53

CASHIER SIGNATURE [Signature]

ALLRIGHT CASH RECEIPT

DATE 11-0-87
RECEIVED \$ 2.00
BY L. H. [Signature]

FORM 57 (REVISED FEBRUARY 1979)

ALLRIGHT CASH RECEIPT

DATE 10-13-87
RECEIVED \$ 3.00
BY [Signature]

FORM 57 (REVISED FEBRUARY 1979)

TAXICAB RECEIPT
(FOR A RADIO CAB CALL RADIO IN US)
636-1600

DATE 10-12-87 TIME

REG'D FROM

TRIP START

TRIP END

FARE

6.00

REGULAR

RADIO

RUSH HOUR

SNOW FEMER

CONTINUT

TIP

TOTAL

AMOUNT PAID 32

CASH

CENTRAL PARKING SYSTEM

DEPOSIT SLIP Receipt

Date: 10/21/87

Cashier: [Signature]

Amount: 6.00

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Leads & Accounting DATE 5/9/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 477.59

PAYEE Arquette M. L...

ADDRESS 3416 Curtis Dr., #103
Suitland, MD 20746

PURPOSE OF EXPENDITURE (DETAILS) Reimbursement for copying
supplies, parking, Postage/Delivery, Gas & Meeting

DOCUMENTATION ATTACHED:

RECEIPTS _____	INVOICE _____
PURCHASE ORDER _____	ORDER FORM _____
COST ESTIMATE _____	CONTRACT _____
PROPOSAL _____	

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 5/9/88 CHECK # 002683 \$ 477.59

VENDOR # 028934 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # <u>0-2-035-2302</u>	\$ <u>98.33</u>
VOUCHER # _____	ACCOUNT # <u>0-2-035-2402</u>	\$ <u>223.37</u>
VOUCHER # _____	ACCOUNT # <u>0-2-035-3032</u>	\$ <u>85.00</u>
VOUCHER # _____	ACCOUNT # <u>0-2-035-2102</u>	\$ <u>45.29</u>
	<u>0-2-035-4022</u>	<u>25.60</u>
	TOTAL \$	

TOTAL 477.59

EXPENDITURE / CHECK REQUEST

COST CENTER LFA DATE 4/10/89

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT ~~#~~ 168.19

PAYEE Suzanne M. Foster

ADDRESS 3416 Curtis Dr. #163

Suitland, MD

PURPOSE OF EXPENDITURE (DETAILS) Reimbursement for reproduction;
office supplies, Meeting - food

DOCUMENTATION ATTACHED:

RECEIPTS X
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 4-10-89 CHECK # 2803 \$ 168.19

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ _____

3770165548

NOT NEGOTIABLE
#07297# :04L901-75# #01 00201 : 01#

M.S. Ginn Company
E STREET Store 11001 PENN AVE NW 202-783-6262

SCOTT L.

SALE

Page 1 of 1

06/16/88

11:50:48

PS3730769

CASH

Amt Tend 10.00

Change 2.10

		Unit	Ext
1 EA	S-544 GINNS OFFICE SUPPLIES	7.45	7.45

Subtotal 7.45

DC Tax 0.45

Amount Due 7.90

THANK YOU FOR SHOPPING AT GINNS !!!

137 / 0165509

7.90 3.45

23070165540

Lunch - Meeting/Low Staff!
Fils, Hdkk., Hester, Vasser, Emerson, Corley

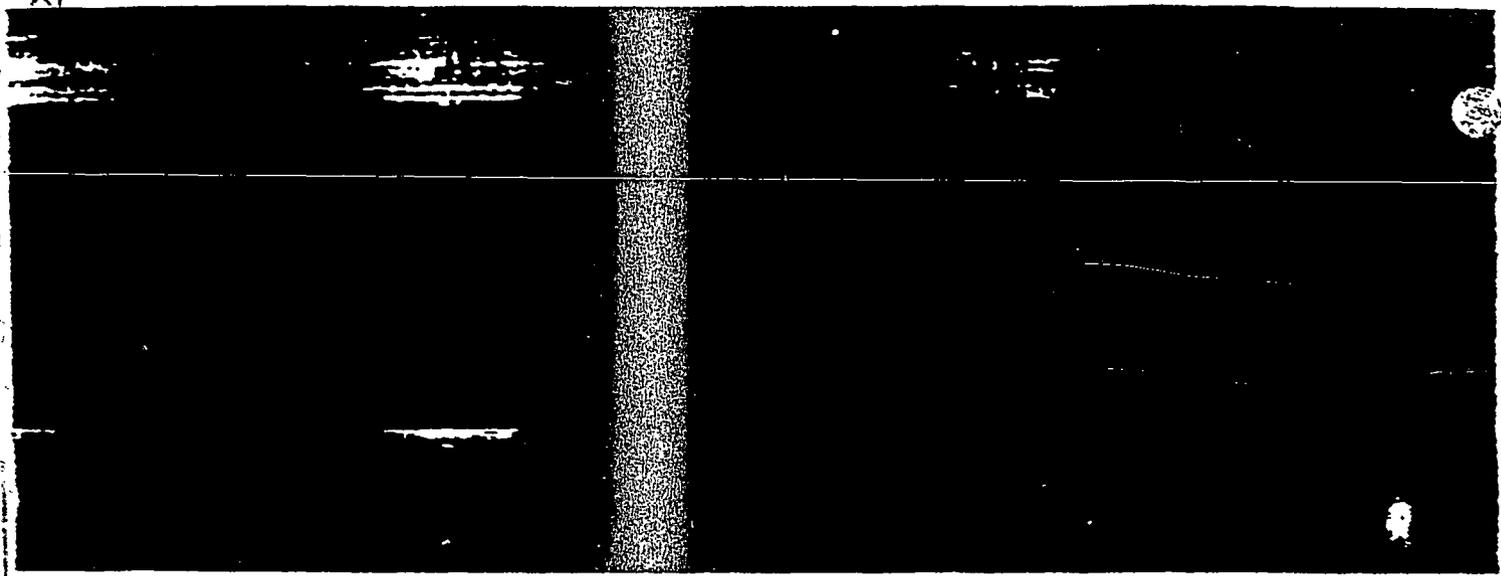
Staff Lunch

2nd & 5th SW • Washington, DC • (202) 854-2100

MARKET INN

\$98.45

3/99
DATE



٤٥

13 / 16573

THE STANDARD
1528 K Street NW
WASHINGTON D C 20005
(202) 628-4940

CUSTOMER'S ORDER NO.	PHONE	DATE
		19
NAME		
ADDRESS		
<p><i>1 Standard</i></p> <p><i>11/15/05</i></p> <p><i>11/15/05</i></p>		
<p><i>John</i></p>		TAX
<p>RECEIVED BY</p>		TOTAL

All claims and returned goods MUST be accompanied by this bill
Thank You

9645

105-571

CUSTOMER IMPORTANT: RETAIN THIS COPY FOR YOUR RECORDS

SALES TAX RECEIPT

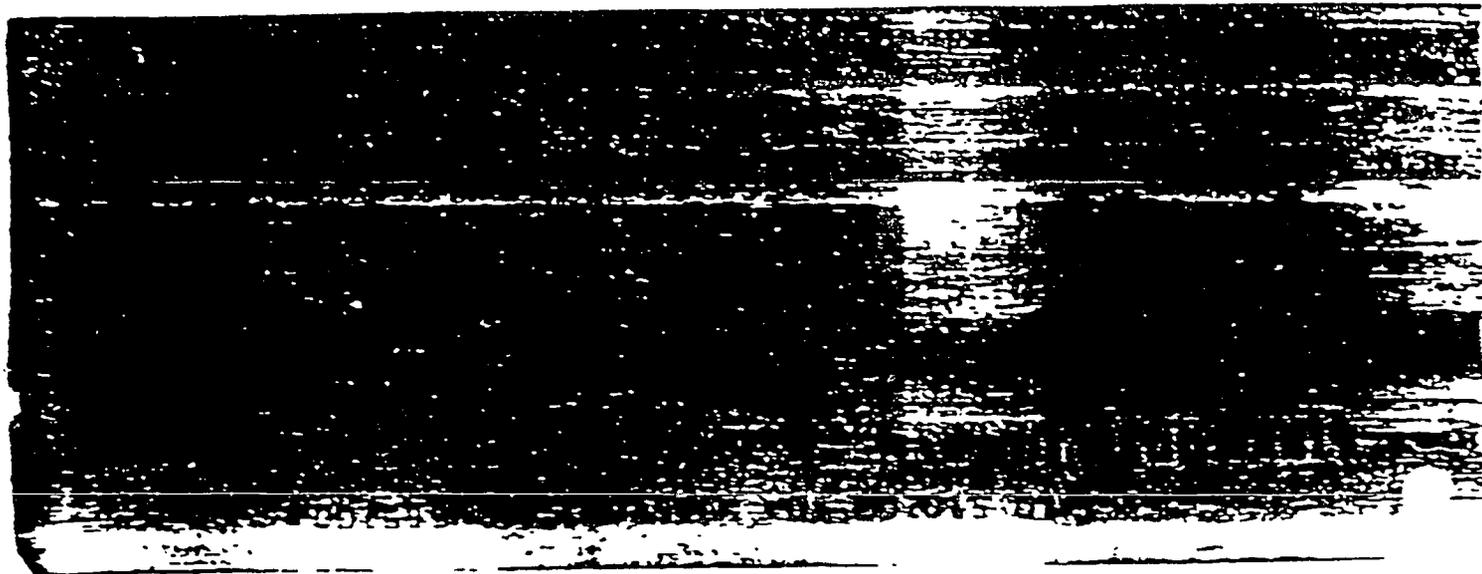
TOTAL	1115.00
TAX	111.50
TOTAL	1226.50

DAVID S. BROWN
 1700 17TH ST
 ST. LOUIS, MO 63103

DAVID S. BROWN
 1700 17TH ST

5779012

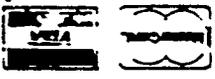
4968 001 0585 7E00 8964



68-1117

68-1117

15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70
15	171	13-88-05320	10/10/70



STANDARD TYPEWRITER
 107060 8128449
 4084802495 WASH DC

DATE
 CHECKED

DAVID S GASSON
 04/89 CV

5909870

8984 585 0031 7300

GERHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Exempt Legal & Accounting DATE 4/28/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$11.18

PAYEE David Gasson

ADDRESS 526 11th Street., SE

Washington, DC 20003

PURPOSE OF EXPENDITURE (DETAILS): Office Supplies

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
CROSS FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 4/28/88 CHECK # 002685 \$ 11.18

VENDOR # 030485 NEW VENDOR # _____

EXPENSE DISTRIBUTION

VOUCHER # _____ ACCOUNT # 0-2-035-2402 \$ 11.18

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 11.18

737 / 0165547

GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER Exempt Legal & Accounting DATE 6/13/88

REQUESTED BY _____
DATE TO BE PAID _____ AMOUNT ~~\$4.98~~ 49.88

PAYEE David Gasson

ADDRESS 526 11th Street., SE
Washington, DC 20003

PURPOSE OF EXPENDITURE (DETAILS) Purchase of office Supplies.

DOCUMENTATION ATTACHED:

RECEIPTS _____	INVOICE _____
PURCHASE ORDER _____	ORDER FORM _____
COST ESTIMATE _____	CONTRACT _____
PROPOSAL _____	

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE SG

CHECK DATA

CHECK DATE 6-17-88 CHECK # 002728 \$ ~~4.98~~ 49.55
VENDOR # 030485 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # <u>0-2-035-2402</u>	\$ 4.98 <u>49.55</u>
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

TOTAL \$ 49.88



0013 76079
Pleasant Post

PAV A... ONLY
MAY 25 1988

2618...
345...

345...
345...

EDUC...
Employee... Signature

1. In A
2. In B
3. In C
4. In D

23070165549

73070165550

11.11.11
11.11.11
11.11.11

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1
1

**GEPHARDT FOR PRESIDENT
COMMITTEE. INC.**

2710

304 PENNSYLVANIA AVE., S.E. 574.7395
WASHINGTON, D.C. 20003

15-157
540

PAY
TO THE
ORDER OF

U.S. Postmaster

CE-27-22 CC- 22 0330

May 25 1988

2037-2332

\$ 92.65

Agency Tax & 65/100's

DOLLARS



**FEDERAL CITY
NATIONAL BANK**
Washington, D.C. 20001

Barbara

FOR

Suzanne M. Lord

⑈002710⑈ ⑆054006576⑆ ⑈01 002065 01⑈ ⑈0000009265⑈

7 3 7 / 0 1 6 5 5 0 1

U.S. POSTAL SERVICE
NATIONAL POST OFFICE
WASHINGTON, D.C. 20002-3000

CLASS OF SERVICE
DATE: 05 18 88 02149129 PM

POSTAGE 91.20
NETS 1.47

TOTAL \$ 92.67
POSTAGE PAID \$ 92.67

U.S. POSTAL SERVICE

23070165552

GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER KFP DATE 5/25/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 92.65

PAYEE U.S. Postmaster

ADDRESS National CAP Station
2 Mass Ave, NE
Washington DC

PURPOSE OF EXPENDITURE (DETAILS) Postage - State Illinois
Mr. M. M. F. F.

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 5/25/88 CHECK # 003710 \$ 92.65
VENDOR # 088136 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 01-015-2102 \$ 92.65
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____

NEW CASE

FOR DEPOSIT ONLY
POSTMASTER
WASHINGTON D.C.

ACCT: 12 08 611 201 RIGGS

ACCT: 012 072-1 NEW

Drive Lic: 0-1-14 3-2-83
Elic

Other I.D. 1-1-83

For Following Postal Service ⁰⁰¹⁹

- Meter (1 Box 25¢)
- Permit Postage
- Bus. Reply Postage Due
- FDC Other (Explain):

[Handwritten Signature]
Employee/Supervisor Signature

C19098 80 Calif

John Yew
219-64-1626
544-7395



(HY 8 19 16 8)
PAY ANY BANK
THE FEDERAL RESERVE BANK
WASHINGTON, D.C.

1 5 1

**GEPHARDT FOR PRESIDENT
COMMITTEE, INC.**

304 PENNSYLVANIA AVE., S.E.
WASHINGTON, D.C. 20003

2696

May 16, 1988

15.157
540

PAY
TO THE
ORDER OF

U.S. Postmaster

03-20-88 004 01 8888

403901132

\$ 300.00

Three Hundred And 00/100

DOLLARS



**FEDERAL CITY
NATIONAL BANK**
WASHINGTON, D.C. 20001

Signature M. S. [unclear]
Robert B. [unclear]

FOR

⑈002696⑈ ⑆054001576⑆ ⑆01 002015 01⑈ ⑆0000030000⑆

U.S. POSTAL SERVICE
SOUTHWEST STATION
377 7TH ST SE 20002

CLERK NO 5

DATE: 05/17/68 11:30:05 AM

090 POSTAGE	25.00

TOTAL: \$ 300.00

THANK YOU

23070165556

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER h9A DATE 5/13/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 300.00

PAYEE U.S. Postmaster

ADDRESS South East Station

Washington, D.C.

PURPOSE OF EXPENDITURE (DETAILS) 1,200 / 25 cent postage stamps

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR X

AUTHORIZING SIGNATURE [Signature]

CHECK DATA

CHECK DATE 5/11/88 CHECK # 002676 \$ 300.00

VENDOR PP136 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-685-3101 \$ 300.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 300.00

**GEPHARDT FOR PRESIDENT
COMMITTEE. INC.**

304 PENNSYLVANIA AVE., S.E.
WASHINGTON, D.C. 20003

2695

May 13, 19 88

15.157
540

PAY
TO THE
ORDER OF U.S. Postmaster

05-12-88 00-01 0700

30757000-

\$ 500.00

Five Hundred And 00/100-

DOLLARS



**FEDERAL CITY
NATIONAL BANK**
Washington, D.C. 20001

Signature M. [unclear]
[unclear]

FOR _____

⑆002695⑆ ⑆054001576⑆ ⑆01 002015 01⑆ ⑆0000050000⑆

033 / 0105509

POST OFFICE		MAIN OFFICE WINDOW SERVICE WASHINGTON, DC 20086-9607		\$240.00	No. 70
AMOUNT (To be written)		Two Hundred Forty		40 100 DOLLARS	10182
FOR	BRE	A/C	053	POSTMASTER (BY)	APW
Received from: (Show address only when receipt is mailed)					DATE
GEPHARDT FOR PRESIDENT ID COMMITTEE INC 4833					5-13-88
					PERMIT NO. 16648
PS Form 3544 Nov 1979		POST OFFICE RECEIPT FOR MONEY			Original

POST OFFICE		MAIN OFFICE WINDOW SERVICE WASHINGTON, DC 20086-9607		\$260.00	No. 69
AMOUNT (To be written)		Two Hundred Sixty		60 100 DOLLARS	10182
FOR	BRE ANNUAL ACCOUNT FEE	A/C	166	POSTMASTER (BY)	APW
Received from: (Show address only when receipt is mailed)					DATE
ID GEPHARDT FOR PRESIDENT 4833 COMMITTEE INC					5-13-88
					PERMIT NO. 16648
PS Form 3544 Nov 1979		POST OFFICE RECEIPT FOR MONEY			Original

1 3 1 6 2 2 0

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER fundraising DATE 5/13/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT 500.00

PAYEE U S Postmaster

ADDRESS 900 Brentwood Rd N/E
Washington, DC

PURPOSE OF EXPENDITURE (DETAILS) Business Reply Account # 16543
- FR Direct Mail

DOCUMENTATION ATTACHED:

RECEIPTS _____	INVOICE _____
PURCHASE ORDER _____	ORDER FORM _____
COST ESTIMATE _____	CONTRACT _____
PROPOSAL _____	

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 5/13/88 CHECK # C02695 \$ 500.00

VENDOR # 099136 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # C 2-046-2102 \$ 500.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 500.00

**GEPHARDT FOR PRESIDENT
COMMITTEE, INC.**

304 PENNSYLVANIA AVE., S.E.
WASHINGTON, D.C. 20003

544-8088

SC Driver Licence 8335612

2680

April 26, 19 88

15.157
540

PAY
TO THE
ORDER OF

U.S. Postmaster

\$ 75.00

Seventy Five And 00/100-----DOLLARS



FEDERAL CITY
NATIONAL BANK
Washington, D.C. 20001

FOR Postage

Signature

⑈002680⑈ ⑆054001575⑆ ⑈01 002015 01⑈ ⑈0000007500⑈

23 / 01 00505

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Administration DATE 4/26/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$75.00

PAYEE U.S. Postmaster

ADDRESS Washington, DC

PURPOSE OF EXPENDITURE (DETAILS) Postage

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 4/26 88 CHECK # 002680 \$ 75.00

VENDOR # 088136 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-021-2102 \$ 75.00

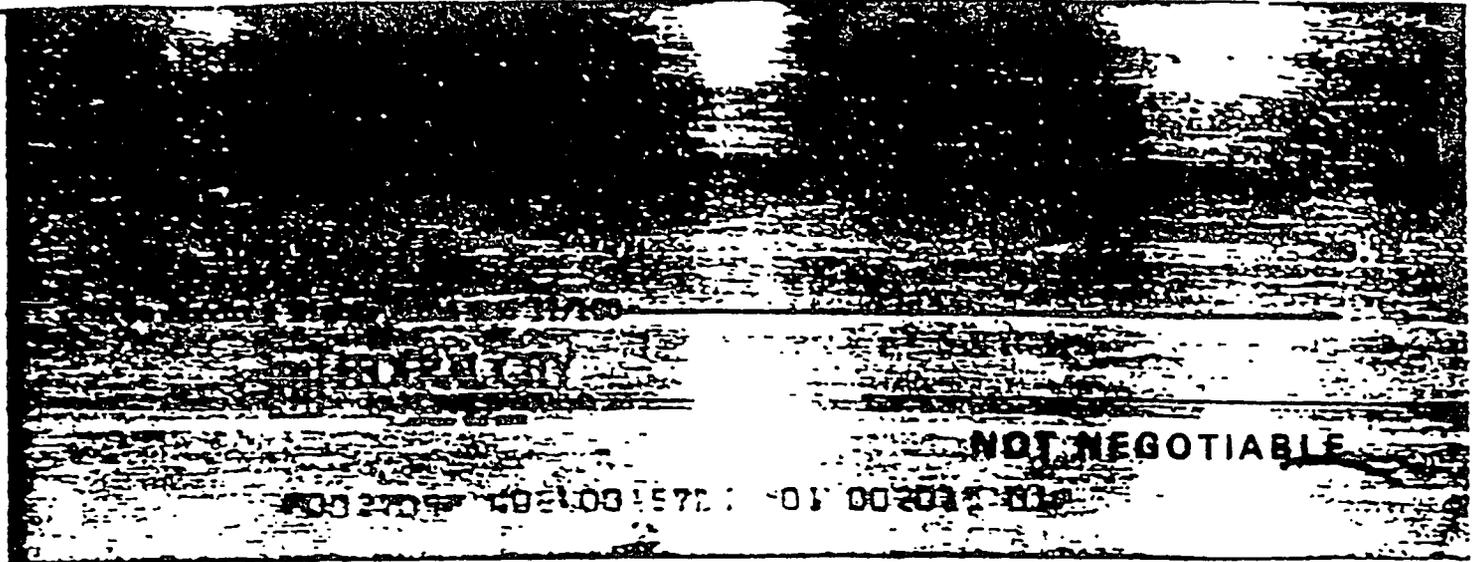
VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 75.00

73 / 0 1665565



NOT NEGOTIABLE

00 2709 69 03 572 : 01 00203 00

230 / 016 5567

U.S. Capitol
100 Pennsylvania Ave., S.E.
Washington, D.C. 20003
(202) 541-0001

03-24

01

11:00

00

00

00:00

GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER Exempt Legal & Accounting DATE 5/24/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$389.11

PAYEE Kinko's

ADDRESS 611 Pennsylvania Avenue., SE

Washington, DC 20003

PURPOSE OF EXPENDITURE (DETAILS) Copies of FEC Report

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 05/24/88 CHECK # 002709 \$ 389.11

VENDOR # 049515 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-1-035-2703 \$ 389.11

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 389.11

15 / 160003

157

3 1 6 0 0 0 2



23070165510

33-2

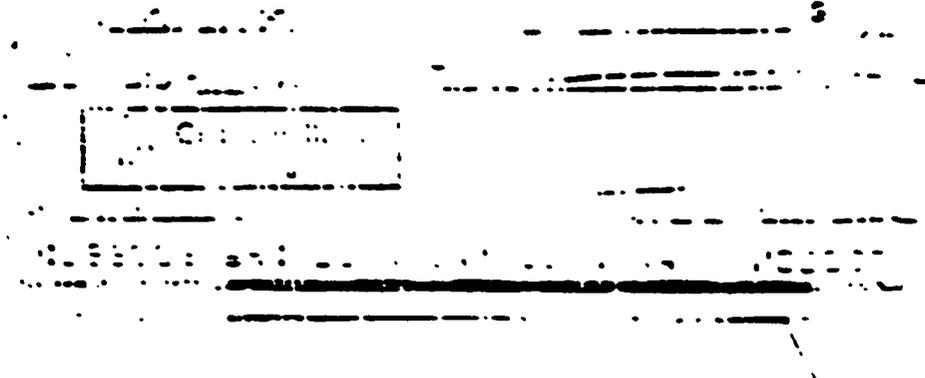
1000 100
400 100

1000 100
400 100

3

1000 100

230 / 01 55 / 1



93070165572

232 / 01655 / 3

Card No. **3724 156106 02005**

~~10/80 THRU 09/80~~ 04 AX

JACQUELINE M FORTE

18167023 FED
 7641000800 EXP 10028T
 JPN 201
 4417400017 11-13-82 2100

Commitment subject to approval by American Express Travel Agency Services
 The Cardholder is responsible for the payment of the Card. The Card is not to be used for cash return.

X *11/13/82* 2100

 Cards 013006 Cardmember Copy

GUEST RECEIPT *NYN STAY 11/27/80*

at Manhattan

Date *9/22/82* \$ *25.60*

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER L&A DATE 9/12/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 46.94

PAYEE Jacqueline M. Lantz

ADDRESS 3416 Curtis Dr, #103

Suitland, MD 20746

PURPOSE OF EXPENDITURE (DETAILS) Reimbursement - Photo Copying
for Matchina Fund Sub #13 & other supplies.

DOCUMENTATION ATTACHED:

RECEIPTS ✓
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR X

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 9-13-88 CHECK # 000582 \$ 46.94

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-035-2302 \$ 45.37

VOUCHER # _____ ACCOUNT # 0-2-035-2402 \$ 1.57

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 46.94

13 / 01690 / 4



Date In: 9/12/88
Date Due: _____
Time Due: _____

Cash Check # _____

Name Gephardt

Address _____

CUSTOMER P.O. _____ Office Telephone _____

SPECIAL INSTRUCTIONS

Copies

- Number of originals _____ Copy one side
- Number of copies _____ Copy two sides
- Total number of copies _____ Collate into sets
- Corner Staple Drill 2 holes
- Double Staple on edge Drill 3 holes
- GBC Bind _____ _____

Copy Charges	_____	\$	_____
	_____	\$	_____
Extra Charges	_____	\$	_____
		Subtotal:	\$ <u>3.95</u>
RECEIVED BY	_____	Tax	\$ _____
		TOTAL	\$ <u>3.95</u>
		BALANCE DUE	\$ _____

555 NEW JERSEY AVE. NW
WASHINGTON DC 20001
(202) 347-6777

233 / 01655 / 5

2107

VENDOR NO.

CHECK NO.

SERIAL NO.

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT

PLEASE DETACH BEFORE DEPOSITING

GEPHARDT FOR PRESIDENT COMMITTEE, INC.
 304 PENNSYLVANIA AVE SE
 WASHINGTON, D C 20003

FEDERAL CITY NATIONAL BANK
 WASHINGTON D C
 15-157 540

STK NO 000582

DATE 09/13/88

CHECK NO 000582

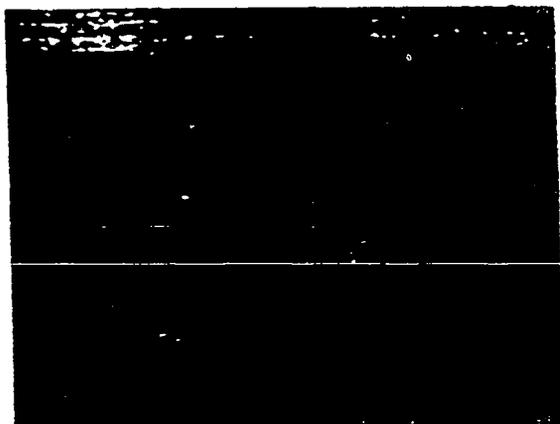
NET AMOUNT 46.94

PAY Forty-Six and 94/100

TO THE ORDER OF
 Jacqueline M. Forte
 3416 Curtis Dr., #103
 Suitland, MD 210746

NON-NEGOTIABLE

⑆000582⑆ ⑆09400⑆576⑆ ⑆002015 0⑆⑆



GEHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER h & A DATE 9/28/88

REQUESTED BY [Signature]

DATE TO BE PAID _____ AMOUNT \$ 38.14

PAYEE Regina M. Foster

ADDRESS 3416 Curtis Dr, #103
Suitland, MD 20746

PURPOSE OF EXPENDITURE (DETAILS) Parking, Printing, Delivery
Reimbursement

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE [Signature]

CHECK DATA

CHECK DATE 9-28-88 CHECK # 000049 \$ 38.14

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-035-3032 \$ 18.50
VOUCHER # _____ ACCOUNT # 0-2-035-2302 \$ 8.64
VOUCHER # _____ ACCOUNT # 0-2-035-2102 \$ 11.00
VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 38.14

9 / 28 / 88

CASH RECEIPT



655 NEW JERSEY AVE. NW
WASHINGTON, DC 20001
(202) 247-6777

Date 9-20-88

RECEIVED OF Eight dollars & 64
four cents 64 DOLLARS

FOR Photocopy

TOTAL \$ 8.64

PAID _____

BAL. DUE 163 Total

CHECK

CASH

Signature: Jackie

Don't

13070165531

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER LF DATE 11/23/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 45.06

PAYEE Superior 113

ADDRESS 3411 Curtis Dr. #113

Superior 113 20141

PURPOSE OF EXPENDITURE (DETAILS) Reimbursement / Parking Fee

12/1/88

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 11-23-88 CHECK # 1019 \$ 45.06

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

TOTAL \$

0006

VENDOR NO.

CHECK NO.

SERIAL NO.

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT

PLEASE DETACH BEFORE DEPOSITING

3
GEPHARDT FOR PRESIDENT COMMITTEE, INC.
 304 PENNSYLVANIA AVE SE
 WASHINGTON D C 20003

FEDERAL CITY NATIONAL BANK
 WASHINGTON D C
 15-157 540

5
 SERIAL NO **000648**

DATE
09/28/88

CHECK NO
000648

NET AMOUNT
\$38.14

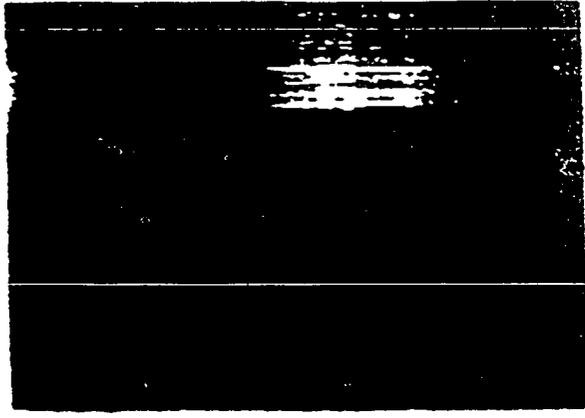
6
PAY Jacqueline M. Forte
 3416 Curtis Drive, #103
 Suitland, MD 21076

TO THE
 ORDER
 OF

NON-NEGOTIABLE

⑈000648⑈ ⑆054021576⑆ ⑆01 002015 01⑈

25 / 11625,4

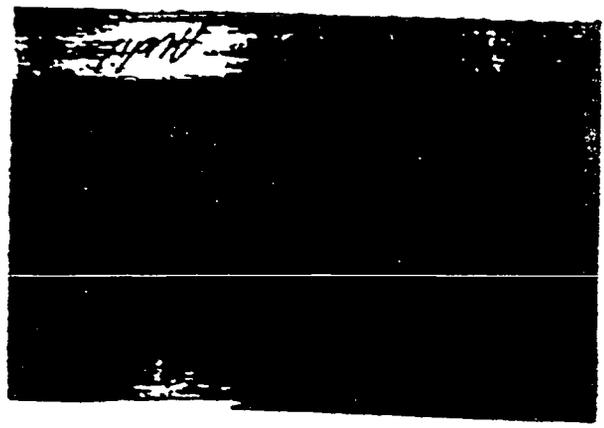


23070165585

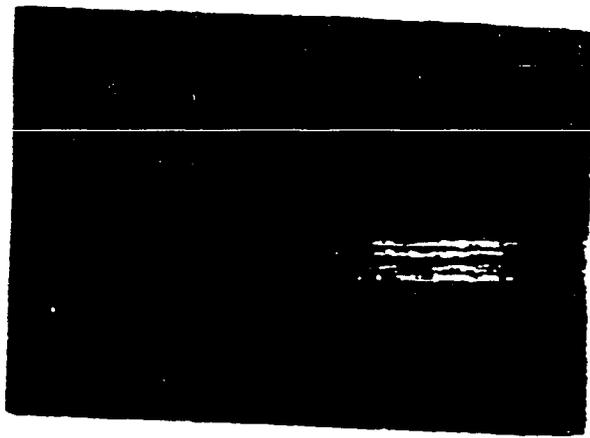
007

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13 160506



13 / 1657 / 1



237 / 01655538

TAXICAB DRIVER'S RECEIPT

Date _____ Time _____
Plan _____ No _____ Tag No. _____
Origin of Trip _____
Destination _____
Signature _____
I.D. No. _____

FARE	Regular	\$ _____
	Rush Hour	_____
	Snow Emerg.	_____
	Contract	_____
	Tip	_____
	Total	\$ 3.00

230 / 0165539

MID TOWN PARKING

FEE PAID 8.00
/



Date In: 11/18/88
Date Due: _____
Time Due: _____

Cash Check # _____

Name: Gephardt Campaign
Address: _____

CUSTOMER P.O. Jackie - Office Telephone _____

SPECIAL INSTRUCTIONS

photocopy

- Number of originals _____ Copy one side
- Number of copies _____ Copy two sides
- Total number of copies _____ Collate into sets
- Corner Staple Drill 2 holes
- Double Staple on edge Drill 3 holes
- GBC Bind _____ " spine _____

Copy Charges: _____ \$ _____

Extra Charges: Handwritten scribble \$ _____

RECEIVED BY _____ Subtotal \$ 6.00

Tax \$ 36

TOTAL \$ 6.41

555 NEW JERSEY AVE. NW
WASHINGTON, DC 20001
(202) 347-8777

BALANCE DUE \$ _____

NOV 18 1988

1 6 6 9 1 1 5

FEDERAL ELECTORAL COMMISSION
 999 E Street, NW
 WASHINGTON, DC 20463

PS Form 3825, RECEIPT FOR REGISTERED SEAL (Customer Copy)
 June 1978
 (See Instructions on Reverse)

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER LFA 1 DATE 11/02/88

REQUESTED BY J M Lutz

DATE TO BE PAID 1 AMOUNT \$55.39

PAYEE Acquiline M Lutz

ADDRESS 13416 Curtis Drive, Apt. #103

Suitland, MD 21746

PURPOSE OF EXPENDITURE (DETAILS) Reimbursement for

Caroline Perkins Conc, Taxi, Copies (FEC reports)

Supplies

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR J M Lutz

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 11-02-88 CHECK # 000766 \$ 55.39

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

0008

VENDOR NO.

CHECK NO.

SERIAL NO

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT

PLEASE DETACH BEFORE DEPOSITING

6 5 5
GEPHARDT FOR PRESIDENT COMMITTEE, INC.
 304 PENNSYLVANIA AVE SE
 WASHINGTON DC 20003

FEDERAL CITY NATIONAL BANK
 WASHINGTON DC
 15-157340

6
 SERIAL NO 000816

DATE
 11/23/88

CHECK NO
 000816

NET AMOUNT
 \$45.06

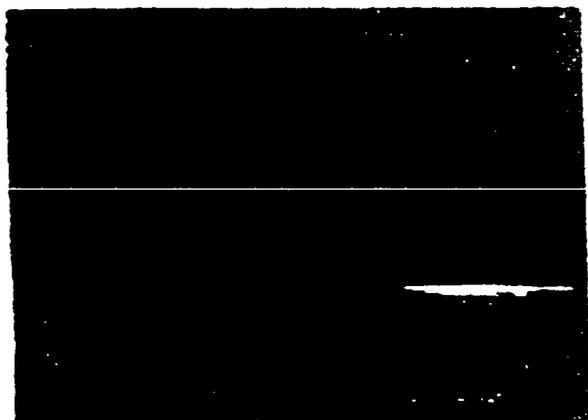
PAY Forty-Five and 06/100

TO THE ORDER OF
 Jacqueline M. Forte
 3416 Curtis Drive, # 103
 Suitland, MD 20746

NON-NEGOTIABLE

⑈000816⑈ ⑆0640065761⑆ ⑆0⑆ 002015 01⑆

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930701675595

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6 1 6 0 0 0 6

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700

160011



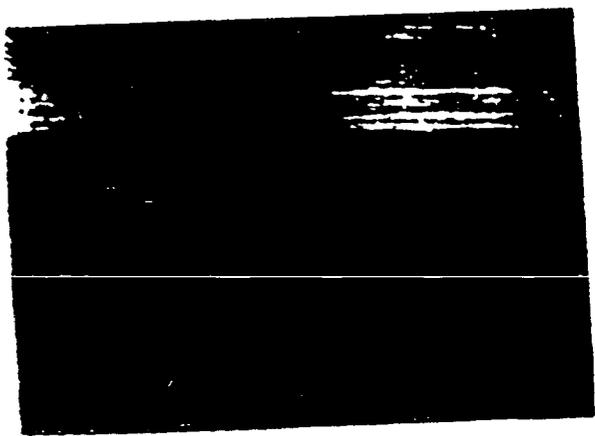
30 / 01 5598

PARKING CHECK

22-647

OUT _____
IN _____
License 920
Plate _____

13 / 1165529



3307015600

INDEX

10-20-0001051A1

16:00

B N-P

TOTL

CASH JEN

CHNG

16:00

7.00

1 5 0 9 1 1 1 5 6

TAX RECEIPT

DATE 10 4 88

FOR _____

TAX AMOUNT \$ 3.50

MILE _____

R.R. _____

ASST. _____

DATE _____

SIGNATURE [Signature]

00076

VENDOR NO.

CHECK NO.

SERIAL NO.

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT
672						

PLEASE DETACH BEFORE DEPOSITING

GEHARDT FOR PRESIDENT COMMITTEE, INC.
304 PENNSYLVANIA AVE SE
WASHINGTON, DC 20003

FEDERAL CITY NATIONAL BANK
WASHINGTON DC
15-157-540

SERIAL NO 000765

DATE 11/27/67

CHECK NO 000765

NET AMOUNT \$100.00

PAY

TO THE ORDER OF

NON-NEGOTIABLE

000765 000765 000765 000765



Date In: 10/21/98
Date Due: _____
Time Due: _____

Cash Check # _____

Name: Gephardt Campaign

Address: _____

CUSTOMER P. O. _____ Office Telephone _____

SPECIAL INSTRUCTIONS

photo

- Number of originals _____ Copy one side
- Number of copies _____ Copy two sides
- Total number of copies _____ Collate into sets
- Corner Staple Drill 2 holes
- Double Staple on edge Drill 3 holes
- GBC Bind _____ spine _____

Copy Charges _____ \$ _____

Extra Charges _____ \$ _____

Subtotal \$ 2

RECEIVED BY _____ Tax \$ _____

TOTAL \$ 2

555 NEW JERSEY AVE. NW
WASHINGTON, DC 20001
(202) 347-6777

BALANCE DUE \$ _____

13 / 116033

230/015604

\$6.00

6 JUN 68

Paul

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER 1,4A DATE 8/3/88

REQUESTED BY [Signature]

DATE TO BE PAID _____ AMOUNT # 88.21

PAYEE Argentine 11 Fido

ADDRESS 2416 Curtis St #153
Southland 11 51746

PURPOSE OF EXPENDITURE (DETAILS) Price / Delivery / Contractor

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

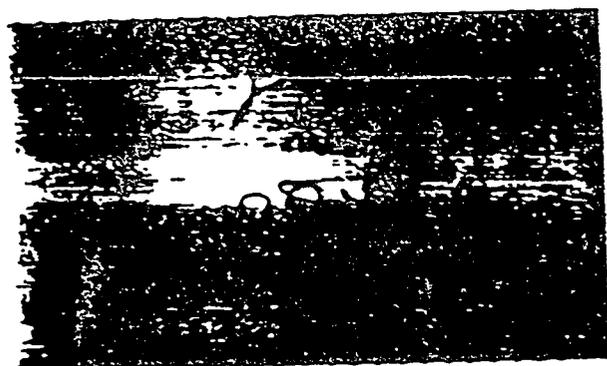
CHECK DATE 8-4-88 CHECK # 002772 \$ 88.21

VENDOR # _____ NEW VENDOR # _____

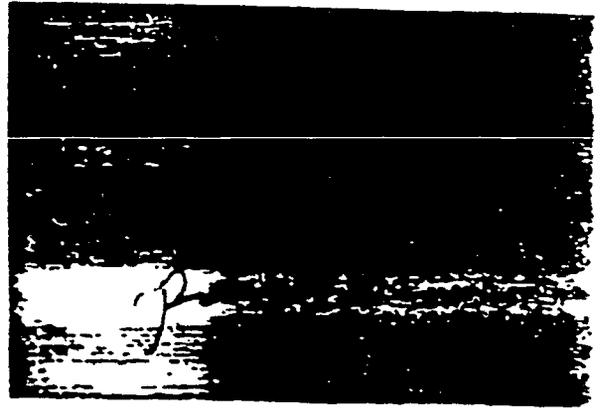
EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # <u>2-035-2102</u>	\$ <u>11.00</u>
VOUCHER # _____	ACCOUNT # <u>2-035-2302</u>	\$ <u>40.71</u>
VOUCHER # _____	ACCOUNT # <u>2-035-3032</u>	\$ <u>36.50</u>
VOUCHER # _____	ACCOUNT # _____	\$ _____

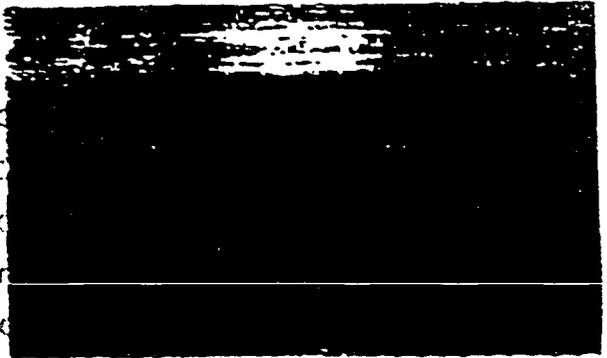
TOTAL \$ 88.21



15 11603 /



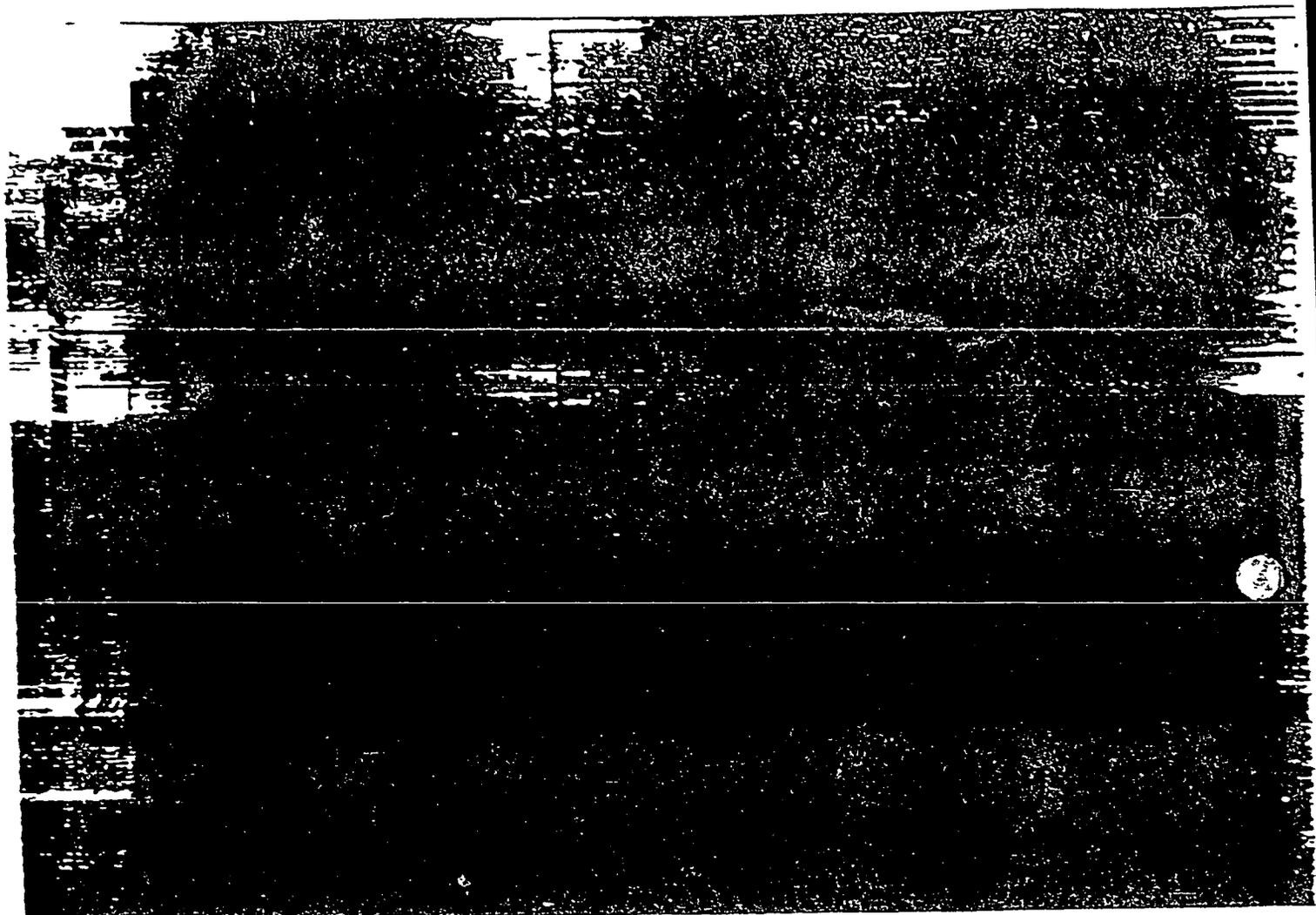
4 2 6 0 8



16007



16007



1
2

.. .

1 5 2 5 1 1

3729 158106 02005

Cardmember Use Express Date Checked

10/31/80
Check or Bill Number

19 15702 3 FED
754 100 0000 EX
441 650 9471
10 1102 50

78/80

Any delivery charges are listed here

Merch: Price of Delivered Ling

Taxes Price of Delivered Chg

Spa/Meal Revised Total

TOTAL

Please Write Firmly

941962 Cardmember Copy

Cards

13 / 16 0 0 1 2

CASH RECEIPT.



Date 7-11

Received of Gepphardt
Three and 3/4 DOLLARS

FOR COPIES (13)

TOTAL 3.75

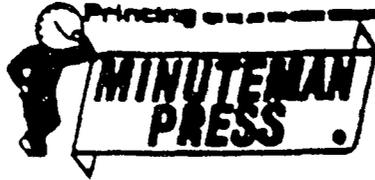
PAID PAID

BAL. DUE [Redacted]

CHECK

CASH

Signatures _____



Date In: 7.25

Date Due: 7.26

Time Due: _____

Cash Check # _____

Name: Gephardt, David

Address: _____

CUSTOMER P. O. _____ Office Telephone 628-3337

SPECIAL INSTRUCTIONS

2 Copies of Each

PAID

- Number of originals _____ Copy one side
- Number of copies _____ Copy two sides
- Total number of copies 324 Collate into sets
- Corner Staple Drill 2 holes
- Double Staple on edge Drill 3 holes
- GBC Bind _____ spine _____

Copy Charges: 324 at 54 / Ea \$ 16,120

Extra Charges: _____ \$ _____

Subtotal: \$ 16,120

RECEIVED BY _____ Tax: \$ 08

TOTAL \$ 17,18

555 NEW JERSEY AVE. NW
WASHINGTON, DC 20001
(202) 347-5777

3044 BALANCE DUE \$ _____



Date In: 2-20
Date Due: 2-29
Time Due: _____

Cash Check # _____

Name: Gephardt

Address: _____

CUSTOMER P.O. Maria Office Telephone 628-3337

SPECIAL INSTRUCTIONS

3 of Each

- Number of originals 127 Copy one side
- Number of copies 3 Copy two sides
- Total number of copies 381 Collate into sets
- Corner Staple Drill 2 holes
- Double Staple on edge Drill 3 holes
- GBC Bind _____ * spine _____

Copy Charges: ~~381~~ at 5¢ Ea \$ 19.05

Extra Charges: _____ \$ _____

PAID

Subtotal: \$ 19.05

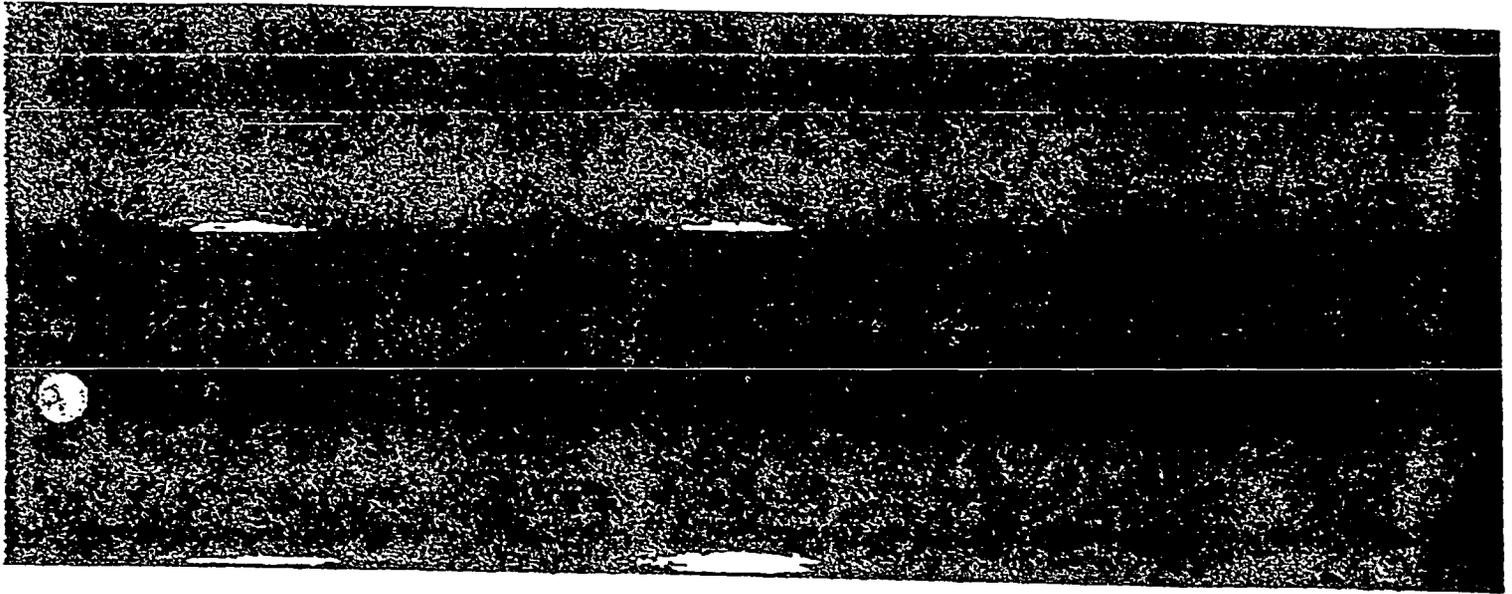
RECEIVED BY _____ Tax: \$ _____

TOTAL \$ 19.05

555 NEW JERSEY AVE. NW 3066
WASHINGTON, DC 20001
(202) 347-5777

BALANCE DUE \$ _____

163014



GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER LA DATE 3/21/89

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 166.52

PAYEE Argue M. [Signature]

ADDRESS 3416 Curtis Dr, #103
Suitland, MI 20746

PURPOSE OF EXPENDITURE (DETAILS) Parking, office supplies & [unclear]

DOCUMENTATION ATTACHED:

RECEIPTS	<input checked="" type="checkbox"/>	INVOICE	_____
PURCHASE ORDER	_____	ORDER FORM	_____
COST ESTIMATE	_____	CONTRACT	_____
PROPOSAL	_____		

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE _____ CHECK # 1890 \$ 166.52

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

6
1
6
0
5
1
3

3307015617

Vertical column of small, illegible characters or symbols.

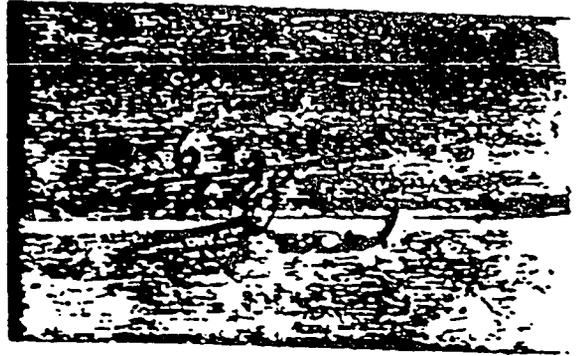
110

110

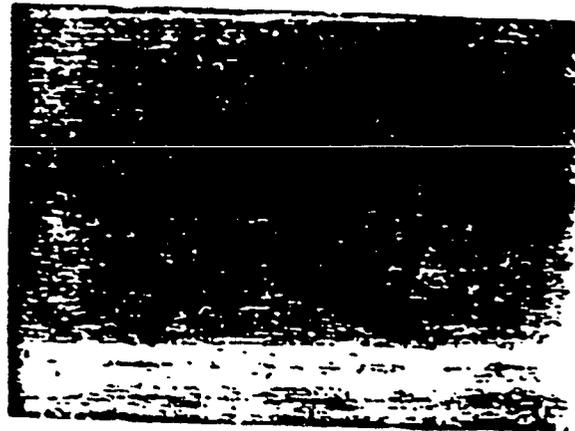
3 1 1 6 5 5 1 8



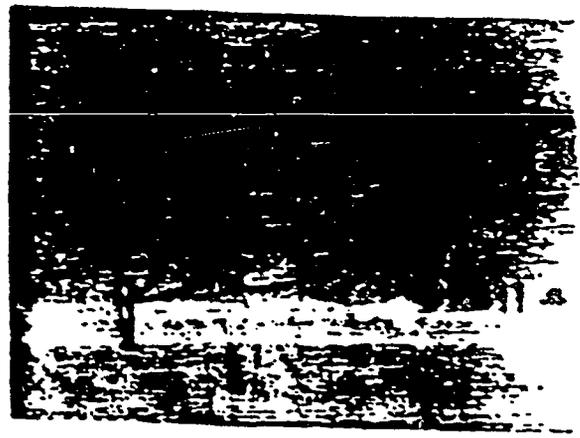
160517



1 5 7 2 5



1 0 2 2 1



160124



13 / 0160525



1400 L Street, N.W.
Washington, D C. 20005

PARKING RECEIPT

DATE 3-3-88

\$3.25

THANK YOU

CASHIER SIGNATURE

230/0165624

Time _____

Date 8/9/85

Cab Number _____ ID Number 52867 Tag NO _____

Company/ Ass'n _____

Origin of Trip _____

Destination 10th St & ... Fare \$ 2.00

Signature [Signature] 1.00

2376165425

—TAXICAB RECEIPT—

DATE 3/17/89

REC'D FROM _____

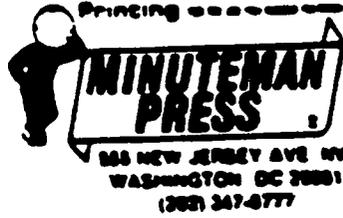
FARE AMOUNT \$ 3.45
7.00 3.45
10.45 3.45
13.90 3.45
17.35 3.45
20.80 3.45
24.25 3.45
27.70 3.45
31.15 3.45
34.60 3.45
38.05 3.45
41.50 3.45
44.95 3.45
48.40 3.45
51.85 3.45
55.30 3.45
58.75 3.45
62.20 3.45
65.65 3.45
69.10 3.45
72.55 3.45
76.00 3.45
79.45 3.45
82.90 3.45
86.35 3.45
89.80 3.45
93.25 3.45
96.70 3.45
100.15 3.45
103.60 3.45
107.05 3.45
110.50 3.45
113.95 3.45
117.40 3.45
120.85 3.45
124.30 3.45
127.75 3.45
131.20 3.45
134.65 3.45
138.10 3.45
141.55 3.45
145.00 3.45
148.45 3.45
151.90 3.45
155.35 3.45
158.80 3.45
162.25 3.45
165.70 3.45
169.15 3.45
172.60 3.45
176.05 3.45
179.50 3.45
182.95 3.45
186.40 3.45
189.85 3.45
193.30 3.45
196.75 3.45
200.20 3.45
203.65 3.45
207.10 3.45
210.55 3.45
214.00 3.45
217.45 3.45
220.90 3.45
224.35 3.45
227.80 3.45
231.25 3.45
234.70 3.45
238.15 3.45
241.60 3.45
245.05 3.45
248.50 3.45
251.95 3.45
255.40 3.45
258.85 3.45
262.30 3.45
265.75 3.45
269.20 3.45
272.65 3.45
276.10 3.45
279.55 3.45
283.00 3.45
286.45 3.45
289.90 3.45
293.35 3.45
296.80 3.45
300.25 3.45
303.70 3.45
307.15 3.45
310.60 3.45
314.05 3.45
317.50 3.45
320.95 3.45
324.40 3.45
327.85 3.45
331.30 3.45
334.75 3.45
338.20 3.45
341.65 3.45
345.10 3.45
348.55 3.45
352.00 3.45
355.45 3.45
358.90 3.45
362.35 3.45
365.80 3.45
369.25 3.45
372.70 3.45
376.15 3.45
379.60 3.45
383.05 3.45
386.50 3.45
389.95 3.45
393.40 3.45
396.85 3.45
400.30 3.45
403.75 3.45
407.20 3.45
410.65 3.45
414.10 3.45
417.55 3.45
421.00 3.45
424.45 3.45
427.90 3.45
431.35 3.45
434.80 3.45
438.25 3.45
441.70 3.45
445.15 3.45
448.60 3.45
452.05 3.45
455.50 3.45
458.95 3.45
462.40 3.45
465.85 3.45
469.30 3.45
472.75 3.45
476.20 3.45
479.65 3.45
483.10 3.45
486.55 3.45
490.00 3.45
493.45 3.45
496.90 3.45
500.35 3.45
503.80 3.45
507.25 3.45
510.70 3.45
514.15 3.45
517.60 3.45
521.05 3.45
524.50 3.45
527.95 3.45
531.40 3.45
534.85 3.45
538.30 3.45
541.75 3.45
545.20 3.45
548.65 3.45
552.10 3.45
555.55 3.45
559.00 3.45
562.45 3.45
565.90 3.45
569.35 3.45
572.80 3.45
576.25 3.45
579.70 3.45
583.15 3.45
586.60 3.45
590.05 3.45
593.50 3.45
596.95 3.45
600.40 3.45
603.85 3.45
607.30 3.45
610.75 3.45
614.20 3.45
617.65 3.45
621.10 3.45
624.55 3.45
628.00 3.45
631.45 3.45
634.90 3.45
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641.80 3.45
645.25 3.45
648.70 3.45
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672.85 3.45
676.30 3.45
679.75 3.45
683.20 3.45
686.65 3.45
690.10 3.45
693.55 3.45
697.00 3.45
700.45 3.45
703.90 3.45
707.35 3.45
710.80 3.45
714.25 3.45
717.70 3.45
721.15 3.45
724.60 3.45
728.05 3.45
731.50 3.45
734.95 3.45
738.40 3.45
741.85 3.45
745.30 3.45
748.75 3.45
752.20 3.45
755.65 3.45
759.10 3.45
762.55 3.45
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769.45 3.45
772.90 3.45
776.35 3.45
779.80 3.45
783.25 3.45
786.70 3.45
790.15 3.45
793.60 3.45
797.05 3.45
800.50 3.45
803.95 3.45
807.40 3.45
810.85 3.45
814.30 3.45
817.75 3.45
821.20 3.45
824.65 3.45
828.10 3.45
831.55 3.45
835.00 3.45
838.45 3.45
841.90 3.45
845.35 3.45
848.80 3.45
852.25 3.45
855.70 3.45
859.15 3.45
862.60 3.45
866.05 3.45
869.50 3.45
872.95 3.45
876.40 3.45
879.85 3.45
883.30 3.45
886.75 3.45
890.20 3.45
893.65 3.45
897.10 3.45
900.55 3.45
904.00 3.45
907.45 3.45
910.90 3.45
914.35 3.45
917.80 3.45
921.25 3.45
924.70 3.45
928.15 3.45
931.60 3.45
935.05 3.45
938.50 3.45
941.95 3.45
945.40 3.45
948.85 3.45
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955.75 3.45
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962.65 3.45
966.10 3.45
969.55 3.45
973.00 3.45
976.45 3.45
979.90 3.45
983.35 3.45
986.80 3.45
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993.70 3.45
997.15 3.45
1000.60 3.45
1004.05 3.45
1007.50 3.45
1010.95 3.45
1014.40 3.45
1017.85 3.45
1021.30 3.45
1024.75 3.45
1028.20 3.45
1031.65 3.45
1035.10 3.45
1038.55 3.45
1042.00 3.45
1045.45 3.45
1048.90 3.45
1052.35 3.45
1055.80 3.45
1059.25 3.45
1062.70 3.45
1066.15 3.45
1069.60 3.45
1073.05 3.45
1076.50 3.45
1079.95 3.45
1083.40 3.45
1086.85 3.45
1090.30 3.45
1093.75 3.45
1097.20 3.45
1100.65 3.45
1104.10 3.45
1107.55 3.45
1111.00 3.45
1114.45 3.45
1117.90 3.45
1121.35 3.45
1124.80 3.45
1128.25 3.45
1131.70 3.45
1135.15 3.45
1138.60 3.45
1142.05 3.45
1145.50 3.45
1148.95 3.45
1152.40 3.45
1155.85 3.45
1159.30 3.45
1162.75 3.45
1166.20 3.45
1169.65 3.45
1173.10 3.45
1176.55 3.45
1180.00 3.45
1183.45 3.45
1186.90 3.45
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1193.80 3.45
1197.25 3.45
1200.70 3.45
1204.15 3.45
1207.60 3.45
1211.05 3.45
1214.50 3.45
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1224.85 3.45
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1231.75 3.45
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1238.65 3.45
1242.10 3.45
1245.55 3.45
1249.00 3.45
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CASH RECEIPT



Date *2-21-59*

Received of

[Handwritten name]

[Handwritten amount] DOLLARS

FOR

TOTAL

PAID

BAL DUE

CHECK

CASH

Signatures

[Handwritten signature]



Date In 3-21-84
Date Due 3-21-84
Time Due _____

Cash Check # _____

Name: Michael J. Smith
Address: 555 New Jersey Ave
Wash DC 20001

CUSTOMER P.O. _____ Office Telephone 628-3337

SPECIAL INSTRUCTIONS

1 document copied at 98%
a total of 137 pages

- Number of originals _____ Copy one side
- Number of copies _____ Copy two sides
- Total number of copies 137 Collate into sets
- Corner Staple Drill 2 holes
- Double Staple on edge Drill 3 holes
- GBC Bind _____ some _____

COPY
FILE
Y=PA

Copy Charges _____ \$ _____

Extra Charges 1.00 \$ _____

Subtotal \$ 6.

Tax \$ _____

TOTAL \$ 7.00

RECEIVED BY _____

555 NEW JERSEY AVE N.W.
WASHINGTON DC 200
(202) 347-6777

BALANCE DUE \$ _____

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00109

VENDOR NO

CHECK NO.

SERIAL NO

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT
0165629						

PLEASE DETACH BEFORE DEPOSITING

GEPHARDT FOR PRESIDENT COMMITTEE, INC.
 304 PENNSYLVANIA AVE SE
 WASHINGTON DC 20003

FEDERAL CITY NATIONAL BANK
 WASHINGTON DC
 15-157 546

SERIAL NO 001091

DATE 03/23/80

CHECK NO 00109

NET AMOUNT 166.52

PAY TO THE ORDER OF: JACQUELINE M. SUPER

TO THE ORDER OF
 JACQUELINE M. SUPER
 3916 C...
 S... 0745

NON-NEGOTIABLE

0981 00540085750 PL 002085 06P

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER L 20 DATE 2/15/89

REQUESTED BY S. N.

DATE TO BE PAID AMOUNT * 214.88

PAYEE S. N.

ADDRESS S. N.

 S. N.

PURPOSE OF EXPENDITURE (DETAILS) S. N.

 S. N.

DOCUMENTATION ATTACHED:

RECEIPTS X
PURCHASE ORDER
COST ESTIMATE
PROPOSAL

INVOICE
ORDER FORM
CONTRACT

COST CENTER DIRECTOR

AUTHORIZING SIGNATURE

CHECK DATA

CHECK DATE 2/15/89 CHECK # 1011 \$ 214.88

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EXPENSE DISTRIBUTION:

VOUCHER # ACCOUNT # \$

TOTAL \$

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Perkins Corp

Audit - VARIOUS TRIPS

- Files to office

Mobil MOBIL OIL CREDIT CORPORATION

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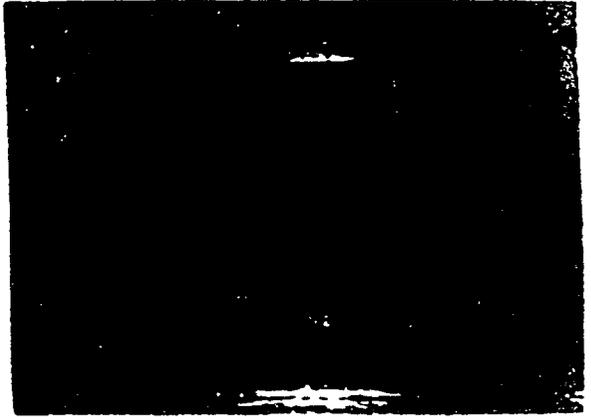
RICHARD MYERS
3300 BRANCH AVE
TERPHILL MO 20748

CUSTOMER SIGNATURE	
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AUTH CODE	SALESMAN
AUTO TAG NO	STATE
DRIVERS LICENSE NO	STATE

PRODUCT OR SERVICE	QTY.	PRICE	AMOUNT
MOTOR FUEL (GRADE)			18.00
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REPAIR ORDER #			
PRICES INCLUDE APPLICABLE FEDERAL & STATE DISC. TAXES		SALES TAX	
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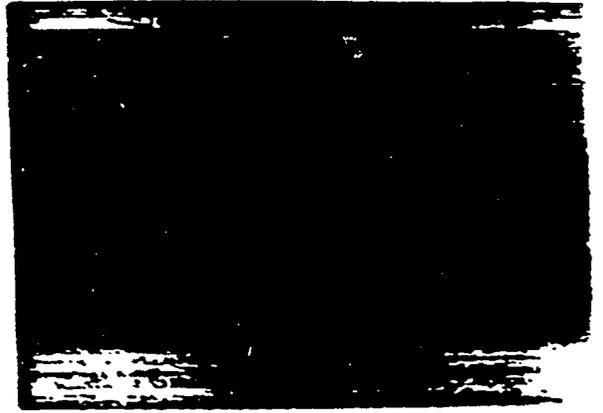


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CHECK NO.

SERIAL NO

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT
5643						

PLEASE DETACH BEFORE DEPOSITING

GEPHARDT FOR PRESIDENT COMMITTEE, INC.
 304 PENNSYLVANIA AVE., SE
 WASHINGTON, D.C. 20003

FEDERAL CITY NATIONAL BANK
 WASHINGTON D C
 15-157540

SERIAL NO 001011

DATE 02/15/89

CHECK NO 001011

NET AMOUNT \$214.88

PAY Two Hundred Fourteen and 88/100

TO THE ORDER OF Jacqueline M. Porte
 3416 Curtis Dr., #103
 Suitland, MD 20746

NON-NEGOTIABLE

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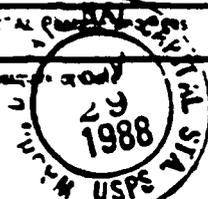
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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	Federal Election Comm.
Street and No.	999 E St. NW
P.O. State and ZIP Code	Washington, DC 20543
Postage	85
Carrier Fee	8
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom Date and Address of Delivery	90
Return Receipt showing to whom Date and Address of Delivery	
TOTAL POSTAGE	26
POSTAGE PAID	
	

PS Form 3800, June 1985

73070165602

CASH RECEIPT



Date 1/9/99

Received of Cash

three & 6/100 DOLLARS

FOR Photocopies

TOTAL

PAID

BAL DUE

CHECK

CASH

Express

PAID

33 / 0165603

CASH RECEIPT



688 NEW JERSEY AVE. NW
WASHINGTON, DC 20001
(202) 347-6777

Date 12-20-88

Received of Six dollars & fifteen
cents DOLLARS

FOR Photo Copy

TOTAL \$6.15

PAID \$6.15

BAL. DUE _____

CHECK

CASH

PAID
[Redacted Box]

Signatures _____

23770165654

CASH RECEIPT



DATE 1-3-89

RECEIVED OF Cash
52 dollars ————— 52 DOLLARS

FOR PHOTOCOPY

TOTAL

PAID

BAL DUE

CHECK

CASH

PAID

Signatures

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VENDOR NO.		CHECK NO.		SERIAL NO		
VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT
65605						

PLEASE DETACH BEFORE DEPOSITING

GEPHARDT FOR PRESIDENT COMMITTEE, INC.
 304 PENNSYLVANIA AVE SE
 WASHINGTON, D.C 20003

FEDERAL CITY NATIONAL
 WASHINGTON, D.C
 15-157 540

SERIAL NO 000951

DATE 1/19/89

CHECK NO 000951

NET AMOUNT *****\$47.07***

PAY *****Forty seven dollars and seven cents*****

TO THE ORDER OF
 Jacqueline M. Forte
 3816 Curtis Drive #103
 Suitland, MD 20746

NON-NEGOTIABLE

⑆000951⑆ ⑆054001576⑆ ⑆L. 032015 01⑆

J. C. ASSOCIATES

Certified Mail
Return Receipt Requested
P 782 042 199

May 10, 1988

Gephardt for President Committee, Inc.
308 Pennsylvania Avenue, S.E.
Second Floor
Washington, D.C. 20003
Attn: William A. Carrick, Jr., Executive Director

Re: DELINQUENT RENT

Dear Mr. Carrick:

Your rent of \$1,501.28 which was due on the on the first (1st) of May has not yet been received and is delinquent. In accordance with your Lease Agreement please include an additional \$150.13 for late charges (10%) with your payment.

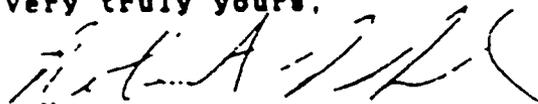
Payment in full of \$1,706.94, as listed below, must be received no later than Monday, May 16, 1988 to avoid having the collection of rent and late charges handled by our attorneys.

Rent Past Due	\$1,501.28
Late Charges (10%)	150.13
Additional Rent due through April 30, 1988*	55.53
Total	<u>\$1,706.94</u>

* Per letter dated April 18, 1988 (enclosed).

Thank you in advance, and should you have any question please do not hesitate to contact this office.

Very truly yours,



Robert S. Silver
Lease Administrator

enc (letter dated April 18, 1988).

cc: E. Hensley, Accounting Manager

1311016561

FILE

J. C. ASSOCIATES

Certified Mail
Return Receipt Requested
P-806 424 348

April 18, 1988

Gephardt for President Committee, Inc.
308 Pennsylvania Avenue, S.E., Second Floor
Washington, D.C. 20003
Attn: William A. Carrick, Jr., Executive Director

Re: Lease Escalation

Dear Mr. Carrick:

Rental escalation provisions of your Lease Agreement provide for annual increase of Base Rent, each lease anniversary date, in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), Washington, DC, MD and VA, all items (1967 = 100).

Computations for rental increase effective April 1, 1988 are as follows:

Base Rent	\$1,225.00
Comparison Index (1/88)	352.1
Base Index (1/85)	317.7

$\$1,225.00 \times (352.1/317.7) = \$1,357.84$
 $\quad \quad \quad - 1,302.11$
 $\quad \quad \quad = 55.53 \text{ monthly increase}$

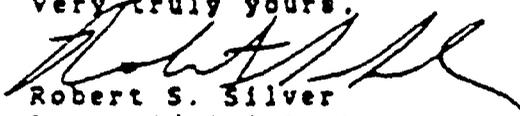
Due April, 1988 (\$55.53/mo x 1 mo) = \$55.53

Therefore, we are requesting your payment in the amount of \$55.53 for additional rent due through April 30, 1988. May 1, 1988 and subsequent monthly payments should be made in the amount of \$1,301.28 as listed below:

Base Rent (Monthly)	\$1,225.00
Consumer Price Index	132.64
Cleaning Fee	143.64

As per our letter of February 26, 1988 your monthly cleaning fee will remain unchanged until a new contract with Building Services and Maintenance is finalized.

Thank you in advance, and should you have any questions, please do not hesitate to contact this office.

Very truly yours,

Robert S. Silver
Lease Administrator

3 1 1 625 6 8

One and Seven



FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

NOT NEGOTIABLE

100-26977-1000015750-01-000000-01

1650



GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER L 4A DATE 5/17/88

REQUESTED BY J. M. [Signature]

DATE TO BE PAID _____ AMOUNT \$ 300.00

PAYEE Kerak Corporation

ADDRESS 1616 N. Fort Myer Dr.

Arlington, VA 22209

Attention: Ruth Kearny

PURPOSE OF EXPENDITURE (DETAILS) Service Call

Serial Number C-34-154116

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 5/17/88 CHECK # 002698 \$ 300.00

VENDOR # 096458 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-015-2402 \$ 300.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 300.00

0316950

Customer Information

XEROX CORPORATION
D.C. COMM ADMIN
1816 N FORT MYER DR
7TH FLOOR
ARLINGTON, VA 22209
Telephone 709-247-6800
Please Direct Inquiries To:

JACKIE FORTE 05/25/88

321369 05/25/88

145123
Special Reference No.

PAYABLE ON RECEIPT
Terms of Sale

Ship To
GEPHARDT FOR PRESIDE
NT
2ND FLOOR
304 PENN AVE SE
WASHINGTON DC
20003

Bill To
GEPHARDT FOR PRESIDE
NT
2ND FLOOR
304 PENN AVE SE
WASHINGTON DC
20003

Master Order No.
5195

GOODS AND/OR TECH REP SERVICE CHARGES
REP ON 05-25-88, MACHINE # C34-054116
TECH REP #892335; HOURS WORKED 4.9

Reorder No.	Description	Quantity Ordered	Quantity Shipped	Unit Price	Amount
SVC10451J	REGULAR SERVICE CHARGE			300.00	300.00
423W08502	BELT	1	1	NO CHG	
053S90116	FILTER DUST	1	1	NO CHG	
600S07760	FEED ROLL BELT	1	1	NO CHG	
600K06630	NDGR.SLEEVE	1	1	NO CHG	
012P90225	CABLE ASSY	1	1	NO CHG	

DISTRICT OF COLUMBIA	SUB TOTAL	\$300.00
	TAX 6.0000%	18.00
	INVOICE TOTAL	\$318.00

Invoice

THIS INVOICE IS FOR COMBINED BILLING FOR SERVICE PERFORMED ON 05/25, 05/26

Detach and Return Payment Section With Payment

Contact Customer Service Department for Change of Address

Ship To
GEPHARDT FOR PRESIDE
NT
2ND FLOOR
304 PENN AVE SE
WASHINGTON DC
20003

Bill To
GEPHARDT FOR PRESIDE
NT
2ND FLOOR
304 PENN AVE SE
WASHINGTON DC
20003

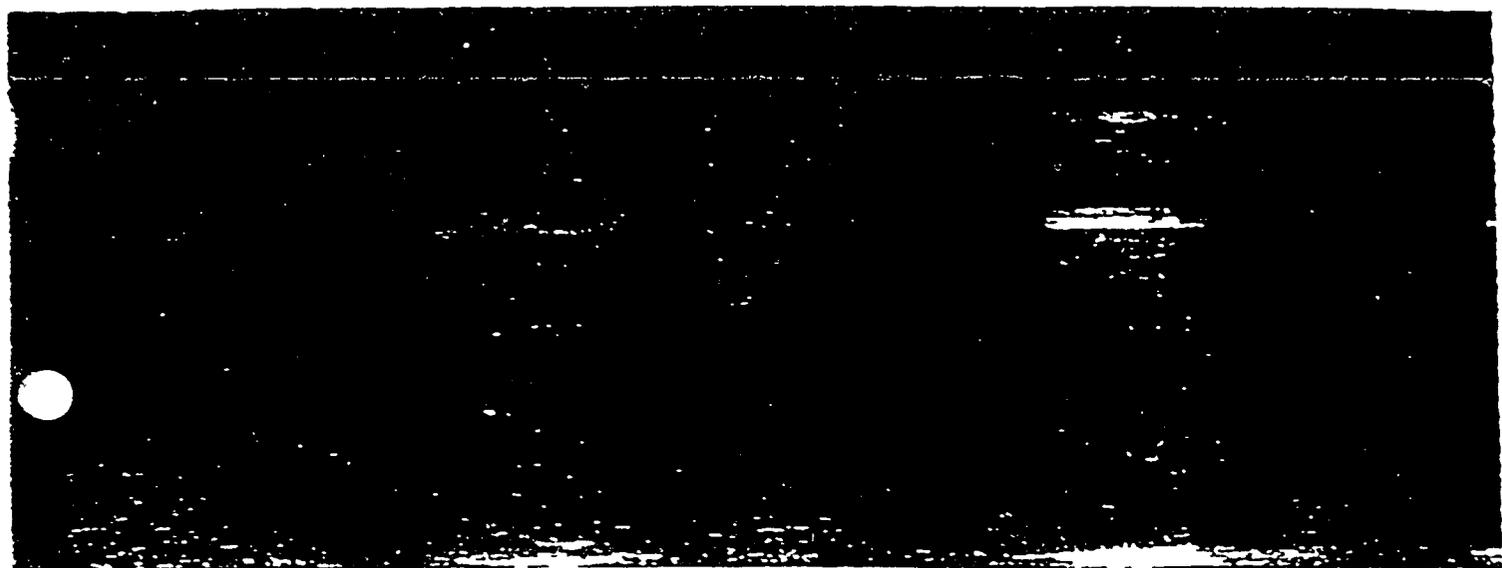
Send Payment To
XEROX CORPORATION
XRX SQ-0870-87L
ROCHESTER, NEW YORK
14664

For Xerox Use Only

When Paying Invoice Amount

00-494-8956 1 093620078 135162288 06/13/88 217D **\$318.00**

Payment



I N V O I C E

Mark Grebner
Practical Political Consulting
P. O. Box 6249
East Lansing, MI 48826

March 20, 1988

1988

to: Gephardt for President

5
6
6
6
3
3
3
1
0
6

DATE	ITEM	AMOUNT
3/5/88	basic package for Michigan caucuses: phone lists for likely participants, targetting, phone lists for potential converts	\$12,000.00
3/14/88	add-on: labels for likely participants & other selected groups (approx. 130,000 gummed labels)	3,000.00
TOTAL		\$15,000.00

Handwritten notes:
4-11-88
1-11-88
2-11-88
3-11-88

GERALD R. FORD PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER _____ DATE APR 27 1993

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$5,000.00

PAYEE Pastoral Biblical Consulting

ADDRESS Mark Greber

P.O. Box 6249

East Lansing, MT 48826

PURPOSE OF EXPENDITURE (DETAILS) _____

Phone Lists labels etc.

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER X _____
COST ESTIMATE X _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER / DEPT _____

AUTHORIZING SIGNATURE _____

CHECK DATA _____

CHECK DATE 5/23/93 CHECK # 002704 \$ 5,000.00

VENDOR # 071727 KEY VENDOR # _____

EXPENSE DISBURSEMENT

VOUCHER # _____ AMOUNT = 0.2-381-1002 \$ 5,000.00

VOUCHER # _____ AMOUNT = _____ \$ _____

VOUCHER # _____ AMOUNT = _____ \$ _____

VOUCHER # _____ AMOUNT = _____ \$ _____

TOTAL \$ 5,000.00

3070165664

Mark Grebner
50%

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Michigan DATE 4-27-88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$10000.00

PAYEE Practical Political Consulting

ADDRESS PO Box 6249

East Lansing MI 48826

PURPOSE OF EXPENDITURE (DETAILS) _____

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 10/7/88 CHECK # 000661 \$ 5,000.00 *Count*

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 381 \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 5,000.00

WAIVER

Practical Political Research

Five thousand and no cents.....



FEDERAL CITY
NATIONAL BANK

NOT NEGOTIABLE

NO. 12048 60 40015780 00 00 01 01

I N V O I C E

Mark Grebner
Practical Political Consulting
P. O. Box 6249
East Lansing, MI 48826

March 20, 1988

to: Gephardt for President

DATE	ITEM	AMOUNT
3/5/88	basic package for Michigan caucuses: phone lists for likely participants. targetting. phone lists for potential converts	\$12,000.00
3/14/88	add-on: labels for likely participants & other selected groups (approx. 130,000 gupped labels)	3,000.00
		4 -38-



October 12, 1988

Mr. Mark Grebner
Practical Political Consulting
P.O. Box 6249
East Lansing, MI 48826

Dear Mr. Grebner:

This letter is in reference to the obligations owed to you by the Gephardt for President Committee, Inc. (the "Committee") in the amount of \$10,000.00.

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 \$5,000.00.

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, 618-3337).

Very truly yours,

Jacqueline M. Forte

DEBT SETTLEMENT AGREEMENT

The Gephardt for President Committee, Inc. (the "Committee") has entered into a Debt Settlement Agreement with Practical Political Consulting (the "Vendor").

The Debt Settlement Agreement covers the following obligation:

- * Purpose of Obligation: Supplies
- * Initial Terms of Credit: Payable Upon Receipt Of Invoice
- * Outstanding Balance: \$10,000.00
- * Settlement Agreement Amount: \$5,000.00

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

Title

Date

For the Committee:

Richard J. ...
Name

President
Title

October 2, 1969
Date

73 / 165609

00066

VENDOR NO.

CHECK NO.

SERIAL NO

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT

PLEASE DETACH BEFORE DEPOSITING

GEPHARDT FOR PRESIDENT COMMITTEE, INC.
304 PENNSYLVANIA AVE SE
WASHINGTON DC 20003

FEDERAL CITY NATIONAL BANK
WASHINGTON DC
15-157 54C

000661

10/07/88

000661

55.000000

PAY Practical Political Consulting
P. O. Box 6240
Washington, DC 20006

Five Thousand and 00/100-----

TO THE ORDER OF

NON-NEGOTIABLE

000661 105400.5760 10.002015 C.M.

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER _____ DATE 3-15-87

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 75.00

PAYEE Internal Revenue Service

ADDRESS Manufacturing Plant

PURPOSE OF EXPENDITURE (DETAILS) _____

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE _____ CHECK # _____ \$ _____

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ _____

**U.S. Income Tax Return
for Certain Political Organizations**

1988

Department of the Treasury
Internal Revenue Service

▶ For Paperwork Reduction Act Notice, see instructions on page 2
▶ To be filed by organizations having taxable income (line 19)

For calendar year 1988 or tax year beginning 1988, and ending 19
Note: If you are a section 501(c) organization (see instruction B3) or a separate segregated fund described in section 527(f)(3) check here ▶

Please print or type	Name of organization Gephardt For President Committee Inc.	Employer identification number 52-1488608
	Number and street (or P.O. box number if mail is not delivered to street) address 80 F Street, NW 8th Floor	Date organization formed November 17, 1986
	City or town, state and ZIP code Washington, DC 20001	(See instruction C4) If this is a principal campaign committee and it is the ONLY political committee, check here <input checked="" type="checkbox"/> If this is a principal campaign committee but is NOT the only political committee, check here and attach a copy of designation <input type="checkbox"/>

Enter name of candidate ▶ **Richard A. Gephardt** The books are in care of ▶ **J.M. Forte**
Located at ▶ **80 F Street, NW 8th Floor Washington, DC 20001** Telephone No ▶ **(202) 628-3337**

Check applicable boxes (1) Final return (2) Change of address (3) Amended return

Income	1 Dividends (attach schedule)	1	0 00
	2 Interest	2	5,244 37
	3 Gross rents	3	0 00
	4 Gross royalties	4	0 00
	5 Capital gain net income (attach Schedule D (Form 1120))	5	0 00
	6 Net gain or (loss) from Form 4797 Part II line 18 (attach Form 4797)	6	0 00
	7 Other income (see instructions)	7	0 00
	8 Total income (add lines 1 through 7)	8	5,244 37
Deductions	9 Salaries and wages	9	0 00
	10 Repairs	10	0 00
	11 Rents	11	0 00
	12 Taxes	12	0 00
	13 Interest	13	374 78
	14 Depreciation (attach Form 4562)	14	0 00
	15 Other deductions (attach schedule)	15	0 00
	16 Total deductions (add lines 9 through 15)	16	374 78
	17 Taxable income before specific deduction of \$100 (not allowed to new exempt funds defined under section 527(g))	17	4,869 59
	18 Less specific deduction of \$100 (not allowed to new exempt funds defined under section 527(g))	18	0 00
19 Taxable income (subtract line 18 from line 17)	19	4,869 59	
Tax	20 Income tax (see instructions)	20	730 47
	21 Credits (see instructions)	21	0 00
	22 Total tax (subtract line 21 from line 20)	22	730 47
	23 Payments: a Tax deposited with Form 7004 <u>23a</u>	23a	
	b Credit from regulated investment company (attach Form 1099) <u>23b</u>	23b	
	23c <u>23c</u>	23c	0 00
24 Tax due (subtract line 23c from line 22) See instructions for depositary method of payment	24	730 47	
25 Overpayment (subtract line 22 from line 23)	25	0 00	

Additional Information

1 At any time during the tax year did you have the estate or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See instructions) Yes No
If "Yes" write the name of the foreign country: _____

2 Were you the grantor of, or transferor to, a trust which existed during the current tax year, whether or not you have any beneficial interest in the trust? Yes No
If "Yes" you may have to file Form 3508 or Form 926

3 Enter the amount of tax-exempt interest accrued during the tax year \$ _____

Please Sign Here Assistant Controller 03/15/89 Date Assistant Controller Title

Paid Preparer's Use Only

Preparer's signature: _____ Date: _____ Check if self-employed Preparer's social security number: _____
Preparer's name (if self-employed): _____ EIN: _____
Address: _____ ZIP code: _____

GEPHARDT FOR PRESIDENT

432.00

EXPENDITURE / CHECK REQUEST

COST CENTER _____ DATE 6-8-88

REQUESTED BY Maria Varner

DATE TO BE PAID _____ AMOUNT ~~\$443.70~~ 2230

PAYEE Professional Flight Services

ADDRESS 3701 N Minnesota Avenue
Sioux Falls SD 57104

PURPOSE OF EXPENDITURE (DETAILS) air travel

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 07/28/88 CHECK # 002759 2,230.70
2230

VENDOR # 021973 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-07-1112 2,230.70
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
TOTAL \$ 2,230.70

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER _____ DATE 4-24-89

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$140.00

PAYEE Deborah A Carras

ADDRESS St. Anselm College
87 Saint Anselm Drive
Manchester, NH 03102-1310

PURPOSE OF EXPENDITURE (DETAILS) Casual Services
0-2-5.0-???

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 4-25-89 CHECK # 2413 \$ 140.00

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

TOTAL \$ _____



Democratic National Committee

April 5, 1989

Scyk

Ms. Andrea King,
Administrative Assistant
Congressman Richard Gephardt
1432 Longworth House Office Bldg.
Washington, DC 20515

Dear Ms. King:

The enclosed letter recently arrived in the Chairman's office here at the DNC.

I am sending it along to you with the hope that you or one of your staff can help resolve Ms. Carnes' complaint.

Thank you for your attention to this matter.

Sincerely,

James F. Spillone

James F. Spillone
Staff Assistant

→ KENT KUTIRA

4-14 TOLD HER WITH A...
SEND HER FILE

137 / 016456 / 6

Saint Anselm



COLLEGE

87 Saint Anselm Drive Manchester New Hampshire 03102-1310
603-641-7000

To date I have not had any response from Congressman Gephardt or his staff. I have enclosed photocopies of all of the documents I have sent to and received from Congressman Gephardt. I would appreciate any assistance you could offer me in resolving this matter.

I would like to thank you in advance for all of your help.

Sincerely,



Deborah A. Carnes
Saint Anselm College

cc: Senator Edward Kennedy
Democratic National Committee

230 / 01656 / 3



Saint Anselm



COLLEGE

Manchester New Hampshire 03102-9001 Phone (603) 641-7000

P.O. Box 1
Saint Anselm College
Manchester, NH 03102
March 13, 1989

Jacqueline M. Forte
Gephardt for President
Payroll Account
304 Pennsylvania Avenue
Washington, D.C. 20003

Dear Ms. Forte:

In August, I received partial payment for work done for Congressman Gephardt's Presidential Campaign. That check dated August 28, 1988, was for \$67.00, which represented only a portion of the \$207.00 that I was actually owed (see Attachments I & II). At that time, I sent you a letter explaining the situation and asked you to please reply and correct this oversight

Seven months have now passed. I have contacted you many times by both letter and telephone, but to date I have not had any response. I worked hard for Congressman Gephardt and deserve to be paid the remaining \$140.00 which I am owed. I have been very patient, but I find your lack of response very unprofessional and inconsiderate.

I hope this letter will not be pushed aside like the previous one.

Sincerely,

Deborah A. Carnes
Saint Anselm College

cc: Congressman Gephardt
Democratic National Committee
Senator Edward Kennedy

216 Otis Street
Hingham, Massachusetts 02043
September 7, 1988

Jacqueline M. Forte
Gephardt For President
Payroll Account
304 Pennsylvania Avenue
Washington, D.C. 20003

Dear Ms. Forte:

Thank you for the check of \$67.00 I received about one week ago. I am aware of Congressman Gephardt's financial problems and appreciate all your efforts to send me this check.

When we spoke earlier, it was understood that you had the record of my total hours worked and would pay the full amount at a rate of \$7.00/hour. The check I received is approximately \$140.00 short of what I am owed. I assume that you intend to send the balance due to me - could you please confirm when I might expect it.

I would like to thank you in advance for your help in resolving this matter.

Sincerely,

Deborah A. Carnes
Saint Anselm College

GEPHARDT FOR PRESIDENT COMMITTEE. INC.

1085

PAYROLL ACCOUNT
304 PENNSYLVANIA AVENUE, S.E.
WASHINGTON, D.C. 20003

18 August 19 80

15.15
540

PAY
TO THE
ORDER OF

Deborah Carnes

\$ ***67.00***

Sixty seven and no cents*****

DOLLARS



FEDERAL CITY
NATIONAL BANK
WASHINGTON, D.C. 20001

FOR

Signature

⑆001085⑆ ⑆054001576⑆ ⑆01 002015 02⑆

1600

FOR PRESIDENT
THE INC.
BLOCK
2000

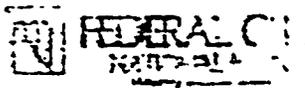
2012

2 April 2012

Deborah Carson

140.00

One hundred forty and 00/100



Custom Services

NOT NEGOTIABLE

FD-302 (Rev. 11-29-10)

EXPENDITURE / CHECK REQUEST

COST CENTER LTA DATE 2/1/91

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 45.00

PAYEE Federal Express

ADDRESS P.O. Box 1140, Dept A
Memphis, TN 38101-1140

PURPOSE OF EXPENDITURE (DETAILS) (Account) Delivery expense
to KENNAN Research & Consulting AND Telecom USA

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM X
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE [Signature]

CHECK DATA

CHECK DATE 2/1 CHECK # 300 \$ 45.00

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ _____

RECIPIENT INFORMATION AND PROOF OF DELIVERY	PACKAGES & WEIGHT	SERVICES	CHARGES	NET CHARGES
SUSAN MORRIS RRC 145 6TH AVE 7TH FL NEW YORK, NY 10013 AA DELIVERED 02/05/90 09:46 SIGNED: S. RODRIGUEZ	1/ NA	PRIORITY LTR	15.00	15.00
RECIPIENT INFORMATION AND PROOF OF DELIVERY	PACKAGES & WEIGHT	SERVICES	CHARGES	NET CHARGES
SUSAN MORRIS KINMAN RESEARCH & CONSULTING 145 6TH AVE 7TH FLOOR NEW YORK, NY 10013 AA DELIVERED 01/26/90 09:05 SIGNED: S. RODRIGUEZ	1/ NA	PRIORITY LTR	15.00	15.00
CARLY JOHNSON TELECOM USA CUSTOMER SERVICE 300 SECOND AVE SE WOODRIDGE RAPIDS, IA 52401 AA DELIVERED 01/26/90 10:05 SIGNED: H. BIZEK	1/ NA	PRIORITY LTR	15.00	15.00

230 / 0165634

297

GEORGETOWN FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER SR DATE 5/2/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 11.00

PAYEE Federal Express

ADDRESS _____

PURPOSE OF EXPENDITURE (DETAILS) Delivery Charge
(Payment sent to Gordon & Schwenkmeier)

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____
Requested from Boyd Lewis
INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 5/2/88 CHECK # 002187 \$ 11.00

VENDOR # 027678 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 05-042-2102 \$ 11.00
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____

6 2 5 7 3

**GEPHARDT FOR PRESIDENT
COMMITTEE, INC.**

304 PENNSYLVANIA AVE., S.E.
WASHINGTON, D.C. 20003

2687

03 60865555 05-15-88 15-157
MAY 15 1988 027 240

PAY TO THE ORDER OF Federal Express 05-09-88 004 02 8500 605042160 \$ 11.00

Eleven And 00/100-----DOLLARS



Signature

FOR _____

⑆002687⑆ ⑆0540015761⑆ ⑆01 002015 01⑆ ⑆0000001100⑆

AP 193307.832

UNRECORDED
MAY 15 1988
FEDERAL CITY NATIONAL BANK
WASHINGTON, D.C. 20003
P.O. BOX 1111
WASHINGTON, D.C. 20004
7-27
605042160

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Exempt Legal & Accounting DATE 5/23/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$11.00

PAYEE Federal Express

ADDRESS 201 Pennsylvania Avenue., SE

Washington, DC 20003

PURPOSE OF EXPENDITURE (DETAILS) Overnight Letter to Kling.

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 05/23/88 CHECK # 002708 \$ 11.00

VENDOR # C77675 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-035-2102 \$ 11.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 11.00

URGENT! CALL 800-836-5300 TOLL FREE

1009077

WHICH FEDERAL EXPRESS ACCOUNT NUMBER IS LISTED BELOW? 1. 1009077 2. 1009077		ZIP CODE 20003	
TO WHOM SHOULD THIS PARCEL BE DELIVERED? Name: Mr. Frank Butler (not preferred) Address: 1000 644-7305 Department/Floor No.: _____		RECIPIENT'S NAME (PLEASE PRINT) Mr. Frank Butler COMPANY Landmark Shipping	
FROM WHOM SHOULD THIS PARCEL BE SHIPPED? Name: Continental Air Freight Service, Inc. Address: 200 Pennsylvania Ave., SE Washington, DC		ZIP CODE 20003	
YOUR DELIVERED ADDRESS (FIRST 24 CHARACTERS WILL APPEAR ON RETICKET)		ZIP CODE 20003	

FEDERAL EXPRESS USE Rate Charge 111 Declared Value Charge Origin Agent Charge Other Total Charge 111	
PART 6204170800 REV. 5/87 PD NY/TEC - S.A. WOSE 007	

DELIVERY <input type="checkbox"/> DELIVERY <input type="checkbox"/> DELIVERY & PICKUP <input type="checkbox"/> DELIVERY & PICKUP (NO. 1) <input type="checkbox"/> DELIVERY & PICKUP (NO. 2) <input type="checkbox"/> DELIVERY & PICKUP (NO. 3)	DELIVERY AND SPECIAL DELIVERY 1. <input type="checkbox"/> DELIVER TO DOOR 2. <input type="checkbox"/> DELIVER TO BUSINESS 3. <input type="checkbox"/> DELIVER SATURDAY 4. <input type="checkbox"/> DELIVER TO HOME 5. <input type="checkbox"/> DELIVER TO BUSINESS (NO. 1) 6. <input type="checkbox"/> DELIVER TO BUSINESS (NO. 2) 7. <input type="checkbox"/> DELIVER TO BUSINESS (NO. 3)	WEIGHT 2.75 DIMENSIONS 10x10x10	RECEIVED AT <input type="checkbox"/> Regular Stop <input type="checkbox"/> On-Call Stop <input type="checkbox"/> Drop Box <input type="checkbox"/> Station
--	--	--	--

YOUR DECLARED VALUE
MAXIMUM OF \$500

As an added service, we will insure the package in the event of physical loss or damage. This service is a separate business service to the Fed Ex shipping system. It is not included in the cost of a shipment. We charge \$2.00 per \$100 of declared value. This service is available for all shipments made by air or ground.

DELAY
 There is always a risk of any delivery of your shipment. In the event of a late delivery, we will refund you the amount of the shipping charge. We will also refund you the amount of the shipping charge. We will also refund you the amount of the shipping charge.

CONSEQUENTIAL DAMAGES
 We are not responsible for any loss or damage to your shipment. We are not responsible for any loss or damage to your shipment. We are not responsible for any loss or damage to your shipment.

DO NOT SIGN BASE ON COMMENT

SENDER'S COPY/RETAIN FOR TRACE PURPOSES

LA 11485

Federal Reserve

Serial And 60/100

FEDERAL CITY
BY YOUR BANK

Overnight Letter

NOT NEGOTIABLE

1002702 100003578 002015 DM

GEHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER _____ DATE June 8, 1988

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 11.00

PAYEE Labrad Express Corp.

ADDRESS _____

PURPOSE OF EXPENDITURE (DETAILS) Delivery Expense / shipped to Gordon & Schwendmeyer

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 6/8/88 CHECK # 002720 \$ 11.00

VENDOR # 027675 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-042-2102 \$ 11.00
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____
VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 11.00

GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER LFA DATE 6/14/88

REQUESTED BY J. L. Lunde

DATE TO BE PAID _____ AMOUNT \$ 11.00

PAYEE Federal Express

ADDRESS _____

PURPOSE OF EXPENDITURE (DETAILS) Delivery to TCB

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 6-14-88 CHECK # 02722 \$ 11.00

VENDOR # 027675 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-035-2102 \$ 11.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

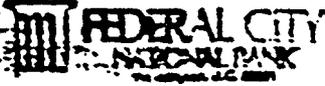
VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 11.00

Eleven and 00/100

11.00



NOT NEGOTIABLE

⑆03722⑆ 03 ⑆001575⑆ ⑆0⑆ 002015 01⑆

3 / 11 / 03 4

217 3-23

GERHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Legal & Accounting DATE 6/16/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT 11.00

PAYEE Federal Express

ADDRESS P.O.Box 727
Memphis, TN 38194

PURPOSE OF EXPENDITURE (DETAILS) Package to Kling (Overnight)

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 6/16/88 CHECK # CC2727 \$ 11.00

VENDOR # 027675 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-7-000-2102 \$ 11.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 11.00

GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER FR DATE 7/8/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT \$ 11.00

PAYEE Federal Express

ADDRESS _____

PURPOSE OF EXPENDITURE (DETAILS) Over Night Delivery

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 07/08/88 CHECK # 002740 \$ 11.00

VENDOR # 037675 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-042-2102 \$ 11.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 11.00

FEDERAL EXPRESS

QUESTIONS? CALL 800-238-8388 TOLL FREE.

AMBIEN NUMBER

1312

1312

Sender's Federal Express Account Number Date 7/7/82

From (Your Name, Please Print) Signature III, Inc.
Company Signature III, Inc.
Department/Floor No.
Street Address 5751 ...
City Winston-Salem, NC
State NC
ZIP Required For Correct Mailing 27157

To (Recipient's Name, Please Print)
Company
Department/Floor No.
Exact Street Address (Use of P.O. Boxes or P.O. Zip Boxes Not Allowed)
City
State
ZIP Street Address Zip Required

YOUR BILLING REFERENCE INFORMATION (FIRST 24 CHARACTERS WILL APPEAR ON INVOICE)

FIELD FOR PICK-UP BY THIS FEDERAL EXPRESS LICENSEE
Street Address (Use Service Guide or Call 800-238-8388)

INTERNATIONAL SERVICE
Priority Mail
Registered Mail
Certified Mail
Insured Mail
Signature Required
Signature Restricted
Signature Restricted (with return receipt)

DELIVERY AND SPECIAL HANDLING CHARGE SERVICES REQUIRED
1. DELIVER TO PICK-UP
2. DELIVERED DELAYED
3. DELIVERED SATURDAY
4. BUSINESS SERVICE
5. BUSINESS SURVEILLANCE SERVICE ACCESS
6. SET ME
7. OTHER SPECIAL SERVICE
8.
9. SIGNATURE PICK-UP
10.

FEDERAL EXPRESS USE
Basic Charges
Insured Value Charge
Origin Agent Charge
Other
Total Charges

YOUR DECLARED VALUE
DAMAGE OR LOSS
RELAY
CONSEQUENTIAL DAMAGES
DO NOT SHIP CASH OR CURRENCY

PART
8204738000 REV 5-87
PRINTED IN SA WGSF
007

SENDER'S COPY/RETAIN FOR TRACE PURPOSES



NOT FOR NEGOTIATION
ALABAMA /
FEDERAL B.C.

July 8,

1957

Federal Express

11:00

Eleven and 00/100

FEDERAL CITY

NOT NEGOTIABLE

100 00 00 00 00

937162619



GEPHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER Fundraising DATE 7-20-88

REQUESTED BY Maria Varner

DATE TO BE PAID _____ AMOUNT \$11.00

PAYEE Federal Express

ADDRESS _____

PURPOSE OF EXPENDITURE (DETAILS) delivery / Gordon & Schwenkrey

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 07/20/88 CHECK # 002252 \$ 11.00

VENDOR # 027675 NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # 0-2-042-2102 \$ 11.00

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ 11.00

FEDERAL EXPRESS

FOR BUSINESS? CALL 800-230-5335 TOLL FREE.

SMALL BUSINESS

2725

DATE 3/19/88

Sender's Federal Express Account Number

2725

Sender's Name: Boyd Lewis
New Phone Number (New Floor): (202) 680-3337
Department/Floor No: 265

Address: 355 New Jersey Avenue, NW
Washington, DC 20001

City: Washington, DC 20001

Recipient's Name: Mike Gordon
New Phone Number (New Location):
Department/Floor No:

Address: Gordon & Schweikner, Inc
Exact Street Address (Box or P.O. Box or R.F. D. Box or Rural or Meter Station or Post Office or Care Station)

City: 3751 Uplander Way, Galveston, CA 90230

YOUR BILLING REFERENCE INFORMATION (PRINT IN CHARACTERS WILL APPEAR ON INVOICE)

SHIPMENT BY REGISTER BY REGISTER'S PRIORITY MAIL BY REGISTER'S PRIORITY MAIL BY REGISTER'S PRIORITY MAIL

SHIPMENT BY REGISTER BY REGISTER'S PRIORITY MAIL BY REGISTER'S PRIORITY MAIL BY REGISTER'S PRIORITY MAIL

SERVICES (CHECK ONLY ONE BOX)	DELIVERY AND SPECIAL HANDLING (CHECK SERVICES REQUIRED)	INCLUDED	WEIGHT	WEIGHT (LBS)	WEIGHT (LBS)
<input type="checkbox"/> PRIORITY 1	<input type="checkbox"/> DELIVER FOR PICK-UP			1.00	
<input type="checkbox"/> PRIORITY 2	<input checked="" type="checkbox"/> DELIVER NEXT DAY			LBS	
<input type="checkbox"/> PRIORITY 3	<input type="checkbox"/> DELIVER SATURDAY			LBS	
<input type="checkbox"/> PRIORITY 4	<input type="checkbox"/> DELIVER SUNDAY			LBS	
<input type="checkbox"/> PRIORITY 5	<input type="checkbox"/> DELIVER MONDAY			LBS	
<input type="checkbox"/> PRIORITY 6	<input type="checkbox"/> DELIVER TUESDAY			LBS	
<input type="checkbox"/> PRIORITY 7	<input type="checkbox"/> DELIVER WEDNESDAY			LBS	
<input type="checkbox"/> PRIORITY 8	<input type="checkbox"/> DELIVER THURSDAY			LBS	
<input type="checkbox"/> PRIORITY 9	<input type="checkbox"/> DELIVER FRIDAY			LBS	
<input type="checkbox"/> PRIORITY 10	<input type="checkbox"/> DELIVER SATURDAY			LBS	

SELLER'S PICK-UP AT THIS FEDERAL EXPRESS LOCATION
Street Address (See Service Guide or Call 800-880-8388)

City: State:

ZIP (Do Code of Street Address Follow)

YOUR DECLARED VALUE
DAMAGE OR LOSS
We are liable for no more than \$100 per package if the amount of declared value of contents exceeds \$100. If a higher declared value is in the bill and recipient signs the bill in the event of a claim, we charge \$1.00 per \$100 declared value of contents over \$100. The maximum amount in our Service Guide. Declared value restrictions are shown on the back of the Service's Card in the area for value of contents or printed elsewhere.

INSURE
There is a charge of 1% of the declared value of contents in the event of a loss. Federal Express will not insure and will not be responsible for loss of contents. Charges will be based on carrier's Code of the area for further information.

CONSEQUENTIAL DAMAGES
We will not be responsible or liable for any loss of earnings resulting from delay, non-delivery or damage to a package except as noted herein. This includes loss of sales, profits, interest, stock, bonds, etc. and other costs. Our liability is limited to the actual cash value of the contents of the package.

DO NOT SHIP CASH OR CURRENCY

SENDER'S COPY/RETAIN FOR TRACE PURPOSES

Federal Express Ltd
Basic Charge
Deferred Value Charge
Origin Agent Charge
Other
Total Charge

PAID
8204113837
REC'D 752 11
REV. 3 24 88
10 M
02 11 11 11

Federal Reserve

17/20

2.157
340

...00..

Eleven And 00/100



NOT NEGOTIABLE

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2
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1
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/
1

GEPHARDT FOR PRESIDENT
EXPENDITURE / CHECK REQUEST

COST CENTER Fundraising DATE 08/02/88

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT 11.00

PAYEE Federal Express

ADDRESS 201 Pennsylvania Avenue., SE
Washington, DC 20003

PURPOSE OF EXPENDITURE (DETAILS) Overnight Package / Gordon & Schorkmeyer

DOCUMENTATION ATTACHED:

RECEIPTS _____	INVOICE _____
PURCHASE ORDER _____	ORDER FORM _____
COST ESTIMATE _____	CONTRACT _____
PROPOSAL _____	

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE 08/02/88 CHECK # 002762 \$ 11.00

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____	ACCOUNT # <u>0-2-3-3-3-3-3-3-3-3</u>	\$ <u>11.00</u>
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____
VOUCHER # _____	ACCOUNT # _____	\$ _____

TOTAL \$ 11.00

3
10275

POSTNET CALL 800-333-3333 FULL RATE

LOUISIANA
4536

LOS ANGELES CALIFORNIA

Sender's Postnet Express Account Number
8/2/88

Sender's Name
GEPHARDT

Your Phone Number (My Important)
214 4933337

Recipient's Name, Please Print
Mike Siefert

Recipient's Phone Number (My Important)
214 615 2200

Occupant/Room No.
Suite 265

Occupant
Gardner + Schumacher

Street Address
555 New Jersey Ave. #10

Street Address (Use of A.R. Boxes or G.R. Boxes and Street Name for Boxes is Same Group)
550 N. WASHINGTON

City
Dallas

City
El Segundo, CA

ZIP Code
90245

ZIP Required For Correct Mailing
75201

ZIP Code (Use of Boxes is Same Group)

ZIP Code (Use of Boxes is Same Group)

THIS BILLING REQUIREMENT INFORMATION (PRINT IN CHARACTER WILL APPEAR ON OFFICIAL)

PAID FOR PICK-UP BY THE FEDERAL EXPRESS AGENT
Street Address (Use Service Guide or Call 800-333-3333)

ITEMS OR OR OR OR

Federal Express Use
Basic Charge
11.00

SERVICES CHECK ONLY ONE BOX

CONFIDENTIAL
Use of this service requires the use of a special container and a special handling procedure. It is not available for international mail.

INSURANCE
Coverage for loss or damage to contents. Maximum value \$100,000. Additional charges apply.

REGISTERED MAIL
Provides a record of mailing and delivery. Additional charges apply.

REGISTERED AIR
Guaranteed next business day delivery. Additional charges apply.

COVERAGE COMMITMENT
Carrier is committed to deliver your mail on time. If delivery is delayed, you will receive a refund of the postage and handling charges.

DELIVERY AND SPECIAL HANDLING (CHECK SERVICES REQUIRED)

1 **DELIVER TO FRONT DOOR**

2 **DELIVER TO REAR DOOR**

3 **DELIVER SATURDAY**

4 **DELIVER TO BUSINESS**

5 **DELIVER TO HOME**

6 **DELIVER TO OFFICE**

7 **DELIVER TO STORE**

8 **DELIVER TO PICK-UP**

WEIGHT	CLASS	POSTAGE	INSURANCE	OTHER
	LBS			
	LES			
	LES			
	LES			
Total				

Accepted At:
1 Regular Box
2 C.O.D. Box
3 C.O.D. Box
4 R.C. Box
5 Station

Priority Express Club Envelopes Per
5x7 7/8

Declared Value Charge
Origin Agent Charge

25¢ to 25¢ Code or Street Address Required

YOUR DECLARED VALUE
DAMAGE OR LOSS

We are glad to receive your mail. We will be glad to accept your mail if it is in a proper container. We will be glad to accept your mail if it is in a proper container. We will be glad to accept your mail if it is in a proper container.

DELAY

There is always a risk of delay or non-delivery in the event of a late delivery. Federal Express will not be responsible for any loss or damage to contents. We will be glad to accept your mail if it is in a proper container.

CONSEQUENTIAL DAMAGES

We will not be responsible for any loss or damage to contents. We will be glad to accept your mail if it is in a proper container.

DO NOT SIGN CASE ON CURRENCY

PART
004173800 REV. 5/81
PRINTED U.S.A. WCSE.
007

SENDER'S COPY/RETAIN FOR TRACE PURPOSES

Physical Express

86

57

11.0

Eleven and 00/100

 **FEDERAL CITY**
NATIONAL BANK

Overnight Package

NOT NEGOTIABLE

⑆0227⑆ ⑆024001576⑆ ⑆01 002015 01⑆

7 5 7 1 0 3 7



GERHARDT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

COST CENTER *EA* DATE *8/26/88*

REQUESTED BY _____

DATE TO BE PAID _____ AMOUNT *# 11.00*

PAYEE *Federal Express*

ADDRESS _____

PURPOSE OF EXPENDITURE (DETAILS) *Overnight Delivery to Gordon & Schuenkmeier*

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR _____

AUTHORIZING SIGNATURE _____

CHECK DATA

CHECK DATE *8-26-88* CHECK # *000555* \$ *11.00*

VENDOR # _____ NEW VENDOR # _____

EXPENSE DISTRIBUTION:

VOUCHER # _____ ACCOUNT # *0-2-042-2102* \$ *11.00*

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

VOUCHER # _____ ACCOUNT # _____ \$ _____

TOTAL \$ *11.00*

FEDERAL

QUESTIONS? CALL 800-328-6888 TOLL FREE

AMMEL NUMBER

2725

8/20/88

Sender's Federal Express Account Number

AMMEL NUMBER 2725

Sender's Name: J. H. T. E. Your Phone Number (Very Important): (202) 627-3357

To Recipient's Name: Mike Jordan Recipient's Phone Number (Very Important): (213) 611-2121

Sender's Company: REPUBLIC FIRE INSURANCE CO. INC.

Company: Jordan + Schubert, Inc. 110

Sender's Address: 555 New Jersey Ave., 11811

Correct Street Address (Box or P.O. Box or ZIP Street Box Mail Delivery and Street to Box Group): 550 NORTH CONDORAVEN

Sender's City: WASHINGTON, DC ZIP Codes For Correct Mailing: 20001

City: El Segundo, CA ZIP Street Address Do Not Mail: 90245

SEND BELIEVE REFERENCE INFORMATION (FIRST IN CHARACTERS WILL APPEAR ON LABEL)

CALL FOR POST-UP AT TIME FORMING EXPRESS LABELS: Street Address (Box Service) or Call 800-328-6888

SHIP BY: AIR SERVICE AIR PRIORITY MAIL ACC. NO. AIR PRIORITY MAIL ACC. NO. GROUND CARRIER

Federal Express Fee: Base Charge: 11.50 Declared Value Charge: Origin Agent Charge: Other: Total Charge: 11.50

SERVICES CHECK ONLY ONE BOX: PRIORITY 1, PRIORITY LETTER, INSURE AND PACKAGING, CHARGE-FOR-COVERAGE ENDORSEMENT, STRAIGHT AIR

DELIVERY AND SPECIAL HANDLING CHECK SERVICES REQUIRED

- 1. DELIVER PRE-UP, 2. DELIVER WEEKDAY, 3. DELIVER SATURDAY, 4. BUSINESS HOURS, 6. DELIVERY SCHEDULE SERVICE, 7. OTHER SPECIAL SERVICE, 8. DELIVER PRE-UP

Table with columns: PACKAGE, WEIGHT, VOLUME (LBS, OZ), and other metrics. Total weight is 4 LBS.

Received At: Regular Stop, On-Call Stop, Drop Box, B.S.C. (Business Stop) or Station. Federal Express Corp. Employee No.

ZIP 4-Digit Code of Street Address Required

FOUR DECLARED VALUE: DAMAGE OR LOSS. We will pay no more than \$500 per package in the event of physical damage to the contents of the package.

DELAY: There is a chance of delay in the delivery of non-hazardous items in the event of a strike, military exercise, or other event.

CONFIDENTIAL SERVICES: We will not be responsible for items in any case of damage resulting from theft, fire, or other causes.

SENDER'S COPY/RETAIN FOR TRACE PURPOSES

Sender authorized Federal Express to deliver this shipment... Sender's Signature

Date/Time For Federal Express Use

POST OFFICE BOX 12507 REC 8 25 1988

DO NOT SHIP CASH OR CHECKS

00055

VENDOR NO

CHECK NO

SERIAL NO

VOUCHER NUMBER	INVOICE NUMBER	PURCHASE ORDER	INVOICE DATE	AMOUNT	DISCOUNT	NET AMOUNT

PLEASE DETACH BEFORE DEPOSITING

GEPHARDT FOR PRESIDENT COMMITTEE, INC.
 304 PENNSYLVANIA AVE SE
 WASHINGTON, D.C. 20003

FEDERAL CITY NATIONAL BANK
 WASHINGTON DC
 15-157 540

SERIAL NO **000555**

DATE
08/26/88

CHECK NO
000555

NET AMOUNT
\$1.00

PAY TO THE ORDER OF \$100.00

TO THE ORDER OF

Federal Empor Cor
 P. O. Box 727
 Washin. D. C. 20007

NON-NEGOTIABLE

⑈000555⑈ ⑈054006576⑈ ⑈01 002065 01⑈

00055

REPORT FOR PRESIDENT

EXPENDITURE / CHECK REQUEST

George TAGG...
GOVERNOR...
DATE 9/10/89

COST CENTER

Admin.

DATE

9/10/89

REQUESTED BY

DATE TO BE PAID

AMOUNT

\$ 586.17

PAYEE

Deliver Express

ADDRESS

300 Maryland Ave. NE
Washington, D.C. 20002

PURPOSE OF EXPENDITURE (DETAILS)

Delivery Service

DOCUMENTATION ATTACHED:

RECEIPTS _____
PURCHASE ORDER _____
COST ESTIMATE _____
PROPOSAL _____

INVOICE _____
ORDER FORM _____
CONTRACT _____

COST CENTER DIRECTOR

AUTHORIZING SIGNATURE

CHECK DATA

Net on New Typing / Sub Station \$460.95

CHECK DATE

9/26/89

CHECK #

2907

\$ 586.17

VENDOR #

NEW VENDOR #

EXPENSE DISTRIBUTION:

VOUCHER #	ACCOUNT #	\$	5,541.15
VOUCHER #	ACCOUNT #	\$	1,252.00
VOUCHER #	ACCOUNT #	\$	4,619.15
VOUCHER #	ACCOUNT #	\$	

TOTAL \$

953,373.22

SCHEDULE D-P

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

**DEBTS AND OBLIGATIONS
EXCLUDING LOANS**

Use separate schedules for each category of the detailed summary page.
PAGE 19 OF Items: pages 56
LINE NUMBER 12

NAME OF COMMITTEE (in Full)	OUTSTANDING BALANCE BEGINNING THIS PERIOD	DATE AND AMOUNT INCURRED THIS PERIOD	PAYMENT THIS PERIOD	OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD
Gephardt For President Committee, Inc.				
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor Elliot Flying Service P.O.Box 100 Moline, IL 61265	712.30	-0-	-0-	712.30
Nature of Debt (Purpose) Air Travel				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor Executive Inn Airport 9035 Highway 20 West Madison, AL 35758	291.71	-0-	-0-	291.71
Nature of Debt (Purpose) Lodging				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor Executive Suites 2100 South 7th Street Rapid City, SD 57701	-0-	1,105.50	-0-	1,105.50
Nature of Debt (Purpose) Occupancy Charges				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor Crip Fagadau Suite 216 6131 Luthlane Dallas, TX 75225	220.00	-0-	-0-	220.00
Nature of Debt (Purpose) Postage				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor Fairmont Hotel One California Street Suite 2900 San Francisco, CA 94111	155.50	333.00	333.00	155.50
Nature of Debt (Purpose) Lodging				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor Federal Express P.O. box 727 Memphis, TN 38194.	907.50	410.50 3/88	66.00	1,252.00
Nature of Debt (Purpose) Delivery				
11 SUBTOTALS This Period This Page Total				3,748.01
21 TOTAL This Period (last page this line only)				

23070165711

PERKINS COIE

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

91 JUL 18 PM 5:20

July 18, 1991

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Gephardt for President Committee -
Final Audit Report

Dear Commissioners:

Pursuant to 11 C.F.R. § 9038.2(c) of the Commission regulations, The Gephardt for President Committee ("the Committee") herewith requests a hearing before the Commission on the initial repayment determination made in the course of the recently completed audit of its 1988 presidential campaign.

I. Scope of Issues Contested

The report of the Audit Division sets out the issues in contention. The Committee will specifically address the Commission on the following matters:

- (1) The 25% national exemption, a discussion of which, along with the auditor's conclusions, may be found at page 8 of the final audit report.
- (2) Telephone charges of Northwestern Bell and MCI, a discussion of which, along with the auditor's conclusions, may be found at pages 15 and 16 of the final audit report.
- (3) Salaries, employee FICA, consulting fees and staff benefits, a discussion of which, along with the auditor's conclusions, may be found at page 18 of the final audit report.
- (4) Intrastate travel and subsistence expenditures, a discussion of which, along with the auditor's conclusions, may be found at page 22 of the final audit report.

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- (6) **Telemarketing services**, a discussion of which, along with the auditor's conclusions, may be found at pages 31-34 of the final audit report.
- (7) **Media expenses**, a discussion of which, along with the auditor's conclusions, may be found at page 40 of the final audit report.
- (8) **Event expenses**, a discussion of which, along with the auditor's conclusions, may be found at page 45 of the final audit report.

II. Position of Gephardt Committee

The position of the Committee on each of these matters is set out in its response to the interim audit report which was filed with the Commission in February 1990. Nonetheless, for the convenience of the Commission, relevant extracts from its response to each issue are set out in the same order. (Exhibit A.)

The Committee reserves the right to rely upon transcripts of the open Commission meeting when the report of the Audit Division was considered for additional information about the auditors' positions on these issues. References to that transcript will be made as appropriate in the course of the hearing.

In addition, the Committee is submitting additional documentation on certain items identified by the auditors on which the Committee does not request a hearing. (Exhibit B.)

Should you have any questions or need additional information, please contact the undersigned.

Respectfully submitted,



Robert F. Bauer
General Counsel
Gephardt for President Committee



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

October 31, 1991

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *LMN*
General Counsel

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

Carmen R. Johnson *CRJ*
Assistant General Counsel

SUBJECT: Oral Presentation - Gephardt for President
Committee, Inc. (LRA #338) - November 6, 1991

I. INTRODUCTION

The Commission approved the Interim Audit Report on the Gephardt for President Committee, Inc. ("Committee") on October 4, 1989. The Committee responded to the Interim Audit Report on February 16, 1990.^{1/} On June 10, 1991, the Commission approved the Final Audit Report. The Committee submitted its response to the Final Audit Report ("Committee's Response") on July 18, 1991.^{2/} In its response, the Committee requested the opportunity to address the Commission in open session regarding the report and the initial repayment determination. See 11 C.F.R.

1/ We note that counsel for the Committee and members of the Audit staff and our Office met on June 27, 1990 and January 22, 1991 to discuss certain issues raised in the Interim Audit Report.

2/ The Committee's response to the Final Audit Report incorporated by reference its response to the Interim Audit Report. Therefore, the citations refer to the pagination used in the Committee's response to the Interim Audit Report.

§ 9038.2(c)(3).^{3/} On September 19, 1991, the Commission granted the Committee's request for an oral presentation and set the date for the oral presentation as November 6, 1991.

We have prepared the following memorandum which summarizes the findings in the Final Audit Report and presents the Office of the General Counsel's analysis of the Committee's response to the Final Audit Report to assist the Commission in its consideration of the Committee's presentation. The oral presentation will allow the Committee to elaborate upon its arguments presented in response to the initial determination. The oral presentation also provides an opportunity for Commissioners and staff to discuss the issues involved, and to ask questions of the Committee's counsel in order to clarify the issues. Following the presentation, the Office of General Counsel will analyze the Committee's oral and written responses in preparing the draft Statement of Reasons supporting the Commission's final determination in this matter. If you have any questions about our analysis, please contact Lorenzo Holloway, the attorney assigned to this audit.

II. COMMISSION'S INITIAL REPAYMENT DETERMINATION

The Final Audit Report found that the Committee exceeded the Iowa expenditure limitation by \$480,848.63. See 11 C.F.R. § 9038.2(b)(2)(ii)(A). The Committee's repayment ratio as calculated under 11 C.F.R. § 9038.2(b)(2)(iii) is .262834. Therefore, the Commission made an initial determination that the Committee make a repayment to the United States Treasury in the amount of \$126,383.37 ($\$480,848.63 \times .262834$).

The Office of General Counsel notes that the Committee submitted additional documentation in response to the Final Audit Report that will have an impact on the repayment determination. This information will be incorporated in the proposed Statement of Reasons. Moreover, the repayment amount is subject to change based on the the Commission's determination with respect to the Committee's debt settlement request. See Debt Settlement Request 90-16; see also 11 C.F.R. § 9038.2(b)(1)(v). Finally, an addendum audit report will be issued pursuant to 11 C.F.R. § 9038.1(e)(4) that may have an impact on the Commission's initial repayment determination.

III. COMMITTEE'S RESPONSE TO THE FINAL AUDIT REPORT

The Committee contends that it was entitled to a 25% national exemption of all of its Iowa expenditures. In addition, the Committee contests the allocation of the following

^{3/} The Committee submitted additional documentation with its response to the Final Audit Report. However, the Committee did not request a hearing on the matters involving this documentation.

expenses to the Iowa expenditure limitation: (1) telephone charges of Northwestern Bell and MCI; (2) salaries, employee FICA, consulting fees and staff benefits; (3) intrastate travel and subsistence expenses; (4) telemarketing expenses; (5) media expenses; and (6) event expenses. Generally, the Office of General Counsel believes that the Committee is not entitled to a 25% national exemption of all its expenditures that would otherwise be allocable to the state limitations. Moreover, we submit that the expenditures that the Committee is contesting are allocable to the Iowa expenditure limitation. We have the following specific comments on the issues raised by the Committee.

A. Twenty Five Percent National Exemption

The Committee contends that it is entitled to a "25% national exemption" because many of the expenditures incurred in Iowa were unrelated to the Iowa effort, but were directly related to maintaining a national campaign. Committee's Response at 32. The Committee believes that because the Iowa primary is a testing ground for a national campaign, presidential campaigns are forced to incur expenditures and to otherwise conduct activities to attract and maintain a national audience during the Iowa primary. Committee's Response 7-13. Therefore, the Committee believes that the Commission should create an additional exception to the Iowa expenditure limitation which recognizes the national impact of the Iowa primary. The Committee contends that to do otherwise would impose an undue burden on presidential campaigns to stay within the expenditure limitation in Iowa, possibly affecting the candidate's guarantees of political speech under the First Amendment. Id. at 33. Further, the Committee points to the Commission's 10% compliance and fundraising exemption as an example of the application of an arbitrary exception. Id. at 36.

While the Committee's arguments do have some validity, the Final Audit Report rejected the Committee's basic proposition. At the heart of the Committee's position is an attack on the concept of state-by-state limits. While the Commission has recommended that Congress eliminate the state-by-state limits, Congress has never chosen to eliminate them. Thus, as long as the state expenditure limitations remain in effect, the Commission is required to administer the law and make its determinations accordingly.

Contrary to the Committee's assertion, the Commission's regulations recognize the realities of political campaigns by permitting committees to exempt expenditures for national campaign overhead as well as for compliance and fundraising

activities.^{4/} Unlike the 10% compliance and fundraising exemptions which focus on special areas of concern in political campaigns, the Committee's proposal is state specific. Moreover, the Commission has never adopted an exception to the state expenditure limitations based on one state's order in the primary election process or its relative importance to the candidate's national campaign. If this argument is extended to its logical conclusion, then the determination of the amount allocable to a state's expenditure limitation would be based solely on its importance to the national campaign and not the voting age population as required by 2 U.S.C. § 441(b)(1)(A).

Moreover, the Committee's position requires that the Commission administer the Matching Payment Act and the regulations based on the whims of the political process. If the Iowa primary ceases to be as significant due to a shift in the California primary or an increase in importance of the Super Tuesday primaries, then the campaigns could argue that the expenditures incurred in those states represent a national campaign. The Commission's regulations cannot be discriminatorily applied based on whether one state's primary has more of an impact on the national campaign than other state primaries.

In order for the Committee to build a national campaign and establish national credibility, it in fact made expenditures to influence the Iowa voters. Section 106.2(a)(1) of the Commission's regulations requires that these expenditures be allocated to the Committee's Iowa limitation absent an applicable exemption under 11 C.F.R. § 106.2(c). The Committee has not demonstrated that such an exemption applies to the expenditures at issue. Nor has the Committee demonstrated that there is a basis for the Commission to create an additional exception to the state expenditure limitation based on the theory that one state primary election takes precedence over another because of its impact on the national campaign.

Furthermore, the Committee has not justified its selection of the 25% figure. This figure does not necessarily reflect the actual expenditures incurred for a national campaign. When the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate has the burden of demonstrating, with supporting documentation, that the proposed method of allocation or claim of exemption is reasonable. 11 C.F.R. § 106.2 a 1). Since the Committee has

^{4/} We note that the Title 26 regulations for the 1992 election cycle permit presidential committees to exempt as fundraising 50% of the total allocable expenditures. See 56 Fed. Reg. 35901 (July 29, 1991).

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not based its claim for an exemption on actual figures, but on a wholly theoretical figure couched in terms of a national exemption, the candidate has not met his burden of proving that the claim of exemption is reasonable. See id.

B. Telephone Charges

1. Northwestern Bell Charges

The Committee contends that \$78.00 in calls that were classified on its Northwestern bill as "Interstate, Canada, and/or 908 Directory Assistance Usage" are not allocable to the Iowa expenditure limitation. Committee's Response at 39. The Committee argues that these calls were interstate calls placed outside of Iowa and therefore, should not be allocated to that state's limitation. Id. The Committee also contends that \$172.15 in charges for intrastate calls made after the Iowa primary are not allocable to the Iowa expenditure limitation. Committee's Response at 40. Since these calls were made after the Iowa primary, the Committee asserts it did not have any influence on the primary. Id. The Committee notes that these calls are distinguishable from the debt retirement activities that take place after an election. Id.

The Commission's regulations exempt charges for interstate telephone calls from allocation to any state. 11 C.F.R. § 106.2(b)(2)(v). However, in its response to the Interim Audit Report, the Committee submitted documentation to support exempting only \$28.20 in telephone charges from the Iowa expenditure limitation. See 11 C.F.R. § 106.2(a)(1). Accordingly, the Final Audit Report reduced the amount allocable to the Iowa expenditure limitation by \$28.20.

Intrastate charges are overhead expenditures which must be allocated to the particular state where the the office is located. 11 C.F.R. § 106.2(b)(2)(iv)(A). Expenditures that are made in a state after the primary election, which relate to that primary election are allocable to the state's expenditure limitation. 11 C.F.R. § 110.8(c)(1); Cf. FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988). Since the Committee has not demonstrated that these calls are unrelated to the Iowa primary, the charges are allocable to that state's expenditure limitation. See 11 C.F.R. § 106.2(a)(1).

2. MCI Charges

The Final Audit Report allocated \$6,756.19 in MCI charges to the Iowa expenditure limitation. The Committee objects to the allocation of \$2,628.56 of these charges to the limitation. Committee's Response at 42. The Committee's MCI service allowed campaign staff to place calls by using the MCI card 800 access code. Id. According to the Committee, the system's access code could identify the location to which a call was made, but not where the call originated. Id. The Committee contends that it

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was inappropriate for the Audit staff to allocate the calls placed to a location in Iowa to that state's expenditure limitation. Committee's Response at 43. The Committee notes that many of the calls in question were reflected on its MCI bill from the national headquarters and, therefore, would be exempt from allocation to the Iowa limit under the interstate call exemption. Id. The Committee concludes that since it cannot be determined where the calls originated, the most reasonable approach is to allocate 50% of the charges to the Iowa expenditure limitation. Id.

The Final Audit Report notes that the 800 access code could be traced to certain MCI card numbers and the documentation indicates that the individuals in possession of the MCI cards with these numbers were in Iowa during the billing cycle in question. The Committee has not submitted any documentation demonstrating that the individuals using the MCI cards were calling from outside of Iowa; it has not submitted documentation indicating that some of the calls were placed from the national headquarters, entitling it to an exemption under 11 C.F.R. § 106.2(b)(2)(v). Therefore, we believe that the charges are allocable to the Iowa expenditure limitation. See 11 C.F.R. § 106.2(a)(1).

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

The Final Audit Report allocated an additional \$30,075.40 to the Iowa expenditure limitation to account for expenses incurred in relation to the salaries paid to the Committee's Iowa staff pursuant to 11 C.F.R. § 106.2(b)(2)(ii). This additional allocation was the result of the Committee's failure to allocate salaries, the cost of life and health insurance and employer FICA.^{5/} The Committee also allocated certain salaries and consultant fees as 100% exempt compliance costs.

With respect to the additional allocation for employer FICA, the Committee contends that the Commission's regulations do not require the allocation of such payments. The Committee states that only the Financial Control and Compliance Manual ("Compliance Manual") imposes such an obligation and concludes that the Compliance Manual and the regulations are inconsistent. Committee's Response at 56. Thus, the Committee asserts that it was correct in using the regulations as guidance and not allocating employer FICA to Iowa. Id. The Committee further argues that, unlike salary, employer FICA payments are not a

^{5/} FICA refers to the tax imposed on both employers and employees to fund the Social Security programs pursuant to the Federal Insurance Contributions Act. 26 U.S.C. §§ 3101-3126. Under FICA, the employer and the employee pay matching amounts 26 U.S.C. § 3101; 26 U.S.C. § 3111.

benefit to the employee. Id at 54. Rather, FICA is the employer's legal obligation to pay taxes and the benefit runs entirely to the federal government. Id.

Contrary to the Committee's assertions, the Commission's regulations and the Compliance Manual are not inconsistent in their approach to allocating employer FICA. Rather, the regulations and the Compliance Manual complement one another. The Compliance Manual elaborates on areas which are not specifically addressed in the regulations to assist candidates in the financial management of campaigns which are publicly financed. See Compliance Manual, pg. xiii. (Introduction). The fact that the Committee chose to "follow the [r]egulations to the letter" does not negate its obligation to allocate employer FICA as required by the Compliance Manual. Moreover, the Committee concedes that it relied on the Compliance Manual in other circumstances throughout the campaign.

In any event, the Committee's argument that employer FICA payments are not allocable to the Iowa expenditure limitation because the payments do not benefit the employee is misplaced. The issue, for purposes of determining whether the cost is allocable to the Iowa expenditure limitation, is whether the FICA payments are committee expenditures. Both the salary and the FICA payments arise out of the Committee's employer-employee relationship with an individual. Pursuant to 26 U.S.C. § 3111, every employer is required to pay taxes under FICA for individuals in their employ. Therefore, the cost is ancillary to the employment relationship, albeit an expenditure which the Committee is required by law to incur, and allocable to its Iowa expenditure limitation.

The Committee raises similar arguments with respect to its failure to allocate its costs for health and life insurance for Committee staff. Specifically, the Committee contends that neither the Commission's regulations nor the Compliance Manual require it to allocate the cost of health and life insurance. Committee's Response at 57. The Committee further argues that the cost of such benefits, unlike employee salaries, does not have any direct relationship to the campaign's activities to influence the nomination. Id.

Salaries must be allocated to each state in proportion to the amount of time each employee spends in the State. 11 C.F.R. § 106.2(b)(2)(ii). While the Commission's regulations do not specifically state that costs for health and life insurance must be allocated, the Compliance Manual, page 124, requires a committee to allocate such costs. Moreover, health and life insurance benefits are a part of the compensation offered to employees as economic inducements to attract campaign staff. The employee's decision to work with the campaign is based

partly on the salary and other benefits provided such as insurance. Therefore, as with the salary payments, the Committee must allocate the cost of the health and life insurance to its Iowa expenditure limitation.

Finally, the Committee contends that it is entitled to take a 100% compliance exemption for certain Iowa staff salaries and still maintain the standard 10% compliance exemption for the remainder of the Iowa staff salaries without establishing an allocation percentage for each individual in the state. Committee's Response at 47. The Committee is entitled to take a 10% compliance exemption for campaign workers' salaries. 11 C.F.R. § 106.2(c)(5). The Commission's regulations provide that "[i]f the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual working in that state." Id. Therefore, the regulations require the Committee to establish an allocation percentage for each individual whenever the Committee elects to take a compliance exemption which exceeds the standard 10%. The Committee is not entitled to take a 100% compliance exemption without such an allocation.

D. Intrastate Travel and Subsistence Expenses

1. Expenses of Campaign Staff

The Audit staff allocated \$19,898.59 to the Iowa expenditure limitation to account for intrastate travel and subsistence expenses of campaign staff who were in the state for 5 or more consecutive days. See 11 C.F.R. § 106.2(b)(2)(iii). The Committee contends that \$1,705.88 of this amount is not allocable to the limitation. Committee's Response at 66. The Committee raises four points with respect to the allocation of these expenditures. First, the Committee contends that the rule requiring the allocation of intrastate travel and subsistence expenses of campaign staff in a state for 5 or more consecutive days should be interpreted using 24 hour periods. Committee's Response at 63. Second, the Committee alternatively argues that the Explanation and Justification for 11 C.F.R. § 106.2(b)(2)(iii) does not require the allocation of such expenditures to a particular state if a committee can demonstrate that the individuals in question were working on its national campaign strategy. Id. at 64. The Committee notes that the tasks performed by the staff in question in Iowa were more akin to "national campaign strategy meetings" than the tasks that were for the purpose of influencing the voters of Iowa. Id. at 63. Third, the Committee submits that at least 25% of these expenditures should not be applied to the Iowa limit under its national exemption theory. Id. at 64; see supra pg 3. Finally, the Committee contends that it cannot be reasonably expected to document in painstaking detail that these

individuals were not (emphasis in original) in the state on the fifth day." Id. at 65. The Committee argues that the Commission's regulations cannot be read to require such a burden on the campaign without first amendment infringements. Id.

The Commission interprets 11 C.F.R. § 106.2(b)(2)(iii) by determining whether a person spent any portion of 5 or more consecutive days in a state rather than whether he or she spent 5 or more consecutive 24 hour periods in a state. See Explanation and Justification of 11 C.F.R. § 106.2(b)(2), 48 Fed. Reg. 5225 (February 4, 1983). See also Compliance Manual at Chapter I, section C.2.b(a)(c), page 32.6/ While the Committee contends that the individuals in question were performing tasks that were akin to its national campaign strategy, the Committee has not submitted any documentation to support its assertion. See 11 C.F.R. § 106.2(a)(1). Moreover, the Commission's regulations do not support the Committee's national exemption theory. See Supra page 3. Finally, although the Committee contends that it is unreasonable to require it to document whether the individuals at issue were in the state on the fifth day, in cases where the Commission disputes a committee's proposed method of allocation, the committee is required to demonstrate, with supporting documentation, that its method of allocating was reasonable. 11 C.F.R. § 106.2(a)(1). The Committee has not submitted any supporting documentation in this case.

2. Vendor Expenses

The Final Audit Report allocated \$51,252.57 in travel expenses the Committee paid to its vendor, Kennan Research and Consulting, Inc. ("Kennan Research"). The Committee contends that a portion of this amount was due to undocumented expenditures which it had in fact documented and expenditures related to certain surveys conducted by Kennan that the Audit Division counted twice. Committee's Response at 91. The Final Audit Report reflects the fact that the amount allocable to the Iowa expenditure limitations has been reduced by \$7,374.41 to account for these two category of expenses.

6/ The Compliance Manual, at Chapter I, Section C.2.b(2)(c), page 32, states in relevant part:

Salary, per diem and/or subsistence costs incurred by persons traveling to a State who remain four (4) consecutive calendar days or less, and for national headquarters staff traveling on business other than the campaign in that State, do not require allocation to the State. 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.

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The Committee argues that \$18,797.31 of the remaining expenses should be excluded from state allocation pursuant to 11 C.F.R. § 106.2(b)(2)(iii) because the consultants at issue did not remain in the state for 5 consecutive days on any Iowa surveys. Committee's Response at 94. The Final Audit Report found that the 5 day rule is not applicable to the consultants. The Compliance Manual, in determining whether the 5 day rule has been satisfied, specifically refers to individuals considered thereunder as "campaign staff." The consultants at issue were distinguished from staff members based on their relationship to the Committee. They were employed by Kennan Research and there was no evidence that they were paid salaries similar to campaign staff members. The Committee has not demonstrated that it placed any limitations on how these individuals were to perform their day-to-day duties. Like the cost of the surveys conducted pursuant to the contract with Kennan Research, their expenses were allocated to the state expenditure limitation.^{7/}

E. Telemarketing Expenses

1. Lewis and Associates Telemarketing, Inc.

The Committee entered into a telemarketing services agreement with Lewis and Associates Telemarketing, Inc. ("Lewis and Associates"). Lewis and Associates was paid \$100,541.75 in exchange for its services. Lewis and Associates considered 9% of this amount to be profit. The Committee was charged \$.75 per call for completed calls and a reduced rate of \$.20 per call for calls placed to wrong and disconnected numbers. The Final Audit Report allocated both the profit and the costs of the wrong and disconnected numbers to the Iowa limitation. The Committee does not dispute the allocation of the profit to Iowa. However, the Committee contends that the cost for wrong and incomplete calls should not be allocated to Iowa because these calls have no influence on the nomination process. Committee's Response at 97.

The Committee's focus is misplaced in this instance. The focus should be on the contract and Lewis and Associates' performance under the contract. Pursuant to the contract, the Committee was charged for all calls, including those made to wrong and disconnected numbers. The intent of the parties in contracting for the services was to influence the voters of Iowa. The fact that some of the calls were not completed is merely one of the risks of contracting for telemarketing

^{7/} Pursuant to 11 C.F.R. § 9003(a)(2)(ii)(A), a general election committee may exempt 10% of its payroll for compliance. We note that in the Final Audit Report on Bush-Quayle '88 and George Bush for President for President, Inc./ Compliance Committee, approved October 24, 1992, the Commission allowed the committee in that case to exempt payments to vendors under 11 C.F.R. § 9003(a)(2)(ii)(A).

services.^{8/} This situation is analogous to the Committee purchasing goods for the campaign and not using everything that was purchased, yet contending that the only allocable cost is for the goods that were actually used by the Committee. Neither argument has any merit if the intent of the parties was to influence the voters of Iowa. Therefore, the expenditures incurred for incomplete calls must be allocated to the Iowa expenditure limitation.

2. Voter Contact Services

The Final Audit Report allocated \$28,511.89 in fees arising out of a contract that the Committee entered into for goods and services with Voter Contact Services ("VCS"). The Committee contends that under this contract, VCS was the exclusive provider of voter files and voter services to the Committee. Committee's Response at 101. In consideration for VCS being the exclusive provider of services, VCS agreed not to do business with other presidential candidates. Id. The vendor charged the Committee a 100% mark-up on its products. Id. at 101. According to the Committee, this mark-up was the result of VCS's commitment to provide its services and products exclusively to the Committee. Id. The Committee argues that this exclusive bilateral arrangement was representative of VCS's commitment to a long term national campaign. Id. The Committee further contends that had the fees been limited to providing goods and services for the Iowa campaign, the fees charged would have been lower and related only to the actual services provided in Iowa. Id. Consequently, the Committee believes that the fees related to this long term objective are not allocable to Iowa. Id.

The Committee's exclusive arrangement in the contract necessarily entitled it to allocate the respective fees to the national limitation. The Final Audit Report notes that detailed invoices provided by the Committee indicated that the goods and services provided were directed at Iowa. Therefore, the cost for the goods and services must be allocated to the Iowa limitation, despite the fact that the Committee contends that VCS was committed to a long-term national campaign. See 11 C.F.R. § 106.2(a)(1).

F. Media Expenditures

The Committee entered into a contract with the firm of Deak and Shrum to place its advertisements. The original contract called for a consulting fee of \$120,000 and a 15% agency

^{8/} This would be a different case had the contract solely based the costs on the number of calls that were actually completed. In that case, the risk of making incomplete calls would have been the sole responsibility of Lewis and Associates and the Committee would have only incurred expenditures for completed calls.

commission on the first one million dollars of media time buys. The Committee subsequently amended the contract to delete the 15% commission, and add an additional consulting fee of \$110,000. The Committee contends that Doak and Shrum requested the amendment for the following reasons: 1) to bring consulting fees current by establishing a new timetable for payment; 2) to increase the payments for consulting services which took up the most substantial part of Doak and Shrum's time; and 3) to add a bonus for success in the primary campaign by raising commission rates in the general election if Gephardt succeeded in winning the nomination. Committee's Response at 116. In essence, the Committee argues that Doak and Shrum sought the changes to the contract to protect its financial interest at a time when the Committee's campaign was losing momentum. Id.

The Final Audit Report allocated \$74,235.77 of the consulting fee, the amount representative of the allocable portion of the 15% commission, to the Iowa expenditure limitation. Expenditures incurred for media advertising production need not be allocated to any state. 11 C.F.R. § 106.2(c)(2). The Commission has traditionally treated consulting fees as a nonallocable media production cost when the fees can be directly related to the production of particular commercials. See Reagan-Bush Interim Audit Report, approved September 10, 1985. However, the Commission has disallowed such a classification when it appeared to be a substitute for a commission, which is allocable to the state expenditure limitation. See Statement of Reasons, Reagan for President Committee, May 26, 1983, pp. 4-7.

The distinction between the 15% commission and the consulting fee is invalid if the purpose of the amendment was to avoid the Iowa expenditure limitation. However, the question is whether the consulting fee is attributable to part of the media production cost such that it is not allocable to the Iowa expenditure limitation. The facts suggest that the consulting fee was more closely associated with media buys than with media production. Doak and Shrum continued to make media buys on behalf of the Committee after the parties agreed to the amendment. In fact, most of the buys were not made until after the amendment. While these facts are not conclusive, the Committee has not demonstrated, other than to present evidence of Doak and Shrum's financial insecurity, that the consulting fee was attributable to media production.

G. Event Expenses - Jefferson/Jackson Dinner

The Final Audit Report identified \$27,918.34 that the Committee incurred in connection with the Jefferson/Jackson Dinner ("Dinner") hosted by the Iowa Democratic Party on November 7, 1987. The Committee incurred expenditures for buses, tents, banners, caps and food. The Committee excluded 75% of these expenditures as exempt fundraising. The Committee argues the Dinner had a twofold purpose: 1) to recruit hosts for

a subsequent fundraising house party event called "America First: December First," by distributing host information packets at the Dinner; and 2) to lay the groundwork for future giving by prospective contributors. Committee's Response at 125.

The Final Audit Report allocated an additional \$21,156.96 to the expenditure limit to account for these expenditures. The Commission's regulations provide that exempt fundraising expenditures are those expenses associated with the solicitation of contributions. 11 C.F.R. § 106.2(c)(5)(ii). The Committee concedes that there was no actual solicitation at the Dinner. The mere distribution of information packets for the recruitment of hosts for a future fundraising event where there is no actual solicitation does not justify the exclusion of the Dinner expenditures as exempt fundraising. Moreover, the Committee's attempts to demonstrate that fundraising increased because of its initial contact with prospective contributors at the Dinner is not persuasive. Therefore, the Committee cannot exempt these expenditures as fundraising.

Attachments

1. Committee's Response to the Final Audit Report (July 18, 1991)
2. Final Audit Report, approved June 10, 1991 (Expunged portions related to referrals)
3. Interim Audit Report, approved October 4, 1989
4. Committee's Response to Interim Audit Report (February 16, 1990)
5. Committee's Request for an Oral Presentation (July 18, 1991)
6. Audit Division's Analysis of Committee's Response to Final Audit Report (August 6, 1991)
7. Memorandum to Commission Re: Request for Oral Presentation, Agenda Document #91-86. (August 30, 1991)

BEFORE THE
FEDERAL ELECTION COMMISSION

IN THE MATTER OF:)
)
ORAL PRESENTATION - GEPHARDT)
FOR PRESIDENT COMMITTEE, INC.)

91011-5 PM 5:30

Wednesday,
November 6, 1991

999 E Street, N.W.
Washington, D.C.

The above-captioned matter came on for hearing,
pursuant to notice at 10:00 a.m., before:

THE FEDERAL ELECTION COMMISSION:

JOHN WARREN MCGARRY, CHAIRMAN
JOAN D. AIKENS, VICE CHAIRMAN
LEE ANN ELLIOTT
THOMAS JOSEFIK
DANNY McDONALD
SCOTT THOMAS

DAVID GARTNER, Deputy to Secretary of Senate
DOUGLAS J. PATTON, Deputy to Clerk of the House

LAWRENCE M. NOBLE, General Counsel
JOHN C. SURINA, Staff Director
ROBERT COSTA

PROCEEDINGS

10:06 a.m.

1
2
3 CHAIRMAN MCGARRY: Good morning, ladies and
4 gentlemen. This special open meeting of November 6, 1991 of
5 the Federal Election Commission will please come to order.

6 On the agenda for today's special open session is
7 an oral presentation on behalf of the Gephardt for President
8 Committee, Congressman Richard A. Gephardt's principal
9 campaign committee for the 1988 Democratic Presidential
10 nomination.

11 The Committee has requested the opportunity to
12 address the Commission in open session concerning the
13 Commission's initial repayment determination contained in
14 the final audit report approved by the Federal Election
15 Commission on June 10, 1991. The Commission made an initial
16 determination that the Gephardt for President Committee must
17 repay \$126,383.37 to the United States Treasury pursuant to
18 11 C.F.R. 9038.2(b)(2)(ii)(A). This amount represents the
19 pro rata portion of \$480,348.63, the amount in which the
20 Committee exceeded the Iowa state expenditure limitation.

21 The Committee responded to the initial repayment
22 determination on July 13, 1991, and requested an opportunity
23 to address the Commission in open session. The Commission
24 granted this request.

25 We are here today to hear the Committee's oral

1 presentation. The sole purpose of this meeting is to give
 2 the Committee an opportunity to address the Commission and
 3 to demonstrate that no repayment or a lesser repayment is
 4 required. This is not an adversarial or trial-type hearing.
 5 The Committee's representative, The Honorable Robert F.
 6 Bauer, will have 30 minutes to make his remarks.

7 At the conclusion of his presentation, each
 8 Commissioner and Special Deputy will have an opportunity to
 9 ask questions. I will then ask the General Counsel and the
 10 Audit Division if they have any questions.

11 After this hearing, the Committee will have an
 12 opportunity to submit additional materials for the
 13 Commission's consideration. The Commission will then make a
 14 final determination and issue a Statement of Reasons in
 15 support of that determination.

16 Before we begin, I want to note that the
 17 Commission will have to break at 10:45 today to attend a
 18 memorial service for Dick Thomas. Dick was one of our most
 19 valued and respected employees. He died this past weekend
 20 after a valiant battle against cancer and we will certainly
 21 miss him.

22 We will resume the meeting at 12:00 p.m. I would
 23 like to thank you, Bob Bauer, for your patience and
 24 understanding. Given today's unforeseen circumstances, most
 25 of the question and answer portion of today's session will

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1 have to await our return from the service.

2 So, thank you very much and, with all of that, Mr.
3 Bauer, please begin.

4 MR. BAUER: Thank you, Mr. Chairman, and I thank
5 the Commission for giving us the opportunity to address you
6 on some of these issues presented in the final audit report.

7 As you know, and I want to emphasize this, this
8 was, on our part, a voluntary undertaking, this hearing. We
9 made the request because we believe that there were issues
10 addressed in the audit process up to this point, which had
11 not been, to our minds, fully aired. Perhaps that's always
12 the way that counsel feels in this matters, if not, their
13 clients. But as know well, there is very limited
14 opportunity to address the Commission directly on certain
15 types of issues under the statute under both the public
16 primary financing statutes and the general election
17 financing statutes, as well as under the Federal Election
18 Commission Campaign Act itself.

19 Very frequently, because there is not much
20 opportunity for that direct contact or for that direct
21 communication, there develops, if you will, and we will call
22 it an anxiety, that perhaps the lack of success on certain
23 issues is owing to your being unable to hear the forceful
24 and incisive arguments of counsel representing the clients
25 at issue. So, I am here to be both forceful and incisive in

1 the extraordinarily brief period of time that you have
2 afforded me.

3 CHAIRMAN MCGARRY: You are never dull, Mr. Bauer.

4 MR. BAUER: I appreciate that. I hope not to be
5 dull.

6 Now, we tried -- when we submitted the statement
7 of issues that we wanted to address in this hearing, we
8 tried to pare it down to the few we thought there would be
9 some point in going over here again. This was a mix of
10 issues about which we had technical concerns and also issues
11 about which we had larger statutory as well as technical
12 concerns.

13 It is not going to be an easy matter to run
14 through them in 30 minutes. I am going to do my very best
15 to do so. I hope somebody gives me some sort of a signal at
16 some point that my time is rapidly approaching, at which
17 point I will speak up my word per minute quotient and try to
18 get through all of it. But in order to address what we
19 think are the most important issues first, I am going to
20 order it as follows.

21 First, I would like to address the 25 percent
22 national exemption that we came for Iowa activities. Then I
23 will discuss briefly some of the issues that we raised with
24 respect to the allocation of health insurance, taxes and
25 also the application of the five-day rule as it applies to

1 24 hour time segments. And you thought this was going to be
2 dull.

3 In any event, let's start with the 25 percent
4 national exemption. As you know, in the very extended brief
5 that we submitted, we made an argument that we believe that
6 the General Counsel's Office, or if not the General
7 Counsel's Office, the Audit Division, continues to
8 misconstrue. Or if it doesn't misconstrue it, perhaps it
9 doesn't all together understand it. Our argument has never
10 been, it has never been that because of the results in Iowa
11 have an impact on a candidate's national standing, or at
12 least did in years past, that therefore the money spent to
13 influence voters in Iowa should not be accounted toward the
14 Iowa state limit. That's never been the argument.

15 Our argument has been very different and it has
16 been admittedly couched in very significant respects in
17 constitutional terms. The argument has been that in a
18 practical manner, as the primary season has been structured
19 to date, and we submitted record evidence on this in our
20 briefs, the Iowa and national campaigns blur to a degree,
21 which makes determining which expenditures are made for the
22 purpose of influencing Iowa voters and which expenditures
23 are made in Iowa for the purpose of influencing national
24 voters, a very difficult determination to make.

25 Now, we did not stop with mere averment. We did

1 not simply state in our brief that indeed everybody knows
2 that a lot of time is consumed in Iowa doing things of
3 national significance or attempting to persuade the national
4 press or have an impact on a candidate's standing in
5 national opinion polls, we submitted evidence. We submitted
6 evidence. We put forward, for example, affidavits from Iowa
7 personnel who testified under oath to this agency that an
8 enormous amount of time was consumed on their part with
9 activities within the physical boundaries of Iowa, which
10 could have no conceivable impact whatsoever on the actual
11 vote in the state itself.

12 We submitted from the campaign director and from
13 the campaign press secretary stationed in Iowa their
14 testimony that they had to spend up to 50 percent of their
15 time processing national press inquiries and addressing
16 national media.

17 Now, of course, as a practical matter, they did so
18 willingly because there was still a national audience to be
19 addressed, an audience which was not yet ready to vote or
20 cast ballots, I might add. But nonetheless, a national
21 audience preparing to vote in other states at a later time.
22 But those activities were not undertaken so that articles
23 would be written in papers read by Iowa voters or newscasts
24 that would be prepared for stations broadcast to Iowa
25 citizens and voters.

1 Those activities were undertaken, because as you
2 know and as I know, as everybody knows, in years past when
3 Iowa was the focal point of the primary election campaign,
4 it was flooded with press with other states, indeed, from
5 the international community at large. It received
6 attention, which had obviously caused some debate about its
7 disproportionate significance to the nominating process.

8 To tell a quick antidote, when I was in Des Moines
9 the night of the caucuses, which I would like to mention
10 Congressman Gephardt won -- you savor those moments -- I
11 walked into a huge segment of the Convention Center in which
12 there was space set aside for the press of Singapore.
13 Immediately next to the press of Singapore was the press of
14 Australia. Behind the press of Australia and Singapore was
15 yet the press of another foreign country. There were
16 journalists from every part of the United States covering
17 the Iowa caucuses and their results.

18 Why? Because the nine delegates in that primary
19 would be dispositive in determining the nomination? The
20 actual vote total would be influenced by the results in
21 Iowa? Absolutely not. But because Iowa played into a
22 larger debate about candidate qualification and the
23 direction of the race, which would be read in other states
24 influencing other voters who would vote at a later date. --
25 New Hampshire on Super Tuesday, in California, in Wisconsin.

1 in Michigan, and a campaign could not realistically, without
2 suffering some sort of psychotic delusion, approach the Iowa
3 campaign, staff the Iowa campaign, or finance the activities
4 in Iowa without recognizing that national impact. It was
5 not a race about nine delegates for the most part.

6 Now, this comes to the part where I have to
7 respond to what the General Counsel and the Audit Division
8 has said on this point. First of all, we have been
9 criticized in this manner -- politely, but criticized
10 nonetheless -- for having set a 25 percent set-off, which
11 is, in their view, arbitrary, has no basis in the statute,
12 lacks documentation.

13 Ladies and gentlemen of the Commission, the fact
14 of the matter is that this is a campaign. It is not Price
15 Waterhouse and, even if it were Price Waterhouse, it would
16 not be able to function any differently. The statute itself
17 reflects the selection of arbitrary percentages to deal with
18 difficult legal and constitutional issues all over the
19 place.

20 The regulations themselves set percentages for
21 set-off, for fund-raising and for compliance, which are in
22 themselves clearly arbitrary. There are some who believe
23 that the 50 percent fund-raising, which applies to
24 communications to voters in Iowa and which came up in an
25 opinion filed by then Democratic candidate Albert Gore, that

1 that was arbitrary in character. There is obviously an
2 element of arbitrariness because fundamentally, while it
3 obviously poses difficulties for you as regulators, we are
4 talking here about the political process. It's got ragged
5 edges around it. It's complicated. The matter of
6 arbitrariness can only be address by recognizing to some
7 extent that it's inevitable.

8 So, the question then becomes if a percentage has
9 to be selected, has it been selected in good faith? Has an
10 attempt been to amass evidence, which suggested that a
11 percentage would be necessary? Why was it necessary? It
12 was necessary because the way the state-by-state limits were
13 structured at a time when it was not believed or forecast
14 that the Iowa results would be so primary or that the Iowa
15 campaign would be so primary, simply disadvantages the
16 efforts to meet all of the expenses, which have to be met
17 over the course of the primary election itself in the state
18 of Iowa. It's simply an anomaly in the statute. And
19 admittedly, it confronts you as regulators with a difficult
20 choice and we are certainly not suggesting that you override
21 Congressional intent or disregard the application of the
22 state-by-state limit.

23 We have argued, however, that to some degree we
24 believe that you have a Constitutional obligation to
25 administer that limit, to make discretionary judgments about

1 its administration with those Constitutional considerations
2 in mind.

3 The statute itself focuses on the allocation to
4 limits of expenditures which are made to influence voters in
5 a particular state. We have said, and we have provided
6 evidence, and we continue to provide, should we be called
7 upon to do so, that the budget for Iowa for this campaign,
8 and frankly in my judgment, for most others, which are
9 competitive in that state, has been crafted with the
10 recognition that a large number of expenditures are not made
11 for the purpose of influencing voters in the state of Iowa.
12 They are made to process the national press. They are made
13 to accommodate national press strategy activity built around
14 what is taking place in Iowa on a week-to-week basis, a
15 month-to-month basis, as much as on the date that the
16 results are announced.

17 So, yes, there was a degree of arbitrariness in
18 the selection because it cannot be escaped, but it was done
19 in very good faith. It was done in a genuine effort on the
20 part of counsel and the campaign to come to terms with an
21 anomalous, impossible situation.

22 Now, in fairness, I recognize the Commission
23 itself has recommended on a number of occasions to Congress
24 that it consider abolishing the state-by-state limit. It
25 will do so, no doubt, after it finishes balancing the

1 budget. But in the meantime, we have to live with this set
2 of circumstances.

3 There is a practical reality affecting speech and
4 core political activity, which has to be addressed here. We
5 believe that we have justified the fundamental proposition
6 that there is a chunk of money spent in that state, which is
7 not for the purpose of influencing its voters.

8 It is on that basis that we made a judgment, which
9 we applied consistently, to set aside 25 percent to account
10 for what we understood to be the impact of processing
11 national, non-Iowa issues, albeit by Iowa staff, within the
12 physical boundaries in the state of Iowa.

13 One last point on the Constitutional question
14 involved. I understand that the Constitution can be sort of
15 a paper bag that periodically counsel put over their heads,
16 so that their actual appearance in the case is
17 unrecognizable. They will throw out various amendments and
18 say it's unconstitutional with disadvantage of free speech
19 and the entire exercise becomes an exercise in rhetoric.

20 But this Commission knows better than I do, all of
21 you having served as long as you have, and having had to
22 wrestle with these issues as long as you have had to do so,
23 that it is impossible to address any major issues under this
24 statute without considering their implications for the
25 conduct of political activity. It's probably what makes us

1 a statute and its administration, and indeed the
2 representation and compliance in this area is interesting,
3 as it sometimes can be.

4 Because that is the case, there is law, and we
5 have cited it, that an agency can be appropriately mindful
6 of these considerations in administering the statute and
7 applying its rules to difficult situations, like the one we
8 believe was presented in Iowa. Quite frankly, we believe,
9 and there are other instances that are not dissimilar in
10 character that I will address later on here, we believe
11 that it is inequitable and an absolute refusal to
12 acknowledge reality, that some allowance should not be made
13 for the number of national-focused expenditures which were
14 made within the physical boundaries of Iowa, but not for the
15 purpose of influencing its voters.

16 Another issue that we have raised, and it is not
17 all together dissimilar in character because it focuses on
18 what is necessary to run a campaign, as distinguished from
19 what is necessary to influence voters, are the series of
20 observations, and I am not taking them precisely in the
21 order in which they appear, by the way, in the General
22 Counsel's response or, indeed in our original letter,
23 because I would like to touch on the most important things
24 first.

25 The way in which we allocated the expenses paid

1 for health insurance, for taxes, namely FICA, and also the
2 application of the five-day rule to national staff
3 travelling within Iowa in the period immediately before the
4 primary. So, I forewarn you, I will then talk about our
5 media consulting contract, about which, I think, we feel
6 equally strongly, as we do about the 25 percent set-off.

7 Here again, we have a regulatory situation, which
8 is, at best, a touch confused. We have a regulatory scheme
9 which puts the focus on allocating expenditures made for the
10 purpose of influencing particular voters in a particular
11 state.

12 Now, as a practical matter, let's take first and
13 foremost, the question of the allocation of payroll taxes.
14 It is somewhat of a technical question to be sure. We have
15 noted that on some of these issues the regulations are
16 quite unclear, whereas the compliance manual, in its own
17 words gives "guidance".

18 Let me step back for a second and simply say to
19 you that on a lot of these questions let's bear in mind that
20 campaigns are rapidly preparing, revising budgets and
21 operating under very hurried and pressured circumstances.
22 We certainly look to the campaign manual, the guide, for
23 guidance, but we look in the first instance to the
24 regulations and we looked above all to the statute wherever
25 it addressed a particular issue.

1 At no time was our approach arbitrary. We did not
2 view this as a lollipop tree, where we looked wherever we
3 could on whatever branch we could find the sweet stuff.

4 But on the question of taxes in particular, here
5 we had a circumstance, and we argued this in the brief at
6 some length, where we were not electing to spend money here
7 to influence the outcome of this election, nor were we
8 electing to spending money here so that we could compensate
9 certain staff and draw them to the campaign, attract them to
10 the Gephardt cause. We were paying money because we had no
11 choice to pay them, but to pay the money.

12 Every salary we set we set on its own terms and
13 the tax consequences flowed from that decision. Our view
14 was that it is ludicrous, frankly, in a state as small and
15 yet as significant as Iowa has been, to ask us to allocate
16 expenditures we have no choice but to make for a purpose
17 other than voter influence to a limit as small as Iowa.

18 All of the decisions that I am running through
19 here are one of a number of decisions, each one of which
20 puts intolerable pressure on a relatively small sum of money
21 in a high stakes battle. So, you make the best set of
22 judgments that you can.

23 There was a recognition that where we spent money
24 by our own choice for a very specific purpose to influence
25 voters in the state, who would allocate nine delegates at

1 the end of the process, we had to allocate that money to an
2 expenditure limit. We never doubted that and we did it.

3 I should mention in passing that one of the few
4 nice things that the Audit Division had to say was that the
5 records that we kept were in very good order, very detailed
6 and there was every evidence that we were trying to put
7 together a compliance effort, which was very painstaking and
8 serious in purpose.

9 But the fact of the matter is decisions did have
10 to be made and we made those decisions and we documented
11 them and the auditors came in and saw exactly what it was
12 that we had elected to do. Then we started arguing about it
13 and that's what brought us here today.

14 Taxes -- one example, health insurance. Here is
15 another example of where it seems that the Commission runs
16 up against a set of choices. When we offer health insurance
17 to a campaign staff, we presumably should be encouraged in
18 the effort. Many campaigns do not provide health insurance.
19 In fact, as you know, and I won't mention over to the right
20 side of the table, Pennsylvania, health insurance is
21 something of an issue nowadays. And I won't mention
22 Mississippi on the left side of the table.

23 But I will say that the fact of the matter is that
24 when the Commission decides that it is going to require
25 health insurance payments to be allocated to the Iowa limit,

1 it is making a faithful and unnecessary decision, it seems
2 to me, in two respects.

3 Number one, many campaigns given the choice will
4 no longer provide the insurance and I guarantee you, those
5 of you who have been involved in campaigns know fully well
6 that for many employees of Presidential campaigns,
7 compensation isn't much of a consideration. If they were
8 looking for monies, stability, job security and good
9 benefits, they wouldn't be looking for a Presidential
10 campaign to work in. Certainly not at the levels that we
11 are talking about here or, for that matter, at any level.
12 So, it's not a decision on the Commission's part, which is
13 going to influence the decision as to whether or not someone
14 will work in a Presidential campaign or go to law school.

15 If you choose a campaign, however, many campaigns
16 will do as many campaigns do today, they will simply not
17 offer the insurance because it's yet another saving on a
18 limited amount of money that can be spent in Iowa, which
19 will be required to make. Those savings have to be made

20 Why do they have to be made? Because as much
21 money as possible, once again, has to be dedicated to the
22 core task of influencing voters in the state.

23 The second reason why the decision, it seems to me
24 to be an unnecessary and yet still a fateful one, is that at
25 some level it doesn't enjoy, shall we say, the standing

1 great deal of logic. The fact of the matter is that the
 2 campaign does indeed pay benefits, but the pay-out to the
 3 staff person who is covered may come at a much later date
 4 when the Iowa caucuses are over. It's not coverage
 5 specifically for Iowa, it's coverage for the campaign for as
 6 long as those staff members remain with the campaign. Some
 7 may stay during Iowa, but not to the end. Some will stay
 8 only at the end of Iowa and some will leave after Iowa.
 9 Some will leave with the candidates after the candidates are
 10 forced to leave after Iowa.

11 But the fact of the matter is that the health
 12 insurance payment, which ought to be encouraged, is one
 13 which protects the staffer for the life of the campaign and
 14 may only involve the pay-out at times much later than the
 15 caucuses themselves.

16 Once again, understanding the difficulties that
 17 the Commission has in administering these regulations and
 18 this statute and the difficult choices to which it is
 19 occasionally put, here are choices which can be simply made
 20 which will not have a dramatic effect on public confidence
 21 in the law. It will encourage sound practice on the part
 22 of the campaigns. It will relieve some of the pressure on the
 23 campaigns to be searching around for the fabled loopholes
 24 that one reads about periodically in the press. It's a
 25 simple, simple thing for the Commission to do.

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1 I want to say in passing, and I recognize that the
2 Agency again in revising the regulations for 1992, has
3 attempted to meet some of those concerns. I, for one,
4 commend the Commission for its effort and, as a practicing
5 attorney who has handled this type of campaign, I feel this
6 is a development which is all together positive -- not much
7 comfort nonetheless for the Gephardt campaign of 1988.

8 Then there is the question of the application of
9 the five-day rule. As a matter of fact, I think I will
10 probably jump it into two directions here, even though they
11 are actually addressed separately in two different parts of
12 the brief under two different issue headings.

13 Let's start, first of all, with the decision of
14 the Audit Division to insist fundamentally on two
15 propositions -- that the five-day rule applies, if indeed, a
16 national staff member has traveled to Iowa, remained there
17 for four days and any portion of the following calendar day.
18 That's one interpretation of how the Audit Division has come
19 down on this issue.

20 The second, and this goes to the heart of how some
21 campaigns feel about the audit process, which is to say,
22 strongly, is that unless we absolutely satisfy you, if there
23 is any question in the records with videotaped incriminating
24 evidence that X got on an Iowa at Des Moines International
25 Airport and left to meet the press in Singapore, that it

1 will be assumed, the four consecutive nights having been
2 spent in Iowa, that the fifth day was spent in Iowa as well
3 and so the relief of the five-day rule will not be afforded.
4 Let me address both of those, shall we say, regulatory
5 perspectives.

6 First of all, the Commission itself has said that
7 it is not bound to a calendar day analysis, that it will
8 generally look at a calendar day, but that a 24-hour
9 analysis, a full 24-hour period, also is allowed for under
10 the regulations under this statute for counting out the
11 five days when encompassed within the five-day rule. I
12 think that's only sensible, to be perfectly honest with you.

13 The fact of the matter is the people that we are
14 discussing in our case happen to be national staff members
15 who are traveling in and out of Iowa regularly, either
16 returning to Washington or traveling on to other primary
17 states. Now, the fact of the matter is if they go to the
18 airport at 5:00 a.m. on the fifth day, so they are going to
19 be in Iowa for less than a full five-day period counted out
20 in full 24-hour segments, there is absolutely no reason of
21 regulatory policy why the full five days should be counted
22 out against them and the exemption, as it operates, denied
23 to the campaign. It doesn't make any sense. Why would we
24 do that?

25 Those of you who have been involved in campaigns.

1 and certainly if every one of the Commissioners and staff
 2 that has been exposed to them over the years here at the
 3 Commission, know that the sort of travel schedule that I am
 4 identifying here is not at all unrealistic. People are
 5 traveling at all times of the day or night. They are coming
 6 in late at night. They are leaving at dawn. This is not an
 7 old wives tale. The fact of the matter is that is entirely
 8 how campaigns operate. That's the schedule of the campaign.
 9 It's not a normal schedule.

10 As a result it seems to be taking that into
 11 account, it seems to me that counting out the full 24-hour
 12 period protects the fundamentals of the five-day rule
 13 without applying it in any fashion, which is fundamentally
 14 discriminatory and, if you will, in a regulatory sense very
 15 limiting and very counter-productive, and frankly very
 16 damaging to the morale of the campaigns.

17 Moreover, addressing the second concern or the
 18 second regulatory perspective that I have identified to the
 19 audit staff, and by the audit staff I mean anybody anywhere
 20 in the Agency who disagrees with me, so don't take it
 21 personally over here on the right, the second point being
 22 that you haven't proven it to us. We can't be certain that
 23 X campaign staffer wasn't there on the full fifth day.

24 Now, this brings me to something, which I believe
 25 in this issue, as well as on others, the Commission had to

1 come to terms with in addressing these types of issues.
2 Even if you knock me down on any one of the issues that I am
3 raising, I hope this is the last thing that you remember
4 that I have said. That is I perfectly well understand the
5 gross environment of suspicions that surrounds campaigns.
6 It is absolutely true, they do whatever they can do to win.

7 But this isn't criminal activity. These are not
8 practitioners of the RICO statute arts. These are
9 Presidential candidates seeking the highest office of the
10 land and what they are doing is not only good, it's
11 absolutely necessary. We need people to run for the
12 Presidency of the United States and we need for them to do
13 so under the difficult and harried conditions of
14 Presidential campaigning. There is necessarily a great deal
15 of chaos. There is necessarily a great deal of order in the
16 paperwork, though I mentioned before, the audit staff found
17 ours, for the most part, in good order. There is
18 necessarily lapses in the sort of documentation, which would
19 make lawyers on E Street very happy, but is a fundamental
20 proposition that one simply cannot give you with any
21 regularity.

22 Schedules change. Staff members between the ages
23 of 19 and 24 who have slept on floors and lived on junk
24 foods don't keep timesheets and, if they did, they would not
25 be highly reliable. Hostess Twinkie sheets. You are not

1 going to base an allegation on a Twinkie sheet, you are
2 encouraging fraud, if you say keep a timesheet, tell us
3 exactly where you were from 5:00 a.m. to 12:00 p.m. that day
4 in Des Moines. You were there four nights before, I bet you
5 hung out somewhere in a garage with an overcoat and a hat
6 pulled low over your head. That is not a useful way to
7 approach a dialogue with the Presidential campaign about
8 what may have happened and it won't encourage any better
9 recordkeeping because, under the conditions of the campaign,
10 that kind of recordkeeping simply is not possible.

11 I've vented about that. Let me move on quickly to
12 the media contract. As you probably know, the Commission
13 made a judgment on the strength of the recommendation of the
14 Audit Division and without objection from the Office of
15 General Counsel to put onto the Iowa state limit a 15
16 percent commission, which I negotiated away with the media
17 consultant. I negotiated it away because there was a
18 substantial change in the business conditions at the time,
19 in the expectations of the consultant, the concerns about
20 the consultant, about the way the campaign was going.

21 That consultant, I said very specifically, would
22 be prepared to have the Audit Division review its books on a
23 proprietary basis at its headquarters, so that it could see
24 that its commission rate was utterly and totally negotiable.
25 Negotiable down to zero. The audit staff never took me up

1 on that offer for whatever reason, probably lack of time.

2 Who knows?

3 But the fact of the matter is that it was within
4 the business practice of this consultant to agree at any
5 point in the campaign as circumstances change, business
6 conditions change, to negotiate away the 15 percent, which
7 it did, and I negotiated it for the campaign.

8 It appears to be that it is the Audit Division's
9 belief, and the Commission has seconded it, that this was an
10 effort to simply relieve the campaign of obligations, which
11 ultimately would be allocable to the Iowa limit, so it was
12 simply fictionally put back in the contract and put back on
13 the limit.

14 I'm offended by it. I negotiated that relief. I
15 negotiated it under pressure from the consultant who had, as
16 I set out in the brief at length, other business objectives
17 it believed better met, and this is part of what I demanded.
18 I, moreover, have pointed out on a number of occasions that
19 many candidates today don't like the commission rate. They
20 don't like the media by commission. They do not believe it
21 represents a true fee for services earned.

22 I'm not expressing an opinion about it, but I can
23 tell you that there are United States Senate candidates I've
24 also represented who have directed that any media contract
25 into which they enter will simply not include a commission.

1 on the buy, will not include it.

2 So, this is the prevailing practice. It seems to
3 me that if indeed there was evidence which we have offered
4 that this particular consultant would be prepared to
5 negotiate on the commission that indeed it was, through
6 counsel, negotiated away, that unless the Commission and the
7 Audit Division, the General Counsel's Office in particular,
8 has some evidence other than raw suspicion that it was done
9 to evade the Iowa limit, at least to that amount, it should
10 come forward with that. Other than that, there is evidence
11 on the record which it seems to me to be to the contrary.

12 The Jefferson-Jackson Day Dinner -- similar point
13 I want to make about this. Here again, we have this, "Come
14 on, you don't expect us to believe that you were fund-
15 raising around the Jefferson-Jackson Day event in Iowa.
16 Come on, guys, don't lie to us." Look, when I lie to you
17 folks, you'll know it, I promise.

18 The fact of the matter is that Jefferson-Jackson
19 used to feature a straw poll, which everybody organized
20 around it to a great extent because it had huge national
21 interest. It tended to so-called forecast who was ahead in
22 Iowa, who might ahead of the pack and winning the caucuses.
23 Well, the fact of the matter is that the Jefferson-Jackson
24 Day authorities, a state party, decided they would do away
25 with the straw poll. They didn't want a straw poll.

1 So, all of a sudden, we were left with a big
2 shindig in Iowa, which nobody particularly wanted to do. It
3 didn't have any more strategic significance or there was no
4 national press coverage of the straw poll.

5 So, we submitted more evidence that it was
6 converted into a fund-raising effort or an effort which was
7 ancillary to our fund-raising activities. We submitted not
8 only some affidavits, but we submitted some charts which
9 illustrated that indeed our fund-raising activity in Iowa
10 did increase thereafter as a result of these end of the year
11 fund-raising efforts, some of which did relate to Jefferson-
12 Jackson Day activities. That's the fact.

13 What we have been greeted with, and I don't want
14 to sound excessively bilious here, but what we have been
15 greeted with is simply a shrug and a very clear cut
16 suggestion that we are making it up.

17 Well, the fact of the matter is we didn't make it
18 up. The Jefferson-Jackson Day Dinner is a strategic event,
19 but no longer had the significance that it had had for years
20 before and the only way to salvage the investment of staff,
21 time and money was to turn it over to the fund-raising
22 division and have them hook it into the end of the year,
23 major fund-raising event, indeed, fund-raising program,
24 which we identified at length here in our brief, which was
25 meant to fuel the finances of the campaign into the first of

1 the actual election year.

2 It does no good, it seems to me, and I will close
3 on this note, to greet all of these arguments with the
4 suggestion that everybody knows better, campaigns in these
5 situations are constantly concocting tall tales to get out
6 of regulatory issues. There are lawyers arguments and then
7 there are tall tales. But this is a lawyer argument that is
8 being built around fact.

9 Again, it seems to me that the Agency has more
10 than mere suspicion to operate on and our evidence should be
11 given a little more weight. There are a lot of people who
12 put a lot of time in campaigns and who worked very hard at
13 compliance, legal representation and management who deserve
14 something more than a suspicious shrug. I think that takes
15 up my time, Mr. Chairman.

16 CHAIRMAN MCGARRY: Mr. Bauer, I apologize to you
17 for the distractions I had at the end. We have a memorial
18 service we are going to, and obviously out of respect. I
19 have been notified that I have to rise to say a few words to
20 the congregation. But I was listening.

21 I don't want to comment and influence my
22 colleagues, but I think probably my facial expressions are
23 what have you that you present a very interesting argument.
24 There is no question about it.

25 The state limitation is really an extremely

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1 difficult one for the Commission and I personally am
2 delighted that you are here.

3 We are going to break now, Mr. Bauer, and are
4 going to resume at 12:00 noon. We are going to go now to a
5 memorial service. As you know, but for anyone in the
6 audience who is unaware of that, a very valued and trusted,
7 wonderful employee of ours, who has been with us many years,
8 who was our liaison with the election community, state
9 election officials and Secretaries of States throughout the
10 United States, did a magnificent job for us, died after a
11 very courageous fight with cancer, and we are going to that
12 service right now.

13 We will resume at 12:00 noon.

14 (Brief recess.)

15 CHAIRMAN MCGARRY: Madame Secretary, the special
16 open session of Wednesday, November 6, 1991, will now
17 resume. I would invite Mr. Bauer before we begin the round
18 of questioning, if you care, to summarize or make any kind
19 of statement at all at this point. That would be perfectly
20 acceptable and appropriate, I think.

21 MR. BAUER: I thought I might add just one other
22 issue to the agenda very briefly. Mercifully, I will limit
23 the argument over the phone bills. It was introduced not
24 because I expected the issues to be litigated to the Supreme
25 Court, but simply as a matter of principal.

1 There is an issue raised in the brief, which I
2 would like, once again, in making any comment on the
3 allowable range of discretion of this Agency, to emphasize
4 here.

5 You will recall that the Audit Division, supported
6 by the General Counsel's Office, and I take it at least on
7 this last vote, which I know you will all be considering in
8 the final audit report that the Commission confirmed as
9 well, took the position that the four-day rule did not apply
10 to consultants. There was no relief available to
11 consultants who traveled into Iowa for a period longer than
12 four days on the grounds that that exception applied to
13 campaign staff only, to fully-payrolled, if you will,
14 employees.

15 Here is an example again, where it seems to me to
16 be an enormous fuss to our detriment has been generated
17 with no particular useful regulatory purpose that I can see.
18 The regulations refer to the availability of the exemption
19 for "persons working in a state." Therein there is no
20 distinction made between an employee and a consultant.

21 The manual, however, makes reference to campaign
22 staff and it is that on which the Audit Division originally
23 relied, to distinguish campaign staff, i.e., salaried
24 employees from consultants, allowing four day rule relief to
25 employees, but not to consultants.

1 We had, as many campaigns, do for a variety of
2 reasons, none of which involve tax fraud, consultants who
3 work full time on campaigns and who, for all intense and
4 purposes, are no different than full-time employees, at
5 least for stretches of time. In fact, as you well know,
6 Presidential campaigns don't have employees for longer than
7 stretches of time inasmuch as they are not perpetual. The
8 fact of the matter is that if the four-day rule makes sense
9 with respect to employees, it makes sense with respect to
10 consultants and prohibiting it in one case while allowing it
11 in the other doesn't do anything more than invite me as
12 counsel to slap people on the payroll who want to be treated
13 as consultants instead, for reasons which relate on the way
14 they conduct their business or the simplicity with which
15 they believe they can manage their tax affairs or their
16 personal payroll affairs. It is not clear to me at all why
17 that argument was not heard.

18 I think, and this is my closing comment, that
19 perhaps -- and that's one reason why the Gephardt committee
20 requested a hearing here -- that perhaps in the course of
21 the papers, the pleadings, the extended auditing process,
22 there is sometimes, I'd like to believe, lapses in the
23 translation between what the committees really have to
24 communicate about their position and how the Audit Division
25 or OGC understand it and communicate it to the Commission.

1 In that regard, if you give me leave to illustrate
2 the point, I would like to tell you a story and then I'll
3 stop. It has to do with the sheriff who chases someone
4 across the border, suspected of bank robbery, chases him
5 into Mexico and the suspect is, in fact, Spanish-speaking.

6 The sheriff finally grabs the suspect and finds a
7 translator. He says to the translator, "Ask him what his
8 name is." The translator in Spanish asks and the suspect
9 in Spanish says, "My name is Joe." So, in English, the
10 translator says, "His name is Joe."

11 Question: "Did you rob the bank in El Paso?"
12 Translated into Spanish, answer back in Spanish, "Yes, I
13 did," relayed to the sheriff.

14 Next question: "Did you bring the money back to
15 Mexico?" Answer in Spanish and translated back in English,
16 "Yes, I did."

17 So, the sheriff says, "Where is the money?" The
18 suspect is asked in Spanish and says in Spanish, "I'm not
19 going to tell you." And the translator faithfully renders
20 this into English, he says he won't tell you.

21 So, the sheriff pulls out a gun, cocks it, puts it
22 to his head and says, "Tell him if he doesn't tell me, it's
23 over for him." In Spanish, it's translated. In Spanish
24 comes back the answer from the suspect. "It's at the well
25 next to my house." Translated into English as, "He says

1 he's ready to die."

2 So, in any event, I think there is in the course
3 of this dialogue something on the order of maybe
4 mistranslation, but I just simply cannot understand how it
5 would be that we would rest on a technical distinction here
6 when fundamentally the purposes of the rule, the four-day
7 exemption, is served either way and the campaigns are
8 provided perfectly appropriate relief from, as I said, the
9 pressures of a limited amount of money to spend in Iowa to
10 influence voters in that state.

11 With that, I will happily turn it over to the
12 questions.

13 CHAIRMAN MCGARRY: Thank you, Mr. Bauer. With
14 that, we will begin with Vice Chairman Aikens.

15 VICE CHAIRMAN AIKENS: Thank you. Mr. Bauer, it
16 is a pleasure to have you here today. I must say you make
17 our meetings much more interesting than some of them have
18 been in the recent past. Nothing against my colleagues, but
19 it's nice to have a fresh face here.

20 MR. BAUER: I won't tell Baron that you said that.

21 VICE CHAIRMAN AIKENS: I want to make sure that
22 you get all our points across. I'm going to go back to your
23 first point, the 25 percent national exemption. You said
24 that the FEC didn't understand the national implications of
25 what you were doing in Iowa because the Iowa and the

1 national campaign was blurred, that 50 percent of the staff
2 time was addressing the national press and media.

3 While I do have to disagree with you, I think the
4 Commission does understand the national implications, but
5 Congress passed a law that said the money that was spent in
6 Iowa had to be reported as coming from Iowa and allocated to
7 the Iowa expenditure limit, as in all other states. I think
8 there is certainly the national press and the international
9 press are interested, but I don't see any way that we can
10 get around the law by saying that this is part of a national
11 campaign because the national press is there.

12 The purpose of your campaign staff being there was
13 to influence the Iowa voters to try to get your candidate
14 elected in the Iowa caucuses. I don't see how the
15 Commission under the statute take that kind of any exemption
16 from the Iowa limits.

17 I would be happy to, aside from the Constitutional
18 issues that you raised, which I've always been concerned
19 about, but I don't see them applying to this 25 percent
20 exemption that you are proposing.

21 MR. BAUER: Commissioner Aikens, let me respond. I
22 think succinctly, by saying the following, and that is
23 Congress didn't have a whole lot to say, to be perfectly
24 candid, in the statute about the state-by-state limits other
25 than it imposed them. Beyond having set the limits and

1 providing the formula by which they are calculated, Congress
2 had nothing more to say on the matter.

3 In fact, it passed over the responsibility of
4 making it meaningful to the Federal Election Commission.
5 This is a task that the Commission has taken up with vigor
6 over the years. A series of regulatory formulations have
7 been developed by this Agency and a series of judgments have
8 been made about how those limits would be implemented and,
9 in fact, the most recent round of rulemaking illustrates the
10 very wide range of discretion which this Agency properly
11 exercises interpreting the flat Congressional mandate.

12 So, it seems to me that we are not here overriding
13 Congressional intent. I am not, as often suggested by the
14 papers filed by the audit and OGC staffs, not challenging
15 the Iowa limit, not challenging any state-by-state limit
16 because I fully recognize that this Commission cannot put
17 itself in the position of sort of overriding by regulatory
18 fiat the Congressional will, but I am suggesting that when a
19 reality, the dimension of which we are discussing here in a
20 state like Iowa presents itself, and when there is evidence
21 submitted which shows that expenditures incurred within the
22 physical boundaries of Iowa are not, in fact, for the
23 purpose of influencing Iowa voters, that it is something
24 that a campaign can properly take into account and argue
25 about and that the Commission can properly consider in

1 determining whether the limit was approached or was not
2 approached by way of these expenditures.

3 I will simply close by saying that this is the
4 reason why at the outset of our presentation in the brief,
5 we set out at great length the overwhelming evidence, and it
6 may indeed be moot for future campaigns because we don't
7 know whether Iowa will occupy the same position in this
8 coming year as it did in the past, but the overwhelming
9 evidence reflected in press account after press account,
10 campaign account after campaign account, of how this little
11 state with its nine to 13 delegates, depending on the area
12 you select, nine to 13 delegates to offer, had become a
13 massive national exercise in which resources of the campaign
14 are consumed on the ground by staff in dealing with national
15 issues affecting national prospectors and voters in other
16 states.

17 I don't think there is any question that a
18 campaign has to finance Iowa more lavishly, if you will, for
19 the simply reason that so much of the communication in the
20 state is taken up with matters outside the state, which will
21 not have an influence on the way the voters themselves
22 behave.

23 An article appearing in the New York Times -- or
24 let's take another example. An article appearing in the
25 Omaha World Herald, which is favorable to a campaign, will

1 not be read by voters in Des Moines or Waterloo or Dubuque.
2 It's going to be read by voters in Nebraska. And yet there
3 is a reason why the Omaha World Herald is pounding on the
4 door of the press secretary seeking interview time or
5 seeking camera time with the candidate or camera time with
6 the campaign manager.

7 The campaign has to spend money to accommodate
8 this demand and yet it is plainly not for the purpose of
9 influencing the voters of Iowa. That's simply the way it
10 is. I don't believe the Commission is without the authority
11 to take that into consideration in a properly-argued case
12 where there is evidence submitted in support of this
13 proposition.

14 VICE CHAIRMAN AIKENS: I just wanted to hear your
15 full argument on it.

16 MR. BAUER: And I did and I can tell you agree
17 with me and I appreciate that.

18 VICE CHAIRMAN AIKENS: I may agree with some
19 things, that the state-by-state limits are mandated by
20 Congress and nobody likes them. Campaigns don't like them.
21 the Commission doesn't like them. But we do feel a
22 responsibility and we did a great deal in our regulations to
23 make life easier for the '92 candidates, we think.

24 I personally felt that we destroyed the limits
25 entirely in those regulations and I was not in favor of most

1 of those, so that's one of the reasons why I wanted to hear
2 your argument on this, whether this is taken up in the
3 future as an intended, proposed regulation. I don't know.
4 It could very well be.

5 MR. BAUER: You raise an interesting point,
6 Commissioner. If, in fact, and I don't know whether the
7 regulations drafted for 1992 will address this problem
8 dispositively, but if, in fact, a different regulatory
9 perspective is taken on these issues or perhaps had been
10 taken on some of the issues that we have been raising here
11 today, and I understand the complications facing all of you
12 in dealing with this, and certainly the complications facing
13 OGC and the Audit Division, but nonetheless, there might
14 have been perhaps less of a cry prompting the Commission to
15 reconsider on a wholesale basis the regulations. The cry
16 develops out of frustration. It's not a consultant, it's a
17 salaried employee, so it applies. But if it's not a
18 salaried employee and it's a consultant, it doesn't apply.
19 Well, darn it, why is that the case? So, the pressure
20 starts to build on you to rethink it.

21 Fair enough and I appreciate the effort, and I'm
22 not going to comment on the '92 regulations because I've
23 heard how you feel about them and I don't want to prejudice
24 the balance of my argument.

25 VICE CHAIRMAN AIKENS: Thank you, Mr. Chairman.

1 CHAIRMAN McGARRY: Thank you, Vice Chairman
2 Aikens. Commissioner Elliott?

3 COMMISSIONER ELLIOTT: My question at this moment
4 goes to the 25 percent national exemption, as you describe
5 it. I want to set your mind at ease about that. When you
6 do it, it's arbitrary. When we do it, it's good government.
7 So, that's the difference.

8 MR. BAUER: There are times when it's the other
9 way around.

10 COMMISSIONER ELLIOTT: I would base my questions
11 on the fact that there would not be this issue if we had not
12 state-by-state limits. Now, my question to you is -- I'm
13 trying to develop this a little bit. Would Iowa, as it
14 stands now, always be the state national blur or what if a
15 candidate came from New Hampshire? Would their state of
16 blur for their national state campaign be New Hampshire?
17 Would somebody else who came in late after Iowa and New
18 Hampshire, but came in, would they have a state that would
19 blur from their state national and what if the press just
20 decided that Indiana was going to be the key state and ever
21 bit of activity that they did focused in on Indiana. Would
22 Indiana then be the blur state for all candidates?

23 What I am trying to get at is are we just always
24 talking about one, if we were going to look to these things
25 to see where the blur occurred? Would each candidate have

1 their choice of states where the blur occurred? How could
2 we possibly manage that?

3 MR. BAUER: That's a very important question, but
4 I think that there frankly is an answer to it. There is no
5 question that that obviously gives calls to regulators, it
6 gives calls to lawyers. The question is I don't see Iowa
7 singled out for special treatment here at home. How in the
8 world am I going to administer this statute if everybody
9 claims a different Dooms Day state and claims that their
10 campaign is blurred national to state? California could be
11 in 1992 in March.

12 My answer to that is law cannot be made without
13 reference to experience. And the argument we made in 1988
14 is an argument that would have probably been perfectly valid
15 in 1984, an argument that probably would have been made
16 somewhat more weakly in 1980, and an argument that might not
17 have been made at all in 1976.

18 But at the outset of our brief in great detail, we
19 cited books and newspaper articles and commentary and
20 analysis, which goes to show that as a fundamental
21 historical matter, we are not making this up, that Iowa had
22 evolved indisputably into a race of a dimension which forced
23 expenditures upon campaigns that you would not normally
24 expect to budget for and make for a state offering nine
25 delegates in the mix. We recognize that there are some

1 administrative problems here, but we also recognize that
2 each case has to be decided on its own facts.

3 If we approach you and we tell you we spent money
4 we would never have spent in a state that size, it would not
5 been constituted the way it was. If we say that, we
6 certainly expect that you are going to be somewhat skeptical
7 at the outset and that you will ask us significant
8 evidentiary showing in support of our position and that's
9 what we did.

10 We said in '76 that people started to say that
11 this was a little peculiar. 1980, it became rather clear,
12 1984, it became overwhelming, 1988, there wasn't any
13 question about it any more. Everybody understood, said,
14 commented and campaigns responded to a basic statement in
15 almost all cases, that this was a campaign that was going to
16 have to consume huge resources.

17 It was going to run the longest. A year-and-a-
18 half was spent, for the most part, preparing for Iowa on the
19 part of many candidates, one way or the other,
20 intellectually, if not financially. It was the whole game
21 for a period of five or six months before it took place. It
22 was treated as a national press matter affecting national
23 voter views on candidates. We were able to submit evidence
24 that showed how it affected the budgetary decisions we made.

25 Now, those are facts. Yes, it's uncomfortable.

1 Regulators don't want to have to do that. I understand that
2 I wouldn't want to have to do it if I were in your shoes
3 because I wouldn't want to have to hear from the fellow in
4 1992 who says I got in late, California was everything.
5 Here's an article in the L.A. Times that says if I don't win
6 everything, I'm lost. But that's a different argument
7 because that might be a sweet, generous case, but it's not
8 Iowa. It's not Iowa from 1976 to 1988.

9 We spared you all the documentation we would have
10 produced on the point and the point was it drove the
11 budgetary decisions that the campaign made and it helps us
12 to explain to you why cannot isolate every expenditure made
13 in that state and say that because it was made in Iowa, it
14 had to be for the purpose of influencing the voters in that
15 state. That's just simply not so.

16 COMMISSIONER ELLIOTT: To follow up, looking at it
17 from the prospective of all of them, Texas was very
18 important when we had a Texas candidate, Bush, and another
19 one, Bentsyn, where they may have thought that Texas was
20 even more important to them than Iowa, looking at it from
21 all of the things that we have seen. In other words, the
22 big push.

23 If you were administering such a thing, would you
24 give candidates just Iowa has a choice or would you say that
25 everybody could have the state of their choice. There are

1 other big races.

2 MR. BAUER: There are unquestionably other big
3 races, as you are perfectly well aware of, and various
4 candidates fell out after specific so-called last-stand
5 primaries -- Gore in New York, Gephardt in Michigan. But we
6 are not making those arguments in those states because we
7 understand that's really not possible.

8 Certainly there are states where you are going to
9 wind up spending a huge amount of money and there are going
10 to be national ramifications from the effort in that state
11 and you are going to have to find some other neat regulatory
12 exemption into which to tuck the excess.

13 An example would be the standing regulatory
14 relief, which is permitted for national campaign staff
15 which fly into the state and are able to document that they
16 are working on national strategic issues. So, there is some
17 limited regulatory relief for those anomalous situations.

18 But there is, and has been for the last several
19 years, a state, which by virtue of historical anomaly, has
20 developed into a crucial contest, which absorbs huge
21 resources of campaigns well in disproportion to the number
22 of delegates at stake.

23 As we pointed out in our brief, it jump started
24 virtually to the point of no return, although there were
25 obviously some turning points along the way, the campaign of

1 Jimmy Carter on the basis of 27 percent of the vote.

2 Gary Hart -- let me put the point to you -- became
3 a major Presidential candidate after finishing with 16
4 percent of the vote to Mondale's 52 or 48.

5 Now, a campaign, which doesn't acknowledge that
6 something is going on here, which is unusual, in fact, quite
7 extraordinary. There are not a lot of states where you can
8 finish 16 percent of the vote and be declared a significant
9 contender, that it has to be taken into consideration in
10 budgeting money.

11 Let me emphasize this one more time, Commissioner
12 Elliott, we are not arguing that because it has a ripple
13 effect on other states and it distinguishes contenders from
14 non-contenders, and for that reason, the limits should be
15 subject to special relief. We are arguing that it drives
16 the budgetary program in the state. It has to absorb the
17 national press. It has to absorb more time of the national
18 staff. It is constantly contending with The Times, The
19 Post, The Omaha World Herald, The San Francisco Chronicle,
20 The Dallas-Fort Worth Journal, those things required the
21 campaign to fundamentally be conducting a national
22 headquarters effort out of Des Moines, Iowa, which is why
23 you see records which show the national campaign staff
24 constantly popping in and out of Iowa. That's where the
25 campaign is taking place at the time.

1 Now, perhaps it will turn out that we will never a
2 situation like this again. Certainly at a minimum, you
3 would require campaigns to make a factual showing, that it
4 did, in fact, driving budgetary decisions. But if you know,
5 as a matter of fact, that there is an anomalous situation,
6 you are putting tremendous strain on the limits. If you
7 know, as a matter of fact, that the candidates were prepared
8 to step forward and submit substantial evidentiary, sworn
9 material, then it seems to me that it must be taken into
10 consideration in the regulatory decision-making process
11 because otherwise it's a fantasy land. We are all
12 pretending something is happening, which isn't happening and
13 how can you make good law on that basis?

14 COMMISSIONER ELLIOTT: Thank you.

15 CHAIRMAN McGARRY: Thank you, Commissioner
16 Elliott. Commissioner Thomas?

17 COMMISSIONER THOMAS: Thank you, Mr. Chairman.
18 Bob --

19 MR. BAUER: Yes?

20 COMMISSIONER THOMAS: Starting with your 25
21 percent national exemption, what is your best answer for how
22 we can rationalize at this stage of the process, giving that
23 kind of exemption to you and your campaign, when, in fact,
24 other campaigns have made this similar kind of argument. Do
25 you see some distinctions that we could draw on at this

1 stage with regard to your campaign?

2 MR. BAUER: Quality of lawyering?

3 (Laughter).

4 MR. BAUER: Let me try something else then.

5 COMMISSIONER THOMAS: Thank you. Let me go to my
6 next question.

7 MR. BAUER: Let me take a serious run at that one.
8 It seems to me that because an argument has been made at
9 whatever course of time without success doesn't mean that
10 the Agency doesn't gain some experience with the argument
11 and continue to reflect on what the various campaigns before
12 you have been saying.

13 Yes, I know some campaigns have made the argument
14 roughly in the same fashion, lots with less experience.
15 Perhaps they did or did not offer evidence. It's my
16 recollection that at least one campaign which made this
17 argument made it sort of more in the form of flat out
18 averment. We spent an awful lot of time in Iowa on national
19 stuff so we have got to get a big exemption for that.

20 That's obviously not good enough. It seems to me
21 that the Commission can respond to that type of generalized
22 showing by asking that the practical impact in dollars spent
23 be demonstrated in some more tangible fashion -- by
24 affidavit, by showing the way the campaign was staffed, by
25 the way the budget was crafted, to account for the national

1 impact.

2 So, it seems to me that arguments made in general
3 form could always have been perfected and we have obviously
4 had the experience of previous campaigns and making the
5 argument.

6 I will close the answer by saying this. I was
7 well aware that this argument was made in roughly similar
8 form before and had it been practically possible for me to
9 avoid making the argument, I would have. Because nobody
10 wants to have to revisit it to any agency, which is probably
11 frustrated in hearing the argument again.

12 But it is so much a reality of the campaign
13 budgeting process and decision-making process in Iowa that
14 it would have been an act tantamount to professional neglect
15 for me not to raise the argument again. It simply has to be
16 raised because it is there and it fronts the campaign and it
17 affects the way that it spends money. It affects the way in
18 which it operates under this limit.

19 So, the mere fact that four years ago in 1984 the
20 Commission injected a similar argument doesn't change the
21 reality for us and also doesn't change our responsibility to
22 make the argument either better or in more substantiated
23 form.

24 COMMISSIONER THOMAS: The next area I will ask a
25 question in is in the area of the salaries and the employer

1 FICA, consulting fees and staff benefits. Obviously, at the
 2 heart of this is whether or not the general rule on
 3 allocation in the regulations or, perhaps more specifically,
 4 the compliance manual which seems to go into a little bit
 5 more detail as to FICA, taxes, health insurance and so on,
 6 whether the general rule on allocation or whether the
 7 compliance manual should be read to cover that situation.

8 I'd kind of like you to address those points.
 9 Obviously at stake is whether the general rule should be
 10 determinative here or whether it is sort of undermined by a
 11 specific rule, meaning specifically with salaries. And then
 12 with compliance manual, it's sort of a question of is that
 13 the law and are we within our permissible bounds in treating
 14 that as if it were the law?

15 MR. BAUER: There is no question whatsoever that
 16 the manual is treated seriously by campaigns. It's
 17 consulted and I think, for the most part, the directives in
 18 the way they appear and often times obviously by the way
 19 they echo provisions of the regulations are not constructed
 20 out of whole cloth. They are followed. It is useful
 21 guidance. The word the Commission itself uses in the
 22 introduction of the manual is guidance, but it is taken
 23 seriously to be sure. Anybody who engages in wholesale
 24 indifferent behavior would almost surely pay the penalty
 25 here. It would be a foolish way for a campaign to conduct

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1 its legal affairs.

2 Our position, and we set this out in the brief,
3 was really two-fold -- two position, one-fold. The first
4 was that in circumstances where the manual appeared to take
5 position which wasn't mandated by the regulation and didn't
6 follow logically from the general rule, we would revisit it
7 because we felt we had an obligation to consider those
8 issues for our clients.

9 The second is that time passes. Even though the
10 Commission revisits its regulations and we consider them,
11 it's not obvious to counsel on the outside or to campaigns
12 that when an issue like FICA or an issue like health
13 insurance is really given a thorough consideration about its
14 impact on the limits that it frankly warrants. Because
15 added up over the course of an entire campaign and a large
16 staff in a state like Iowa, it could represent a significant
17 amount of money.

18 So, in writing the manual in general terms, and
19 health insurance we'll throw that in, and FICA, we'll throw
20 that in, whereas it does not appear in any of the
21 regulations or mandated by any of the regulatory logic,
22 doesn't settle the question for counsel. If counsel
23 believes that the statute sets out a certain course of
24 action, a certain policy, a certain way of approaching these
25 issues and the regulation consistent with the statute does

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1 the same, though in more detail, and then we arrive at the
2 manual and there appears a somewhat off-handed edition of
3 requirements to the regulatory and statutory lists, we feel
4 it's appropriate for us to revisit the issue and to raise
5 the appropriate consideration for the Commission.

6 An example, as I mentioned earlier, is in the
7 whole question of why are you in charge of taxes paid to the
8 Government against the Iowa limit. As I said before, it's a
9 simple matter of keeping in mind how these limits don't
10 operate terribly effectively in the early, small states. It
11 seems to me that the Agency would want to take a hard look
12 at anything added to the limit that didn't have a direct
13 impact on influencing the voter, didn't have a direct impact
14 on financing core campaign operations, didn't have a direct
15 impact on budgetary decisions in the sense that it was a
16 voluntarily-adopted expenditure.

17 So, we raised that issue. We simply felt that it
18 should not be included in the Iowa limit and that it was
19 utterly unfair to campaigns and without relationship to the
20 statutory purpose as we saw it.

21 I could say the same thing about life insurance or
22 about health insurance as I did previously.

23 By the way, and there is another issue that I
24 haven't raised here, but it is addressed in the brief and I
25 believe it's included in those portions of the brief Xeroxed

1 for your benefit by the staff, and that's this whole
2 question of whether in order to claim 100 percent compliance
3 exemption for one individual, a separate allocation
4 percentage has to be established for each and every other
5 individual working in the campaign in the same state.

6 Now, a very plausible, technical, legal
7 construction has been developed by OGC and the Audit
8 Division, which suggests absolutely -- either everybody gets
9 10 percent or nobody gets 10 percent. Some people get 100
10 percent and some people get 17 percent and some people get
11 21 percent. I cannot tell you how out of sync that line of
12 reasoning is with the realities of the campaign.

13 There are two realities in a campaign. The first
14 reality is, and particularly in a large state operation, and
15 when I say large I don't mean size of state, I mean level of
16 effort, there are certain individuals who are indispensably
17 retained to perform only compliance services, number one.

18 Number two, everybody -- that's an over-statement
19 -- maybe 75 to 80 percent of the balance of the staff bumps
20 up against compliance responsibilities at one time or
21 another. It has to be briefed on them, it has to attend to
22 them, it has to report expenditures, it has to turn in
23 receipts, has to understand how the statute works. So, we
24 took some employees and we established 100 percent of them,
25 because that's why there were hired, and we established 10

1 percent for everybody else. No more arbitrary figure than
2 any other. The response was that you can't do that.

3 Why can't we do it? It's not barred by the
4 Constitution. It's not barred by the statute. Congress
5 didn't have anything to say on the subject. It seems that
6 our reading of the regulations isn't wildly at variance with
7 the language of the regulations and the reading of OGC and
8 the Audit Division. It makes sense, it encourages campaigns
9 to be serious about compliance. Why? What are we fighting
10 about?

11 COMMISSIONER THOMAS: In the area of so-called
12 vendor expenses and a larger category, intra-state travel,
13 you made a pitch that with regard to some travel expenses
14 that relate to vendors and consultants that we ought to be
15 willing to apply the five-day rule.

16 I was just going to, number one, alert you that,
17 at least from my perspective, that's going to be something
18 that I think I'm going to suggest we do some adjustment in
19 because I think in one particular previous campaign, the
20 Kemp campaign, we actually have treated some consulting fees
21 as fees to which the five-day rule is applicable.

22 We would have to go back and look at that closely
23 to see exactly whether there is any distinction between the
24 consulting fees that you are talking about and the ones that
25 were at stake there.

1 If you are not aware of that situation, you
2 probably ought to be.

3 I suppose the main question under that would
4 really be how would you demonstrate that for all practical
5 purposes, the travel expenses, basically of the Kennan
6 Research Group, that those travel expenses are or should be
7 treated the same as campaign staff in the traditional sense?

8 MR. BAUER: Because there is absolutely no
9 fundamental functional difference between the two. Let me
10 give you an example.

11 I am thinking of at least one member of that
12 operation, Kennan Research, who is identified in the brief,
13 who is a member of the core management team and who, between
14 October of 1987 and I'd say early March of 1988, probably
15 didn't do a whole lot else than consult on the Gephardt
16 campaign. Paid a fee for the services, but as a consultant,
17 not as an employee, inasmuch as he arrived at the campaign
18 in a consultancy capacity out of the firm of his own, which
19 continued to be paid for the service, and when he left the
20 campaign, he returned to that same consultancy firm.

21 Let us assume we took him off of the payroll of
22 his consultancy firm and we slapped him onto the full-time
23 payroll of the campaign. What difference does it make? How
24 could the application of the five-day rule rest on that kind
25 of a distinction?

1 I'm lost. I've been trying to look for something
2 to quarrel about here and I can't even get started in my
3 argument because I don't understand the objection other than
4 we have this core campaign staff in the manual, we have
5 persons working four days in a state in the regulations, so
6 let's go to the manual because it's going to irritate the
7 campaign and cause them to spend that much more money on an
8 allocated basis to Iowa.

9 Is that what the object is here? I don't think
10 so. I can't imagine that it is.

11 COMMISSIONER THOMAS: In the matter involving Doak
12 and Shrum, I think, and I know you talked about it, but I
13 think it would be really helpful if you could focus
14 precisely for us on what kind of services were being
15 provided by this vendor such that we might feel comfortable
16 treating them as production-related services, as
17 distinguished perhaps from standard media placement
18 services, just the standard fee that is tacked on in
19 connection with getting some media time.

20 The reason I want that is because I think for us
21 to consider your argument, we are going to have to have some
22 assurance that this really should fall into the category of
23 production costs.

24 MR. BAUER: On the grounds that that is
25 independently exempted?

1 COMMISSIONER THOMAS: Yes.

2 MR. BAUER: Well, let me say, I'm happy to make
3 that argument. I'm happy to do whatever it takes to make
4 that argument, if indeed, it wins me sympathy on the
5 fundamental request for an exemption. But at the risk of
6 seeming stubborn, I must tell you that in our view, we still
7 have to insist somewhat -- I won't insist forever on it, but
8 I will certainly turn my attention with alacrity to media
9 production, if that's required, but insist on the point that
10 there is no basis for assuming, without even the inspection
11 of their records which we offer or any other evidence that
12 we offer, that somehow the 15 percent, which was negotiated
13 away during the first amendment to the Doak and Shrum
14 agreement, was negotiated away somehow as a means of evading
15 the Iowa limit. It's simply not true.

16 There is no reason in the world why a consultant
17 like Doak and Shrum should be required to charge a
18 commission. As I mentioned before, it is now a belief that
19 commissions are not wildly in favor. There are some
20 candidates that refuse to pay them, United States Senate
21 candidates in particular. I suspect that there will be
22 candidates with relatively-limited resources in the 1992
23 Presidential election, who will hire their media consultants
24 on the basis of some negotiated commission rate, if any at
25 all.

1 So, I must tell you that I really still don't
2 understand why we are having so much trouble with this. I
3 must tell you all the issues resolved against us, and there
4 were some, and this was one that really surprised me. We
5 had an affidavit from the principal in the company setting
6 out the reasons why the amendment in the agreement,
7 including the elimination of the media guide commission, was
8 undertaken. A sworn affidavit.

9 I definitely had the impression that I was
10 shouting into an empty stadium when the thing returned in
11 two drafts. I felt we weren't at all successful in making
12 this argument and had been treating it with something
13 approaching a very high order of skepticism.

14 There is something in your question, however, that
15 I think is helpful in consideration of the larger issue.
16 What did they do for us?

17 This particular firm was essentially, through its
18 two principals, 50 percent of the core management team of
19 the campaign. These two individuals, like the one I cited
20 earlier, identified Kennan Research, had a wide range of
21 responsibilities. They took the campaign on in the
22 expectation that it would survive beyond Iowa and New
23 Hampshire, two Super Tuesdays, and beyond, and they took the
24 campaign as they set out, by the way, in the brief and along
25 with the supporting affidavit evidence in the hope that,

1 having not done a Presidential campaign before, their
2 experience with this campaign and reputation that they would
3 gain during this campaign would help them to build their
4 fledgling business. And it did.

5 We weren't making it up and we provided evidence
6 on that. There are 400 pages of exhibits attached to this
7 brief and some good portion of it is showing how this firm
8 did exactly as a business objective what it set out to do.

9 In the context of which, the media could -- the
10 commission on the buy was an entirely negotiable item. I
11 know that because I negotiated it.

12 Now, could some of this be chalked up to be media
13 production? I don't know how to answer that question. I
14 suppose that if I had to construct an argument that some
15 part of it was media construction, I would withdraw to
16 chambers and attempt to do so.

17 COMMISSIONER THOMAS: It may be that it wouldn't
18 necessarily have to fall into the category of production.
19 Maybe I overstated it a little bit. We have been fairly
20 kind and gentle with regard to general consulting as long as
21 it can be shown to be national strategy consulting. In some
22 of the audits in this cycle, we backed out those kinds of
23 costs. So, it strikes me that that would be another logical
24 way to go.

25 I raised the questions in this area because this I

1 think points out some of the frustration that you have had
 2 in the process. You feel that you have opened the doors and
 3 invited our staff in to take a look at Doak and Shrum's
 4 operation and the justification in terms of these kinds of
 5 questions, I gather, what they did and more particularly,
 6 some demonstration that maybe with other clients they
 7 accepted a much lower media placement fee or perhaps none at
 8 all.

9 Having made that invitation and having not been
 10 taken up on that, you are now, to put it mildly, resistant
 11 to throwing in additional information like that to show
 12 those kinds of functions and operations. All I am
 13 expressing is from my perspective.

14 One way or the other it would be nice to get that
 15 information because based on the documentation that we had,
 16 the contract signed initially for 15 percent media fee,
 17 suddenly it's gone. It obviously puts it on us to insure
 18 ourselves in that area.

19 So, it struck me as something that if we could get
 20 information on that, at least some sort of representation
 21 that indeed that's what was going on and indeed there was
 22 an awful lot of national strategy consulting going on and
 23 that really were never perhaps justified in being expected
 24 to pay a 15 percent fee for media placement.

25 MR. BAUER: Commissioner Thomas, if you take the

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7

1 question beyond media production, per se -- what you suggest
2 is absolutely true. If you as anybody in the business, I
3 think will confirm, that is, the commission on buy is simply
4 a way that a consultant measures value of service.

5 Let me put it differently, it is the way that a
6 consultant gets paid in this business. It's not the
7 exclusive way, it's a way. As a matter of fact, it doesn't
8 even relate to the value of services provided because, as
9 some candidates will tell you, and I'm not attacking
10 consultants or commission buys, I'm simply telling you what
11 the other side of the story is, and it goes to the question
12 of what kind of a consultant service this was.

13 This is not a media buy operation. This is a
14 consulting firm, which provided, as we said in our brief,
15 soup to nuts, A to Z, counseling on the entire campaign and
16 the two principals of which formed about 50 percent of the
17 core management team, read the polls, wrote the scripts,
18 reviewed the media strategy, made the buys, consulted with
19 the candidate, traveled to states, dealt with the press,
20 everything.

21 And a commission on a buy doesn't have any real
22 relationship to any of that. It's just a flat percentage
23 whatever it is that the candidate buys for television.
24 That's why some candidates don't like it because it doesn't
25 have anything to do with what you do for me. I could buy

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1 I could get somebody else to buy, but that's a fee for
2 something that which is, frankly, not even particularly
3 labor or necessarily skill intensive.

4 It's just a way of paying and that's why they are
5 willing to get paid some other way. But what they are
6 fundamentally being paid for and the reason there is a
7 contract with them in the first place, and I think that's
8 what answers your question is because there are national
9 strategic consultants.

10 When Iowa was over, they were with us in New
11 Hampshire. When New Hampshire was over, they were with us
12 in South Dakota. When that was over, they were with us on
13 Super Tuesday. When Super Tuesday was over, they were with
14 us in Michigan. On the day that Gephardt dropped out of
15 the race, they were with him then too..

16 So, this is just a way of paying them and they can
17 be paid another way and indeed they opted to be paid another
18 way. Why that got put on the limits in Iowa ultimately
19 escapes me. I don't understand it.

20 COMMISSIONER THOMAS: I would have as my last
21 question, why did you negotiate that in the first place?

22 MR. BAUER: Negotiate what?

23 COMMISSIONER THOMAS: The 15 percent.

24 MR. BAUER: Why did we accept it in the first
25 place?

1 COMMISSIONER THOMAS: Why did you negotiate that
2 in the first place? You were probably having second
3 thoughts actually.

4 MR. BAUER: Sure, absolutely, because things
5 change. Let me just interpret you for a moment,
6 Commissioner Thomas, and address precisely what happened in
7 the brief.

8 We said that when December, '87 rolled around --
9 and we were very frank about this -- the reason a
10 renegotiation of the agreement took place was because the
11 Gephardt campaign and the way in which campaigns passed in
12 and out of these rumored phases of success and failure, the
13 Gephardt campaign was rumored to be very wobbly. The
14 Congressman was treated unjustly for having performed poorly
15 in the national television debate and there was some
16 discussion about finances and whether monies could be raised
17 in early January to make the Iowa and New Hampshire
18 campaigns fully competitive.

19 The business we are talking about began to develop
20 concerns that it wasn't going to work as well, it wasn't
21 going to do as well, or the campaign wasn't going to last as
22 long as it originally thought. So, as we entered into
23 negotiations, we gave a little, we took a little.

24 But the question wasn't Iowa, per se, the question
25 was the entire course of the campaign and how the

1 originally-negotiated compensation agreement would, in fact,
2 now work.

3 So, circumstances changed. We set that out in the
4 brief.

5 COMMISSIONER THOMAS: My only semi-facetious
6 question was why did you negotiate 15 percent in the first
7 place?

8 MR. BAUER: Because at the outset of the campaign,
9 any consultant will ask for it, and very typically, you are
10 bidding for consultants. You know what happens at the
11 beginning of campaigns, everybody wants to line up the good
12 consultants.

13 COMMISSIONER THOMAS: You probably wish you could
14 have that one back.

15 MR. BAUER: You got it back, but you put it back
16 on. The great piece of negotiating strategy, you unraveled
17 it for me.

18 COMMISSIONER THOMAS: My last question really goes
19 to process again. You expressed a lot of frustration with
20 process. I supposed from our perspective we would like to
21 be able to give more guidance as we go through the campaigns
22 and I wanted you to sort of share with us the thought
23 process as to why during the course of campaigns some maybe
24 perhaps less than willing to come forth with advisory
25 opinion requests? Is that just a practical complexity?

1 MR. BAUER: It's a combination. I will -- there
2 are a variety of reasons and I will cite them to you very
3 candidly, none of which I would like to have attributed to
4 the Gephardt campaign because I don't recall, other than
5 fending off the Gore assault on the fund-raising exemption,
6 I didn't recall any serious attention being paid to
7 developing advisory opinion requests on any issue.

8 I think my thoughts were whenever the issue
9 crossed my mind, but I will also tell you what I believe to
10 be the general set of considerations which affect the entire
11 community of people who practice before the Agency.

12 Number one, advisory opinion requests are a matter
13 of public record. Campaigns become paranoically
14 suspicious and secretive in a way which you are all familiar
15 with. There is no point in my taking it any further. They
16 become very suspicious, competitively secretive, very
17 proprietary about information. To fashion an advisory
18 opinion request on the important funding issues, you have
19 to be prepared to put it before your opposition. And some
20 campaigns are simply unwilling to do it.

21 As you know, the press treatment of these issues
22 is sometimes slightly, if not all together, hysterically out
23 of proportion to the issues at stake. Everybody spins
24 everything. That is to say, you might put in an advisory
25 opinion request on a very mundane issue and the campaign

1 manager for Y picks up the phone, calls his reporter and
2 says is it really true about them running out money, they're
3 breaking the law, I hear this and I hear that, and you have
4 to deal with all that, which makes the entire exercise
5 rather inefficient and also politically irritating.

6 So, part of it is the public character of the
7 advisory opinion request in a highly-competitive campaign in
8 which information is proprietary.

9 The second reason is, quite frankly, that
10 sometimes the questions raised need to be answered before it
11 can really be laid on the table and addressed and resolved
12 here. The time consumed in getting the advisory opinion
13 request, even on an expedited timetable, in the context of a
14 Presidential campaign can be very problematic, particularly
15 after the first primary kicks in.

16 As we made very candidly clear in our brief,
17 anyone claims not to be surprised by the issues developed in
18 a Presidential campaign, to have mapped them all out in
19 advance and figured out exactly how things were going to be
20 done, my judgment is that it is either an idiot or a liar.
21 It doesn't work that way.

22 All sort of conditions change and different
23 problems are developed and different issues are raised.
24 You'd have to strategically adapt to something the
25 opposition has done which you don't expect and that, in

1 turn, raises legal issues about your response and so time
2 becomes a very scarce resource. It's not something that you
3 have a whole lot of time to work out and an advisory opinion
4 request can be time consuming.

5 You cannot be sure, for example, if you follow an
6 advisory opinion request that you get it right the first
7 time. The OGC may send back a letter saying in order for us
8 to respond to your request you need to answer the following
9 11 questions. So, that's not an easy thing to do.

10 So, I think those are the two principal reasons
11 why it's not done and there is also, frankly, an absolute,
12 abiding horror, and I'm being very candid with you about
13 Presidential campaign AORs which will produce a 3/3 split on
14 close and controversial issues in which partisan interest
15 issues are involved, and let's say philosophical differences
16 between different commissioners will surface and be grossly
17 misinterpreted by the press.

18 Those are very honestly the reasons why I don't
19 think it happens very often.

20 CHAIRMAN MCGARRY: Anything further, Commissioner
21 Thomas?

22 COMMISSIONER THOMAS: No.

23 CHAIRMAN MCGARRY: Commissioner Josefiah?

24 COMMISSIONER JOSEFIK: Thank you, Mr. Chairman
25 Bob, I think you make very credible arguments with regard

1 your media contract and your Jefferson/Jackson Day Dinner
2 and I think it just emphasizes in my own mind the need for
3 this kind of oral presentation somewhere in the process.
4 Unfortunately, it happens at the end and it's too bad it
5 doesn't happen earlier on, like at the interim audit stage.

6 But procedures as they are and then the fact that
7 those audits at that point are sort of not available to the
8 public, it's very difficult to have anything that's a public
9 hearing, but it seems to me that a lot of our issues could
10 be resolved earlier on and maybe avoid the length of these
11 audits, if we could get involved at an earlier stage with
12 direct discussions with the committees.

13 I don't know how we do that, but I think the
14 Commission should look at that for the next go-around. But
15 maybe since we are making these great changes in '92, it
16 won't happen, but we will see.

17 I would strongly discourage you from going up with
18 an artificial argument based on the media contract. I think
19 what you are saying today is reasonable and logical and what
20 the Commission has looked for in the past is are you getting
21 some sort of a deal that is not there for anybody else.
22 What you have been telling us today is that it is not
23 uncommon in this business to have these kinds of
24 arrangements. That's all that we are looking for, I think.

25 To give you an example, when you started this

1 process with commissions, in particular, the general rule
2 was if you didn't collect 15 percent commission that you
3 were giving the committee a break. Then we started getting
4 affidavits and testimony in that 3 percent was this
5 business' practice and 1 percent was this business'
6 practice, so we would accept that because we understood that
7 this wasn't something that the Gephardt Committee or the
8 Reagan Committee or the Bush Committee or the Mondale
9 Committee or the Dukakis Committee was getting because of
10 who they were and that's that whole corporate side of this
11 thing that we look at.

12 But I think he makes some very credible arguments
13 on both of those points. I certainly will take that into
14 consideration.

15 With regard to the five-day rule and the general
16 arguments, first of all, when you say we shouldn't look at a
17 24 hour period, but we should break it up a little bit. We
18 don't have to go a full 24 hours. If you are in and out of
19 the state, we should let you get out of the state and start
20 all over again, I guess, is what you are saying.

21 Do you think our own regulations preclude us from
22 taking that view?

23 MR. BAUER: From taking the view that it should be
24 done on any portion of a calendar day?

25 COMMISSIONER JOSEFIK: Right.

1 the regulator to decide, okay, is this the kind of case
2 where we are going to go along with this as being a
3 reasonable response or do we really need these records to
4 demonstrate that, in fact, these people were in there for
5 this period of time before we can say what they were doing
6 and what state we are going to assess this person to or
7 something like that.

8 It's a fine line and I would like to get -- I'm
9 sympathetic to your view, but also I think that we have the
10 difficulty of trying to demonstrate what is an accurate
11 representation by a committee in certain circumstances.

12 MR. BAUER: . I think that the question probably
13 becomes one of exactly how you define the burden that the
14 campaign has to bear because campaigns do have to bear a
15 burden and I don't think the hectic nature of campaigns is
16 an excuse for the campaigns to avoid dealing in good faith
17 with their statutory obligations. I wouldn't make that
18 argument. I don't think anybody would make that argument.

19 By the same token, those campaigns are, in fact,
20 hectic and hurried and the people who are recruited into
21 these efforts do not have MBA quality management skills
22 always. Records are kept. I think our records were
23 relatively well-kept, but I can't say that every record that
24 I would have liked to have access to was available to me

25 So, I think the question of the sufficiency of the

1 showing has to be analyzed in the context of the particular
2 campaign and what the general trend of its effort, the
3 general quality of its effort in its legal decision-making
4 appears to have been, or its accounting decision-making
5 appears to have been.

6 I am very proud of the compliance staff inside
7 this operation. As an attorney, I work with a lot of
8 compliance staffs, ranging from state offices to the United
9 States Senate races. The compliance staff, which was
10 undermanned and did not have use resources at its disposal,
11 performed, in my judgment, heroically, and put together
12 records which I have cited Audit as having said were as
13 complete as at least many as they had ever seen, and
14 certainly candid. We didn't go and hide the 25 percent
15 exemption. It was noted the second day that the auditors
16 were in our office.

17 We put all of this material forward and in that
18 context then the question becomes whether or not -- if a
19 campaign appears to have been dealing on rough issues in
20 relative good faith or the Commission might return the favor
21 some way by not being overly-troubled that we can't find out
22 where our campaign manager was exactly what time on the
23 fifth day, having been there four consecutive nights, so he
24 must have been there and the five-day rule doesn't apply.
25 That kind of thing.

1 After all is said and done, we are chasing the guy
2 around for a day in Des Moines.

3 COMMISSIONER JOSEFIK: And you are wasting your
4 time.

5 MR. BAUER: That's what I'm here for, that's the
6 comfort.

7 COMMISSIONER JOSEFIK: We created the five-day
8 rule to be a benefit to the campaigns because before that,
9 we were looking at everybody going in and out.

10 MR. BAUER: Yes.

11 COMMISSIONER JOSEFIK: So, now in '92, we won't
12 deal with that anymore, so that's another element that's out
13 of the way.

14 I guess there is a sensitivity that when you come
15 up with a rule, whether it's good, bad or indifferent, and
16 we attempt to try to apply that across the board.

17 MR. BAUER: Certainly.

18 COMMISSIONER JOSEFIK: And that when we apply it
19 to one committee, it's very difficult, even if you come in
20 with a good argument after the fact to say that maybe that's
21 a good point and we shouldn't have done it this way, but we
22 did it this way.

23 The DuPont campaign, which was the first committee
24 that we audited, and paid its civil penalty and made its
25 repayment versus to the Dukakis Committee and the Bush

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1 Committee that are way at the other end of the spectrum
2 here, and even some others further down, how can you treat
3 them, when you try to treat them fairly, if you have a
4 general rule that seems to be clear cut to not to apply that
5 across the board, especially something as clear-cut as a
6 five-day rule. Without the records to back it up, how are
7 we going to give the benefit of the doubt to one committee
8 when we didn't do it to another, I guess is the problem.

9 MR. BAUER: Well, again I think the campaigns do
10 have to bear some burden. They have to be able to make some
11 case that X was indeed in the state on the fifth day or Y
12 was indeed renting a car in Missouri and driving it into
13 Iowa. Whatever it is, there has to be some showing.

14 I'm not suggesting that you just waive the rules
15 by some act or regulation, the question is whether you can
16 strike some appropriate balance of imposing a burden and not
17 imposing it in the context of the way that campaigns run, an
18 impossible burden.

19 COMMISSIONER JOSEFIAK: One other point on the
20 five-day rule -- consultants, in particular. Do you see a
21 difference among consultants? In other words, we have had
22 a number of discussions recently with regard to the personal
23 services of a consultant, again going to the issue of the
24 many reasons why you have independent contractors, as
25 opposed employees. It may be for tax reasons. It may be

1 for a number of reasons, but there are varying degrees of
2 consultants.

3 So, I can see someone who you hire as an
4 independent contractor/consultant that works just as an
5 employee versus the vendor that you are hiring that their
6 business is to do a certain thing and they are in the
7 business of doing that and there's no way that you can treat
8 those as employees of a committee.

9 Do you see a differentiation there? Would you
10 treat under the five-day rule all consultants the same,
11 whether they are the pollster or whether they are the person
12 you are hiring to write specific speeches for your candidate
13 that is basically with the campaign all the time, but is
14 treated as an independent contractor?

15 MR. BAUER: My inclination would be to treat them
16 all the same for the simple reason that I would like some
17 simplicity of administration and fewer calls for the Agency
18 to have to make.

19 However, I will answer differently than what I
20 just suggested. It seems to me that one rule which is
21 perfectly appropriate or one guideline which could be
22 followed is to not distinguish between a consultant and an
23 employee, if, in fact, the consultant is performing the
24 types of services integral to a campaign and which many
25 campaign employees also perform.

1 That covers most of the troublesome cases. It
2 covers the pollster, it covers the media consultant, it
3 covers the management consultant.

4 It may not cover the very anomalous case, and I
5 guess I would be happy because I could live without it, but
6 maybe you hire someone to come and fix the computers under a
7 warranty and you pay them the travel expenses and they spend
8 five days in your California offices fixing up the network
9 because it wasn't functioning properly. Maybe in that case,
10 inasmuch as you wouldn't have a full-time computer repair
11 person on the campaign staff, you might want to make an
12 exception and not permit relief under the five-day rule.

13 But in cases where it is integral to a campaign
14 and is the function of the campaign itself that an employee
15 himself or herself in any campaign performs, I would see no
16 basis to distinguish them.

17 COMMISSIONER JOSEFIAK: My last question deals
18 with the 25 percent national exemption. Assuming that the
19 Commission bought into the idea of allowing the committee to
20 come to us and demonstrate that in the state of Iowa for
21 Iowa expenditures, not necessarily related to Iowa, but
22 expenditures made in Iowa, that we were going to allow some
23 flexibility there. Do you think that you have provided the
24 Commission sufficient basis for that, and let me follow up
25 on that.

1 I've heard you discuss, for example, 50 percent of
2 staff time dealt with press and dealing with all these
3 inquiries and getting them regulated to where they have to
4 go and answering their questions and doing the interviews.
5 50 percent of the staff time of the Iowa employees, as
6 opposed to what I understood national committee employees.
7 Now, are you saying that for the entire period of the Iowa
8 campaign or is this based on the last month of the campaign
9 or two weeks before or the last two days before?

10 In other words, it's very difficult to buy an idea
11 in generalities, and when you have records that can be a
12 little more specific that demonstrate, for example, that
13 these people were doing this during this period of time and
14 that was 50 percent of their effort, as opposed to saying
15 that the day they walked to the Iowa office, 50 percent of
16 their time was spent dealing with this kind of situation.

17 I don't think that necessarily is true. It tends
18 to give people a reason not to go only with that kind of an
19 argument.

20 And over and over the staff time, I don't see any
21 other expenses that you have delineated that would be part
22 of that, yet you are asking for a 25 percent exemption for
23 all of the expenditures made for Iowa.

24 I'm saying that maybe it's not 25 percent, maybe
25 it's much lower than that, maybe it could be higher than

1 that. But it seems to me for the Commission to buy the
2 concept, there has got to be some basis and more basis than
3 reality as to exactly what was going on and that involves
4 records to demonstrate that, in fact, these people were
5 doing that other than just making broad-based
6 generalizations.

7 I'd like you to respond to that because I think
8 that there is a lot of sympathy for these kinds of
9 arguments. Even though necessarily they were rejected
10 before, they have always been rejected in general terms. I
11 think that it would give the Commission some material to go
12 by to legitimize that argument, if, in fact, there was some
13 records that demonstrated exactly what you are talking
14 about.

15 MR. BAUER: I'll answer in two parts. The first
16 is that obviously the business of establishing records
17 sufficient to make the case is an enormously-complicated
18 business. There is no way that we can establish and Iowa
19 campaign office in any major Presidential campaign in which,
20 for example, a time sheet/recordkeeping system could be
21 reliably established.

22 I would frankly worry that when it was all over,
23 either the system would break down, in which it would
24 completely undermine its credibility, that is to say,
25 Commission, we have records for the first four months, but

1 unfortunately for the last two months, nobody had the time.
2 What's it worth?

3 Or alternatively, encourage people to simply write
4 down whatever came into their heads so they could get it
5 over with every day, somewhat in the fashion that lawyers
6 do.

7 So, I don't think a recordkeeping system can be
8 really imagined for those circumstances, which would be
9 fully equal to the task.

10 What happened in this case is that I conducted a
11 review, which suggested to me that the Iowa operation, for
12 the most extended period of time, that is to say, not for
13 the last month or the first two months, but for a good six
14 months or so, had been turned over to national concerns or
15 resources consumed for national purposes in a range anywhere
16 from 15 to 50 percent. So, it varied over time.

17 In fact, oddly enough, at the same time that the
18 actual organizing activity which produces a vote became very
19 intense, so did the additional consumption of resources at
20 the same time to deal with all the national pressures. So,
21 they both became intensive at approximately the same time.

22 We put forward a couple of affidavits, which were
23 meant to show how two absolutely key employees, probably the
24 two key employees in our campaign office believe their time
25 had been organized during the campaign and they were both up

1 at about 50 percent. Then we took 25; half of that number.

2 Now, our hope, frankly, had been that had the
3 Commission bit at all at the argument and suggested where it
4 would have liked it strengthened, how questions they had
5 might have been answered, that we could have focused on
6 additional evidence that we could have developed and we
7 would have been prepared to do so. But it was really
8 rejected immediately out of hand as having been argued
9 before in another context and rejected and, therefore, not
10 available to us. So, the entire enterprise collapsed.

11 But it was a good faith enterprise. When I sat
12 down, the campaign manager said walk me through it. I
13 didn't permit him simply to say, and let me be very clear
14 about that, and I think some of the details are reflected in
15 the affidavit, I must have spent half my time on that
16 national stuff. I said, "Give me an example. Give me
17 examples."

18 For example, we pointed out in the briefs, and I
19 may be getting the days wrong, but the hypothetical -- not
20 the hypothetical, the example, is still the same, that there
21 was so much national press pressing into see him, that he
22 finally decided on a policy whereby he would never see them
23 by ones any more, but only in groups of at least four. It
24 just gives you an idea of what we are talking about here.
25 He could not get his job done. And yet he still had to see.

1 with these people.

2 So, there is not an easy answer to your question,
3 but that shouldn't stop us from trying to get to the bottom
4 of it, if the result is fairness to the campaign in spending
5 limited resources.

6 COMMISSIONER JOSEFIK: I know it doesn't affect
7 you immediately, but all of these arguments have been taken
8 into consideration obviously, when we looked at the '92
9 situation and we don't have half of these problems. You
10 don't have the staff problem. We did allow for so many
11 things to be considered national expenditures now that would
12 have been considered state expenditures before.

13 In order to eliminate the necessity for the
14 committees to keep these records, to be able to demonstrate
15 that these, in fact, were national committee expenditures,
16 and also from us having to go through them and delay these
17 audits so that we can get them down in a relatively short
18 period of time.

19 I know that doesn't help you right now, but I was
20 just curious because it seems to me that your argument,
21 which would be much more credible and acceptable, at least
22 to look at, if, in fact, we have some basis, but you are
23 saying that you didn't do that because --

24 MR. BAUER: We did some of it and then it just
25 disappeared.

1 COMMISSIONER JOSEFIK: You didn't pursue it
2 because you didn't think it was going anywhere.

3 MR. BAUER: That's correct.

4 COMMISSIONER JOSEFIK: Thank you, Mr. Chairman.

5 CHAIRMAN MCGARRY: Before I recognize Commissioner
6 McDonald, I just want to ask one quick question as a
7 followup to Commissioner Josefiak. Would it be your
8 position that on Constitutional grounds alone we could
9 justify agreeing with the 25 percent national set-up?

10 MR. BAUER: I think I believe on the
11 Constitutional constraints could suggest to you that some
12 percentage, if not the percentage actually selected by the
13 Gephardt campaign reasonably came to terms with our concern.
14 That is to say, I am not suggesting that you are compelled
15 by the Constitution to adopt 25 percent. I am suggesting
16 that you are constrained by the Constitution for rejecting
17 any percentage whatsoever.

18 But if you are looking around for a percent, mine
19 is pretty good. I'd look at it closely.

20 CHAIRMAN MCGARRY: You mentioned earlier in the
21 day about the Gore advisory opinion and there was a real
22 split here at the table on that. I suppose it could be
23 argued that the percentage arrived at was arbitrary. I have
24 always said that anyone who could figure out the percentage
25 of a fund raiser in a commercial, for example, on television

1 is fund raising. The shrewdest fund raiser is the one who
2 doesn't ask you for money, but you get the message they want
3 money.

4 MR. BAUER: You are absolutely right,
5 Commissioner. The whole difficulty that faces the Agency,
6 and I'm not suggesting that I have any better answer for how
7 to do it, is the business of translating politics into
8 dollars. How do you translate politics into dollars?
9 There are obviously some organizations in town where it
10 happens every single day, but I mean in the terms we're
11 discussing it in. I think that it's not easy.

12 How do you quantify speech? How do you decide
13 what percent of the communication has a fund-raising impact?

14 CHAIRMAN MCGARRY: It has to be arbitrary to some
15 extent and I think in the interest of simplification and in
16 the interest of making it understandable and enforceable, it
17 has to be specific and that's why I personally brought in
18 for the 50 percent, to make it easier on us in the regulator
19 community and everybody.

20 Commissioner McDonald?

21 COMMISSIONER McDONALD: Thank you, Mr. Chairman.
22 Robert, you are outstanding as always, quick as always. I'm
23 going to make just some general observations about some of
24 your comments. I may ask you one Constitutional question,
25 but I must say I think a number of my questions have been

1 answered. I know a number of my colleagues have other
2 questions that they might want to ask in another round.

3 I'll start off talking the most unpopular
4 position, vis-a-vis, lawyers who practice before us and then
5 work back, if it's all right.

6 Let me say from the outset about the audit staff
7 and counsel staff that I think they do a very good job. I
8 think their task is very difficult. I think they are
9 required to act on a formula that has been espoused by the
10 Commission. The formula changes certainly from time to time
11 and we are trying to change it again in 1992 to reflect some
12 of the problems that have come before us in your
13 presentations and in other presentations.

14 I think the point that the Vice Chairman made
15 earlier on is certainly one that the Commission has adhered
16 to from day one, which is that we have always objected to
17 statements, and I think that today you indicated that as
18 well. But having said that, it has not changed.

19 Let me give you some classic examples. In 1989, I
20 thought I had an agreement on the Hill with members to look
21 at in 1989 after the election, not in a political season,
22 where we would have an area that revolved strictly around
23 Presidential campaign problems.

24 General Counsel can tell you that I went to him
25 and said that we should have a series of hearings or

1 meetings, if we could, with people who participated in the
2 process, to listen to the kind of problems they have, not in
3 the context of a heated election process, but while it was
4 fresh on their mind and after the election had taken place.

5 For a variety of reasons, among them was if we did
6 it on an ongoing panel basis, the panel members would have
7 to disclose their finances. We weren't going to rush
8 forward and participate in that activity and certainly
9 understood that, but was somewhat frustrated because I think
10 we would like to hear from all the practitioners about their
11 concerns.

12 One of the things that I've learned in criticisms
13 of the Commission, and there are too many to enumerate at
14 one setting, is it's what's mine is mine and what's yours is
15 negotiable. It's not uncommon in Washington, D.C., but
16 again I want to keep in mind the audit staff and legal staff
17 are trying to work within a framework of, whether we agree
18 with it or not, the framework that I think has been set
19 forth historically and in relationship to rulings the
20 Commission has made.

21 We can argue forever whether they took a certain
22 attitude or didn't take a certain attitude, but I do think
23 that it would be not all together a total fair assessment to
24 say that they summarily dismissed these things without their
25 own theory about what the law should be. It may be wrong,

1 it may be right, but I don't want to diminish their role.

2 Having said that, this meeting shows once again
3 what I have been saying literally since 1984 that I know for
4 sure, which is, I favor a block grant. I think candidates
5 should get money based on their ability to match funds and I
6 really don't care if they set the money on fire. I don't
7 care if they spent \$10,000 in Iowa or 50 cents because one
8 of the reasons why we tried to get out of the state-by-state
9 business was the very kind of issues that have been raised
10 here today. I think you've raised some very good ones, as
11 all the campaigns.

12 But it is in an area that is forever shifting and
13 I think once the public has shown their faith in a
14 candidate, that should suffice. I don't understand why my
15 colleagues don't agree with that.

16 But you could make a practical argument that if
17 you lost 49 of 50 states, you would still have to give the
18 money back. So, I don't much like to get into what
19 candidates should spend their money for because I don't much
20 care. I care in relationship to the point made earlier by
21 the Vice Chairman in relationship to the law, but I would
22 like to see us get out of the business entirely.

23 If a candidate is entitled to money and they get
24 the money, I want to have them disclose in the most generic
25 sense, but I think once they met the public's confidence.

1 I'd rather not get into it at all. So, to be very candid
2 with you, I am, have been and will continue to be for a
3 block grant.

4 I call on the two most powerful legal people I
5 know in town, the B&B boys. Baron and Bauer or Bauer and
6 Baron. One represents the President, one represents some
7 fairly strong committees on the Hill, both represent an area
8 of the majority, and has been proven effective. It's one of
9 the very few smart things I did in life was have the B&B
10 boys give a speech in Philadelphia where you saved me. I
11 don't remember a thing I had to say, but I thought you all
12 were outstanding and I thought it was a very good
13 presentation because it was a realistic presentation.

14 Clearly, you work well together in other areas. I
15 enjoy immensely those letter, although I think I could
16 improve on them, but I'm not in a position to do so.

17 In terms of the Iowa impact, there is no question
18 that Iowa is important. Ask Gephardt and Dole. They were
19 extremely helpful to those two campaigns. It gave George
20 Bush Big Mo in 1980, I remember, that and I thought that
21 race was pretty close.

22 This does not take away from your argument at all.
23 It just interests me about politics in general because the
24 very things that you said about Iowa I think are exactly
25 right. An incredible amount of coverage -- national,

1 international. It's amazing to me and it will be
2 interesting to see what happens, vis-a-vis, 1988. It will
3 be interesting to see just where the press comes.

4 My guess is they will be every bit as active as
5 they have been before, based on the very things you have
6 said. There's a lot at stake. It's the first newsworthy
7 story and I think that's very critical.

8 I think you've been extremely candid. I missed a
9 few of those things that you said about the advisory opinion
10 request. You may have said, but I don't think you did, that
11 we might be turned down. You may have left that one out. I
12 think that's another reason -- if I could just add as a
13 possibility. I'm not saying that it's true, but it did
14 cross my mind that one of the reasons that people don't ask
15 for an advisory opinion request is that they may not be
16 happy with the answer.

17 I don't know how to address the kind of problems
18 that Mr. Josefiak has raised because I think he has raised
19 the most fundamental problem and your answer, by the way,
20 was extremely good in terms of what do we do, vis-a-vis,
21 these other campaigns? I think you made some very
22 compelling examples of frustrations you have. I'd someday
23 just love to have commissioners and auditors and General
24 Counsel's Office have the opportunity to make the same kind
25 of discussions because are forever inundated with difficulty

1 in terms of problems.

2 Let me give you an example, not one you have ever
3 availed yourself of, but people have from time to time.
4 Timeliness is a major issue for this Commission. You'd be
5 surprised how many times there is a big issue from OGC or
6 auditors or commissions. Without exception, you'd be
7 stunned at the number of people who ask for extensions of
8 time before this Commission.

9 One of the things I suggested in this area was
10 let's just don't grant any -- none. That way it will cut
11 down on these problems. No more case-by-case, just simply
12 say fine, we'll have no more extensions. That will solve a
13 great deal of time.

14 Frankly, I'm not for that, but I mean if you just
15 want to get down to one of the problems that we are
16 constantly criticized for, that would be a way, at least in
17 part, to take care of the problem.

18 And I close at this point, I think I'll have some
19 questions, but I want to say to you again, and I'm very
20 serious about this. I think the concept of block grants is
21 the only clean way to do this. I think we have spent months
22 and months and months on these projects. We are into the
23 next election basically, for all practical purposes, and I
24 don't think it's anybody's fault. I think it is a result of
25 what has happened over time. On the audit side and we need

1 more audits. On the OGC side, we need more lawyers.

2 But in this area we have found that it's very
3 difficult and frustrating to be able to satisfactorily work
4 out these processes. Should a committee like yours not be
5 allowed to develop either a new or more articulate argument
6 -- I don't think so. I think in terms of the law, the law
7 has come to the defense of someone, whether it's a new idea
8 or an old idea that we packaged. That will forever be a
9 criticism that the Commission will have to undergo too.

10 But I say again, because it's fairly easy -- I
11 don't mind people being after the Commission, that's what
12 the Commission gets paid for -- but I do say again, at least
13 in my experience in dealing with the auditors and General
14 Counsel, it's not that I may always agree with them, but I
15 don't think they summarily, and I'm just back to the point,
16 that I don't think they summarily and arbitrarily pick
17 things out of the air. I think they see a difference
18 between a consultant and a paid staffer. Your presentation
19 may make that more clear that that's not the case.

20 But I don't think it is done on the basis that
21 they are trying to be difficult. Frequently, I'm asked the
22 question does the FEC make any difference? Only if we take
23 action against you. What the law does is it creates a
24 parameter and from the parameter everybody has to work. And
25 I think your point about the guide was a very good one.

1 You have to have some starting place.

2 The only thing that I would ask you in terms of a
3 Constitutional question, which the Chairman touched on, the
4 relationship between a Constitutional argument and the
5 Commission itself is, on its face, a violation of First
6 Amendment rights.

7 MR. BAUER: I think I can answer that, running
8 down each amendment and the Commission's position.

9 COMMISSIONER McDONALD: Feel free. Do you mean
10 cruel and unusual from our vantage point or yours?

11 MR. BAUER: Search and seizure.

12 COMMISSIONER McDONALD: It's my understanding that
13 you didn't have much for us to seize.

14 MR. BAUER: I take it, Commissioner, you are
15 referring to that part of the brief which, I suppose,
16 fulminates at length in Constitutional terms. That was
17 meant, quite frankly, to establish a framework for the
18 frustration that I know this Agency feels and perhaps the
19 source of some of the misguided criticisms directed against
20 it in regulating something very different from what the Food
21 and Drug Administration regulates, something very different
22 from what the Commodities Future Exchange may regulate,
23 something very different from the Securities and Exchange
24 Commission regulates.

25 It regulates political activity. It doesn't

1 regulate the sale of spoiled food stuffs or improperly
2 registered or misleading securities documents.

3 So, it is not, and the Supreme Court has addressed
4 this issue, it is not an agency which is unconstitutional
5 because it administers those portions of the statute that
6 the Court has already held to be Constitutional and,
7 therefore, Constitutionally it interprets them.

8 But even those issues as we know, from all the
9 court cases and all the matters under review and all the
10 enforcement decisions and all the debates on the floor of
11 the House and the Senate, even in those areas where the
12 Commission has conceded jurisdictional authority, it hasn't
13 up to a point.

14 Even there at some point, the Constitutional
15 issues begin to surface again. You simply cannot bring them
16 to a close.

17 I just want to close by saying I don't think there
18 is any escape from that. I take it to be the kinds of
19 issues that make your work challenging, also makes it
20 frustrating. I don't want to suggest for a minute that I
21 consider myself to be addressing an unconstitutional body,
22 but my view on this may change, depending on the outcome of
23 the hearing. I do not, by the way, mean to disparage the
24 efforts made by either audit or General Counsel. I did not
25 believe that summary dismissal was so much my concern.

1 took the dismissal to be absolutely summary and in some
2 instances it was. It was wrongheaded summary dismissal that
3 I was concerned with.

4 If it had been granted, then the summariness of
5 the response would not have been objectionable to me.

6 COMMISSIONER McDONALD: I do want to respond to
7 that only in the sense that I appreciate you complimenting
8 the staff in that way and I know they do too.

9 I just find it extremely -- I thought you made
10 some pretty good discussions. I'm always lost on personal
11 attacks and I didn't view them as personal, but I must say
12 I'm always lost on these issues about the staff, just as I
13 am about arguing about outside counsel.

14 Everyone understands that they have to represent
15 their concerns as best they can. None of us would
16 anticipate anything else. I must say you have done a very
17 good job in representing your client exceedingly well.

18 Again, I just say in the most generic sense,
19 because it's popular to be in Government these days and
20 attack the Government. That's not a position I take and I
21 have been much more vocal in my last year in this regard.
22 It is not a position that I take. It is one that I have
23 grown very tired of.

24 A lot of people that participate before us have
25 been in the Government. A lot of people have come before us

1 to represent the Government in another vain. My only point
2 is in relationship to findings by the auditors or the
3 General Counsel, I think I could make, probably not as
4 skillful an argument as you can, but I think it's not
5 illogical to determine that they come in with a particular
6 philosophy based on history of this Commission and our
7 findings and like circumstances of these cases.

8 That is not to say that I always agree with those.
9 but I would say that I don't find it unusual that in their
10 experience, whether it is in the Audit Division or in the
11 Office of General Counsel -- a lot of these people and I
12 particularly think about Bob Costa, who has maybe been here
13 the longest in this area or certainly one of the longest --
14 these are summarily things that are picked out of the air.
15 They are based on at least their best empirical data of what
16 has transpired over time.

17 But one last point, if I may, which is something I
18 strongly favor and I think that Commissioner Josefiak
19 alluded to it earlier and maybe some of my other colleagues
20 as well, I think these discussions are extremely helpful and
21 I'm glad you have come to the table because I've always
22 found you to be candid in your assessments and willing to
23 come forward, which we have not had a lot of, which is
24 somewhat frustrating to us, so we are certainly glad you are
25 here.

1 Even though some of your attitudes might be
2 wrongheaded -- what was that term, wrongheaded and what was
3 the first part of that term? I wanted to use it and now I
4 forgot. Wrongheaded and what was the other part of that
5 term?

6 MR. BAUER: You weren't going to use it against
7 me, so --

8 COMMISSIONER McDONALD: No, I wasn't.

9 MR. BAUER: Wrongheaded summary dismissal.

10 COMMISSIONER McDONALD: Yes. That's too
11 complicated for me.

12 MR. BAUER: Commissioner McDonald, let me just say
13 one last thing so I make myself absolutely clear. I am not
14 in the business of attacking the Government. I'm in the
15 position of representing a client whose interests are
16 necessarily affected by the operation of an Agency
17 established by the Government and which is itself,
18 therefore, is an agency of the Government.

19 What I think happens, and perhaps that's why an
20 innovative term creeps into discussion on both sides, is
21 something which puts in mind of an op/ed piece in the New
22 York Times recently by an attorney in New York who talked
23 about the limitations of legal language and legal thinking.
24 We're stuck with them because we are dealing with a statute
25 It has to be interpreted and that's why it's administered:

1 attorneys.

2 But we had in mind as a lawyer who practices .
 3 apparently a fair amount of criminal law, a case that the
 4 Supreme Court decided in which an individual claim,
 5 apparently with complete factual support, that in the state
 6 criminal proceeding he was utterly done in by counsel. He
 7 was unprepared, didn't show up at the hearing or whatever it
 8 was. The Supreme Court tossed out the claim and the
 9 Petitioner went to prison in the state where he was. The
 10 first sentence of the opinion by the United States Supreme
 11 Court was this is a case about federalism.

12 The writer of the op/ed piece said it was also the
 13 case about a guy who went to went to prison because his
 14 lawyer stunk. That's what we are dealing with here, is that
 15 there is this vast perspectival gap, which develops between
 16 an agency which admittedly has to interpret a law and
 17 establish rules and apply them and a campaign which is out
 18 in the trenches, which is dealing with the myriad of
 19 weirdnesses which the law can never capture or adequately
 20 acknowledge or address. And between the two schools lies
 21 something which is very difficult to capture.

22 I'm not faulting anybody, but I would be remiss in
 23 my obligations to either this particular either client or
 24 indeed as you suggest, the party I represented if I didn't
 25 keep on coming back and saying hey, it's a strange world . . .

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1 there. You can certainly turn to me and say we have a
2 statute we have to administer.

3 But this dialogue has to take place because
4 somewhere in between the cold, legal formulas and the way in
5 which lawyers write and think and rules are applied and the
6 way campaigns are really conducted has to lie something in
7 the realm of a satisfactory adjustment, a satisfactory
8 regulatory regime, where everybody can get their job done.

9 We can elect candidates and you can regulate the
10 money we raise and spend it the way that Congress intended
11 to do. But what doesn't work is that if you are either
12 over-regulating and we can't run our campaigns, or we are
13 running our campaigns in a way which make a mockery of your
14 regulations. Neither of us are happy with either of those
15 two scenarios.

16 COMMISSIONER McDONALD: I think one last point. I
17 agree with that. I didn't want you to take -- this is for
18 the regulating community, if you will, about the Government.
19 Neither you nor I would be eating if it were not in
20 opposition. So, that's why we have both done very well in
21 that regard for some period of time. I didn't want to leave
22 the impression, and I apologize if I did, that I felt like
23 you were attacking the Government.

24 What I did want to say, and I do want to say, and
25 I'm going to be saying it quite a bit and I'll have a number

1 of recommendations after the first of the year that I'm
2 going to ask my colleagues to look at in this area. I did
3 want to say as a practical matter there are a lot of folks
4 in the process that fight the process, but they continue to
5 participate in it at whatever level.

6 To the contrary, as I say, I'm glad you have come
7 because I think it's helpful to have these discussions. I
8 just know, and I've witnessed it year in and year out, how
9 easy it is, and how easy it is for us to get off the hook as
10 well pretending that the problem lies in the auditors'
11 office or from counsel's office or from somewhere else. We
12 make the decisions. They don't make them. They try to work
13 off the basis of what we've done over a period of years.
14 That's a responsibility that we have and they do so on the
15 basis of direction from us and it's always been on the basis
16 of direction from us.

17 As you said earlier, certainly people can have a
18 different interpretation than what is critical and what an
19 argument should be to be put before the Commission.

20 I close by reminding you one more time to use all
21 of your resources and power. In the 10 years I have been
22 here I know that I could at least entertain my idea of the
23 block grant, which I still think makes eminently good sense.
24 Any help we could get on eliminating the state-by-state,
25 which we have asked for for a number of years would be

1 helpful.

2 I thank you for coming. You are articulate and
3 skillful as always.

4 CHAIRMAN McGARRY: Thank you, Mr. McDonald. Mr.
5 Patton?

6 MR. PATTON: Thank you, Mr. Chairman. Before I
7 start, I have a couple of editorial comments. I just got
8 back from the great state of Iowa pheasant hunting on my
9 annual sojourn. Compared to '87, there seemed to be more
10 campaign workers in the state than pheasant or hunters.
11 It's sort of a relief to go out there and find more
12 pheasants this time than campaign workers.

13 Unfortunately, I have been one of the few people
14 that felt that way because thank to Mr. Gephardt, among
15 others, you've probably got a campaign not only going in
16 Iowa, but you've probably kept the economy going in 1987 and
17 1988. Actually, Iowa is in much better shape economically
18 than the rest of the country right now. So, we would like
19 to thank the likes of Mr. Gephardt.

20 Two other quick things. I always like to cite
21 these on the record, even how true they may be. I think my
22 mother voted for Congressman Gephardt in the caucus, so she
23 told me, but she has been known to stretch the truth
24 sometimes when it will help her son.

25 COMMISSIONER McDONALD: You are not recusing

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1 yourself, are you?

2 MR. PATTON: No. I just want this on the record.
3 The second matter, which maybe a little more importantly
4 substantively, is that I notice that Doak and Shrum use
5 Century National Bank as a bank and I formerly was a
6 director on that bank. I was not at the time when they had
7 an account there.

8 That raises a question, and the only one I have.
9 Mr. Chairman, sort of a followup to Commissioner Thomas'
10 question and I must say, and I have repeated to this
11 Commission before, on this particular issue of negotiability
12 of commissions, consulting fees, etc. I've been a manger,
13 I've been a consultant. I've negotiated these types of
14 things.

15 As I mentioned before, I have never done it on a
16 national level, but I've done it on a state and local level,
17 particularly in urban areas when I didn't even want to
18 handle a commission fee. I would usually give it to a
19 friend of the candidate, who was an ad firm, and tell him I
20 was going to pay 4 or 5 percent and that was it because I
21 was going to end up doing most of the work. He was just
22 going to give the media a time lag.

23 What brings me to my question without debating the
24 point any further, you point out on pages 68 to 74 on the
25 Doak and Shrum matter, argument in terms of an escrow

1 account and the money that was returned. FEC's Audit
2 Division answered on attachment 2 on page 44 and that's what
3 I would like to have you refer to.

4 Basically they say that the relevant issue in this
5 matter is what was the true purpose of the amendment. It is
6 the audit staff's opinion that the amendment deleted
7 allowable costs of 15 percent agency commission on media
8 time buys and substituted costs which are not normally
9 allocable to states additional consultants' fees of
10 \$110,000.

11 Further one down to the bottom, it says, "This
12 seems to be in direct conflict with counsel's assertions,
13 especially since counsel has stated that Gephardt's position
14 in December of 1987 on fund-raising prospects and in mid-
15 February, we are worlds apart." If you can answer that in
16 the shortest time possible -- I don't want to belabor the
17 hearing any further, but I think it's important, at least in
18 my opinion, and maybe for the Commission an important point
19 to review.

20 MR. BAUER: First of all, as we mentioned on the
21 question -- there were two points that the Audit Division
22 made on this. The first had to do with -- I'm not saying
23 these were the only two points that were made concerning
24 Doak and Shrum, which I believe were contained in your
25 question and which I'll answer.

1 It first has to do with their surprise when, at
2 the end of December of 1987, Doak and Shrum returned to the
3 Gephardt Campaign some \$300,000. The question was how
4 could Doak and Shrum return this money if, at the time, it
5 was worried about jeopardy of nonpayment all together.

6 The answer to that one was very simple. The
7 answer to that one was it wasn't Doak and Shrum's money. It
8 was never intended as compensation to Doak and Shrum. As
9 many Commissioners know, media buy consultants open up
10 escrow accounts in the name of the campaigns and deposit
11 monies into their campaigns for sole, exclusive use in
12 buying time. The time was bought in the name of the
13 campaign and it is always the campaigns resources.

14 Toward the end of 1987, the campaign requested
15 that the money which was being held in escrow for that
16 purpose be returned to it for use for other purposes. But
17 at no time was it compensation to Doak and Shrum, which Doak
18 and Shrum was asked to return. So, I frankly believe at
19 some point -- I may be mistaken about this -- in the
20 exchange of papers with the Audit Division, that point sort
21 of dropped away, but I may be mistaken on it. I think it
22 was clarified that this was never Doak and Shrum's
23 compensation. This was campaign money used for media buy.

24 Second, at the time the contract was negotiated,
25 the contract was renegotiated, the effort was made to

1 structure something realistic that the campaign could plan
2 for. Its resources available at the time would not have
3 been sufficient to make a huge payment to Doak and Shrum.
4 However, the campaign certainly was in a position to budget
5 for a large payment in the near future and, in fact, a
6 series of those payments were made.

7 Indeed, the contract and experience shows that
8 Doak and Shrum, by the time the campaign was over, let me
9 emphasize this, was paid substantially all that it was owed
10 under the renegotiated agreement. I don't have the numbers
11 in front of me at the moment, but I can readily enough
12 secure them.

13 So, the reason that there was some time lapse
14 provided for in the payment of the larger consulting fees,
15 which were part of the renegotiation, was simply to give the
16 campaign time to develop the resources and, frankly,
17 although the campaign was very well in danger of going belly
18 up, or so it was thought.

19 There was never any doubt that it could make
20 provision for \$100,000 payment. The wisdom of the March 1
21 date was it was going to give the campaign an opportunity to
22 budget for that while still being able to conduct regular
23 operations. They just didn't have the money in December of
24 1987. I guarantee if you scour the reports for payments of
25 legal fees to Perkins Cole you won't find any there either.

1 MR. PATTON: If that account was truly an escrow
2 account, would not the bank records reflect the monies going
3 in and out over a period of time?

4 MR. BAUER: It does. We Xeroxed a copy of the
5 check into the report, which unfortunately -- we have a copy
6 of the check and we can make it available. The check that
7 was Xeroxed into the brief doesn't actually reflect it. But
8 if you take a look at --

9 MR. PATTON: I'm not talking about the check. I'm
10 talking about --

11 MR. BAUER: It's shows it is an account that is
12 not actually Doak and Shrum's account. It says the Gephardt
13 Committee account.

14 MR. PATTON: If it truly is a Gephardt escrow
15 account, you have the bank documents that will show monies
16 in and out over a period of time to do media buy time, is
17 that correct?

18 MR. BAUER: Absolutely.

19 CHAIRMAN MCGARRY: Mr. Gartner?

20 MR. GARTNER: Thank you, Mr. Chairman.
21 Fortunately, Bob, being last on the list, most of the
22 questions I had have already been asked and sufficiently
23 answered. I will say that I too hail from the great state
24 of Iowa, where my parents continue to reside in Des Moines.
25 Speaking for the standpoint of the Chamber of Commerce, we

1 are certainly delighted to have as many campaign workers
 2 spending as much money as they can out there as possible, as
 3 opposed pheasants, since we don't shoot campaign workers.
 4 We like that influx of money in there and I wish you could
 5 spend even more than you are spending.

6 I personally share the view of the majority of the
 7 Commission that there ought not to be state-by-state limits
 8 Unfortunately, there are and I know that this will someday
 9 be resolved and I would urge you that, if and when, and
 10 perhaps that is many moons away, if Congress ever in its
 11 wisdom sees fit to open up the Federal Election Campaign Act
 12 that you will take it upon yourself to go in and testify on
 13 this and other points that you have brought up before the
 14 Commission today.

15 Thank you, Mr. Chairman.

16 CHAIRMAN MCGARRY: Larry Noble.

17 MR. NOBLE: Thank you, Mr. Chairman. First of
 18 all, I want to thank you, Bob, for your kind words.

19 MR. BAUER: I've been very impressed with your
 20 work by in large except on this audit thing.

21 MR. NOBLE: Talking about that, I would want to
 22 know that while the Audit Division and General Counsel have
 23 to work on this, you are now referring to the documents. Is
 24 that it?

25 MR. BAUER: No. I'm not.

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1 MR. NOBLE: So, I criticize the staff, in fact --

2 MR. BAUER: No. I really am troubled. I cannot
3 come here and comment adversely on the recommendations
4 put before the Commission obviously without taking them on
5 in an argumentative fashion, but I'm not criticizing the
6 staff in any manner, which isn't implicit in the type of
7 proceeding we have.

8 If there is any suggestion to the contrary, the
9 answer is I haven't done it yet. I was going to go on in
10 the latter part of this proceeding to start going into
11 personal attacks, but I hadn't gotten there yet. So, give
12 me a break.

13 MR. NOBLE: The problem we face is we don't have
14 the luxury of representing one campaign or one position.
15 What we are looking for are rules that are workable across
16 all the campaigns.

17 When a good argument is made, and we have heard a
18 lot of good arguments today, on how you practice -- when you
19 are looking at documents from the campaign or auditing the
20 campaign, how, in fact, are we going to apply that rule?

21 Along those lines, one of the questions that I
22 wanted to ask, and this follows up on something that
23 Commissioner Elliott asked you a while ago, 'are you saying
24 that you would apply your 25 percent rule only to Iowa
25 regardless of what another campaign came in and asked?'

1 they said Super Tuesday really was it for us and we would
2 say no, in 1988 Iowa was really the only state the this 25
3 percent rule applies to.

4 MR. BAUER: I put before the Commission the
5 Committee's evidentiary record. I can't imagine, to be
6 perfectly honest, that another committee in another state
7 could put the same record before you, campaigns in other
8 states who could put the same records before you, perhaps
9 there are campaigns in New Hampshire who could put the same
10 records before you, but I can only speak to what I thought
11 the circumstances in Iowa were.

12 I don't believe the Commission can entirely escape
13 the character of a particular campaign and the historically-
14 developed pressures under which it may be operating in a
15 state like Iowa.

16 So, am I saying only Iowa per se? No. I am
17 saying I know of no other case or no other state where such
18 a thorough-going factual case can be made and play such a
19 unique role in the process, about which virtually no
20 dispute, to my knowledge, has been entered.

21 If I could just drop a footnote here, Commissioner
22 McDonald made a point in this typically-laconic fashion that
23 there are candidates who enter Iowa with high expectation
24 and did not emerge successfully. That's true.

25 It is also true, however, that those very same

1 candidates entered Iowa and lavished the resources and
2 developed a national following for a reason, whether they
3 were successful or not.

4 It is also true that for all the candidates who
5 failed on that turf, there were many candidates who were
6 wildly successful and came very close to frankly wrapping up
7 the nomination on that basis alone.

8 Now, let me distinguish also the case where a
9 candidate say to you if I win in Iowa, I could win in New
10 Hampshire, which also a case could be made for. I don't
11 think the Commission can get involved very much in that
12 argument. It can take note of the significance of that
13 argument, but that fundamentally goes to the heart of
14 influencing voters. If I win this state, I can win New
15 Hampshire too. That means I have to win the state; that
16 means I have to influence voters in Iowa to vote for me.
17 That's one set of arguments.

18 There is another set of arguments which is
19 different, and I want to emphasize it again, at the risk of
20 repeating myself, I promise it's the last time, but that's
21 the case of the way in which the primary has been structured
22 requires the candidates to spend a great deal more money if
23 they need to in seeking Iowa voters.

24 MR. NOBLE: In terms of the evidence that you
25 think we should accept, and in this case I think we are

1 talking about the national media that were there, do you
 2 think that basically we should just rely on affidavits from
 3 people or do you think we are in a position where we are
 4 going to seriously examine this 25 percent rule Really
 5 examine such things as records? I think it is a matter of
 6 record that virtually every campaign is going to show
 7 national media following them around. Is that enough? Can
 8 you say that the national media following us is enough for
 9 us?

10 MR. BAUER: No. I'm not suggesting that, but let
 11 me step back and address something else that I'm also not
 12 suggesting, which you may have misunderstood. When I saw a
 13 25 percent rule, I can't speak to what that percentage might
 14 have been for another campaign. I can't say what evidence
 15 another campaign might or might not have put forward or
 16 might or might not have thought was available to it.

17 Certainly, the Gore Campaign, which made a
 18 calculated judgment to by-pass Iowa all together, is not
 19 going to be able to make that argument to you. As a matter
 20 of fact, it made a national point out of avoiding Iowa
 21 if you would be able to compete with Iowa, denied Iowa
 22 withdrew from Iowa, you were still making a national point
 23 about your candidacy, saying I don't want to go in front of
 24 all these liberal crazies. That's really addressing with
 25 Iowa the audience outside of Iowa.

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1 I want to make it clear that our 25 percent is not
2 25 percent. It's not Mondale's, it's not Hart's, it's not
3 Simon's.

4 Second, it was very clear to us early in the
5 process that there wasn't a huge appetite for this argument,
6 which is a little bit dispiriting. I'm not certain it's
7 unpredictable, it's dispiriting. It would have been
8 helpful, which is why we arranged to rehearse some of these
9 arguments on a couple of occasions in meetings here with
10 staff, to open up a dialogue on it. You want to open up a
11 dialogue? What do you need? What is your problem? What
12 have we not provided you that will be useful.

13 If there is any chance that you would have been
14 persuaded by different evidence, additional evidence, a
15 better character of evidence, what is that evidence? We
16 can't know that.

17 That's probably a frustration that stems from the
18 type of proceeding that we have here. Again, so I'm not
19 accusing of libeling anybody, I'm not blaming the Commission
20 for this, it has procedure and it operates under them, and
21 in the end decisions to get made.

22 What I am suggesting is, and you have heard him
23 say before, I believe that there is a disconnectedness to
24 the dialogue. I have not addressed the Commissioners on
25 this issue in session before. I don't have that type of

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1 dialogue throughout the process provided for specifically
2 under the regulations with the Office of General Counsel.
3 Other than the initial conference with the auditors and then
4 the wrap-up conference with the auditors, I don't have a
5 dialogue with the auditors and, quite frankly, neither of
6 those conferences are really dialogues. They are not meant
7 to be.

8 I'm not criticizing that either. I becoming
9 unbelievably sensitive about criticizing people are here.

10 So, the gist of it is that as a result of that,
11 we can't get a sense of what is happening in the case. Do
12 you want more affidavits? You don't like the affidavits,
13 they don't address the right kind of case? Tell us what you
14 need. There are hundreds of thousands of dollars at stake.
15 And we'd like to know, but we can't know because nobody
16 tells us.

17 Frankly, by the time the interim auditor is
18 released, I must be frank, I think to a substantial degree
19 the die is cast from private counsel's point of view. Why
20 is that the case?

21 Because the interim audit comes through, and I'm
22 not saying it's fixed in stone or anyone is acting badly --
23 I'm going to continue apologizing until I leave the table --
24 that it's not fixed in stone and nobody changes their
25 position, but bear in mind that the auditors' conclusions

1 are reviewed and approved by OGC and reviewed and approved.
2 by the Commission. That's how it appears before private
3 counsel at the interim stage.

4 So presumably, if any violent objection developed
5 in the line of argument of the auditors and OGC, it would
6 have surfaced at that point, other than the request for
7 documentation on certain points.

8 MR. NOBLE: I don't really want any procedural
9 arguments, but --

10 MR. BAUER: Why not?

11 MR. NOBLE: I think probably from the staff's
12 point of view is that it is not set in stone. I think the
13 Commission goes out of its way to ---

14 MR. BAUER: I'm not alleging bad faith or
15 rigidity.

16 MR. NOBLE: But just so you understand, the
17 Commission goes out of its way when it issues these reports
18 that there be disclaimers about how this initial decision is
19 made and you do see things change along the process.

20 So, I think that the view that it is set in stone,
21 and I will say view, not excuse, that it is set in stone
22 and that we felt, therefore, that we didn't have an
23 opportunity to do anything later is not a healthy one.
24 Sometimes from our standpoint, we feel like what we are
25 telling you what is needed and the answers we are getting

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1 back are good answers.

2 MR. BAUER: Can I please respond to that so that
3 we can have this good feeling inside that when we left we
4 truly understand each other, okay? I would like this to be,
5 if not a successful legal experience, a meaningful spiritual
6 one.

7 The point I am trying to make here is not on 25
8 percent. You've told us what you needed and, therefore, we
9 made the decision to provide it or we didn't or we provided
10 something which was unsuccessful. The point is on 25
11 percent it was ruled out of bounds on the first go.

12 The position that was taken at the interim audit
13 report was evidence was we don't allow for this sort of
14 thing, so have a nice day.

15 I'm not saying that's a wrong decision, trust me.
16 I think it's a dreadfully wrong decision, but I'm not saying
17 it's activated by bad faith or anything like that. I'm
18 simply suggesting that doesn't exactly open a door to a
19 dialogue about the additional type of evidence to sustain an
20 exception, which you tell us is legally unavailable.

21 MR. NOBLE: What I'm saying now is beyond that.

22 MR. BAUER: Right. Okay.

23 MR. NOBLE: What I am trying to get at is in terms
24 of 25 percent. So, you would say you put in affidavits that
25 say 25 percent, and if another committee comes in and their

1 affidavits say 50 percent, you would have no problem with
2 the Commission saying we're going on these affidavits, so we
3 are going to give them 50 percent.

4 MR. BAUER: I wouldn't have any trouble at all. I
5 would have hoped that Gore would have run commercials on
6 which he would have taken the 50 percent fund-raising
7 exception with the spirit of an exercise before the
8 Commission. I don't begrudge him the same treatment that I
9 took for myself, provided he is able to make the same case,
10 that the same material appears at the bottom of the ad and
11 the same rough claim can be made.

12 Then if a candidate is prepared to make an
13 argument on the historical data that we provided and on the
14 budgetary data that we provided and on the sworn affidavit
15 material that we provided, God bless him or her. And he or
16 she should be entitled to the same regulatory relief that we
17 are seeking.

18 MR. NOBLE: So, you are not then using a 25
19 percent rule, you are saying that you are flexible to --

20 MR. BAUER: I believe the Commission has
21 demonstrated flexibility in setting percentages for a wide
22 variety of purposes.

23 MR. NOBLE: One or two more questions. On the
24 health insurance. It seems to be that your argument comes
25 down to the social policy issue, that this is good for the

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1 people and that we shouldn't discourage it by telling them
2 that the health insurance payments are going to exceed the
3 limits.

4 MR. BAUER: That's a nice position for me to take
5 and I'm not saying that shouldn't be made available to OGC
6 and Audit either, I think we all should have health
7 insurance. I'm going to be very nice from now on, I
8 promise. But what I was suggesting to you was that if you
9 have an expenditure at the threshold which is plainly not
10 part of the core communication with the voters, core
11 influencing activity, I think there may still be reasons why
12 as OGC argues or whoever argues, that the sole expenditure
13 shouldn't be allocated to the limit, but there are certain
14 types of expenditures which campaigns and taxes are
15 compelled to make or on health insurance ought to make,
16 which might bear a closer look.

17 There the campaign does have the option of
18 trimming the budget to save the expense and in some cases
19 workers will be with the campaign for six weeks to two
20 months or four months to six months. Frankly, it isn't
21 indispensable because people who are not covered by
22 insurance can still pay to see a doctor when they are sick
23 Some of these people may have protection under some previous
24 policy, which they are prepared to pay out of their own
25 pocket, but they will still take the job with the campaign.

1 at salary.

2 If the campaign goes ahead and does it because it
3 believes that it is not going to necessarily change the
4 campaign is being run -- in fact, it's not going to change
5 the way the campaign is run at all. Salaries will be the
6 same, duties will still be the same, the tenure of the
7 employee will still be the same, but it does so because it
8 believes it is a responsible thing to do.

9 I don't think it makes a whole lot of sense in the
10 context and then say good, we will reward your good deed by
11 taking that much more off your Iowa spending limit. I have
12 trouble with that.

13 MR. NOBLE: I think in terms of us trying to apply
14 the rules is really a value judgment, if that's a good deed.
15 Do we decide what we will do is not count against the limit
16 money given for public transportation, but limit them to
17 rent cars because pollute and they can take public
18 transportation? Where to we start?

19 MR. BAUER: Those are generically different
20 questions, it seems to me. The fact of the matter is that
21 FEC is already taking up the question of salaries and,
22 therefore, it had to take up, it seems to me the question of
23 other standard payments that employers make on the payroll
24 to keep a work force and those are taxes and insurance. It
25 doesn't include subsidies for transportation and taxis

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1 Those are expenses the campaign itself pays. It's not money
2 that's paid to the employer for that employee's personal
3 benefit.

4 So, I think it's distinguishable. I think the
5 question is if the campaigns have a choice, why not
6 encourage a choice that is not going to cause some morose
7 loophole to develop in the statute. The amounts of money
8 are not going to be all that substantial and it is not going
9 to cause them to be able to escape application to the limit
10 of monies that are spent to directly influence voters. So,
11 why not take a position which will relieve some pressure on
12 the limit and leaves employers to do the right thing.

13 I will tell you very frankly, I think there are
14 campaigns which offer insurance and there are going to be
15 more campaigns which are going to offer insurance. I
16 guarantee if I put together a list of options for my
17 campaign the next time around, I would have to include that
18 as an option.

19 MR. NOBLE: Can you frame the rule some way that
20 it doesn't use the phrase do the right thing or --

21 MR. BAUER: Certainly. You can change the rule by
22 saying that health insurance paid to employees under a
23 standard employment package will not be allocated to the
24 limits. That's how you would use it.

25 MR. NOBLE: So, it just comes to going through and

1 sorting out those things which you think are good for a
2 campaign to offer its staff? .

3 MR. BAUER: When there is no prevailing regulatory
4 concern about them busting the limit or creating loopholes
5 in the statute.

6 CHAIRMAN MCGARRY: Will counsel defer to
7 Commissioner Elliott who has a question just on the health
8 insurance?

9 MR. NOBLE: Of course.

10 COMMISSIONER ELLIOTT: What I would like to know
11 is, and I will ask this in a series, so it will move very
12 quickly, was this written as a master-no policy? Did it
13 include every last person that was considered an employee or
14 was there a break-off maybe by dollar earned or by title or
15 something like that? Did you have Blue Cross Iowa, Blue
16 Cross New Hampshire, Blue Cross something else at the state
17 level? How was that structured?

18 MR. BAUER: If you will permit me, I will consult
19 with some who knows the answer.

20 COMMISSIONER ELLIOTT: Okay.

21 MR. BAUER: The answer is it was a national policy
22 made available by Blue Cross/Blue Shield and it was
23 available to all employees regardless of earnings.

24 COMMISSIONER ELLIOTT: Regardless of earnings?

25 MR. BAUER: That's correct.

1 COMMISSIONER ELLIOTT: And regardless of the
2 length of time that they were in anything?

3 MR. BAUER: That's correct.

4 COMMISSIONER ELLIOTT: Am I correct that the total
5 sum of that amounts to about \$1,800?

6 MR. BAUER: I'd have to check that. I'm not sure
7 that it's exactly that. We'll double-check that. I don't
8 have the number.

9 COMMISSIONER ELLIOTT: That's all I wanted to
10 know.

11 CHAIRMAN MCGARRY: Bob Costa has some information
12 on that. We will let the General Counsel finish his line of
13 questions.

14 MR. NOBLE: On the Jefferson/Jackson Day Dinner, I
15 take it your argument is not the same argument that we have
16 heard before, that everything has a fund-raising element to
17 it?

18 MR. BAUER: Absolutely not.

19 MR. NOBLE: Can you explain how --

20 MR. BAUER: That's a very important point. We did
21 not make that argument because I think that generally
22 imposes an impossible task for regulators. If I'm a good
23 candidate and people like me and they are going to send me
24 money no matter what it is I say. So, I'm a walking fund-
25 raising appeal. I find that as a possible argument to

1 sustain.

2 The Jefferson/Jackson Day Dinner develops into
3 part of an overall fund-raising initiative of crucial
4 importance to the campaign in the last three months, which
5 was called December 1st, America First. It was a national
6 fund-raising initiative.

7 There were some particular targeted effort made
8 in Iowa because it happened to be in a state where the
9 campaign had been active, but it was not a state where a
10 strong fund-raising base had yet been developed.

11 When the Jefferson/Jackson Day program was
12 restructured to omit the straw poll, so the strategic value
13 of the exercise lessened, a decision was made in the
14 campaign, which we attempted to document for the Commission,
15 to convert into a support event for December 1st, America
16 First. It became folded into Finance Division and became
17 considerably less a concern, if it was a concern at all, for
18 the people who were primarily concerned with political
19 strategy in the campaign. It was on that ground that we
20 allocated the money to fund-raising.

21 One of the questions that can fairly be asked is
22 why didn't you just pull out of the event all together? The
23 answer is because there had already been a substantial
24 amount of planning and some considerable investment in the
25 event, so the question is how do we capitalize on the

1 investment already made?

2 ... Did we think it was a rock 'em, sock 'em, bang up
3 fund-raising event? No. It wasn't terribly successful as
4 an effort. It was not unsuccessful and there were certainly
5 significant monies raised, which in Gephardt Campaign terms
6 were significant, but it was unquestionably converted from a
7 political to a fund-raising exercise. We tried to show that
8 on the facts.

9 Finishing up, if the Commission has concerns, if
10 the Commission had concerns at the time with the character
11 of the evidence provided, we would have certainly been happy
12 to augment it. We are still happy to augment it and I think
13 that's why this kind of dialogue is use.

14 MR. NOBLE: Can you follow certain funds raised
15 directly back to that event?

16 MR. BAUER: What we asked our computer people to
17 do was to show how Iowa yields subsequent to that event be
18 proved. There are charts which are set out in the brief
19 which show an improvement in the yield.

20 Let me be frank and say the total dollars
21 generated out of Iowa, even on that improved curve, are not
22 particularly impressive. This is not where the campaign did
23 its most impressive fund-raising, but it certainly tried.
24 There isn't anything in the law which suggested that fund-
25 raising isn't anything less than fund-raising because it

1 isn't particularly productive.

2 But we try to address the Commission's concern
3 that this was a bit of a contrivance by showing how it could
4 be converted into a fund-raising event.

5 MR. NOBLE: I think you.

6 CHAIRMAN MCGARRY: Bob, you do not argue the
7 national set-off on the impact of the state on the national.
8 if I understand you correctly, or you do not argue also that
9 the state is separable from the national. They are
10 inextricably intertwined.

11 MR. BAUER: That's correct. And those events are
12 very close in character in some respects, but we really try
13 to emphasize the latter. They are so closely intertwined
14 when determining how resources should be allocated, the
15 national purposes and the Iowa purposes begin to blur
16 together.

17 CHAIRMAN MCGARRY: It almost sounds to me like the
18 mystery of the Trinity that is both human and divine at the
19 same time, all in one, or in a more pedestrian concept, the
20 real estate tenants part of the entirety. It's both one and
21 the other at the same time. Would you explain that?

22 MR. BAUER: It is a circumstance, which I said at
23 the very beginning, an enormous amount of national
24 attention, forming national opinions among the voters
25 outside Iowa, occurs in the state at which nine delegates

1 are at stake. This has suddenly become the stage where the
2 candidates are expected to communicate not only with the
3 voters who are before them and who are Iowa citizens, but
4 through their activities in Iowa are expected to communicate
5 with Americans and other states around the country.

6 If you recall, for example, just to give you a
7 very graphic example, this so-called CONUS satellite
8 program, which we argued about, and the Commission was good
9 enough to accept our arguments. It was a program, a debate,
10 which was set up between Congressman Gephardt and then
11 Congressman Kemp on a university campus in Iowa, which was
12 satellite-fed outside of Iowa to a huge number of potential
13 markets. I don't know how many took the signal down any
14 more, but it certainly was directed towards a market outside
15 of Iowa.

16 The number of Iowans physically present for the
17 debate was 250. The number of citizens outside Iowa who had
18 access to the debate or intended to have access to the
19 debate had to have numbered in the tens of thousands. I'm
20 sure hundreds of thousands, but I'm have trouble remember
21 exactly where the feed was.

22 We made that point. That was structured in Iowa
23 because that's what people were looking at. That's how a
24 national campaign was mounted and how voters in other states
25 were then reached.

1 CHAIRMAN MCGARRY: Thank you. We'll now go to the
2 final, Bob Costa.

3 MR. COSTA: Yes. I have just a couple of
4 questions. First, as a followup on the Jefferson/Jackson
5 Day Dinner. Do you have any documentation on a solicitation
6 that was made by your committee at that event? Any specific
7 documentation that would indicate that you were, in fact,
8 raising money at that event?

9 MR. BAUER: We had documents which showed that we
10 were going to use the event to recruit people who were going
11 to be part of the America First, December 1st, House party
12 program, and that we were trying to seek raw additional
13 personnel support into that program.

14 My recollection is, and co-counsel here can
15 correct me if I'm wrong, that we did not at the convention
16 hall itself conduct fund-raising activity, but we tried to
17 rally around this organization of Iowa democrats, enough
18 support for the fund-raising activity that it would actually
19 merit the effort. There was nothing else for us to do in
20 Iowa on that day. Nothing else to do.

21 MR. COSTA: My second question is I would like to
22 revisit media just for a moment. With all due respect to
23 the Commission, I would like a point of clarification on the
24 15 percent commission.

25 Is it your position that the committee did not

1 incur any costs to place media ads, that that service was
2 provided free of charge by a media firm?

3 MR. BAUER: No. That's not our position
4 whatsoever. Our position is that a decision was made, which
5 is not at all uncommon in the market, to pay the consultant
6 in other ways, so that the whole consulting fee not based on
7 the commission itself, but the whole consulting fee was a
8 fee for all services rendered, including the buy services.
9 It was not done via a commission on the actual dollar value
10 of the buy.

11 MR. COSTA: So then that I understand that some
12 portion of the fee would cover placement of the ads? That
13 there was, in fact, some costs incurred by the committee?

14 MR. BAUER: You could imagine it that way. In
15 fact, that is not indeed the way clients in this kind of
16 relationship envision this kind of arrangement.

17 As I said earlier in my testimony, there were some
18 clients who absolutely refused to compensate the consultants
19 at all for making a media buy. They just won't compensate
20 them. They say we pay you enough as it is for the services
21 that you rendered. We are asking you to do something which
22 is not, as I said earlier, labor or skill intensive, and so
23 we expect you to do that as part of the general services
24 provided under the contract.

25 You can't identify in those services, as I have

1 just described them to you, a part of the consulting fee
2 which relates to the buy. It's fundamentally expected to be
3 part of the services provided.

4 I'll give you an example. Our law firm provides
5 library services to clients. We don't charge for them
6 separately.

7 MR. COSTA: The problem the Commission faces as we
8 have seen in all other cases a quantifiable placement fee
9 that is, in fact, an allocable cost. If I am understand
10 correctly what you are saying is that the fees that you do
11 pay, some portion of those fees were, in fact, to cover
12 placement of your ads in Iowa and it is an allocable expense
13 to Iowa.

14 MR. BAUER: I disagree.

15 MR. COSTA: So, the Commission is placed somewhat
16 in a quandary and has to determine how much of the cost is
17 to be allocated to the state limit. That's the situation we
18 are in.

19 Granted, there are cases where there have been all
20 kinds of percentages of commissions paid, ranging anywhere
21 from 2 percent to 15 percent. However, there have been
22 payments that have been made for that specific purpose to
23 place ads. That's what the Commission says today, try and
24 figure out what money, how much money was for that service
25 for those ads which were run in Iowa. That's the quantity

16000

1 So, it's really a question of how you characterize
2 it and I understand your characterization, but I don't
3 believe we are between the rock and the hard place, where
4 it's free legal corporate services on the one hand or hidden
5 amounts which require allocation to Iowa on the other.

6 I simply don't think that is a fair
7 characterization of media buy arrangements in the market as
8 it appears today. But I understand your concern on this
9 point. I'm extremely sensitive. I just wanted you to know.

10 CHAIRMAN MCGARRY: That would appear to conclude
11 our consideration. Doug Patton?

12 MR. PATTON: Just a footnote, Mr. Chairman, on Mr.
13 Bauer's point. I think one of the reasons that some of
14 these candidates don't want to pay 15 percent or 10 percent
15 or 8 percent is 20 years ago the cost of media buy times was
16 not as great as it is today. When you do a \$300,000 buy and
17 put another 15, 10 percent on that, that's pretty
18 incredible. Whereas, 20 years ago it might have been
19 \$30,000 or \$40,000.

20 So, the cost of media has driven up the other one,
21 so it makes the candidates obviously really reluctant to pay
22 that kind of commission. I wish I had had it when I was
23 doing work back in the late '60s, early '70s.

24 CHAIRMAN MCGARRY: Do you have anything further.
25 Bob?

1 MR. BAUER: No. I certainly appreciate the
2 opportunity to come here and I thank you for your courtesy
3 in hearing me out on these issues.

4 On behalf of the Committee, thank you.

5 CHAIRMAN MCGARRY: I thank you profoundly for your
6 patience and indulgence, particularly for the major
7 interruption, but I know you understand the validity of it.
8 I think we are all well-served by your appearance here. I
9 think a lot of the points that you made, particularly on
10 going beyond the legalisms and getting into hearing a little
11 bit about what's going on out there on the firing line and
12 the reality and practicality of life are worthwhile hearing.

13 So, on behalf of everyone, there appears to be
14 nothing further. Madame Secretary, we will conclude this
15 Special Open Session for the Gephardt for President
16 Campaign, conducted on Wednesday, November 6, 1991.

17 Thank you all.

18 (Whereupon, at 3:53 p.m., the proceedings were
19 adjourned.)

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REPORTER'S CERTIFICATE

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CASE TITLE: ORAL PRESENTATION - GEPHARDT FOR
PRESIDENT COMMITTEE, INC.
HEARING DATE: November 6, 1991
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are
contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
Federal Elections Commission.

Date: November 6, 1991

Margaret A King

Margaret A. King
Official Reporter
Heritage Reporting Corporation
1220 L Street, N.W.
Washington, D.C.

230 / 0.165802



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

July 26, 1991

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *[Signature]*
General Counsel *KPC*

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson *[Signature]*
Assistant General Counsel

SUBJECT: Final Audit Report on Gephardt
for President Committee, Inc.
(LRA #338/AR-90-45)

On June 10, 1991, the Commission approved the Final Audit Report on Gephardt for President Committee, Inc. ("Committee"). The Final Audit report was publicly released on June 18, 1991. The Office of General Counsel received the Committee's response to the Final Audit Report on July 18, 1991.

The Office of General Counsel requests that the Audit Division review the Committee's response and submit the analysis to this Office. The Audit Division's analysis will be incorporated in our proposed Statement of Reasons. If you have any questions, please contact Lorenzo Holloway, the attorney assigned to this matter.

Amount Allocated by the Committee to the Iowa Expenditure Limitation (\$739,478.98)

The Committee erroneously allocated \$1,051.88 to Iowa. However, since the Committee reduced its Iowa allocation by 25 percent, an adjustment of only \$788.91 is required ($\$1,051.88 \times 75$ percent). As a result, the amount allocated to Iowa by the Committee should be reduced to \$738,690.07 ($\$739,478.98 - 788.91$).

Section III.C.1. - Twenty-Five Percent National Exemption

The Commission did not allow the Committee's 25 percent national exemption, and increased the amount allocated by the Committee accordingly. Since, the Committee demonstrated that it had erroneously allocated \$1,051.88 to Iowa (see above) an adjustment of \$262.97 ($\$1,051.88 \times 25$ percent) is required. As a result, the amount allocated, by the Audit staff, to the Iowa expenditure limitation should be reduced to \$178,647.14 ($\$178,910.11 - 262.97$).

Section III.C.2.a. - Telephone Related Charges

The Committee received refunds, totaling \$642.84, from U.S. West (formerly Northwestern Bell). Documentation from the vendor indicated that the refunds were being made to customers who had telephone service (telephone service base charges) from June 1, 1984 to June 30, 1988. Since telephone service base charges were allocated 100 percent, the amount allocated to the Iowa expenditure limitation should be reduced to \$43,412.98 ($\$44,055.82 - 642.84$).

Section III.C.13. - Miscellaneous Expenses

The Committee provided documentation which demonstrated that \$2,248.16 in miscellaneous charges does not require allocation to Iowa. As a result, the amount allocated to Iowa should be reduced to \$25,787.41 ($\$28,035.57 - 2,248.16$).

Section III.C.15. - Accounts Payable

The Committee provided documentation from a vendor which stated that an invoice for shipment, totaling \$967.20, was voided since the shipment was never received. As a result, the amount allocated to Iowa should be reduced to \$24,253.86 ($\$25,221.06 - 967.20$).

Section III.C.17. - Exempt Compliance and Fundraising Expenditures

As a result of the adjustment made in Section III.C.2.a. the Committee's 10 percent compliance and 10 percent

fundraising exemption must be adjusted by \$128.57 (\$642.84 x 20 percent exemption). Therefore, the exemption allowed should be reduced to \$19,063.33 (\$19,191.90 - 128.57).

Recap of Iowa Allocations

Presented below is a recap of Iowa allocations. The categories and amounts that have changed, as a result of the Committee's response to the final audit report, are in bold type.

Amount Allocated by Committee		\$ 738,690.07
Additional Allocations by the Audit Staff		
Twenty-five Percent National Exemption	\$178,647.14	
Telephone Related Charges	43,412.98	
Salaries, Employer FICA, Consulting Fees, and Staff Benefits	36,614.02	
Intra-state Travel and Subsistence	19,898.59	
Car Rentals	22,486.08	
Polling	19,288.08	
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	25,787.41	
Adjustments to Previous Iowa Allocations	4,691.98	
Accounts Payable	24,253.86	
Rental Apartments/Houses	7,371.46	
Exempt Compliance and Fundraising Expenditures	(19,063.33)	
Total Allocations by Audit Staff		<u>527,464.17</u>
Total Allocable Amount		1,266,154.24
Less Iowa Expenditure Limitation		<u>775,217.60</u>
Amount in Excess of the Iowa Expenditure Limitation		<u>\$ 490,936.64</u>

9

Shown below is the revised calculation of the amount repayable to the United States Treasury as a result of the expenditures in excess of the Iowa state limitation.

Amount Paid in Excess of the Limitation	\$477,034.32
(\$490,936.64 - 13,902.32*/ outstanding A/P at 10/25/89**/	
Repayment Ratio from Finding III.A.	<u>.262834</u>
Repayment Amount	<u>\$125,380.84***/</u>

As you are aware Counsel for the Committee has requested a hearing before the Commission. The Committee is contesting Finding III.C.1. - 4., 7., 9. and 10. of the final audit report. The Audit staff has not received any additional documentation with respect to the above mentioned contested matters.

Should you have any questions, please contact Tom Nurthen or Rick Halter at 376-5320.

cc: The Commissioners
Anne A. Weissenborn, OGC

*/ This amount has been reduced by \$967.20, which represent the reduction made at Section III.C.15.

**/ October 25, 1989 represents the last day matching funds remained in the Committee's account.

***/ The repayment amount may increase as a result of the submission and review of documentation for a rental property which has not been made available to date, as well as the disposition of the Iowa Mailing List (\$10,000). The interim addendum to the final audit report, approved by Commission on August 5, 1991, and made available to the Committee on August 6, 1991 addressed the Iowa mailing list issue.

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AR-91-24



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

August 6, 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. -
ANALYSIS OF RESPONSE TO THE FINAL AUDIT REPORT

On July 26, 1991, the Office of General Counsel requested the Audit Division to review the Committee's response to the final audit report. The results of which will be incorporated into the proposed Statement of Reasons.

The Committee provided documentation with respect to Finding III.B. (Determination of Net Outstanding Campaign Obligations) and C. (Use of Funds for Non-Qualified Campaign Expense - Allocation of Expenditures to the Iowa Spending Limitation).

With respect to Finding III.B., the Committee submitted adequate documentation which results in an increase of \$14,104.57 in accounts payable for qualified campaign expenses. This amount is now included in a revised Statement of Net Outstanding Campaign Obligations. Audit analysis at Attachment A. It should be noted that the increase does not change the conclusion noted on page 6 of the final audit report but does increase the Committee's calculated remaining entitlement, as of September 14, 1989, from \$6,303.96 to \$20,408.53.

With respect to Finding III.C., the Committee provided documentation which demonstrated that \$4,781.51 in expenses do not require allocation to the Iowa expenditure limitation. The above reductions effect the following sections of the final audit report.

16731

Therefore, as of April 8, 1988, the Candidate's remaining entitlement was \$1,534,666.29. Using the Commission's matching fund records and Committee disclosure reports for the period April 9, 1988 through September 14, 1989 it was determined that the Committee received \$1,514,257.76 in contributions and matching funds. As a result, the Candidate's remaining entitlement, as of September 14, 1989 was \$20,408.53 ($\$1,534,666.29 - 1,514,257.76$).

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Gephardt for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations
as of April 8, 1988
as Determined Through November 9, 1990
(Audit Analysis 8-5-91)

Assets		
Cash in Bank	\$	62,819.94
Accounts Receivable		48,913.59
Capital Assets		<u>45,861.00</u>
Total Assets		\$ 157,594.53
Liabilities		
Accounts Payable for Qualified Campaign Expenses		1,387,448.49*/
Refunds of Excessive Contributions Due		43,575.00
Actual Winding Down Cost (4/9/88 to 11/9/90)		247,437.33
Estimated Winding Down Cost (11/10/90 to 5/10/91)		
Salaries/Consulting	\$8,000.00	
Occupancy	2,400.00	
Telephone	2,400.00	
Office Expenses	300.00	
Travel	500.00	
Postage and Delivery	200.00	
Total Estimated Winding Down Cost		<u>13,800.00</u>
Total Liabilities		<u>\$1,692,252.82</u>
Net Outstanding Campaign Obligations		<u>(\$1,534,658.29)</u>

*/ The Committee's accounts payable figure has been reduced by the amount of accounts payable allocable to the Iowa spending limit, which represent non-qualified campaign expenses, and the forgiven/unpaid portion (\$987,457) of debt settlements approved by the Commission on October 30, 1990.

AR-92-22



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MH002772

April 6, 1992

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. -
UPDATED STATEMENT OF NET OUTSTANDING
CAMPAIGN OBLIGATIONS

Per your request on March 27, 1992, the following adjustments to the Committee's Statement of Net Outstanding Campaign Obligations (NOCO) are required.

It should be noted that on October 30, 1990 the Commission did not approve debt settlements for obligations totaling \$66,774.35. However, on December 11, 1991 the Committee responded to the Commission's requests, and as a result of subsequent recommendations by the Office of General Counsel, the Commission allowed obligations totaling \$51,707.60 to be paid in-kind, and other obligations totaling \$13,862.45 to be considered as either exempt travel and subsistence (\$7,411.53) or volunteer services (\$6,450.92). In addition, the Committee stated it overstated the amount of one obligation by \$1,204.30.

Since the above obligations were included on the NOCO statement in Accounts Payable for Qualified Campaign Expenses, a downward adjustment of \$66,774.35 is necessary.

Further, the effect of obligations being paid in-kind results in the Committee receiving \$34,446.89 in apparent excessive contributions and \$7,374.09 in apparent prohibitive (corporate) contributions. Therefore, an equal amount for refunds due would be recognized on the NOCO statement.

Memorandum to Lawrence M. Noble
Page 2

As a result, Refunds of Excessive Contributions Due (and now Prohibited Contributions) would increase \$41,820.98 (\$34,446.89 + 7,374.09).*/ (See Attachment A for a revised NOCO Statement.)

Finally, your memorandum dated March 25, 1992 regarding DSR 90-16 Gephardt for President Committee - Debts Owed Six Individuals, does not affect the revised NOCO statement and/or repayment of matching funds.

Attachment as stated

232 / 0165851

Gephardt for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations
as of April 8, 1988
as Determined Through November 9, 1990
(Audit Analysis 8-5-91)

Assets			
Cash in Bank	\$	62,819.94	
Accounts Receivable		48,913.59	
Capital Assets		<u>45,861.00</u>	
Total Assets			\$ 157,594.53
Liabilities			
Accounts Payable for Qualified Campaign Expenses		1,320,674.14*/	
Refunds of Excessive/Prohibited Contributions Due		85,395.98	
Actual Winding Down Cost (4/9/88 to 11/9/90)		247,437.33	
Estimated Winding Down Cost (11/10/90 to 5/10/91)			
Salaries/Consulting	\$8,000.00		
Occupancy	2,400.00		
Telephone	2,400.00		
Office Expenses	300.00		
Travel	500.00		
Postage and Delivery	<u>200.00</u>		
Total Estimated Winding Down Cost		<u>13,800.00</u>	
Total Liabilities			<u>\$1,667,307.45</u>
Net Outstanding Campaign Obligations			<u>(\$1,509,712.92)</u>

/ The Committee's accounts payable figure has been reduced by the amount of accounts payable allocable to the Iowa spending limit, which represent non-qualified campaign expenses, the forgiven/unpaid portion (\$987,457) of debt settlements approved by the Commission on October 30, 1990, and by the amount of the forgiven/unpaid portion (\$66,774.35) of other obligations approved by the Commission on February 25, 1992.

Therefore, as of April 8, 1988, the Candidate's remaining entitlement was \$1,509,712.92. Using the Commission's matching fund records and Committee disclosure reports for the period April 9, 1988 through September 14, 1989 it was determined that the Committee received \$1,514,257.76 in contributions and matching funds. As a result, the Candidate received matching funds in excess of his entitlement as of September 14, 1989, totaling \$4,544.84 (\$1,514,257.76 - 1,509,712.92).

The Audit staff does not recommend a repayment of matching funds pursuant to 26 U.S.C. §9038(b)(1) at this time. It is expected that the Committee will incur additional legal fees and additional winding down costs subsequent to the end of the winding down period (5/10/91) projected in the NOCO statement, which would eliminate the overpayment (\$4,544.84) noted above.

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AR-72-2-7



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MH002878

May 4, 1992

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSKA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: GEPHARDT FOR PRESIDENT COMMITTEE, INC.
UPDATE OF AMOUNT IN EXCESS OF THE IOWA
EXPENDITURE LIMITATION

Per your request on April 24, 1992, the following adjustments, to the amount calculated by the Audit staff as allocable to the Iowa limit in our January 15, 1992 memorandum to your office, would be required as a result of the Commission's determination of April 23, 1992.

The Commission determined that travel and subsistence costs associated with conducting public opinion polls in Iowa are allocable to the Iowa limit. As a result, the amount allocable to Iowa would be increased from \$6,535.74 (Agenda Document #92-52) to \$19,288.08.

Further, the Commission determined that a 15% agency commission should be allocated for all media placements run in Iowa up to and including the date of the amendment to the media contract (January 18, 1988); thereafter, no allocation to Iowa relative to the cost of placement is necessary. As a result, the amount allocable for media would increase from \$21,642.44 (Agenda Document #92-52) to \$49,745.40. The increase of \$28,102.96 represents the allocable portion of placement costs in accordance with the Commission's April 23, 1992 determination.

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MEMORANDUM TO LAWRENCE H. NOBLE
PAGE 2 of 2

Application of the above results in the following adjustments to expenditures allocable to the Iowa limit.

Amount in Excess of the Iowa Expenditure limit	\$466,446.27
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Amount Paid in Excess of the Iowa Expenditure Limit	\$452,543.95
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Repayment Amount	\$118,943.94
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Should you have any questions please contact Tom Warthen at 219-3726.

237/0165865

Memorandum to the Commission
Proposed Final Repayment Determination
Gephardt for President Committee, Inc.
(LRA #338)
Page 2

comparing 11 C.F.R. § 106.2(a)(1) with the Commission's on public financing of the 1992 presidential election cycle in the section of Statement of Reasons discussing the allocation of salaries and employer FICA. See Certification, Agenda Document #92-52.

On April 24, 1992, the Office of General Counsel requested that the Audit Division adjust the amount subject to the Iowa expenditure limitation and recalculate the Committee's pro rata repayment based on the Commission's determinations. In a memorandum dated May 4, 1992, the Audit Division included the adjustment to the Iowa limitation and the recalculated pro rata repayment. The Committee exceeded the Iowa expenditure limitation by \$452,543.95. Therefore, the Committee's pro rata repayment for exceeding the limitation is \$118,943.94 ($\$452,543.95 \times .262834$). Attachment #11.

The Office of General Counsel has made the revisions to comport with the Commission's determinations and included the adjusted amount in excess of the Iowa limitation and the recalculated pro rata repayment in the draft Statement of Reasons. The revisions are marked in the draft Statement of Reasons accordingly. However, it should be noted that, due to the length of the document when all of the attachments are included, we are only circulating the proposed Statement of Reasons and Attachment #11 (The Audit Division's memorandum dated May 4, 1992).

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Determine that Congressman Richard A. Gephardt and the Gephardt for President Committee, Inc. must repay \$118,943.94 to the United States Treasury; and
2. Approve the attached Statement of Reasons in support of the final repayment determination.

Attachment

Proposed Statement of Reasons

233 / 0165361

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Congressman Richard A. Gephardt)
and the Gephardt for President)
Committee, Inc.)

STATEMENT OF REASONS

On _____, 1992, the Commission made a final determination that Congressman Richard A. Gephardt and the Gephardt for President Committee ("Committee") must repay \$118,943.94 to the United States Treasury. The Committee's final repayment determination was based on it exceeding the Iowa expenditure limitation by \$452,543.95. See 11 C.F.R. § 9038.2(b)(2)(ii)(A). The Committee's repayment ratio as calculated under 11 C.F.R. § 9038.2(b)(2)(iii) is .262834. Therefore, the Committee is ordered to repay \$118,943.94 (\$452,543.95 x .262834) to the United States Treasury within 30 days receipt of this determination. 11 C.F.R. § 9038.2(d)(2). Pursuant to 11 C.F.R. § 9038.2(c)(4), this Statement sets forth the legal and factual basis for the Commission's determination.1/

1/ Throughout the Statement of Reasons, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455, and "Matching Payment Act" refers to the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031-9042.

I. BACKGROUND

230 / 16509

The Gephardt for President Committee, Inc. is the principal campaign committee of Congressman Richard A. Gephardt, a candidate for the Democratic presidential nomination in 1988. On June 10, 1991, the Commission made an initial determination that the Committee must repay \$126,383.37 to the United States Treasury. The issues relevant to the repayment determination first arose in the Interim Audit Report which was approved by the Commission on October 4, 1989. See Attachment 1. The Committee responded to the Interim Audit Report on February 16, 1990. See Attachment 2. The Commission issued the Final Audit Report on June 10, 1991. See Attachment 3. The Committee responded to the Final Audit Report on July 18, 1991.^{2/} See Attachment 4. As part of its response, the Committee requested an opportunity to address the Commission in open session regarding the Final Audit Report and the initial repayment determination pursuant to 11 C.F.R. § 9038.2(c)(3). See Attachment 5. The Commission granted the Committee's request for an oral presentation on September 19, 1991. Counsel for the Committee made an oral presentation before the Commission on November 6, 1991. See Attachment 7.

^{2/} The Committee's response to the Final Audit Report incorporates by reference its response to the Interim Audit Report. Therefore, references to the Committee's response includes both its responses to the Interim Audit Report and the Final Audit Report.

II. EXPENDITURES IN EXCESS OF THE IOWA LIMITATION

Section 441a(b)(1)(A), Title 2 of the United States Code establishes national and state expenditure limitations for candidates seeking the presidential nomination who receive public financing. The Commission's regulations, as set forth at 11 C.F.R. § 106.2, govern the allocation of expenditures by publicly-financed primary candidates to particular states. The Iowa expenditure limitation for the 1988 election cycle was \$775,217.60. See 2 U.S.C. § 441a(b)(1)(A). The Final Audit Report found that the Committee exceeded the Iowa expenditure limitation by \$480,848.63. Since the Committee's repayment ratio is .262843, the Commission made an initial determination that the Committee repay \$126,383.37 ($\$480,843.63 \times .262834$) to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii)(A).

The Committee contends that it was entitled to a 25% national exemption of all of its Iowa expenditures. In addition, the Committee contests the allocation of the following expenses to the Iowa expenditure limitation: (1) telephone charges of Northwestern Bell and MCI; (2) salaries, employer FICA, consulting fees and staff benefits; (3) intrastate travel and subsistence expenses; (4) telemarketing expenses; (5) media expenses; and (6) event expenses.

Based on the additional information submitted by the Committee in response to the Final Audit Report and the initial repayment determination, the Commission has determined that the Committee exceeded the Iowa expenditure limitation by

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revised } \$452,543.95.3/ Therefore, the Commission has reduced the amount
the Committee must repay to the United States Treasury from
\$126,383.37 to \$118,943.94 ($\$452,543.95 \times .262834$).4/

The reduction in the amount allocable to the Iowa expenditure limitation is the result of several adjustments. First, the amount was reduced to account for \$1,051.88 in expenditures the Committee erroneously allocated to the Iowa limitation. The Commission also reduced the amount allocable to the Iowa expenditure limitation to account for \$642.84 in refunds for telephone base charges. Similarly, the amount allowed for the 10% compliance exemption was reduced by a proportional amount. In addition, the amount allocable to the Iowa limitation was reduced by \$967.20 for certain accounts

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3/ An addendum audit report will be issued pursuant to 11 C.F.R. 9038.1(e)(4). The amount in excess of the Iowa expenditure limitation may be increased to account for expenses found to be applicable to the Iowa limit in the Final Addendum Audit Report. Therefore, the Committee may owe an additional amount to the United States Treasury. See 11 C.F.R. § 9038.2(b)(2)(ii); see also 11 C.F.R. § 9038.2(f).

4/ The Committee may be required to make an additional repayment to the United States Treasury for receiving public funds in excess of its entitlement. See 11 C.F.R. 9038.2(f). The Final Audit Report found that the Committee had a remaining entitlement of \$6,303.96. The Committee submitted information documenting additional accounts payable in the amount of \$14,104.57. Accordingly, the Committee's remaining entitlement is increased to \$20,408.53 ($\$6,303.96 + 14,104.57$). See Attachment 7. The Committee submitted a debt settlement request, DSR 90-16, on March 30, 1990. The Committee submitted additional information related to the request on May 1, 1990 and December 11, 1991. On February 25, 1992, the Commission made several determinations with respect to DSR 90-16 that may reduce the Committee's net outstanding campaign obligations by more than its remaining entitlement. See Attachment 10. The difference between the Committee's remaining entitlement and its net outstanding campaign obligations is repayable to the United States Treasury. See 11 C.F.R. §§ 9038.2(b)(1)(i) and (v).

payable and \$2,248.16 in miscellaneous expenses. See Attachment 9. Finally, the Commission adjusted the amount of media expenses allocable to the Iowa expenditure limitation. See infra p. 27. The issues raised by the Committee are addressed in the following discussion.

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A. Twenty Five Percent National Exemption

The Committee contends that it is entitled to a "25% national exemption" because many of the expenditures incurred in Iowa were unrelated to the Iowa effort, but were directly related to maintaining a national campaign. Committee's response at 32. The Committee argues that its Iowa primary and national campaigns were "inextricably intertwined." Id. at 32. According to the Committee, at least 25% of the funds incurred in Iowa were related to its campaign efforts nationwide. Id. at 34. The Committee's argument is based on the historical development of the Iowa primary as the initial election with unquestionable national significance. Transcript of Committee's Oral Presentation ("Transcript") at 39. The Committee contends that from the 1976 election to the 1988 campaign, Iowa became the focal point of the primary elections with a disproportionate significance in the presidential nominating process. Transcript at 8.

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The Committee cautions that it is not contending that it is entitled to the 25% exemption because of the nationwide impact of the Iowa primary. Committee's Response at 17; Transcript at 6. Rather, the Committee asserts that as a result of the national importance of the Iowa primary, the national campaign

and the Iowa primary begin to "blur to a degree, which makes determining which expenditures are made for the purpose of influencing the Iowa voters and which expenditures are made in Iowa for the purpose of influencing the national voters, a very difficult determination to make." Transcript at 6. In support of its position, the Committee submitted affidavits of campaign staff detailing the amount of time they spent addressing the concerns and inquiries of the national press. In addition, the Committee intimates that its Iowa budget was prepared in recognition of the fact that a substantial portion of its expenditures would be incurred to influence voters nationwide. Id. at 11.

In view of its efforts to focus on the demands of a national campaign, the Committee exempted 25% of the expenditures incurred in connection with the Iowa primary and asks that the Commission allow it to take this exemption in order to address the political and financial realities of the Iowa primary. The Committee contends that to do otherwise would impose an undue burden on it to stay within the expenditure limitation in Iowa, possibly affecting the candidate's guarantee of political speech under the first amendment. Committee's Response at 33. The Committee further argues that the Commission has a constitutional obligation to administer the Iowa expenditure limitation in a manner that accounts for the political realities of the initial primary and, therefore, the Commission cannot reject an exemption based on any percentage. Transcript at 10 and 79.

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Although the Committee concedes that the selection of the percentage of exempt expenditures was arbitrary, it asserts that a fixed percentage is an effective way to apportion those expenditures incurred to influence the voters of Iowa and the voters nationwide. Committee's Response at 35-36. In support of this argument, the Committee states that the Commission has often selected an arbitrary percentage to deal with similar problems in the area of campaign finance. As an example, the Committee states that the 10% compliance and fundraising exemptions set forth at 11 C.F.R. § 106.2(c)(5) are arbitrary percentages. Id. at 36.

The Commission rejects the Committee's position that it is entitled to exempt 25% of the expenditures it incurred in Iowa. At the heart of the Committee's position is an attack on the concept of state-by-state limits. While the Commission has recommended that Congress eliminate the state-by-state limits, Congress has never chosen to eliminate them. Thus, as long as the state expenditure limitations remain in effect, the Commission is required to administer the law and make its determinations accordingly. See 11 C.F.R. § 437c(b)(1).

The Committee's position essentially requires the Commission to administer the Matching Payment Act and the regulations based on the whims of the political process. For example, in the 1992 presidential election cycle, Iowa appears to have had less national significance than it did in the 1988 election cycle. Therefore, the Committee's argument would not apply in that instance, but other campaigns could argue that

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expenditures incurred in other states with a greater national significance in the 1992 election cycle should be exempt from state allocation.

The congressional mandate that the Commission is required to follow, as expressed at 2 U.S.C. § 441a(b)(1)(a), is to calculate the state expenditure limitations based on the voting age population and not according to a candidate's belief that a specific state's relative significance to his or her national campaign causes the committee to incur expenditures to influence the voters in that state and the voters nationwide. The Commission is required to follow this congressional mandate even if the candidate's belief is based on strategic political reasoning, media reports or historical information suggesting that the Iowa primary campaign and the national campaign are "inextricably intertwined."

While the Committee contends that certain expenditures incurred in Iowa were actually for the purpose of influencing voters nationwide, the Commission believes that every expenditure incurred in the entire primary process has a national component that is not necessarily measurable or separable from the state component. The primary elections are not held to elect a candidate to a particular state office. Rather, they are held for the purpose of nominating a candidate for the office of President of the United States. See 11 C.F.R. § 106.2(a)(1). Therefore, it is anticipated that the expenditures will have a national component and the presidential committee receiving public funds will make the necessary

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financial adjustments to accommodate a process by which state-by-state elections are held to nominate a candidate to a national office.

Moreover, the Commission does not believe that the candidate's right to political speech is abridged by the denial of the 25% national exemption. Nor does the Commission believe that it has a constitutional obligation to grant the Committee's exemption. The intent of Congress in enacting the public financing provisions was to facilitate political speech and not to abridge it. See Buckley v. Valeo, 424 U.S. 1, 92 (1976). However, in order to be eligible to receive public funding, the candidate must satisfy several conditions and make certain certifications to the Commission. See 26 U.S.C. § 9033(a),(b). The candidate certified to the Commission that he would not exceed the state expenditure limitation. 26 U.S.C. § 9033(b)(1). The candidate was not compelled to accept the public funds and to make the certification to the Commission. See Republican National Committee v. Federal Election Commission, 487 F. Supp. 280, 284 (S.D.N.Y. 1980), aff'd 616 F.2d 1 (2d Cir. 1980), aff'd 445 U.S. 955 (1980); see also John Glenn Presidential Committee, Inc. v. Federal Election Commission, 822 F.2d 1097 (D.C. Cir. 1987)(The court rejected the committee's argument that the state-by-state expenditure limitations violated the first amendment). The Commission notes that the Iowa expenditure limitation was the same for all of the presidential candidates receiving public funds under the Matching Payment Act. Therefore, the Commission is not

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constitutionally obligated to grant the candidate a special exemption from the Iowa expenditure limitation that the other candidates receiving public funds did not enjoy.

Furthermore, the Commission does not believe the Committee is justified in arbitrarily selecting the percentage of expenditures exempt from the Iowa limitation without documentation supporting this method of allocation. When the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate has the burden of demonstrating, with supporting documentation, that the proposed method of allocation or claim of exemption is reasonable. See 11 C.F.R. § 106.2(a)(1). Since the Committee has not based its claim for an exemption on actual figures, but on a theoretical figure couched in terms of a national exemption, the candidate has not met his burden of proving that the claim of exemption is reasonable. See id.

Finally, the Committee's claim for a 25% national exemption is not analogous to the 10% compliance and fundraising exemptions. Unlike these exemptions, which focus on special areas of concern in the financial management of political campaigns, the Committee's proposal for a national exemption is state specific. The Commission has never and cannot adopt an exception to the state expenditure limitations based on one state's order in the primary election process or its relative importance to the candidate's national campaign.

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B. Telephone Charges

1. Northwestern Bell Charges

The Committee contends that \$78.00 in calls that were classified on its Northwestern Bell bill as "Interstate, Canada, and/or 908 Directory Assistance Usage" are not allocable to the Iowa expenditure limitation. Committee's Response at 39. The Committee argues that these calls were interstate calls placed outside of Iowa and therefore, should not be allocated to that state's limitation. Id. The Committee also contends that \$172.15 in charges for intrastate calls made after the Iowa primary are not allocable to the Iowa expenditure limitation. Committee's Response at 40. Since these calls were made after the Iowa primary, the Committee asserts they did not have any influence on the primary. Id. The Committee notes that these calls are distinguishable from the debt retirement activities that take place after an election. Id.

The Commission's regulations exempt charges for interstate telephone calls from allocation to any state. 11 C.F.R. § 106.2(b)(2)(v). However, in its response to the Interim Audit Report, the Committee submitted documentation to support exempting only \$28.20 in telephone charges from the Iowa expenditure limitation. See 11 C.F.R. § 106.2(a)(1). Accordingly, the Final Audit Report reduced the amount allocable to the Iowa expenditure limitation by \$28.20. Since the Committee provided no further evidence that an additional amount

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in telephone charges should be exempt from allocation, the remainder of the charges are allocable to the Iowa expenditure limitation.

Moreover, the Commission believes that the calls made after the Iowa primary are allocable to that state's expenditure limitation. Intrastate charges are overhead expenditures which must be allocated to the particular state where the office is located. 11 C.F.R. § 106.2(b)(2)(iv)(A). Expenditures that are made in a state after the primary election, which relate to that primary election are allocable to the state's expenditure limitation. 11 C.F.R. § 110.8(c)(1); cf. FEC v. Ted Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988). Since the Committee did not demonstrate that these calls were unrelated to the Iowa primary, the charges are allocable to that state's expenditure limitation. See 11 C.F.R. § 106.2(a)(1).

2. MCI Charges

The Final Audit Report allocated \$6,756.19 in MCI charges to the Iowa expenditure limitation. The Committee objects to the allocation of \$2,628.56 of these charges to the limitation. Committee's Response at 42. The Committee's MCI service allowed campaign staff to place calls by using the MCI card 800 access code. Id. According to the Committee, the system's access code could identify the location to which the call was made, but not where the call originated. Id. The Committee contends that it was inappropriate for the Audit staff to allocate the calls placed to a location in Iowa to that state's expenditure limitation. Committee's Response at 43. The Committee notes

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that many of the calls in question were reflected on its MCI bill from the national headquarters and, therefore, would be exempt from allocation to the Iowa limit under the interstate call exemption. Id. The Committee concludes that since it cannot be determined where the calls originated, the most reasonable approach is to allocate only 50% of the charges to the Iowa expenditure limitation. Id.

The Final Audit Report noted that the 800 access code could be traced to certain MCI card numbers and the documentation indicates that the individuals in possession of the MCI cards with these numbers were in Iowa during the billing cycle in question. The Committee has not submitted any documentation demonstrating that the individuals using the MCI cards were calling from outside of Iowa; nor has it submitted documentation to support its assertion that some of the calls were placed from the national headquarters. Therefore, the Committee is not entitled to exempt these costs from state allocation under 11 C.F.R. § 106.2(b)(2)(v).

C. Salaries, Employer FICA, Staff Benefits and Consultant Fees

The Final Audit Report allocated an additional \$30,075.40 to the Iowa expenditure limitation. This additional allocation was the result of the Committee's failure to allocate the cost of life and health insurance and employer FICA.^{5/} This

^{5/} FICA refers to the tax imposed on both employers and employees to fund the Social Security programs pursuant to the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101-3126. Under FICA, the employer and the employee pay matching amounts. 26 U.S.C. § 3101; 26 U.S.C. § 3111.

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additional allocation was based on the fact that the Committee improperly allocated certain salaries and consultant fees as 100% exempt compliance costs.

With respect to the additional allocation for employer FICA, the Committee contends that the Commission's regulations do not require the allocation of such payments. The Committee argues that only the Financial Control and Compliance Manual ("Compliance Manual") imposes such an obligation and, therefore, concludes that the Compliance Manual and the regulations are inconsistent. Committee's Response at 56. Thus, the Committee asserts that it was correct in using the regulations as guidance and not allocating employer FICA to Iowa. Id. The Committee further argues that, unlike salary, employer FICA payments are not a benefit to the employee. Id. at 54. Rather, FICA is the employer's legal obligation to pay taxes and the benefit runs entirely to the federal government. Id. Consequently, the Committee contends that these expenditures were not incurred to influence the nomination, but to satisfy its legal obligation to contribute to the FICA. Transcript at 15.

The Committee raises similar arguments with respect to its failure to allocate its costs for health and life insurance for its staff. Specifically, the Committee contends that neither the Commission's regulations nor the Compliance Manual require it to allocate the cost of health and life insurance. Committee's Response at 57. The Committee also argues that the cost of such benefits, unlike employee salaries, does not have any direct relationship to the campaign's activities to

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influence the nomination. Id. The Committee further contends that in consideration of the "high stakes battle" in Iowa and the relatively small expenditure limitation available in that state, campaigns may choose not to offer insurance benefits to campaign staff in order to avoid allocating such expenses to that state's limitation. Transcript at 15. The Committee argues that committees should be encouraged to offer insurance benefits to their staffs. Id. at 16.

Finally, the Committee contends that it is entitled to take a 100% compliance exemption for certain Iowa staff salaries and still maintain the standard 10% compliance exemption for the remainder of the Iowa staff salaries without establishing an allocation percentage for each individual in the state. Committee's Response at 47. The Committee submits that requiring presidential committees to establish an allocation percentage for each individual in a state to be entitled to the 100% compliance exemption is not in line with the realities of political campaigns. Transcript at 50. The Committee intimates that one of the realities is that during the course of the campaign most of the staff will be charged to perform compliance tasks at one time or another. Id. The Committee asserts that another political reality is that certain individuals are employed solely for the purpose of ensuring compliance. Id. Therefore, the Committee believes that it is entitled to exempt 100% of their salaries to compliance and it contends that there is no constitutional or statutory bar to this method of allocation. Id. at 51.

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The Commission believes that these expenses are allocable to the Iowa expenditure limitation. In general, the regulations do not require that any specific expenditures be allocated to the state limitations. Rather, the regulations merely set forth a general rule that expenditures incurred for the purpose of influencing the nomination of a candidate with respect to a particular state are allocable to that state. 11 C.F.R. § 106.2(a)(1). The regulations also set forth a general rule for the method of allocating expenses and specific rules for the method of allocating certain enumerated expenditures. 11 C.F.R. § 106.2(b). In addition, the regulations provide for specific expenses that are exempt from state allocation. 11 C.F.R. § 106.2(c). Therefore, unless the expenditure is expressly exempt from state allocation under 11 C.F.R. § 106.2(c), the Commission is not precluded from applying such an expenditure to the state limitation. ¹

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Contrary to the Committee's assertion, the Commission's regulations and the Compliance Manual are not inconsistent in their approach to allocating employer FICA. Rather, the regulations and the Compliance Manual complement one another. The Compliance Manual elaborates on areas which are not specifically addressed in the regulations to assist candidates in the financial management of campaigns which are publicly financed. See Compliance Manual, pg. xiii. (Introduction). The fact that the Committee chose to "follow the [r]egulations to the letter" does not negate its obligation to allocate employer

FICA as required by the Compliance Manual. Moreover, the Committee concedes that it relied on the Compliance Manual in other circumstances throughout the campaign.

In any event, the Committee's argument that employer FICA payments are not allocable to the Iowa expenditure limitation because the payments do not benefit the employee is misplaced. The threshold inquiry, for purposes of determining whether the cost is allocable to the Iowa expenditure limitation, is whether the FICA payments are expenditures incurred for the purpose of influencing the nomination. See 11 C.F.R. § 106.2(a)(1). Salary is an expense that is allocable to the state expenditure limitation. See 11 C.F.R. § 106.2(b)(2)(ii). Pursuant to 26 U.S.C. § 3111, every employer covered by FICA is required to pay these taxes for individuals in their employ. As a result, employer FICA payments are ancillary to the employer-employee relationship. Since salary is a committee expense that arises out of the employer-employee relationship, employer FICA payments must be allocated to the state expenditure limitation in the same manner as salary. See 11 C.F.R. § 106.2(b)(2)(ii).

Moreover, the Commission believes that employer FICA payments were incurred to influence the nomination. The Committee employed the individuals to engage in activity to influence the Iowa primary election. The cost to the Committee was staff salary, benefits, employer FICA and other taxes. The fact that employer FICA was paid into a fund established by the federal government as opposed to a campaign employee, the lessor of the property where the campaign office was located, or the

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vendor of campaign buttons, for example, does not change the nature of the expense. Employer FICA payments are merely one of the many expenses a committee will incur in the course of conducting a campaign and influencing the nomination.

Furthermore, the Committee's costs for the staff's health and life insurance are allocable to the Iowa expenditure limitation. Salaries must be allocated to each state in proportion to the amount of time each employee spends in the State. 11 C.F.R. § 106.2(b)(2)(ii). While the Commission's regulations do not specifically state that costs for health and life insurance must be allocated, the Compliance Manual, page 124, does state that a committee must allocate such costs. Moreover, health and life insurance benefits are the same as salary in that they are all part of the compensation package offered to employees in consideration for their services. The form of the compensation does not change the nature of the expense as allocable to the Iowa expenditure limitation. See 11 C.F.R. § 106.2(b)(2)(ii).

Finally, the Commission believes that the Committee is not entitled to a 100% compliance exemption for certain employees if it does not establish an allocation percentage for each individual in the state. The Commission's regulations provide that "[a]n amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular [s]tate may be excluded from allocation to that [s]tate as an exempt compliance cost." 11 C.F.R. § 106.2(c)(5). However, "[i]f the candidate wishes to

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claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual working in that state." Id.

D. Intrastate Travel and Subsistence Expenses

1. Expenses of Campaign Staff

The Audit staff allocated an additional \$19,898.59 to the Iowa expenditure limitation to account for intrastate travel and subsistence expenses of campaign staff who were in the state for 5 or more consecutive days. See 11 C.F.R. § 106.2(b)(2)(iii). The Committee contends that \$1,705.88 of this amount is not allocable to the limitation. Committee's Response at 66. The Committee raises four points with respect to the allocation of these expenditures. First, the Committee contends that the rule requiring the allocation of intrastate travel and subsistence expenses of campaign staff in a state for 5 or more consecutive days should be interpreted using 24-hour periods. The Committee argues that there is no regulatory policy for the Commission using calendar days. Transcript at 20; Committee's Response at 63. Alternatively, the Committee argues that the Explanation and Justification for 11 C.F.R. § 106.2(b)(2)(iii) does not require the allocation of such expenditures to a particular state if a committee can demonstrate that the individuals in question were working on its national campaign strategy. Committee's Response at 64. The Committee notes that the tasks performed by the staff in question in Iowa were more akin to "national campaign strategy meetings" than the tasks that were for the purpose of influencing the voters of Iowa. Id. at 63.

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Third, the Committee submits that at least 25% of these expenditures should not be applied to the Iowa limit under its national exemption theory. Id. at 64; see supra at 4. Finally, the Committee contends that it cannot be "reasonably expected to document in painstaking detail that these individuals were not in the state on the fifth day." Id. at 65 (emphasis in original). The Committee argues that the Commission's regulations cannot be read to require such a burden on the campaign without first amendment infringements. Id.

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The Commission interprets 11 C.F.R. § 106.2(b)(2)(iii) by determining whether a person spent any portion of 5 or more consecutive days in a state, rather than whether he or she spent 5 or more consecutive 24-hour periods in a state. See Explanation and Justification of 11 C.F.R. § 106.2(b)(2), 48 Fed. Reg. 5225 (February 4, 1983); see also Compliance Manual at Chapter I, section C.2.b(2)(c), page 32.6/ While the Committee contends that the individuals in question were performing tasks that were akin to its national campaign strategy, the Committee has not submitted any documentation to support its assertion. See 11 C.F.R. § 106.2(a)(1). Moreover, the Commission has

6/ The Compliance Manual, at Chapter I, Section C.2.b(2)(c), page 32, states in relevant part:

Salary, per diem and/or subsistence costs incurred by persons traveling to a State who remain four (4) consecutive calendar days or less, and for national headquarters staff traveling on business other than the campaign in that State, do not require allocation to the State. 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.

rejected the Committee's argument that it is entitled to a 25% national exemption. See supra at 7. Furthermore, although the Committee contends that it is unreasonable to require it to document whether the individuals at issue were in the state on the fifth day, in cases where the Commission disputes a committee's proposed method of allocation, the committee has the burden of demonstrating, with supporting documentation, that its method of allocating was reasonable. 11 C.F.R. § 106.2(a)(1); see John Glenn Presidential Committee, Inc. v. Federal Election Commission, 822 F.2d 1097, 1103 (D.C. Cir. 1987). The Committee has not submitted any supporting documentation in this case. Therefore, the intrastate travel and subsistence expenses of the campaign staff who were in Iowa for 5 or more consecutive days are allocable to that state's expenditure limitation.

Finally, as a condition for receiving public funds under the Matching Payment Act, the candidate certified that he would not incur expenditures in excess of the state limitations. 11 C.F.R. § 9033.2(b)(2). In addition, the candidate agreed to comply with the applicable requirements of the FECA, the Matching Payment Act and the regulations promulgated thereunder. 11 C.F.R. § 9033.1(b)(9). The Commission's regulations require candidates to submit documentation if his or her method of allocation is disputed. 11 C.F.R. § 106.2(a)(1). Imposing these requirements on candidates who choose to receive public

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financing does not violate the first amendment. See Republican National Committee v. Federal Election Commission, 487 F. Supp. 280, 284 (S.D.N.Y 1980), aff'd 616 F.2d 1 (2d Cir. 1980), aff'd 445 U.S. 955 (1980).

2. Vendor Expenses

The Final Audit Report allocated \$19,288.08 in travel expenses the Committee paid to a vendor, Kennan Research and Consulting, Inc. ("Kennan Research"). Part of this allocation was based on the Commission's determination that the Committee could not exclude the intrastate travel and subsistence expenses for the Kennan Research consultants under the 5-day rule as set forth at 11 C.F.R. § 106.2(b)(2)(iii).

First, the Committee contends that a portion of the amount in question was undocumented expenditures, which it had in fact documented and another portion was related to expenses for certain surveys conducted by Kennan Research that the Audit Division counted twice. Committee's Response at 91. The Commission notes that the Final Audit Report reflects the fact that the amount allocable to the Iowa expenditure limitations has been reduced by \$7,374.41 to account for these two categories of expenses.

Second, the Committee argues that \$18,797.31 in intrastate travel and subsistence expenses for its consultants should be excluded from state allocation because the consultants at issue did not remain in the state for 5 consecutive days on any Iowa

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surveys. Committee's Response at 94. The Committee contends that there is no regulatory purpose for applying the 5 day-rule to employees and not consultants. Transcript at 29.

The Commission rejects the Committee's contentions. The Commission's regulations, at 11 C.F.R. § 106.2(b)(2)(vi), require expenditures incurred for the purpose of taking public polls to be allocated to the state(s) in which the polls are taken, except in the case of nationwide polls. The individuals at issue were employees of Kennan Research who traveled for the purpose of conducting polling activity directed at Iowa. Accordingly, such costs are related to polling and, therefore, are allocable to the Iowa expenditure limitation under 11 C.F.R. § 106.2(b)(2)(vi).

E. Telemarketing Expenses

1. Lewis and Associates Telemarketing, Inc.

The Committee entered into a telemarketing services agreement with Lewis and Associates Telemarketing, Inc. ("Lewis and Associates"). Lewis and Associates was paid \$100,541.75 in exchange for its services. Lewis and Associates considered 9% of this amount to be profit. The Committee was charged \$.75 per call for completed calls and a reduced rate of \$.20 per call for calls placed to wrong and disconnected numbers. The Final Audit Report allocated both the profit and the costs of the wrong and disconnected numbers to the Iowa limitation. The Committee does not dispute the allocation of the profit to Iowa. However, the Committee contends that the cost for wrong and incomplete calls

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should not be allocated to Iowa because these calls did not influence the nomination process. Committee's Response at 97.

The Committee's focus is misplaced in this instance. The focus should be on the contract and Lewis and Associates' performance under the contract. Pursuant to the contract, the Committee was charged for all calls, including those made to wrong and disconnected numbers. The intent of the parties in contracting for the services was to influence the voters of Iowa. The fact that some of the calls were not completed is merely one of expenses for conducting a telemarketing operation. This situation is analogous to the Committee purchasing goods for the campaign and not using everything that was purchased, yet contending that the only allocable cost is for the goods that were actually used by the Committee. Neither argument has any merit if the intent of the parties in bargaining for the goods or services was to influence the voters of Iowa. Therefore, the expenditures incurred for incomplete calls are allocable to the Iowa expenditure limitation.

2. Voter Contact Services

The Final Audit Report allocated \$28,511.89 in fees arising out of a contract that the Committee entered into for goods and services with Voter Contact Services ("VCS"). The Committee contends that under this contract, VCS was the exclusive provider of voter files and voter services to the Committee. Committee's Response at 101. The vendor charged the Committee a 100% mark-up on its products. Id. at 101. According to the Committee, this mark-up was the result of VCS's commitment to

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provide its services and products exclusively to the Committee. Id. The Committee argues that this exclusive bilateral arrangement was representative of VCS's commitment to a long-term national campaign. Id. The Committee further contends that had the fees been limited to providing goods and services for the Iowa campaign, the fees charged would have been lower and related only to the actual services provided in Iowa. Id. Consequently, the Committee believes that the fees related to this long-term objective are not allocable to Iowa. Id.

The Committee's exclusive arrangement in the contract does not necessarily entitle it to allocate the respective fees to the national limitation. The Final Audit Report notes that detailed invoices provided by the Committee indicated that the goods and services provided were directed at Iowa. Therefore, the costs for the goods and services are allocable to the Iowa expenditure limitation, despite the fact that the Committee contends that VCS was committed to a long-term national campaign. See 11 C.F.R. § 106.2(a)(1).

F. Media Expenditures

On June 24, 1987, the Committee entered into a contract with the firm of Doak and Shrum to place its advertisements during the course of Congressman Gephardt's presidential campaign. The original contract called for a consulting fee of \$120,000.00 and a 15% agency commission on the first one million dollars of media time buys. The term of the original agreement was July 1, 1987 until November 8, 1988. The contract was subsequently amended to delete the 15% commission for the period

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placement as a part of their general consulting services. Id. Accordingly, the Committee argues that any compensation for media placement is incorporated in the fee for general consulting services and, therefore, it is not identifiable. Id. The Committee contends that its renegotiations with Doak and Shrum and the subsequent amendment to the contract allowed it to compensate Doak and Shrum in this manner for its media placement. Id. at 59.

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In view of the fact that the original agreement recognized and required the Committee to pay a 15% commission on media buys, the Commission has determined that the amount of the consulting fee representative of the 15% media commission for media placed prior to the signing of the amendment on January 18, 1988, \$28,102.96, is allocable to the Iowa limitation. See 11 C.F.R. § 106.2(b)(i)(B). However, since the Committee is entitled to amend its contract to properly reflect the fee for consulting services rendered, the Commission concludes that the compensation for services rendered subsequent to January 18, 1988 is not allocable to the Iowa expenditure limitation.

G. Event Expenses - Jefferson/Jackson Dinner

The Final Audit Report identified \$27,918.34 that the Committee incurred in connection with the Jefferson/Jackson Dinner ("Dinner") hosted by the Iowa Democratic Party on November 7, 1987. The Committee incurred expenditures for buses, tents, banners, caps and food. The Committee excluded 75% of these expenditures as exempt fundraising. The Committee

argues the Dinner had two purposes: 1) to recruit hosts for a subsequent fundraising house party event called "America First: December First," by distributing host information packets at the Dinner; and 2) to lay the groundwork for future donations by prospective contributors. Committee's Response at 125.

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The Final Audit Report found that these expenditures were not exempt fundraising and, therefore, an additional \$21,156.96 was allocated to the Iowa limitation.^{7/} The Committee is not entitled to exempt these expenses as fundraising. The regulations provide that exempt fundraising expenditures are those expenses associated with the solicitation of contributions. 11 C.F.R. § 106.2(c)(5)(ii). The Committee concedes that there was no actual solicitation at the Dinner. The mere distribution of information packets for the recruitment of hosts for a future fundraising event, without any actual solicitation, does not justify the exclusion of the Dinner expenditures as exempt fundraising. See Final Audit Report on Paul Simon for President Committee, approved October 22, 1991.^{8/} Moreover, the Committee's attempts to demonstrate that fundraising increased because of its initial contact with prospective contributors at the Dinner is not persuasive.

7/ The Committee had already allocated \$6,761.38 (\$27,918.34 - \$21,156.96) of the expenditures incurred in connection with the Dinner to the Iowa limitation.

8/ The Paul Simon for President Committee claimed that its commercials, which did not include a fundraising appeal, were a part of its "multi-tiered fundraising strategy." The Committee asserted that the commercials were followed by direct mail and telemarketing appeals. The Commission rejected the Committee's argument.

Therefore, the Commission has determined that the Committee may not exempt these expenses and has allocated them to its Iowa expenditure limitation.

III. FINAL REPAYMENT DETERMINATION

Therefore, the Commission has made a final determination pursuant to 11 C.F.R. § 9038.2(c)(4) that for the foregoing reasons, Congressman Richard A. Gephardt and the Gephardt for President Committee, Inc. must repay \$118,943.94 to the United States Treasury.

ATTACHMENTS

1. Interim Audit Report on the Gephardt for President Committee, Inc., approved October 4, 1989 (portions omitted).
2. Response of the Gephardt for President Committee, Inc. to the Interim Audit Report, February 16, 1990 (portions omitted).
3. Final Audit Report on the Gephardt for President Committee, Inc., approved June 10, 1991.
4. Response of the Gephardt for President Committee, Inc. to the Final Audit Report, July 18, 1991.
5. Gephardt for President Committee's request for an oral presentation, July 18, 1991.
6. Memorandum to the Commission on the Oral Presentation of the Gephardt for President Committee, Inc., October 31, 1991, (attachments omitted).
7. Transcript of Oral Presentation to the Commission on November 6, 1991 on behalf of the Gephardt for President Committee, Inc.
8. Memorandum to Robert J. Costa, Re: Gephardt for President Committee's Response to the Final Audit Report, July 26, 1991.

23 / 0160016

9. Memorandum to Lawrence M. Noble, Re: Analysis of the Gephardt for President Committee's Response to the Final Audit Report, August 6, 1991.

10. Memorandum to Lawrence M. Noble, Re: Updating Statement of Net Outstanding Campaign Obligations, April 6, 1992 (portions omitted).

11. Memorandum to Lawrence M. Noble, Re: Update of Amount In Excess of the Iowa Expenditure Limitation, May 4, 1992.

1 3 / 1 1 6 2 2 1 1

AK-52-2-



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MH002878

May 4, 1992

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.
UPDATE OF AMOUNT IN EXCESS OF THE IOWA
EXPENDITURE LIMITATION

Per your request on April 24, 1992, the following adjustments, to the amount calculated by the Audit staff as allocable to the Iowa limit in our January 15, 1992 memorandum to your office, would be required as a result of the Commission's determination of April 23, 1992.

The Commission determined that travel and subsistence costs associated with conducting public opinion polls in Iowa are allocable to the Iowa limit. As a result, the amount allocable to Iowa would be increased from \$6,535.74 (Agenda Document #92-52) to \$19,288.08.

Further, the Commission determined that a 15% agency commission should be allocated for all media placements run in Iowa up to and including the date of the amendment to the media contract (January 18, 1988); thereafter, no allocation to Iowa relative to the cost of placement is necessary. As a result, the amount allocable for media would increase from \$21,642.44 (Agenda Document #92-52) to \$49,745.40. The increase of \$28,102.96 represents the allocable portion of placement costs in accordance with the Commission's April 23, 1992 determination.

SEARCHED _____
SERIALIZED _____
MAY 1 1992

7317160378

Application of the above results in the following adjustments to expenditures allocable to the Iowa limit.

Amount in Excess of the Iowa Expenditure Limit	\$466,446.27
Amount Paid in Excess of the Iowa Expenditure Limit	\$452,543.95
Repayment Amount	\$118,943.94

Should you have any questions please contact Tom Nurthen at 219-3720.

230/0165899



AK002981

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1992

MEMORANDUM

TO: FRED S. EILAND
PRESS OFFICER

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

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

Attached please find a copy of the Final Addendum to the Final Audit Report on the Gephardt for President Committee, Inc. which was approved by the Commission on May 29, 1992.

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

Attachment as stated

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

237/0163/00



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

AK002847

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

I. Background

A. Overview

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

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

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

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

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

2307016521

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

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

B. Key Personnel

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

C. Scope

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

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

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

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

Use of Funds for Non-Qualified Campaign Expenses

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

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

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

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

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

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

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

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

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

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

In response, Counsel for the Committee states that

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

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

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

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Recommendation #1

On May 29, 1992, the Commission made an initial determination that \$2,628.34 is repayable to the United States Treasury within 90 calendar days of service of this report in accordance with Section 9038.2(d) of Title 11 of the Code of Federal Regulations.

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

Repayment Amount: \$2,628.34

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

RECEIVED
MAY 23 1992

AK002849

May 22, 1992

MEMORANDUM

TO: THE COMMISSIONERS

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

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

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

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

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

Attachments:

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

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

230/0165916



FEDERAL ELECTION COMMISSION

AK002847

WASHINGTON DC 20461

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

I. Background

A. Overview

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

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

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

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

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

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

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

B. Key Personnel

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

C. Scope

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

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

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

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

Use of Funds for Non-Qualified Campaign Expenses

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

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

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

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

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

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

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

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

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

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

In response, Counsel for the Committee states that

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

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

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

Recommendation #1

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

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

Repayment Amount: \$2,628.34

230/0165911



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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

April 1, 1992

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Lorenzo Holloway
Attorney

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

2571160712

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

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

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

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

The Iowa expenditure limitation, as calculated under 2 U.S.C. § 441a(b)(1)(A) for the 1988 presidential election cycle, was \$775,217.60. In the Final Audit Report, the Audit staff found that the Presidential Committee exceeded the Iowa expenditure limitation by \$480,843.63.^{3/} The Audit staff obtained information indicating that the Presidential Committee acquired a mailing list containing the names of past Iowa Caucus attendees and that the list was purchased on behalf of the Presidential Committee by an unknown party.^{4/} The Audit staff allocated the cost of the mailing list, \$10,000.00, to the Iowa expenditure limitation.^{5/} The Presidential Committee did not report the expenditure nor did it allocate the expenditure to the Iowa limitation. The Interim Addendum Audit Report recommended that the Presidential Committee identify the person

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

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

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

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

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

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

6/

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

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

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

II.

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III. SUNSHINE RECOMMENDATION

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

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

23070165916



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20541

July 13, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

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

Carmen R. Johnson *CRJ*
Assistant General Counsel

Lorenzo Holloway *L.H.*
Attorney

SUBJECT: Gephardt for President Committee, Inc.
Request for Extension to Make Repayment
to United States Treasury (LRA #338)

On May 21, 1992, the Commission made a final determination that Congressman Richard A. Gephardt and the Gephardt for President Committee ("the Committee") repay \$118,943.94 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2)(A). On May 27, 1992, a notice was sent to the Committee informing it of the Commission's final repayment determination. Accordingly, the Committee was required to make a repayment to the United States Treasury on June 30, 1992.

In a letter dated July 2, 1992, the Committee requests an extension of 90 days to make its repayment. Attachment 1 at 2. The Committee claims that it does not have enough cash-on-hand to make the repayment. The Committee contends that its cash-on-hand is all the funds it has available after it engaged in fundraising to raise the money to pay the outstanding debts owed to creditors. Therefore, the Committee asserts that additional fundraising is necessary to raise the money to make its repayment to the United States Treasury. The Committee, however, notes that its "current efforts to implement a fundraising plan has so far met with discouraging results." Id at 1. According to the Committee, the additional time will also be used to establish a repayment schedule if it cannot make the

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Memorandum to The Commission
Extension to Make Repayment
Gephardt for President Committee, Inc.
(LRA #338)
Page 3

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the Gephardt for President Committee's request for an extension of 90 days until September 28, 1992 to make its repayment to the United States Treasury; and

2. Approve the appropriate letter notifying the Committee of the Commission's decision.

Attachments

1. Letter from Committee's counsel, Re: Gephardt for President Committee Repayment (July 2, 1992).

2. Committee's 1992 April Quarterly Report

23070165718

Memorandum to The Commission
Extension to Make Repayment
Gephardt for President Committee, Inc.
(LRA #338)
Page 2

full repayment within 90 days. The Committee states that it will be in the position to make the full repayment at some point, but it is currently unsure of the exact date. Id at 2.

A presidential committee must make its repayment to the United States Treasury within 30 days after service of the notice of the final repayment determination. 11 C.F.R. § 9038.2(d)(2). If a presidential committee does not make its repayment, the Commission may institute judicial action to seek recovery of the amount owed to the United States Treasury. 26 U.S.C. § 9040(b). However, the Commission may grant a committee an extension of up to 90 days to make its repayment. 11 C.F.R. § 9038.2(d)(2).

Although the Commission does not routinely grant extensions of time, 11 C.F.R. § 9038.4(a), the Office of General Counsel believes that good cause exists for granting the Committee's request for an extension of time. According to the Committee's 1992 April Quarterly Report, it has \$1,455.42 in cash-on-hand.^{1/} Attachment 2. Consequently, the Committee must raise an additional \$117,488.52 (\$118,943.94 - \$1,455.42) to make its repayment to the United States Treasury.^{2/} The Committee has stated that it will use the additional time to engage in fundraising and establish a repayment schedule.^{3/} Therefore, the Office of General Counsel recommends that the Commission grant the Committee an extension of 90 days to make its repayment. The Committee's repayment would be due on September 28, 1992.

^{1/} The 1992 April Quarterly Report indicates that the Committee does not have any outstanding debts or obligations. Attachment 2. The Committee submitted a debt settlement request, DSR 90-16, which was approved by the Commission on February 25, 1992.

^{2/} It should be noted that the Commission approved the Final Addendum Audit Report on May 29, 1992. In that report, the Commission made an initial determination that the Committee repay an additional \$2,628.34 to the United States Treasury. The Committee's response to the Final Addendum Audit Report was due on July 6, 1992. The Committee has not submitted its response to that report.

^{3/} While the Committee raises a question as to its ability to raise additional funds, we note that it reported receipts of \$116,557 on its 1991 October Quarterly Report. The Committee reported disbursements of \$115,636. The candidate's authorized congressional committee, Gephardt in Congress Committee, reported cash-on-hand of \$1,088,705.29 and no outstanding debts or obligations on its 1992 April Quarterly Report. Subject to the conditions and prohibitions set forth at 11 C.F.R. § 110.3(c), the Gephardt in Congress Committee may transfer funds to the Gephardt for President Committee, Inc.

Federal Election Commission
July 2, 1992
Page 2

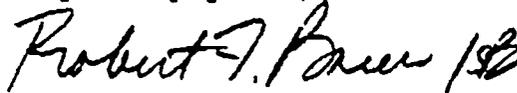
By our calculation the date for repayment on a thirty-day schedule was June 30, 1992. Obviously, as of this date, the Committee does not have the money necessary to make the full repayment identified in the audit report. The Committee would like to request an extension of time of 90 days under the provisions of 11 C.F.R. § 9038.2(d)(2) during which it will be able to accomplish one of the following:

- (1) Raise the funds necessary to make repayment;
- (2) Raise whatever funds are available for repayment and identify to the Commission a payment schedule during which repayment will be possible.

The Committee would like to note in closing that fundraising may be difficult this year, in particular, but it has never come easily to a presidential campaign which has been concluded (and unsuccessfully). The Committee anticipates that it will be in the position at some point to raise all the monies necessary to repay in full. The date by which this possible is still unknown.

Accordingly, the Committee requests an extension of time of 90 days within which to raise the additional monies required and also, if necessary, to establish a plan for raising whatever additional amounts will be needed.

Very truly yours,



Robert F. Bauer
Counsel to the Gephardt for
President Committee, Inc.

RFB:smb

ATTACHMENT 1
Page 2 of 2

**REPORT OF RECEIPTS AND DISBURSEMENTS
 BY AN AUTHORIZED COMMITTEE OF A
 CANDIDATE FOR THE OFFICE OF PRESIDENT**

APR 17 12 07 PM '92

NOTE This report is to be used by an authorized committee of a candidate seeking nomination or election to the office of President or Vice President of the United States whether or not such person is also a candidate for another office.

1 NAME OF COMMITTEE (in full)
 GERHARDT FOR PRESIDENT COMMITTEE, INC.

2 IDENTIFICATION NUMBER
 000212365

3 IS THIS REPORT OF RECEIPTS AND DISBURSEMENTS FILED?
 Primary '88 General

4 TYPE OF REPORT
 Amendment for (insert) Mandatory Report (insert)
 April 15 Quarterly Report January 31 Year-end Report
 July 15 Quarterly Report Termination Report
 October 15 Quarterly Report

5 TYPE OF RECEIPTS
 Through Day Before Election
 Through Day After Election

6 CITY STATE AND ZIP CODE
 Washington, DC 20001

7 DATE _____ **8 REPORTING DATE** _____

COMMITTEE SUMMARY OF RECEIPTS AND DISBURSEMENTS

9 COVERING PERIOD		From January 01, 1992	To March 31, 1992	
SUMMARY	6. CASH ON HAND AT BEGINNING OF THE REPORTING PERIOD		1,455.42	
	7. TOTAL RECEIPTS THIS PERIOD (From Line 22 Column A)		0	
	8. SUBTOTAL (Add Line 6 and 7)		1,455.42	
	9. TOTAL DISBURSEMENTS THIS PERIOD (From Line 23 Column A)		0	
	10. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Change Line 6 and 9)		1,455.42	
	11. DEBTS AND OBLIGATIONS OWED TO THE COMMITTEE (Transfer All on Schedule C or Schedule D)		0	
	12. DEBTS AND OBLIGATIONS OWED BY THE COMMITTEE (Transfer All on Schedule C or Schedule D)		0	
	13. EXPENDITURES SUBJECT TO LIMITATION (From FEC Form 3P, Part II)		---	
	NET YEAR-TO-DATE CONTRIBUTIONS AND EXPENDITURES	14. NET CONTRIBUTIONS (Other than Loans) (Subtract Line 23 Column B from 17a Column B)		0
		15. NET OPERATING EXPENDITURES (Change Line 23 Column B from 22 Column B)		0

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

TYPE OR PRINT NAME OF TREASURER
 S. Lee Kling

SIGNATURE OF TREASURER *S. Lee Kling* **DATE** 4/15/92

For further information, contact:
 Federal Election Commission
 Toll Free 800-424-9530
 Local 202-541-2000

NOTE Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. 437g.
 All previous versions of FEC Form 3P are obsolete and should no longer be used.

ATTACHMENT 2
 1 - 2

92037441322

NAME OF COMMITTEE OR FUND

Support For President Clinton, Inc.

I. RECEIPTS

16 FEDERAL FUNDS (Income on Schedule A-F)

17 CONTRIBUTIONS (other than loans) FROM:

(a) Individuals/Persons Other Than Political Committees

(b) Political Party Committees

(c) Other Political Committees

(d) The Candidate

(e) TOTAL CONTRIBUTIONS (other than loans) (Add 17(a), 17(b), 17(c) and 17(d))

18 TRANSFERS FROM OTHER AUTHORIZED COMMITTEES

19 LOANS RECEIVED

(a) Loans Received From or Guaranteed by Candidates

(b) Other Loans

(c) TOTAL LOANS (Add 19(a) and 19(b))

20 OFFSETS TO EXPENDITURES (Interest, Rental, etc.):

(a) Operating

(b) Fundraising

(c) Legal and Accounting

(d) TOTAL OFFSETS TO EXPENDITURES (Add 20(a), 20(b) and 20(c))

21 OTHER RECEIPTS (Insurance, Interest, etc.)

22 TOTAL RECEIPTS (Add 16, 17(e), 18, 19(c), and 21)

II. DISBURSEMENTS

23 OPERATING EXPENDITURES

24 TRANSFERS TO OTHER AUTHORIZED COMMITTEES

25 FUNDRAISING DISBURSEMENTS

26 EXEMPT LEGAL AND ACCOUNTING DISBURSEMENTS

27 LOAN REPAYMENTS MADE:

(a) Repayments of Loans Made or Guaranteed by Candidates

(b) Other Repayments

(c) TOTAL LOAN REPAYMENTS MADE (Add 27(a) and 27(b))

28 REFUNDS OF CONTRIBUTIONS TO:

(a) Individuals/Persons Other Than Political Committees

(b) Political Party Committees

(c) Other Political Committees

(d) TOTAL CONTRIBUTION REFUNDS (Add 28(a), 28(b) and 28(c))

29 OTHER DISBURSEMENTS

30 TOTAL DISBURSEMENTS (Add 23, 24, 25, 26, 27(c), 28(d) and 29)

III. CONTRIBUTED ITEMS (Check, Art Object, Etc.)

31 ITEMS ON HAND TO BE LIQUIDATED (Art, Etc.)

Line Item	Amount	Code
16		
17(a)		17a
17(b)		17b
17(c)		17c
17(d)		17d
17(e)		17e
18		
19(a)		19a
19(b)		19b
19(c)		19c
20(a)		20a
20(b)		20b
20(c)		20c
20(d)		20d
21		
22		
23		
24		
25		
26		
27(a)		27a
27(b)		27b
27(c)		27c
28(a)		28a
28(b)		28b
28(c)		28c
28(d)		28d
29		
30	-0-	
31	-0-	

9
2
0
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7
4
4
1
5
2

ATTACHMENT
Page 2 of 2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20541

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Lorenzo Holloway *L.H.*
Attorney

SUBJECT: Gephardt for President Committee, Inc.
Request for Extension to Make Repayment
to United States Treasury (LRA #338)

On May 21, 1992, the Commission made a final determination that Congressman Richard A. Gephardt and the Gephardt for President Committee ("the Committee") repay \$118,943.94 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2)(A). On May 27, 1992, a notice was sent to the Committee informing it of the Commission's final repayment determination. Accordingly, the Committee was required to make a repayment to the United States Treasury on June 30, 1992.

In a letter dated July 2, 1992, the Committee requests an extension of 90 days to make its repayment. Attachment 1 at 2. The Committee claims that it does not have enough cash-on-hand to make the repayment. The Committee contends that its cash-on-hand is all the funds it has available after it engaged in fundraising to raise the money to pay the outstanding debts owed to creditors. Therefore, the Committee asserts that additional fundraising is necessary to raise the money to make its repayment to the United States Treasury. The Committee, however, notes that its "current efforts to implement a fundraising plan has so far met with discouraging results." Id at 1. According to the Committee, the additional time will also be used to establish a repayment schedule if it cannot make the

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full repayment within 90 days. The Committee states that it will be in the position to make the full repayment at some point, but it is currently unsure of the exact date. Id at 2.

A presidential committee must make its repayment to the United States Treasury within 30 days after service of the notice of the final repayment determination. 11 C.F.R. § 9038.2(d)(2). If a presidential committee does not make its repayment, the Commission may institute judicial action to seek recovery of the amount owed to the United States Treasury. 26 U.S.C. § 9040(b). However, the Commission may grant a committee an extension of up to 90 days to make its repayment. 11 C.F.R. § 9038.2(d)(2).

Although the Commission does not routinely grant extensions of time, 11 C.F.R. § 9038.4(a), the Office of General Counsel believes that good cause exists for granting the Committee's request for an extension of time. According to the Committee's 1992 April Quarterly Report, it has \$1,455.42 in cash-on-hand.^{1/} Attachment 2. Consequently, the Committee must raise an additional \$117,488.52 (\$118,943.94 - \$1,455.42) to make its repayment to the United States Treasury.^{2/} The Committee has stated that it will use the additional time to engage in fundraising and establish a repayment schedule.^{3/} Therefore, the Office of General Counsel recommends that the Commission grant the Committee an extension of 90 days to make its repayment. The Committee's repayment would be due on September 28, 1992.

^{1/} The 1992 April Quarterly Report indicates that the Committee does not have any outstanding debts or obligations. Attachment 2. The Committee submitted a debt settlement request, DSR 90-16, which was approved by the Commission on February 25, 1992.

^{2/} It should be noted that the Commission approved the Final Addendum Audit Report on May 29, 1992. In that report, the Commission made an initial determination that the Committee repay an additional \$2,628.34 to the United States Treasury. The Committee's response to the Final Addendum Audit Report was due on July 6, 1992. The Committee has not submitted its response to that report.

^{3/} While the Committee raises a question as to its ability to raise additional funds, we note that it reported receipts of \$116,557 on its 1991 October Quarterly Report. The Committee reported disbursements of \$115,636. The candidate's authorized congressional committee, Gephardt in Congress Committee, reported cash-on-hand of \$1,088,705.29 and no outstanding debts or obligations on its 1992 April Quarterly Report. Subject to the conditions and prohibitions set forth at 11 C.F.R. § 110.3(c), the Gephardt in Congress Committee may transfer funds to the Gephardt for President Committee, Inc.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the Gephardt for President Committee's request for an extension of 90 days until September 28, 1992 to make its repayment to the United States Treasury; and
2. Approve the appropriate letter notifying the Committee of the Commission's decision.

Attachments

1. Letter from Committee's counsel, Re: Gephardt for President Committee Repayment (July 2, 1992).
2. Committee's 1992 April Quarterly Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20541

July 21, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *Kim by KBC*
General Counsel

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

Carmen R. Johnson *CS by KBC*
Assistant General Counsel

Delanie DeWitt Painter *KDP*
Attorney

SUBJECT: Jack Kemp for President Committee, Inc.
Request for Extension to Make Repayment
to United States Treasury (LRA #328)

On June 11, 1992, the Commission made a final determination that Congressman Jack Kemp and the Jack Kemp for President Committee, Inc. (the "Committee") must repay \$103,555.03 to the United States Treasury. The Commission approved the amended Statement of Reasons supporting the final repayment determination on June 23, 1992. On June 26, 1992, the Commission sent notice of the Commission's final repayment determination to the Committee. Accordingly, the Committee is required to make a repayment to the United States Treasury on July 27, 1992.

In a letter dated July 9, 1992, the Committee requests an extension of 90 days to make its repayment.^{1/} Attachment 1. The

^{1/} The Committee's letter requests a "90-day extension of time, up to and including September 24, 1992." This Office calculated that a 90-day extension of time from July 27, 1992 would extend up to October 26, 1992, a month later than the date mentioned in the Committee's request. Staff of this Office telephoned Gretchen Lowe, Counsel for the Committee, to clarify this discrepancy. Ms. Lowe stated that the

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Memorandum to The Commission
Extension to Make Repayment
Jack Kemp for President Committee, Inc.
(LRA #328)
Page 2

Committee claims that expenses incurred to close down the Committee have placed the Committee in a deficit position. Therefore, the Committee asserts that it needs additional time to raise the funds necessary to make its repayment to the United States Treasury.

A presidential committee must make its repayment to the United States Treasury within 30 days after service of the notice of the final repayment determination. 11 C.F.R. § 9038.2(d)(2). If a presidential committee does not make its repayment, the Commission may institute judicial action to seek recovery of the amount owed to the United States Treasury. 26 U.S.C. § 9040(b). However, the Commission may grant a committee an extension of up to 90 days to make its repayment. 11 C.F.R. § 9038.2(d)(2).

Although the Commission does not routinely grant extensions of time, 11 C.F.R. § 9038.4(a), the Office of General Counsel believes that good cause exists for granting the Committee's request for an extension of time. According to the Committee's 1992 July Quarterly Report, it has \$66,952.74 in cash-on-hand.^{2/} Attachment 2. Consequently, the Committee must raise an additional \$36,602.29 (\$103,555.03 - \$66,952.74) to make its repayment to the United States Treasury. Therefore, the Office of General Counsel recommends that the Commission grant the Committee an extension of 90 days to make its repayment. The Committee's repayment would be due on October 26, 1992.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the Jack Kemp for President Committee's request for an extension of 90 days until October 26, 1992 to make its repayment to the United States Treasury; and
2. Approve the appropriate letter notifying the Committee of the Commission's decision.

(Footnote 1 continued from previous page)
Committee is requesting a full 90-day extension, until October 26, 1992.

^{2/} We note that the Committee owes \$105,000.00 in legal fees, but has no other debts. We further note that the Committee has received net year to date contributions totaling \$52,600.00. The itemized disbursements reveal expenditures of \$780.23 for printing and \$1,200.00 to a catering firm for "F/R Expense" incurred on June 16, 1992. Thus, it appears that the Committee has been involved in fundraising efforts in 1992.

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1. Letter from Committee's counsel, Re: Jack Kemp for President
Committee Report (July 9, 1992).

2. Committee's 1992 July Quarterly Report

93070165929

PIPER & MARBURY

1200 NINETEENTH STREET, N W
WASHINGTON, D C. 20036-2430
202-861-3900
FAX 202 223 2085

BALTIMORE
NEW YORK
PHILADELPHIA
LONDON
EASTON, MD

WRITER'S DIRECT NUMBER

(202) 861-3917

July 9, 1992

BY HAND

Kim L. Bright-Coleman
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

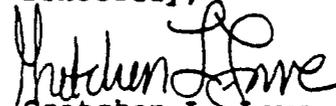
Dear Ms. Bright-Coleman:

On June 23, 1992 the Commission approved the amended Statement of Reasons supporting the final repayment determination that Congressman Jack Kemp and the Jack Kemp for President Committee, Inc. must repay \$103,555.03 to the United States Treasury. The Committee received written notification of the repayment and the Statement of Reasons on June 26, 1992. Therefore, repayment is due on July 27, 1992. We hereby request, pursuant to 11 C.F.R. § 9038.2(d)(2), a 90-day extension of time, up to and including September 24, 1992, in which to make repayment.

Good cause exists for the extension of time we have requested. Expenses incurred to close down the Committee have placed the Committee in a deficit position requiring additional time to raise the funds necessary to make the repayment.

We respectfully request, therefore, that the time for repayment be extended up to and including September 24, 1992.

Sincerely,


Gretchen L. Lowe

GLL:cce

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FEDERAL ELECTION COMMISSION
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REPORT OF RECEIPTS AND DISBURSEMENTS
 BY AN AUTHORIZED COMMITTEE OF A
 CANDIDATE FOR THE OFFICE OF PRESIDENT

NOTE This report is to be used by an authorized committee of a candidate seeking nomination or election to the Office of President or Vice President of the United States whether or not public funds are used.

TYPE OF REPORT OR TYPE OF PARTY	1. NAME OF COMMITTEE Jack Kemp for President '88	2. IDENTIFICATION NUMBER C0021427
	3. ADDRESS 5119 A LEBANON PIKE BOX 192 DUNELTON, VA 22041	4. IS THIS REPORT OF RECEIPTS AND DISBURSEMENTS FOR <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General
	5. AMENDMENT TO REPORT	

6. TYPE OF REPORT: April 15 Quarterly Report Annual Year-end Report Third Quarter Report October 15 Quarterly Report

7. ELECTION DATE: _____

COMMITTEE SUMMARY OF RECEIPTS AND DISBURSEMENTS

8. COVERING PERIOD FROM 4/1/92 THROUGH 6/30/92

SUMMARY	9. CASH ON HAND AT BEGINNING OF THE REPORTING PERIOD	68,932.97
	10. TOTAL RECEIPTS THIS PERIOD (From Line 22 Column A)	-0-
	11. SUBTOTAL (Add Line 9 and 10)	68,932.97
	12. TOTAL DISBURSEMENTS THIS PERIOD (From Line 28 Column A)	1,980.23
	13. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Subtotal Line 11 from 12)	66,952.74
	14. DEBTS AND OBLIGATIONS OWED TO THE COMMITTEE (From Line 31 on Schedule C or Schedule D)	-0-
	15. DEBTS AND OBLIGATIONS OWED BY THE COMMITTEE (From Line 32 on Schedule C or Schedule D)	105,000.00
	16. EXPENDITURES SUBJECT TO LIMITATION (From FEC Form 3P, Page 4)	16,912,142.00
	17. NET YEAR-TO-DATE CONTRIBUTIONS AND EXPENDITURES	
	18. NET CONTRIBUTIONS (Other than Loans) (Subtotal Line 70a Column B from 17e Column B)	52,600.00
	19. NET OPERATING EXPENDITURES (Subtotal Line 70a Column B from 23 Column B)	7,450.37

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

20. TYPE OR PRINT NAME OF TREASURER: Scott B. Mackenzie

21. NATURE OF TREASURER: _____ DATE: 7.0.92

For further information contact Federal Election Commission Toll Free 800 424 9530 Area 316 3122

023376066

FINANCIAL STATEMENT OF RECEIPTS AND DISBURSEMENTS
Page 2, REC FORM 371

NAME OF COMMITTEE OR CANDIDATE JOHN EDGAR HOOVER COMMITTEE		REPORT COVERING THE PERIOD	
		From: 04/01/62	Through: 06/30/62
		COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
I. RECEIPTS			
1 FEDERAL - LEGAL (Items on 9-Part to A-F)		10 00	10 00
2 CONTRIBUTIONS (other than loans) from a) Individuals/Persons Other Than Political Committees b) Political Party Committees c) Other Political Committees		10 00	182,800 00
		10 00	10 00
		10 00	10 00
		10 00	10 00
3 TOTAL CONTRIBUTIONS (other than loans)		10 00	152,800 00
4 TRANSFERS FROM OTHER AUTHORIZED COMMITTEES		10 00	10 00
5 LOANS RECEIVED: a) Loans Received From or Guaranteed by Candidates b) Other Loans		10 00	10 00
		10 00	10 00
6 TOTAL LOANS		10 00	10 00
7 OFFSETS TO EXPENDITURES (Refunds, Rebates, etc.) a) Operating b) Fundraising c) Legal and Accounting		10 00	10 00
		10 00	10 00
		10 00	10 00
8 TOTAL OFFSETS TO EXPENDITURES		10 00	10 00
9 OTHER RECEIPTS (Dividends, Interest, etc.)		10 88	1348 84
10 TOTAL RECEIPTS		10 88	182,948 84
II. DISBURSEMENTS			
11 OPERATING EXPENDITURES		17,988 23	17,988 27
12 TRANSFERS TO OTHER AUTHORIZED COMMITTEES		10 00	10 00
13 PURCHASES DISBURSEMENTS		10 00	10 00
14 EXEMPT LEGAL AND ACCOUNTING DISBURSEMENTS		10 00	10 00
15 LOAN REPAYMENTS MADE: a) Repayments of Loans Made by Candidates b) Other Repayments		10 00	10 00
		10 00	10 00
16 TOTAL LOAN REPAYMENTS MADE		10 00	10 00
17 REFUNDS OF CONTRIBUTIONS TO: a) Individuals/Persons Other Than Political Committees b) Political Party Committees c) Other Political Committees		10 00	10 00
		10 00	10 00
		10 00	10 00
18 TOTAL CONTRIBUTION REFUNDS		10 00	10 00
19 OTHER DISBURSEMENTS		10 00	10 00
20 TOTAL DISBURSEMENTS		17,988 23	17,988 27
III. CONTRIBUTED ITEMS (Paint, Art Objects, Etc.)			
IV. ITEMS ON HAND TO BE LIQUIDATED (Artwork, Etc.)			

OPERATING EXPENDITURES SUBJECT TO LIMIT
To Be Used Only in Primary Campaigns Receiving Federal Funds

NAME OF CANDIDATE OR COMMITTEE	
Jack Kemp for President '88	
A Operating Expenditures (Line 23 Column B)	1,310
B Operating Officers (Line 20b Column B)	-0-
C Current Year Net Operating Expenditures (Subtract Line B from A)	7,950
D Prior Year(s) Operating Expenditures	17,129,923
E Prior Year(s) Operating Officers	225,731
F Prior Year(s) Net Operating Expenditures (Subtract Line E from D)	16,904,192
G Fundraising Disbursements (Line 25 Column B)	
H Officers to Fundraising Disbursements (Line 20b Column B)	
I Current Year Net Fundraising Disbursements (Subtract Line H from G)	
J Prior Year(s) Fundraising Disbursements	
K Prior Year(s) Fundraising Disbursements Officers	
L Prior Year(s) Net Fundraising Disbursements (Subtract Line K from J)	
M Total Net Fundraising Disbursements (Add Lines I and L)	
N 20% Exemption (20% of Operating Expenditure Limit)	
O Total Fundraising Disbursements Subject to Limit (Subtract Line N from M)	-0-
P Total Expenditures Subject to Limitation (Add Lines C, F and O)	16,912,142

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INSTRUCTIONS
(Calculated from FEC Form 3P, page 2)

FEC Form 3P, page 4 is for use by a candidate or the principal authorized committee of a candidate to track operating expenditures subject to limitation during the primary campaign (2 U.S.C. 441a(b)(1)(A)). As soon as possible after the beginning of the calendar year, the Commission will publish the adjusted limits to be used during the election cycle. The 20% fundraising exemption will be based on the published operating expenditure limitation.

Line A - Print FEC Form 3P, page 2, enter the calendar year to-date total for operating expenditures.

Line B - Enter the calendar year-to-date total of officers to operating expenditures.

Line C - Subtract Line B from Line A.

Line D - If reports were filed in a prior year(s) from the year end report(s), enter the calendar year-to-date total for operating expenditures.

Line E - From the year end report(s) for the prior year(s), enter the calendar year-to-date total for officers to operating expenditures.

Line F - Subtract Line E from Line D.

Line G - From FEC Form 3P, page 2, enter the calendar year-to-date total for fundraising disbursements.

Line H - Enter the calendar year-to-date total for officers to fundraising disbursements.

Line I - Subtract Line H from Line G to obtain the net fundraising disbursements for the current year.

Line J - If reports were filed in a prior year(s) from the year end report(s), enter the calendar year-to-date total for fundraising disbursements.

Line K - If officers to fundraising disbursements were reported in a prior year(s), from the year end report(s), enter the calendar year-to-date total.

Line L - Subtract Line K from Line J.

Line M - Add Line I and Line L.

Line N - Enter 20% of the operating expenditures as published by the FEC.

Line O - Subtract Line N from Line M. If the result is less than zero, enter -0- if greater than zero, enter the amount.

Line P - Add Line C, Line F, and Line O to obtain the total operating expenditures made by the candidate or principal authorized committee subject to 2 U.S.C. 441a(b)(1)(A).

If the candidate has authorized either the candidate or the principal campaign committee must file the calendar year-to-date receipt and disbursement report on FEC Form 3P, page 5 (Candidate Report of Receipts and Disbursements) (FEC Form 3P, page 4) to accompany the column totals from the calendar year-to-date report on the calendar year (if any) calendar year-to-date report.

SCHEDULE D

Federal Election Commission
 900 E Street, N.W.
 Washington, D.C. 20543

ITEMIZED DISBURSEMENTS

Use separate schedule for each category of the detailed summary page

PAGE 1
 OF (total pages) 1
 LINE NUMBER 23

NAME OF CANDIDATE OR COMMITTEE
Jack Kemp for President

Any information received from such Reports and Statements may not be used or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such contributors.

DATE
 MONTH, DAY, YEAR)

AMOUNT OF EACH DISBURSEMENT THIS PERIOD

NAME ADDRESS CITY STATE ZIP CODE	PURPOSE OF DISBURSEMENT	DATE MONTH, DAY, YEAR)	AMOUNT OF EACH DISBURSEMENT THIS PERIOD
The Press Room 5200 Leesburg Pike Falls Church, VA 22041	DISBURSEMENT FOR <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	6 . 6 92	780.23
Design Cuisine 154 S. Sharrington Road Arlington, VA 22206	DISBURSEMENT FOR <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	6/16 92	,200.00
NAME ADDRESS CITY STATE ZIP CODE	PURPOSE OF DISBURSEMENT DISBURSEMENT FOR <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
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NAME ADDRESS CITY STATE ZIP CODE	PURPOSE OF DISBURSEMENT DISBURSEMENT FOR <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)		
SUBTOTAL OF DISBURSEMENTS THIS PERIOD			
TOTAL THIS PERIOD (Include in the number of votes)			

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SCHEDULE D
 Form 1041-1
 1963

**DEBTS AND OBLIGATIONS
 EXCLUDING LOANS**

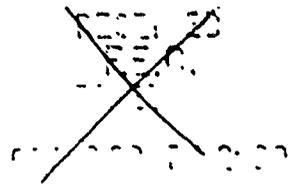
PAGE 12
OF TOTAL PAGES

NAME OF CREDITOR	AMOUNT OF DEBT OR OBLIGATION	DATE PAID	AMOUNT PAID	AMOUNT OF DEBT OR OBLIGATION REMAINING AT END OF YEAR
Jack Kemp for President * Full Name, Mailing Address and Zip Code of Debtor or Creditor Ripper & Marbury 1200 19th Street, NW Washington, D.C. 20036	-0-	105,000	-0-	105,000
Nature of Debt (Purpose) Legal Fees				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
11 SUBTOTALS (The Period This Page Represents)				
21 TOTAL (The Period Last page this Form only)				
31 TOTAL OUTSTANDING LOANS (from Schedule C-F last page only)				
41 ADD 21 and 31 and carry forward to appropriate line of Summary Page (last page only)				

92,5760,600



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461



August 20, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *LMN by KPC*
General Counsel

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

Carmen R. Johnson *CRJ*
Assistant General Counsel

Lorenzo Holloway *LH*
Attorney

SUBJECT: Gephardt for President Committee, Inc.
Request for Extension to Make Repayment
to United States Treasury (LRA #338)

08/21/92

130/91607.6

Attached for your review is a request by the Gephardt for President Committee, Inc. ("Committee") for an extension of time until September 28, 1992 to make its repayment of \$2,628.34 to the United States Treasury. Attachment 1. The Commission made a final determination on August 4, 1992 that the Committee must repay \$2,628.34 pursuant to 26 U.S.C. § 9038(b)(2)(A). This repayment was based on a finding included in the Final Addendum Audit Report. On August 7, 1992, a notice was sent to the Committee informing it of the Commission's final repayment determination. Accordingly, the Committee is required to make this repayment to the United States Treasury on or before September 9, 1992.^{1/}

On August 6, 1992, the Commission granted the Committee's request for an extension of 90 days until September 28, 1992 to make its repayment of \$118,943.94 to the United States

^{1/} Since the Committee's repayment of \$2,628.34 was due on September 9, 1992, it is essentially requesting an extension of 19 days to make this repayment.

Memorandum to The Commission
Extension to Make Repayment
Gephardt for President Committee, Inc.
(LRA #338)
Page 2

Treasury.2/ See Certification, Agenda Document 92-101 (August 6, 1992). This repayment was based on the findings included in the Final Audit Report. The Committee now requests that its repayment of \$2,628.34 be subject to the same extension of time as its repayment of \$118,943.94. Attachment 1.

The Office of General Counsel recommends that the Commission grant the Committee's request that its repayment of \$2,628.34 be subject to the same extension as its repayment of \$118,943.94. In its letter requesting an extension of time to make the \$118,943.94 repayment, the Committee demonstrated that the additional time is necessary to engage in fundraising. Attachment 2. The Committee's 1992 July Quarterly Report reveals that it only has \$1,362.92 in cash-on-hand. Attachment 3. Therefore, the Committee should be granted its request for an extension of time to raise the funds to repay the additional \$2,628.34. Accordingly, the Committee would be required to make a total repayment of \$121,572.28 (\$118,943.94 + \$2,628.34) to the United States Treasury on September 28, 1992.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the Gephardt for President Committee's request for an extension of time until September 28, 1992 to make its repayment of \$2,628.34 to the United States Treasury; and
2. Approve the appropriate letter notifying the Committee of the Commission's decision.

Attachments

1. Letter from Committee's counsel, Re: Gephardt for President Committee Repayment (August 11, 1992)
2. Letter from Committee's counsel, Re: Gephardt for President Committee Repayment (July 2, 1992).
3. Committee's 1992 July Quarterly Report

2/ The Commission notified the Committee that it would not grant any additional requests for extensions of time to make this repayment to the United States Treasury.

PERKINS COIE

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

August 11, 1992

Kim L. Bright-Coleman
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Gephardt for President Committee, Inc.

Dear Ms. Bright-Coleman:

This is in response to the Commission's letter dated August 7, 1992 regarding the final repayment determination in the Final Addendum Audit Report.

The Committee asks that this repayment be subject to the same extension of time granted to the Committee by the Commission at its meeting on August 6, 1992.

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 Gephardt for
President Committee, Inc.

92 AUG 12 AM 9:21

FEDERAL ELECTION COMMISSION

237/0160200

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
517 FIFTEENTH STREET, N.W., WASHINGTON, D.C. 20005-2011 • (202) 638 6600

July 2, 1992

Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Gephardt for President Committee
Repayment

Dear Commissioners:

With the approval of the final audit report for the Gephardt presidential campaign of 1988, the Gephardt for President Committee ("the Committee") has begun addressing the requirement to make repayment required. As matters now stand, the presidential committee has less than that amount in its cash-on-hand. This balance is all that remains following an active period of fundraising in the course of which the Committee attempted to pay outstanding creditors. The Committee must now begin additional fundraising to obtain the monies required for the repayment.

An assessment of the current fundraising environment in which this must be done suggests that it will be no easy matter. The Commission is certainly aware of press reports that suggest that even the active Democratic presidential campaign in progress this year has found fundraising difficult. This is an election year in which there are major presidential campaigns raising money along with scores of competitive Congressional, Senate and local elections. The Committee's current efforts to implement a fundraising plan has so far met with discouraging results.

As the Commission knows, debt settlements with a large number of creditors were reached, and upon review by the Commission, approved. These settlements reflected the limited resources available to the Committee through post-campaign fundraising.

ATTACHMENT 2
Page 1 of 2

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Federal Election Commission
July 2, 1992
Page 2

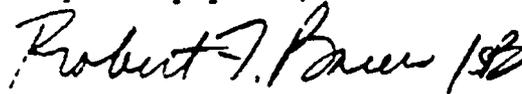
By our calculation the date for repayment on a thirty-day schedule was June 30, 1992. Obviously, as of this date, the Committee does not have the money necessary to make the full repayment identified in the audit report. The Committee would like to request an extension of time of 90 days under the provisions of 11 C.F.R. § 303.2(d)(2) during which it will be able to accomplish one of the following:

- (1) Raise the funds necessary to make repayment;
- (2) Raise whatever funds are available for repayment and identify to the Commission a payment schedule during which repayment will be possible.

The Committee would like to note in closing that fundraising may be difficult this year, in particular, but it has never come easily to a presidential campaign which has been concluded (and unsuccessfully). The Committee anticipates that it will be in the position at some point to raise all the monies necessary to repay in full. The date by which this possible is still unknown.

Accordingly, the Committee requests an extension of time of 90 days within which to raise the additional monies required and also, if necessary, to establish a plan for raising whatever additional amounts will be needed.

Very truly yours,



Robert F. Bauer
Counsel to the Gephardt for
President Committee, Inc.

RFB:smb

ATTACHMENT 2
Page 2 of 2

**REPORT OF RECEIPTS AND DISBURSEMENTS
 BY AN AUTHORIZED COMMITTEE OF A
 CANDIDATE FOR THE OFFICE OF PRESIDENT**

NOTE: This report is to be used by an authorized committee of a candidate seeking nomination or election to the Office of President or Vice President of the United States whether or not public funds are used.

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 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 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NAME OF COMMITTEE (in Full) Gehardt For President Committee, Inc.	REPORT COVERS THE PERIOD From <u>04/01/92</u> Through <u>06/30/92</u>	
	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
I RECEIPTS		
16 FEDERAL FUNDS (Itemize on Schedule A P1)		
17 CONTRIBUTIONS (other than loans) FROM		
(1) Individual Persons Other Than Political Committees		
(2) Political Party Committees		
(3) Other Political Committees		
(4) The Candidate		
(5) TOTAL CONTRIBUTIONS (other than loans) (Add 17(a), 17(b), 17(c) and 17(d))		
18 TRANSFERS FROM OTHER AUTHORIZED COMMITTEES		
19 LOANS RECEIVED		
(1) Loans Received From or Guaranteed by Candidate		
(2) Other Loans		
(3) TOTAL LOANS (Add 19(a) and 19(b))		
20 OFFSETS TO EXPENDITURES (Refunds, Returns, etc.)		
(1) Operating		
(2) Fundraising		
(3) Legal and Accounting		
(4) TOTAL OFFSETS TO EXPENDITURES (Add 20(a), 20(b) and 20(c))		
21 OTHER RECEIPTS (Dividends, Interest, etc.)		
22 TOTAL RECEIPTS (Add 16, 17(a), 18, 19(a-c), 20(a-c), 21)	-0-	-0-
II DISBURSEMENTS		
23 OPERATING EXPENDITURES		
24 TRANSFERS TO OTHER AUTHORIZED COMMITTEES		
25 FUNDRAISING DISBURSEMENTS		
26 EXEMPT LEGAL AND ACCOUNTING DISBURSEMENTS	92.50	
27 LOAN REPAYMENTS MADE		
(1) Repayments of Loans Made or Guaranteed by Candidate		
(2) Other Repayments		
(3) TOTAL LOAN REPAYMENTS MADE (Add 27(a) and 27(b))		
28 REFUNDS OF CONTRIBUTIONS TO		
(1) Individual Persons Other Than Political Committees		
(2) Political Party Committees		
(3) Other Political Committees		
(4) TOTAL CONTRIBUTION REFUNDS (Add 28(a), 28(b) and 28(c))		
29 OTHER DISBURSEMENTS		
TOTAL DISBURSEMENTS (Add 23, 24, 25, 26, 27(c), 28(a-c) and 29)	92.50	
III CONTRIBUTED ITEMS (Check All Objects, Etc.)		
30 ITEMS ON HAND TO BE LIQUIDATED (Attach List)		

ATTACHMENT 3
Page -0- of 2

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MW004492

November 13, 1992

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REPAYMENT OF \$121,572.28 RECEIVED FROM
THE GEPHARDT FOR PRESIDENT COMMITTEE

This informational memorandum is to advise you of a repayment check in the amount of \$121,572.28 received from the Gephardt for President Committee. The check represents full payment as requested in the final repayment determination.

Copies of the repayment check and receipt showing delivery to the Treasury are attached.

If you have any questions concerning this matter, please contact Ray Lisi at 219-3720.

Attachments as stated

230 / 0165743



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A REPAYMENT OF
1988 PRESIDENTIAL PRIMARY MATCHING FUNDS

November 13, 1992

Received on November 13, 1992, from the Federal Election Commission (by hand delivery) a check (#7805) drawn on the Gephardt in Congress Committee in the amount of \$121,572.28. The check represents a full repayment from the Gephardt for President Committee as requested in the final repayment determination in the final audit report.

Pursuant to 26 U. S. C. §9038(d), this check should be deposited into the Matching Payment Account.

Gephardt for President Committee
Amount of Repayment: \$121,572.28

Presented by

Arthur T. Becker
for the
Federal Election Commission

Received by

Robert E. Hines
for the
United States Treasury

337716074

7805

GEPHARDT IN CONGRESS COMMITTEE
7455 WATSON RD., SUITE 107 PH. 314-851-1111
ST LOUIS, MO 63119

23 October . 92

4-3/92

\$ *121,572.20*

U.S. Treasury

hundred twenty one thousand five hundred seventy two and 28/100*****



THE COMMUNITY
NATIONAL BANK
OF ST. LOUIS
ST. LOUIS, MISSOURI

Joseph A. ...

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